

HUNTLY FLOOD PROTECTION SCHEME- PUBLIC HEARING STATEMENT ON BEHALF OF ABERDEENSHIRE COUNCIL

Introduction

Aberdeenshire Council proposes to build a flood scheme which will offer protection to the residents of the Meadows area of Huntly who have frequently suffered the effects of flooding. The scheme will involve the raising of embankments along the River Deveron, Ittingston and Meadow Burns to reduce overland flow, and the construction of storage areas near Arnhall and to the west of the Meadows to slow down and regulate flows. The scheme is intended to provide in excess of a 1:200 year standard of protection to the Meadows area.

This hearing is to consider the flood protection scheme proposed by Aberdeenshire Council for the Meadows area of Huntly. This statement seeks to support the proposal, and provide some background information on the history of the site and the development of the proposed scheme.

The Meadows is an area which forms part of the flood plain of the River Deveron and has a long history of flooding. That fact is not in dispute. The earliest recorded flood goes back to 1739, but there have been several floods in recent times, notably 1995, 2000, 2002 and 2009.

The flood event which occurred on the night of 31 October/1 November 2009 was particularly damaging, and led to strong demands from residents for urgent action to prevent a repeat occurrence. On that occasion, nearly 50 properties were affected, including a nursing home for the elderly, two houses for vulnerable residents, a caravan park and recreational area. Properties had to be evacuated in the middle of the night by the emergency services and this was particularly traumatic for those in a weak and vulnerable state. The A96 Aberdeen to Inverness trunk road, the A920 Huntly to Dufftown road and a couple of minor local roads were also affected by flood water, and had to be closed.

Flooding of the Meadows is complex, and involves out of bank and/or overland flows from the River Deveron and the much smaller Ittingstone and Meadow Burns. This will be discussed in more detail later.

Site development history

Returning to the historical facts, the farm known as the Meadows became available for sale in the early 1990s and Gordon District Council (predecessors of Aberdeenshire Council) decided to acquire the property. This decision was apparently driven by a desire to create more recreational facilities within Huntly and provide land for housing purposes, which was in short supply.

The first developments on the ground were a caravan site and nursing home. The former was a joint venture between Gordon District Council and the then Gordon Enterprise Trust. The construction of the nursing home was a private venture on land bought from the Council.

A Notice of Intention to Develop (NID) a serviced housing site on the Meadows was made by Gordon District Council in 1995. The application was notified to the then Scottish Office. One letter of representation received raised concerns about flooding. However, the Scottish Office approved the NID on 12 March 1996, but not before seeking and receiving a more detailed hydrological report. The site appears to have been designed to be protected against a 1 in 100 year flood event, primarily by the construction of bunding on the north and west sides. The Scottish Office, in its letter of approval, accepted that was a reasonable standard of protection for a built up area, but warned that floods with a greater return period had been experienced elsewhere across Scotland, and the Council needed to be aware of the possibility of remaining risk. Areas of the site were subsequently sold off for association and private housing.

A planning application for the erection of 32 houses was submitted by Grampian Housing Association, and ultimately approved in 1996. Another application for 8 houses was submitted by Kirkwood Homes, and it was approved in 1997. Further planning applications for individual private houses were submitted and approved between 1996 and 2001. Apparently, no specific conditions relating to flooding were attached to the permissions. However, it is known that some of the purchasers of individual plots alongside the Meadow Burn were burdened to maintain a flood bund along the rear of their properties as a condition of sale.

Previous flooding investigations

Around 1996 engineering consultants, Fairhurst, were commissioned by Aberdeenshire Council to investigate flooding from the River Deveron about 1 mile upstream of Huntly near its confluence with the Ittingstone Burn. Water was spilling out of the river at this location during prolonged rainfall events and finding its way to the Meadow Burn where it created increased flood risk in the Meadows area.

Drawings prepared at the time indicated that a section of raised embankment should be built on the south side of the river, and a flap valve installed on the end of the Ittingstone Burn to prevent flows from the River Deveron breaking out due to hydraulic head differences. These measures are believed to have been implemented around 1996, though some correspondence suggests it may have been several years later.

A consequence of the installation of the flap valve is that waters from the Ittingstone Burn back up to some degree, and one of the land owners, Mr John Rhind, believes that this has had a detrimental effect on his agricultural

land. He claims that what was once productive land is now subject to frequent flooding because of the changed flow paths. It is the case that water from the Ittingstone Burn now backs up until it reaches a point where it can flow eastwards and ultimately into the Meadow Burn. However, were the flap valve not there, significantly more water would flow from the Deveron on to the A920 public road, and from there to the Meadow Burn. By way of comparison, it is estimated that in extreme flood conditions, the flow in the River Deveron could be at least 100 times the flow in the Ittingstone Burn. (This is based on the hydrological assessments undertaken by Halcrow and contained in Table 10 of their report dated April 2005). Therefore, any release from the Deveron is likely to eclipse the flow from the Ittingstone Burn, so closing the end of the Burn must be seen as the lesser of the two evils.

In 2004/2005 the Halcrow Group Limited (Halcrow) were commissioned by Aberdeenshire Council to build a hydrological model of the catchment to further examine flood risk in the Meadows area, and to inform future planning decisions. This study identified a continuing flood risk in the area, and came forward with a number of recommendations to reduce that risk. These included raising embankments on the River Deveron and Meadow Burn and increasing the capacity of a number of culverts along the Meadow Burn. Though only one recommendation was acted upon at the time, some of the others are included in the current proposed flood protection scheme.

It is worth noting that a later planning application by Langstane Housing Association for more houses in the Meadows Area was refused by Aberdeenshire Council on 29 September 2009 on the strength of the flooding concerns identified in the report.

Immediately following the flooding in October/November 2009, Halcrow were asked to review their previous findings to reflect the latest event. This confirmed initial observations that flooding of the Meadows was mainly caused by the Meadow Burn backing up and overspilling its embankments. The flows in the Meadow Burn were significantly larger than the channel and capacity of several culverts along its route, and indeed far exceeded the runoffs generated by the Meadow Burn catchment alone. This was primarily due to the River Deveron overtopping its banks upstream at Milton. The overspill followed a path towards the A96/A920 junction, where it joined the Meadow Burn, eventually ending in the Meadows Estate. Backup water from the Ittingstone Burn also reached the Meadow Burn, thus exacerbating the problem. It was subsequently estimated by Atkins, and included in their Summary Project Appraisal Report, that the volume of overspill from the Deveron was about eight times the normal expected flood flow in the Meadow Burn.

The second Halcrow study concluded that the recommendations of their first report remained valid, but that the hydrological analysis update resulted in an approximate 5 to 10% increase in design flows which would need to be taken account of in any future detailed design.

Development of the scheme

As a result of the findings of the second Halcrow report, the Infrastructure Services Committee of Aberdeenshire Council on 13 May 2010 agreed to progress the development of a flood scheme. A local authority has general permissive powers under section 56 of the Flood Risk Management (Scotland) Act 2009 (the FRMA) to "...do anything which it considers"..."will ... manage flood risk in its area..."

Engineering consultants, Atkins, were appointed to develop a scheme through to tender stage. The aim of the scheme was to provide protection to the properties in the Meadows against a 1 in 200 annual flood event plus an allowance for future climate change effects. Many of the features identified by Halcrow were included but, as an alternative to upgrading the culverts, Atkins proposed the introduction of a storage area with throttled outlet to limit flows along the Meadow Burn to the capacity of the existing channel and culvert structures. This proposal was considered less disruptive than upgrading culverts and introducing bunding along the rear gardens of numerous properties adjacent to the Burn, and was agreed.

The FRMA had only just been introduced at the time, and there was much uncertainty about the process involved in promoting a formal flood scheme. Discussions took place with the Scottish Government, and it was established that the Council could follow one of two routes. Either progress flood "works" by agreement through obtaining planning permission, or promote a flood "scheme" using the new legislation contained in part 4 of the FRMA. Because relatively few landowners were involved, and initial discussions with them on the effects of the scheme had been generally encouraging, it was decided to adopt the agreement route. Overall, it was felt that this approach would achieve a speedier outcome, though this was not borne out by subsequent events.

The outline proposals were discussed in depth with the Scottish Environment Protection Agency (SEPA) and eventually agreement was reached on the hydrology and design standards to be adopted.

The planning application was treated as a Major Application and those directly affected, together with interested public and community groups, were invited to a pre-application consultation meeting held locally to provide input to the proposals. The Planning Authority (Aberdeenshire Council) was asked for a screening opinion on the environmental impacts of the scheme. It determined that the proposals did not require an environmental impact assessment but that detailed environmental surveys were required.

A planning application for the proposed works was subsequently submitted. This included a statement on the outcome of the pre application consultation,

and how it had influenced the final proposals. It also included the necessary information on relevant environmental investigations.

The application attracted four letters of representation. These covered a range of issues such as; lack of sufficient consultation; flooding of fields requiring compensation; and lack of details on compensation to be offered.

The planning authority considered these representations as well as the impacts on residential amenity, public access, cultural heritage, nature conservation interests, landscape and planning policy, before arriving at any conclusions. It concluded that the proposals were of an essential nature aimed at mitigating the potential for flooding and the consequential impacts. They were also deemed to be in compliance with relevant policies of the Development Plan and, on 12 June 2012, the Marr Area Committee of Aberdeenshire Council granted planning consent for the works.

More detailed discussions then took place with landowners while the scheme was being developed and land plans prepared. Applications were also made to SEPA for authorisations relating to engineering works in or adjacent to watercourses under the Water Environment (Controlled Activities) (Scotland) Regulations (frequently referred to as “CAR licences”) and these were eventually granted on 15 May 2013.

Following finalisation of the land plans, negotiations for the acquisition of the various plots of ground using the Council’s Estates Service commenced. However, these neither went as well nor as quickly as hoped, and with no means of drawing the matter to a head by a defined date through the “planning” route, the Council decided that an alternative course of action was necessary. It should be noted that neither planning consent nor CAR authorisations give powers of entry to the ground to undertake works.

It was decided that a formal flood protection scheme should be promoted in accordance with section 60(1) and Schedule 2 of the FRMA, and progressed in parallel with the ongoing land negotiations. This Hearing is intended to be a concluding part of the scheme consideration process. If, and when, the Scheme is confirmed, powers of entry will be available to the Council under section 79(2)(e) of the FRMA to carry out “scheme operations”- or, in other words, build the scheme. This is regardless of whether or not agreement on any compensation is achieved.

However, under section 65 of the FRMA, deemed planning permission for the scheme will be required from Scottish Ministers before works can commence.

Compensation and land acquisition

Now that the requirements of the FRMA have become clearer, it is considered worthwhile providing some information on these issues as they may be

relevant in considering objections relating to future access to land to undertake scheme operations.

First, the local authority must decide whether or not it requires to purchase the ground on which flood works are constructed. This may be desirable for some permanent works, but is not always essential. If it is deemed essential, compulsory purchase powers under section 66(1)(b) may be used following confirmation of a scheme. However, lack of ownership by the local authority does not preclude the ability to construct the Scheme, as mentioned in the previous section.

Hitherto, Aberdeenshire Council has always preferred to acquire title to ground over which it requires for works, in order to have control over its future use. This approach has been followed on all land negotiations to date relating to the Huntly Scheme. It remains the belief of the Council that access by negotiation and, where possible, advance agreement on compensation, is preferable to the use of more strident powers.

According to section 82(2) of the FRMA, compensation is only due to any person who “sustains damage” as the result of the construction and maintenance of a scheme. This is defined in section 83(1)(a) and (b) as loss of value or loss of enjoyment of land. Any question of disputed compensation may, under section 83(4), be referred to and determined by the Lands Tribunal for Scotland. There are time limits on when claims can be made, with the latest being 10 years after completion of the operations.

Conclusions

The residents of the Meadows area of Huntly remain on tenterhooks some five years after the last major flood, and are desperate that a flood scheme be implemented sooner rather than later. Several near misses since 2009, have only served to increase their anxiety. There are a number of extremely weak and vulnerable individuals residing in the area, and any evacuation or rescue operation is fraught with risk to life and limb, not only to them, but also, in rescue situations, to emergency services’ staff.

Since 2009 a flood warning scheme for the River Deveron has been put in place by SEPA, and the Council and other responders have improved their response arrangements for dealing with the threat of flooding. These do not eliminate the risks, but at least allow everyone to be better prepared when flooding is considered possible.

It could certainly reasonably be argued, with the benefit of hindsight, that the decision to develop the Meadows area for residential use was a flawed one, and current flooding problems are a result of that decision. However, it was a democratic decision taken at a time when different guidelines and legislation applied, and flood risk was not such a prevalent planning consideration as it is now.

Aberdeenshire Council has developed a scheme which it is confident will address flooding in the residential areas. It is considered to be the optimum design possible in terms of, achieving a substantial reduction in the level of flood risk, providing value for money, and sharing the burden of impact across landowners. The scheme has also been closely scrutinised by SEPA and satisfies all their requirements.

All public works projects are intended to produce considerable community benefit and this project is no different. However, it recognises that it will have a negative impact on the interests of some landowners and that is an unavoidable fact. These can only be mitigated through appropriate design and compensation, and every effort has been made to limit the resulting losses.

Through its efforts the Council has demonstrated that it is committed to delivering a scheme, and is willing to invest the estimated £3.1 million required to do so. It is very mindful of the effects on others, but believes that the benefits to the many outweigh the disadvantages to the relatively few. It therefore urges the Reporter to dismiss the objections, find in favour of the Scheme, and allow it to progress with the minimum of further delay.

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