

Report of	Meeting	Date
Director of Streetscene, Neighbourhoods and Environment (Introduced by the Executive Member for Environment and Community Safety – Cllr E Bell)	Executive Cabinet	26 June 2007

LAND DRAINAGE ACT 1991 (AS AMENDED) – ADOPTION, AUTHORISATION AND ACTION

PURPOSE OF REPORT

- To approve the delegations and authorisations to the Director of Streetscene, Neighbourhoods and Environment necessary for the discretionary enforcement of the Land Drainage Act 1991 as amended and to propose a priority based approach to dealing with land drainage issues.

CORPORATE PRIORITIES

- The issue raised and recommendations made in this report involve risk considerations in the following categories:

Strategy		Information	
Reputation	4	Regulatory/Legal	4
Financial	4	Operational	4
People		Other	

- The risk / consequences of not adopting this legislation or having appropriately authorised officers to undertake discretionary land drainage work means that any enforcement action required could be successfully challenged and thereby rendered ineffective. In addition the lack of a prioritised approach to land drainage activity exposes the Council to reputational risk as well as unquantifiable financial risk through unprogrammed and unidentified land drainage work.

BACKGROUND

- The Land Drainage Act 1991 makes provision for local authorities to take action with respect to land drainage where a risk of flooding exists.
- The Councils constitution and the delegations available to the Director of Streetscene Neighbourhood and Environment need to be amended to reflect the adoption of the Land Drainage Act provisions
- Previous activity with respect to land drainage has been on an unprogrammed and ad hoc basis and this report seeks to set some priorities for dealing with land drainage issues

INTRODUCTION

8. Flooding of land and property is a problem throughout the Borough of Chorley and is generally caused either through a lack of maintenance of the existing land drainage system or because no land drainage exists at all.
9. The existing land drainage system may consist of a ditch, watercourse or an underground pipe, in the latter case, the property owner may not even know it exists. Unfortunately, under land drainage law, the property or landowner has the responsibility to maintain the land drainage system where it crosses or borders that land or property. This is sometimes referred to as 'riparian responsibilities'
10. Also common law precedents and statutory provisions have established that individual property owners are not only responsible for the drainage of their own land but for also accepting and dealing with the natural flows from adjoining land. They must also not create or permit an obstruction to that natural flow to occur.
11. Land drainage flooding can be further exacerbated by the general rise in the natural ground water levels, which are occurring throughout the country, as abstraction by industry and the water companies reduces.

SERVICE DELIVERY

12. Residents who suffer any form of flooding have access to advice by contacting the Directorate of Streetscene Neighbourhoods and Environment. In addition new development proposals should have regard to land drainage issues and recommendations made at the consent stage through the Development Control process.
13. However Chorley Borough Council has no direct responsibility to solve land drainage flooding but they can, using powers within the Land Drainage Act 1991, enforce maintenance responsibilities and in default carry out that work and recharge the person with riparian responsibility. Unfortunately, this can be very expensive and may involve a great deal of investigation. The budget for such work is small and therefore the problems are prioritised in accordance with the listing shown below and under current resource provision only No.s 1 and 2 will receive a response and follow up action if appropriate. This means that land drainage issues relating to no.s 3 through 8 will be referred back to the complainant for private action.

PRIORITY LISTING

No	Definition
1	Internal flooding – domestic premises
2	Imminent threat of repeat internal flooding – domestic premises
3	Nuisance to highway network/environment
4	Other internal flooding – non domestic premises
5	Flooding to amenity areas in proximity to property
6	Flooding to amenity areas remote from property
7	Fields/farms
8	Footpaths/rights of way

FUTURE ACTION

14. Given that there is no statutory responsibility to undertake land drainage works, there may be occasions where land drainage problems arise and no riparian responsibility exists or can be readily identified. Under these circumstances the Council may decide to underwrite that responsibility to effect action which would prevent a situation arising in priority listing 1 and 2 above.

15. In general, however, it is envisaged that the majority of work in this area would rely on informal action supported by formal enforcement action on those with the riparian responsibility by way of enforcement notice, work in default and recovery of the cost of that work.

COMMENTS OF THE DIRECTOR OF CUSTOMER, DEMOCRATIC AND LEGAL SERVICES

16. The legal implications are adequately described within the report.

COMMENTS OF DIRECTOR OF DEVELOPMENT AND REGENERATION

17. Flooding is a material planning consideration and is taken into account when assessing development proposals. When development is located within a flood risk area applicants are required to submit a Flood Risk Assessment for consideration.

COMMENTS OF THE DIRECTOR OF FINANCE

18. In the circumstances described in the report it would be necessary to charge the landowner for any costs incurred. However, in some circumstances it is not always clear who is the landowner or rate of the flooding problem. Then Council will always endeavour to trace the individuals concerned and recover the appropriate sums. If this is not possible then the costs would need to be absorbed by the Council. Such events are relatively rare and the sums involved relatively minor. Any costs of this nature would have to be accommodated within the Council's current cash budgets.

COMMENTS OF THE DIRECTOR OF HUMAN RESOURCES

19. There are no direct HR implications from the report.

RECOMMENDATIONS

20. It is recommended that:

The Land Drainage Act 1991 be referenced in the Councils constitution to enable the Director of Streetscene, Neighbourhoods and Environment to authorise officers appropriately under this legislation

The following Executive Functions be allocated to the Director of Streetscene, Neighbourhoods and Environment under Executive Arrangements made pursuant to Section 15 of the Local Government Act 2000 and be discharged by his Officers under that Section:

The functions of:

- i) authorising the service of notices and the taking of consequential action, including carrying out work in default and the recovery of costs;
- ii) recommending to the Director of Customer, Democratic and Legal Services the institution of legal proceedings; and
- iii) authorising officers to exercise statutory powers of entry (including obtaining warrants),

Pursuant to the Land Drainage Act 1991 as amended.

21. It is recommended that the prioritisation list above be adopted and the Director of Streetscene, Neighbourhoods and Environment be give authority to allocate a budget to essential works falling in Prioritisation List No.s 1 and 2, in consultation with the Director of Finance, where riparian responsibility cannot be readily identified or equitably apportioned.

REASONS FOR RECOMMENDATION(S)

22. To permit the Director of Streetscene Neighbourhood and Environment to authorise officers where appropriate.
23. To enable essential works to progress to prevent internal flooding or reduce the imminent risk of internal flooding

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

24. No alternatives were considered since these would not meet the Councils corporate priorities.

JOHN LECHMERE
DIRECTOR OF STREETSCENE, NEIGHBOURHOODS AND ENVIRONMENT

There are no background papers to this report.

Report Author	Ext	Date	Doc ID
Simon Clark	5742	18 May 2007	HRREP/1406LM1