

	<h2>Cabinet</h2>
Title	Proposed Barnet Land Drainage Byelaws for Flood Risk Management
Date of meeting	16 January 2024
Report of	Councillor Alan Schneiderman, Cabinet Member for Environment and Climate Change
Wards	ALL
Status	Public
Key	No
Urgent	No
Appendices	Appendix A – Proposed Drainage Byelaws (DEFRA Model as amended)
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<h3>Summary</h3>	
<p>The London Borough of Barnet (“the Council”) is considering using its powers under the Flood and Water Management Act 2010 to implement local drainage byelaws to assist in reducing flood risk in the Borough of Barnet and in turn, neighbouring boroughs.</p>	

The making of byelaws is a policy matter reserved to full Council in the Council's Constitution as detailed in the Legal Implications section. This report seeks authorisation to commence the process to enable the Council at a future meeting to consider making the proposed byelaws.

The process would, in the main, be a formal consultation exercise. Initial informal approval of the proposed byelaws being required from the Department of Agriculture and Rural Affairs (DEFRA). In addition, Consultation will also be with Natural England and any local navigation authority to make sure that the proposed byelaw does not conflict with any byelaws that they may have in place.

Once the formal stakeholder consultation period has concluded and comments considered and taken on board the Council will then consider whether to make the byelaws.

Once the byelaws are made there will be a further period whereby the public can make comment. The byelaws will be advertised locally, and objections are considered and following which, and depending on the objections received, the byelaws are confirmed.

The primary purpose of these byelaws is to ensure efficient drainage within the Council's area. The principal benefits of making the proposed byelaws are as follows:

- Ensuring the ordinary watercourses are maintained by the Riparian Owners.
- Managing and reducing flood risk.
- Improving water quality.
- Improving biodiversity.
- Ensuring drainage infrastructure will be maintained and adapted over time.
- Improving the quality of life for people by improving the quality of public spaces and the water environment.

Recommendations

That Cabinet:

- 1. Note the proposal to make land drainage byelaws.**
- 2. Approve the commencing of the stakeholder consultation and process as set out in the report.**
- 3. Approve the delegation of authority to the Director of Highways and Transportation, in consultation with the Cabinet Member for Environment and Climate Change to progress the stakeholder consultation process including liaising with the Department of Agriculture and Rural Affairs and other regulatory/statutory bodies and consider making any amendments to the proposed byelaws.**
- 4. Recommend that the Leader is delegated to consider the stakeholder consultation and any amendments to the draft byelaws and to make recommendations to Council whether to adopt the byelaws.**

1. Background

- 1.1 The London Borough of Barnet (LBB) is a Lead Local Flood Authority (LLFA) under the Flood and Water Management Act 2010. The LLFA is responsible for managing local flood risks from surface water, groundwater, and ordinary watercourses, collectively known as “local flood risk”.
- 1.2 Main rivers are usually larger rivers and streams, designated as such, and shown on the [Main River Map](#). The Environment Agency carries out maintenance, improvement, or construction work on main rivers to manage flood risk. Other rivers are called ‘ordinary watercourses’. LLFAs carry out flood risk management work on ordinary watercourses.
- 1.3 Land Drainage Act 1991- functions of LLFA’s in relation to land drainage, in particular:
- Section 23 - the Council is responsible for consenting works that propose any changes to the ordinary watercourse and alter or obstruct the flow in the watercourse. Enforcement action to rectify unlawful and damaging work to a watercourse can be taken by the Council.
 - Section 25 - permissive powers to ensure that appropriate maintenance is carried out by landowners on ordinary watercourses. These powers can be exercised if it is deemed that a lack of maintenance or an alteration to a watercourse pose a flood risk.
- 1.4 Section 66 of the Land Drainage Act 1991 allows Local Authorities to make byelaws for securing the efficient working of the drainage system in an area.
- 1.5 The proposed byelaws follow the DEFRA model byelaws; however, the Council has amended these proportionately to reflect current issues identified within the Borough as well as recognising such matters as the Borough not being a coastal authority with a coastline.
- 1.6 The enactment of the byelaws will enable the Council to monitor and enforce the efficiency of flood defences and will provide scope for the Council to work with developers and local communities (including riparian owners) to reduce flood risk now and in the future.
- 1.7 Failure to make the byelaws may make it difficult for the Council to take action to reduce flood risk in some circumstances. The byelaws cannot come into operation until they have been confirmed by the Secretary of State.
- 1.8 To achieve the aims set out in this report, there are a number of stages that must be completed, subject to Cabinet approval, when making the byelaws, which are prescribed by the DEFRA statutory process. These are set out in Section 3 Post Decision Implementation.
- 1.9 Whilst the Council do not have to advise DEFRA about the Council’s changes to the model byelaws, as the Council wishes to amend the byelaws then it would be prudent for the Council in the first instance to send the proposed byelaws to DEFRA with an explanation of why the Council considers any changes are necessary and why the byelaws are needed. This forms part of the proposed consultation process and early engagement with DEFRA can assist advance the process.
- 1.10 The drainage byelaws will support the conservation and enhancement of the area’s local character, biodiversity, and habitats, by contributing to a healthier environment with reduced pollution and contamination in our watercourses.

2. Alternative Options Considered and Not Recommended

- 2.1 The Council maintains the status quo in exercising its powers under Land Drainage Act 1991, which has been found not to be as effective and of local relevance as compared to having its own Land drainage byelaws, thus not recommended.

3. Post Decision Implementation

The following table sets out next steps. The Process can be further found at:

<https://www.gov.uk/guidance/flood-risk-and-land-drainage-byelaws>

Cabinet	Cabinet considers and makes recommendations for the byelaw process to be started.
Informal check by DEFRA	The proposed draft byelaws are forwarded to DEFRA for informal checking. Here, as the model Byelaws have been amended by the Council there may be some further amendments to the Byelaws and the delegations will enable reasonable and proper amendments to be made. The Council will need to provide an explanation of why they think any changes are necessary and why the byelaws are needed, this is standard procedure.
Formal consultation with stakeholders	Formal consultation takes place with Natural England and other relevant stakeholders such as Local Navigational Authority the Canal and River Trust and any other relevant parties to ensure that the proposed byelaws do not conflict with or interfere with the operation of their byelaws.
Council decides whether or not to make byelaws	Under the Council’s constitution, this decision is reserved to Full Council to make local legislation such as byelaws. The Council considers recommendations made by the Leader, as so delegated at Recommendation 4 of this Report and undertakes the decision whether to formally adopt the byelaws.
Byelaws made and public consultation takes place (1 month)	<p>Once the Council has formally resolved to adopt the byelaws, a statutory process takes place where the byelaws are made, sealed and deposited for one month.</p> <p>As part of this process the Council will:</p> <ul style="list-style-type: none"> • Advertise the proposed byelaws in at least one newspaper in the area affected by your byelaws. The advertising should give everyone an equal opportunity to object to the proposals. The Council should consider other platforms such as its website but should not be used in substitute for the local press. • Leave a copy of the byelaws at the Council’s offices for public inspection for at least one month and provide a copy to anyone who asks for one.

	<ul style="list-style-type: none"> The Council must tell anyone who objects to the proposals to write with their objections and resolve any objections where possible.
Byelaws and feedback sent to Secretary of State	<p>The Byelaws cannot come into force until they are confirmed by the Secretary of State.</p> <p>The Council can apply to the Secretary of State for confirmation of the byelaws one month after either of the following:</p> <ul style="list-style-type: none"> the date of publication of the notice. the last date of publication if more than one newspaper is used. <p>The Council must send 2 sealed copies of the byelaws and with:</p> <ul style="list-style-type: none"> an explanation of why the byelaws are necessary. a statement of where the byelaws were deposited and advertised, with the dates and times. a copy of the newspaper pages and any website pages where the byelaws were advertised, with a statement that the Council made appropriate efforts to reach all affected parties. copies of any objections sent in and any response - if there were none, to include a statement explaining that the Council received no objections. a statement of when the local and other public authorities (Natural England, local navigation authority) were notified.
Byelaws become effective	<p>Unless otherwise decided, the byelaws will come into operation at the expiration of one month from the day on which they are confirmed by the Secretary of State.</p>

4. Corporate Priorities, Performance and Other Considerations

4.1 Corporate Plan

This proposed land drainage byelaws align with Our Plan for Barnet 2023 to 2026, specifically with the strategic objectives within the plan of Caring for our Places and Caring for the Planet. The Caring for our Places objective sets out a vision to make neighbourhoods into welcoming hubs for communities to enjoy their unique characteristics.

4.2 Corporate Performance/Outcome Measures

The proposed land drainage byelaws will help the Council to exercise its duties as Lead Local Flood Authority (LLFA) defined under Flood and Water Management Act 2010 and in line with Barnet's Local Flood Risk Management Strategy (2023-29).

4.3 Sustainability

The implementation of the land drainage byelaws should help promote that regular maintenance of the watercourses is undertaken (including riparian owners) on a proactive rather than reactive basis which will help to explore more sustainable approaches to maintenance of the ordinary watercourses.

4.4 Corporate Parenting

This proposal has no likely impacts on looked-after children or care givers.

4.5 Risk Management

- The Council has an established approach to risk management, which is set out in the Corporate Risk Management Framework. The decision of implementing the Council's land drainage byelaws will enable the Council to exercise its duties of flood risk management in a more resilient and robust manner.
- Any individual capital or maintenance related schemes that are delivered as a result of the implementation of this decision will develop their respective risk registers.

4.6 Insight

Not applicable.

4.7 Social Value

- The Public Services (Social Value) Act 2013 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. This report does not relate to the procurement of service contracts.
- This will aid the Council to identify and to manage flood risk across the Borough and would facilitate stronger and more resilient communities and provide additional benefits deriving from ecosystem services, such as for leisure activities and nature protection.

5. Resource Implications (Finance and Value for Money, Procurement, Staffing, IT and Property)

5.7 It is not anticipated that there will be any immediate or significant financial or resourcing implications arising from the making of the byelaws. The costs associated with the implementation of local land drainage byelaws are principally administrative, comprising officer time in managing the process (e.g. consultation and liaison, reporting, making, advertising and dealing with objections etc.).

5.8 Where enforcement of the byelaws would require the construction or remediation of drainage infrastructure, the financial implication of this would be with the responsible party/landowner and not the Council (for where otherwise agreed or the law provides otherwise) and the Council would seek payment of its costs where appropriate.

6. Legal Implications and Constitution References

6.1 A Byelaw is a local law which is made by a statutory body, such as a local authority, under an enabling power established by an Act of Parliament and operate to control or regulate activities in certain places. Byelaws will be made under the Flood and Water Management Act 2010, Land Drainage Act 1991 and the Local Government Act 1972 and confirmed by the Secretary of State.

6.2 In 2016 the Byelaws (Alternative Procedure) (England) Regulations 2016, were made on 11 February 2016. These regulations introduced new arrangements for the making and revoking of those byelaws for which the then Department for Communities and Local Government (DCLG) had policy responsibility. These are byelaws that principally relate to the peaceful enjoyment of public spaces such as parks, and the prevention of nuisance behaviour in towns and cities. These new arrangements provided for councils to assume responsibility for these byelaws, which will not be subject to the process as set out in this report. These regulations though do not apply to the proposed drainage byelaws.

6.3 The making of a Byelaw is a function of Council as detailed at part 2A of the Constitution:

Part: 1.20 making, amending, revoking, re-enacting or adopting by-laws and promoting or opposing the making of local legislation or personal bills.

6.4 The byelaws will create criminal offences that can be prosecuted in the Magistrates' Courts. Any person who acts in contravention, or fails to comply with the proposed byelaws, will be guilty of a criminal offence punishable in the Magistrate's Court by way of a fine. The new byelaws will assist the Council in meeting its obligations under the Flood and Water Management Act 2010, Land Drainage Act 1991 and Highways Act 1980 and any other relevant legislation concerned with land and highway drainage.

6.5 Under the Council's Constitution, Part 2D, sets out the terms of reference of the Cabinet which includes responsibility for the following functions: - Development of proposals for the budget (including the capital and revenue budgets, the fixing of the Council Tax Base, and the level of Council Tax) and the financial strategy for the Council; - Monitoring the implementation of the budget and financial strategy; - Recommending major new policies (and amendments to existing policies) to the Council for approval as part of the Council's Policy Framework and implementing those approved by Council; - Approving policies that are not part of the policy framework; - Management of the Council's Capital Programme; and All key decisions

7. Consultation

7.1 The Stakeholder Consultation occurs prior to the making of the byelaws and the public consultation then occurs following the making of the byelaws but prior to the byelaw being confirmed. This consultation is through the advertising of the byelaws in the Council's area and considering any objections.

7.2 Should any objections be received during the public consultation period the Council should respond to the objector in writing explaining why the Council considers the proposed byelaws as justified or advise of any proposed changes. The Council would also invite objectors to consider withdrawing their objections, where possible, to resolve these before sending the final proposed byelaws to the Secretary of State for confirmation.

7.3 Ideally, the Council will resolve any objections and have them withdrawn before the byelaws are submitted to the Secretary of State for formal confirmation. Otherwise, the Secretary of State may take into account relevant objections that have not been withdrawn when determining whether or not to confirm a byelaw. In some cases, the Council may consider that it is appropriate to meet the objectors' concerns by amending the byelaw in question. If such amendments would

lead to significant and substantive change, the Council should then re-advertise the amended byelaws and the affected parties would be able to comment on the proposed changes.

8. Equalities and Diversity

8.1 There are no identified equalities impacts in connection with making the proposed byelaws, which will be subject to stakeholder and public consultation in due course. Any equalities concerns raised as part of the consultation or through an objection can be addressed at that time.

9. Background Papers

- The Land Drainage Act 1991 – <http://www.legislation.gov.uk/ukpga/1991/59>
- The Flood and Water Management Act 2010 – www.legislation.gov.uk/ukpga/2010/29/contents
- <https://www.gov.uk/guidance/flood-risk-and-land-drainage-byelaws>
- Local Flood Risk Management Strategy 2023-2029