

TEWKESBURY BOROUGH COUNCIL

Report to:	Council
Date of Meeting:	22 June 2021
Subject:	Consideration of a petition requesting that the Council instigates a full transparent review of planning and water management policy for the area of Ash Lane and Down Hatherley Lane in Down Hatherley
Report of:	Head of Development Services
Corporate Lead:	Chief Executive
Lead Member:	Lead Member for Built Environment
Number of Appendices:	One

Executive Summary:

An electronic petition (e-petition) was published by the Council on 27 January 2021. The e-petition requests that the Council instigates a full transparent review of planning and water management policy for the area of Ash Lane and Down Hatherley Lane in Down Hatherley. It also requests that the review be carried out in consultation with residents, the Parish Council, along with the water and highways authorities. 165 people have signed the petition.

The wording of the e-petition is set out in Paragraph 2.2.1 of this report. The Council's process for dealing with petitions is set out in Paragraph 1.3 of the Petition Scheme, which is attached as Appendix 1.

The planning and water management policies of the Council are contained with the Development Plan for the Borough.

A review of the local planning and water policies has recently been undertaken as part of the Local Plan review process. The JCS review which has commenced will provide the opportunity to review the strategic planning and water policies throughout the plan area.

The process for dealing with planning applications is set out in relation to drainage mitigation. In addition, the legal status of Ash Lane is explained setting out that any legal restrictions on the implementation of a planning permission and/or matters relating to the ownership of land are not considerations which are material to the determination of planning applications.

The Council has engaged with the County Council's Lead Local Flood Authority, the Environment Agency, Severn Trent to understand the contributory factors which led to the floods in December and officers have met with the Twigworth and Down Hatherley Flood Watch Group to listen to their concerns.

It is not recommended that the Council undertakes a specific review of planning and water policies for Ash Lane and Down Hatherley Lane, Down Hatherley separately, as requested by the petition. Rather, it is proposed that this is dealt with as part of the strategic review of these policies which will be undertaken by the Council as part of the JCS review process. The JCS review will involve members of the public, the County Council, the Environment Agency and, Severn Trent along with numerous other statutory consultees.

Recommendation:

That the Council requests Officers to consider the planning issues raised by the Petition as part of the review of the Joint Core Strategy.

Reasons for Recommendation:

The local planning and water policies have recently been reviewed as part of the process leading to the Examination in Public, of the Tewkesbury Borough Local Plan. The strategic planning and water policies are in the process of being reviewed, which the public and statutory agencies will be consulted upon. The work requested by the petition is already programmed to be undertaken as part of that wider review.

Resource Implications:

Officer time in considering the issues raised as part of the JCS and Borough Plan process.
Officer time in liaising with other statutory providers.

Legal Implications:

The Petition must be considered in accordance with the Council's Petition Scheme. The Scheme sets out a number of options for the Council to respond to the Petition. These are set out in the report at 2.5.1.

Risk Management Implications:

Any risks associated with land use allocations will be considered and recorded during the development of the JCS process.

Performance Management Follow-up:

None.

Environmental Implications:

As part of the JCS review process a Strategic Environmental Assessment will be undertaken which will identify any potential environmental impacts and the mitigation required to address any negative impacts.

1.0 INTRODUCTION/BACKGROUND

- 1.1** The Council's Petition Scheme, including e-petitions is designed to ensure that the public has easy access to information about how to petition the Council and to let them know what to expect from the Council in response. Included within the Scheme is the requirement to have a Council debate should a certain number of signatures be achieved. Tewkesbury Borough Council has set that threshold at 100 signatures. As such the Petition received now triggers a debate by Council.

- 1.2** The Scheme provides a fifteen minute maximum period for the debate and recognises that the issue may be referred to another Committee where the matter is not one reserved for Council. The purpose of the requirement for Council debate, therefore, is not to ensure that the final decision relating to the petition issue is made at that Council meeting, but to increase the transparency of the decision-making process, ensuring that debates on significant petitions are publicised with sufficient notice to enable the petition organiser and public to attend. It also ensures that local people know that their views have been listened to and they have the opportunity to hear their local representative debate their concerns. The outcome of debates will depend on the subject matter of the petition.

2.0 THE PETITION

- 2.1** An electronic petition was published by the Council on 27 January 2021. The petition refers to unrestricted development and failing infrastructure at Ash Lane and Down Hatherley Lane in Down Hatherley.

- 2.2** The petition has 165 signatures which is in excess of the 100 signatures required to trigger a debate at Council. The wording of the petition is set out below:

- 2.2.1** *We the undersigned petition the council to Instigate a full transparent review of planning and water management policy for the area of Ash Lane and Down Hatherley Lane in Down Hatherley. This review to be carried out in consultation with residents, the Parish Council, and the water and highways authorities.*

Tewkesbury Borough Council has failed to consider the human rights, opinions, mental health and physical welfare of residents of Ash Lane and Down Hatherley Lane in the application of planning decisions:

- *it has failed to recognise the status of Ash Lane as a private road*
- *it has failed to differentiate between greenfield development and development amongst existing housing, which has to consider existing residents and infrastructure.*
- *it has failed to make adequate provision for the management and removal of foul drainage and flood water.*
- *it has allowed developers to adopt the least cost option of plugging into existing infrastructure rather than including infrastructure as part of any planning approval.*
- *it has made no attempt to balance new build against the impact on the existing community.*

The Neighbourhood Plan specifically excludes a settlement boundary for Down Hatherley. It is instead subject to piecemeal and unrestricted development. The strategy behind the piecemeal is not transparent although there are clearly long-term plans behind much of the building.

The area is still trying to recover from the crisis over the Christmas period 2020 with flooded houses and backed up sewers. The water pumping station failed, and Severn Trent were using tankers to pump out. In addition, the A38 junction with Down Hatherley lane flooded over this period and the field that acts as a soak away for neighbouring fields was flooded. This is marked for development. If this field is built on, this water will flood into nearby homes.

- 2.3** The e-petition requests that the Council undertakes a full transparent review of planning and water management policy for the area of Ash Lane and Down Hatherley Lane in Down Hatherley.

2.4 The Council is required to debate the electronic petition in accordance with the Petitions Scheme attached at Appendix 1.

2.5 Paragraph 5.1 of the Petitions Scheme states that the petition organiser (or their representative) will be given five minutes to present the petition at the meeting and the petition will then be discussed by Councillors for a maximum of fifteen minutes. The Council's response to a petition will depend on what a petition asks for and how many people have signed it, but may include one or more of the following:

- 2.5.1**
- taking the action requested in the petition;
 - considering the petition at a Council meeting;
 - holding an inquiry into the matter;
 - undertaking research into the matter;
 - holding a public meeting;
 - holding a consultation;
 - holding a meeting with petitioners;
 - referring the petition for consideration by the Council's Overview & Scrutiny Committee;
 - calling a referendum;
 - writing to the petition organiser setting out the Council's views about the request of the petition.

3.0 BACKGROUND INFORMATION TO THE SUBJECT OF THE PETITION

3.1 On 23 and 24 December 2020, a number of areas within the Borough experienced flooding. One of these areas was Ash Lane. The cause of flooding is complex and can include pumping station failure, drains not being maintained, the extent of the rainfall or a combination of factors.

3.2 There is a local perception that the flooding experienced is a direct result of new development and that the Council has failed to take into account the lack of infrastructure within areas, including the Ash Lane, Down Hatherley area.

4.0 EXISTING DEVELOPMENT PLAN POLICIES

4.1 Decisions upon planning applications should be made in accordance with the adopted development plan, unless there are other material considerations that may indicate otherwise. The planning and water management policies of the Council are contained with the Development Plan for the Borough.

4.2 The Development Plan consists of:

- the Gloucester, Cheltenham and Tewkesbury Joint core Strategy 2011-2031, adopted December 2017 (JCS). The JCS provides the overarching strategic plan for the area covered by the three Councils;
- the saved policies of the Tewkesbury Local Plan to 2011, adopted 2006, Borough level document; and
- the Down Hatherley, Norton and Twigworth Neighbourhood Development Plan (NDP), made 28 May 2019.

4.3 In addition, the Council has a Flood and Water Management Supplementary Planning Document (SPD) adopted in February 2018. The SPD details the policies within the JCS and the existing Local Plan. The SPD sets out the national policies (NPPF) and relevant legislation. It sets out the information that applicants are required to submit as part of a planning application. It also details the flood risk zones and what a flood risk assessment should cover.

4.4 The Council is already in the process of reviewing a number of its flood and water management policies. In October/November 2013 the Council commenced the review of the Local Plan with a consultation on the key issues affecting the Borough. This led to the consultation on the Draft Policies and Site Options which took place from February to April 2015. The preferred option was issued for consultation in October 2018, with the pre-submission plan consulted upon in October 2019. The Plan was submitted to the Secretary of State in May 2020. The Examination in Public into the Local Plan took place between February-March 2021 and the Inspector's report is awaited.

4.5 On 6 January 2021, the Executive Committee approved the Local Development Scheme. The Tewkesbury Borough Local Development Scheme (LDS) outlines the timetable for preparing statutory development plan documents in the Borough. The Local Plan timetable is detailed above. The estimated timetable for the JCS Review to adoption is as follows:

Issues & Options Consultation	Winter 2018/19
Preferred Options Consultation	Summer 2021
Pre-Submission Consultation	Winter 2022
Submission to the Secretary of State	Spring 2023
Examination	Summer 2023
Adoption	Winter 2023

4.6 The opportunity to review the planning and water management policies as requested by the petition is, at a strategic level, already underway.

5.0 LEGISLATIVE REQUIREMENTS IN THE DETERMINATION OF PLANNING APPLICATIONS

5.1 One of the claims within the petition is the Council has failed in its duty to take several factors into account in the determination of planning applications, within this area. This includes, status of road, provision of infrastructure, whether site is greenfield or brownfield, failure to make adequate provision for the management and removal of foul drainage and flood water.

5.2 In relation to the issue of the legal status of Ash Lane, Down Hatherley, any such restrictions on the implementation of a planning permission and/or matters relating to the ownership of land are not considerations which are material to the determination of planning applications. A developer has to engage with the various parties who may own or have rights over /interests in the land that may affect the developers' ability to implement any planning permission that has been obtained.

5.3 The National Planning Policy Framework (NPPF) says the following (paragraph 103):

“When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere, and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:

- *within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and*
- *development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems.”*

5.4 The Council will always seek to manage and reduce flood risk through the development management process. The Council has a duty to consult the Environment Agency for developments in areas at risk of flooding as well as the Lead Local Flood Authority (LLFA) (Gloucestershire County Council (GCC)) in relation to whether a scheme has adequate provision of infrastructure. As LLFA, GCC has responsibility for managing local flood risk from surface runoff, ordinary watercourses and groundwater in the area and is therefore a statutory consultee for development proposals. The Council is obliged to make its decisions within the existing legal and policy framework and any refusal of a planning application must be based on sound evidence-based reasons which should be resilient to the prospect of challenge. The responses from statutory consultees are taken into account when making any decision and where those raise no objection, the Council requires evidence to support a refusal on technical grounds.

6.0 WORKING WITH STAKEHOLDERS

6.1 Following the floods that took place in December 2020 and January 2021, officers have been working with the water, environment agency and flood authorities to determine the reason for some of the flooding that occurred across the County. Officers at the Borough Council have also spoken to residents who we are aware of who were flooded to gain more information about the specifics to each flood, so we have a better understanding of what caused the flood.

6.2 Furthermore, the County Council as lead local flood authority has published a County-wide report which summarises the scale of the flooding across Gloucestershire that took place on 23 and 24 December 2021. The report provides an overview, primarily of the effectiveness of the response to the floods by the County Council and other key agencies. The report identifies lessons learnt and sets out the next steps to address the issues raised by the flood events.

6.3 Additionally, officers from the Council, along with representatives of the Lead Local Flood Authority, Severn Trent and the Environment Agency have met with representatives of the Twigworth and Down Hatherley Flood watch group to discuss the issues related to flooding within the area. The purpose of the meetings has been to listen to the concerns of the residents, understand the issues, share information and to explain the roles and responsibilities of the respective agencies, with a view, wherever possible, to addressing the issues raised.

7.0 CONCLUSION

- 7.1** The petition is asking the Council to instigate a full and transparent review of the planning and water management policies for the area of Ash Lane and Down Hatherley Lane in Down Hatherley, in consultation with the residents, the Parish Council and the water and highway authorities.
- 7.2** It is not recommended that the Council undertakes a review of planning and water policies specifically for Ash Lane and Down Hatherley Lane, Down Hatherley. This is because, as set out previously in the report, a review of the local planning and water policies has recently been undertaken as part of the Tewkesbury Borough Council Local Plan review. The Examination in Public into the draft Local Plan has recently been held and the Council is currently awaiting the Inspectors report.
- 7.3** The review of the JCS is also underway and the strategic planning and water policies will be reviewed as part of this process. At the formal stages of the process all residents across the borough will be able to comment and engage with the Council on the proposed policies within the revised JCS. The review of the JCS will also involve the key statutory stakeholders including the County Council, the Environment Agency and Severn Trent.
- 7.4** Since the December flood, Council officers have worked with the County Council as Local Lead Flood authority and other key statutory agencies who have all met with Twigworth and Down Hatherley Flood Watch Group to listen to the concerns they have.
- 7.5** To conclude, given that the local planning and water policies have recently been reviewed and that the strategic planning and water policies are in the process of being reviewed in consultation with the public and statutory agencies, the review requested by the petition, whilst not solely for the Down Hatherley area, is already programmed to be undertaken.

8.0 OTHER OPTIONS CONSIDERED

- 8.1** None.

9.0 CONSULTATION

- 9.1** None.

10.0 RELEVANT COUNCIL POLICIES/STRATEGIES

- 10.1**
- The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031, adopted December 2017.
 - Emerging Tewkesbury Borough Plan.
 - The saved policies of the Tewkesbury Local Plan to 2011, adopted 2006.
 - Flood and Water management SPD, March 2018.

11.0 RELEVANT GOVERNMENT POLICIES

- 11.1**
- Planning and Compulsory Purchase Act 2004.
 - National Planning Policy Framework (2019).
 - Local Democracy, Economic Development and Construction Act 2009.
 - The Flood and Water Management Act (FWMA) 2010

12.0 RESOURCE IMPLICATIONS (Human/Property)

12.1 Officer time.

13.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

13.1 None directly related to this report, although a development plan led approach to development will help ensure that new development is supported by the necessary facilities and infrastructure. The adoption of the JCS and the TBP will remain matters to be decided by the Council.

14.0 IMPACT UPON (Value for Money/Equalities/E-Government/Human Rights/Health and Safety)

14.1 The proposed plan review process and comments from statutory consultees/stakeholders will be cognisant of equalities and/HRA issues.

15.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

15.1 None.

Background Papers: None.

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Appendices: 1. Council's petition scheme.