

To: Scrutiny and Petitions Board

On: 23 June 2008

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Subject: Flooding in Renfrewshire: Grants to Owner Occupiers for Flood Protection

1. Summary

1.1 At the meeting of the Scrutiny and Petitions Board held on 12 May 2008, a report was submitted by the Lead Officer in relation to a review of flooding in Renfrewshire which outlined the scope and purpose of that review. As part of the review, it was requested that the ability of the Council to provide grants for flood protection to owner occupied households be investigated.

1.2 In summary, having considered this, powers are available to the Council to provide such grants. However the main constraints on the Council in the use of any of the available powers may be the more practical issues of the resources and priority the Council is able to devote to this.

1.3 This submission details:-

- (a)The powers of the Council to provide grants for flood protection to owner occupied households (section 2 of this submission);
- (b)Examples of such grants being provided by other Councils (section 3 of this submission);
- (c)The legal and administrative implications for the Council were it to provide such grants (section 4 of this submission); and
- (d)Future developments.

2. The Powers of the Council to provide grants for flood protection to owner occupied households

2.1 The Council has a range of powers under which it may make grant assistance available. As opposed to duties (which the Council is legally obliged to perform), powers may be exercised at the discretion of the Council. In relation to flooding, several powers may be available.

- 2.2** Firstly, the Flood Prevention (Scotland) Act 1961. Section 12 of this Act gives local authorities the power to make contributions towards expenditure incurred by any other person in the carrying out of operations which could properly have been carried out by the local authority under the Act. The measures available under this Act are in relation only to watercourses, barriers and similar flood defence works and their ancillary apparatus and so it may only be of use in instances of river or tidal flooding, which is not always the cause of flooding in Renfrewshire.
- 2.3** Secondly, there are powers available under section 32 of the Roads (Scotland) Act 1984. This provides that where it appears to the roads authority that the execution of any drainage works under the Land Drainage (Scotland) Act 1958 or flood prevention operations under the Flood Prevention (Scotland) Act 1961 is desirable for the protection or enjoyment of a public road or proposed public road they may make such contributions as they think fit towards any expenses incurred in the execution and maintenance of those works.
- 2.4** In the case of both powers referred to above, there may be an interpretation that particular administrative procedures would be required before the local authority could rely on the powers although there is no explicit restriction contained in the legislation.
- 2.5** Given this, the power to advance well-being may be the most appropriate power to rely on. The power to advance well-being was introduced by the Local Government in Scotland Act 2003. It can be used by a local authority to do anything that it considers is likely to promote or improve the well-being of the area and people within that area. The power does not enable a local authority to do anything which is explicitly prohibited by other legislation but where local authorities are in doubt about whether a particular course of action can be taken under the existing powers, it can be regarded as a 'power of first resort'. Local authorities therefore have considerable discretion in how they exercise this power and statutory guidance has been issued on the power.
- 2.6** The guidance gives examples of key factors which contribute to the promotion or improvement of well-being and this includes environmental factors such as freedom from a high risk of flooding.
- 2.7** Specific examples of the kind of action that can be taken are set out in the Act and include the power to incur expenditure, give financial assistance to any person, enter into arrangements with any person, co-operate with or facilitate or co-ordinate the activities of any person, exercise on behalf of any person any functions of that person and provide staff, goods, materials, facilities, services or property to any person.

- 2.8** It should be noted that the power may be exercised in relation to, or for the benefit of, the whole or any part of a local authority area, or all or some of the persons within that area. This means that it could be used to benefit one individual as long as there is a wider benefit to the community in general.
- 2.9** The guidance states that decisions taken to commit funds under this power need to be transparent and need to reflect good practice in assessing options.

3. Examples of such grants being provided by other Councils

- 3.1** There do not appear to have been many examples of such grants being provided by other Councils to date. This may be due to some of the implications noted in section 4 of this submission.
- 3.2** A recent example of one of these powers being used was by the City of Edinburgh Council. In February 2004 a report was submitted to the Executive of their Council in connection with the Braid Burn Flood Prevention Scheme. The report considered the flood defences required to a property adjacent to Old Dalkeith Road which could be constructed in advance of the Council's Flood Prevention Scheme as part of a current housing development. The report sought approval to contribute funds in relation to the construction of a wall on the basis of section 12 of the Flood Prevention (Scotland) Act 1961.
- 3.3** In this example, the Council had just submitted the planning application for their Flood Prevention Scheme. This followed the notification of those directly affected and the completion of the objection period in relation to the Scheme. Scotia Homes Limited were granted Planning Consent to construct a housing development adjacent to the Braid Burn. As part of their proposals, a building which the Council had intended to waterproof and utilise as a flood defence was to be demolished. It was intended instead to construct a new floodwall. The Scottish Executive advised however that to construct a floodwall instead of waterproofing the existing building would entail modifying the Flood Prevention Scheme. This would have involved re-notifying all those directly affected, would have delayed the project by at least four months and would have re-commenced the objection period. To avoid this, there were two options. The first option was that a separate Flood Prevention Scheme could be promoted for this section which would limit the parties which required to be notified and reduce the likelihood of new objections. Alternatively, a private individual or company could construct the flood defences without the need for consent from the Scottish Executive. The Council concluded that progressing the short section of flood defences in this way avoided the need for re-notification of the existing scheme and the potential for further objections of promoting a separate scheme for this section. Scotia Homes were amenable

to this however they had requested the Council make a contribution to the cost of the wall. It was noted that if Scotia Homes constructed their development without a floodwall the Council would be required to construct this separately as it would protect other properties as well as the new development. It was considered that the cost of constructing the floodwall at the same time as the new housing would result in savings. Accordingly the Council approved a contribution of 20% of the cost of the construction which was approximately £6,000.

- 3.4 In this example, it should be noted that a company was the recipient of the grant rather than an individual and the works would be subject to the planning process as part of the housing development. When selling houses in the development, the builders would have been able to incorporate conditions on owners (present and future) in terms of upkeep and maintenance of the flood defence.
- 3.5 More recently, I understand that Glasgow City Council relied on the power to advance well-being as the basis for flood prevention works they undertook as part of the Clyde Waterfront development.
- 3.6 However consideration should be given to the protection offered to householders if the areas had been included in a formal Flood Prevention Scheme (discussed in more detail in section 4.6, below) rather than being carried out separately.

4. Legal and Administrative Implications for the Council of providing such grants

- 4.1 Once it has been established that the Council has the power to award a grant, the appropriate procedures require to be followed before the grant can be awarded. This is provided for in the Council's Financial Codes. Code 18(i) provides that persons applying for grants must submit completed application forms for the relevant director to review. Directors then require to submit application details and a report by themselves and the Director of Finance and IT for approval to the appropriate policy board in line with the terms of reference of policy boards.
- 4.2 In terms of how this might work in practice, it may be helpful to consider housing repairs grants. These are also paid to individuals at the discretion of the Council in respect of repairs or improvements to their property. The legislative power in this case is found in the Housing (Scotland) Act 1987. Unlike the legislation referred to in section 2 of this submission, the 1987 Act

prescribes in detail how grants issued under it should be dealt with by local authorities.

In particular it provides:-

- Applications must be submitted containing full particulars of works proposed together with plans and specifications and the expenses estimated to be incurred in executing the work (including professional fees).
- How an applicant's contribution is to be assessed and that this decision may be reviewed.
- Once an application is approved, that the applicant is to be notified as to the approved expense (which is capped by the legislation to a maximum amount, depending on the nature of the repairs), their contribution and the amount of grant to be awarded.
- How the grant should be paid (in instalments after the work has been completed), that payment is subject to the works being executed to the satisfaction of the local authority and that a local authority may require as a condition of payment that the works be carried out within a specified period.
- A right to charge interest where a grant instalment is paid and works are not completed within a given period after the payment.

Conditions to be observed for a given period in relation to the use of the property as a private dwelling-house and the individual's main residence, and that all such steps as are practicable should be taken to secure the continued maintenance of the property. These conditions are recorded against the property in a prescribed form.

The Act also details the action to be taken if these conditions are breached which may include, for example, repayment of the whole amount.

4.3 If the Council was to rely on powers to make grants under either of the powers referred to in section 2 of this submission, it would be advisable to consider adopting similar procedures to those set out above to ensure appropriate safeguards and controls were in place. In addition, consideration would require to be given to:-

- (i) Developing the criteria to be used to determine grant applications;
- (ii) Assessing the likelihood of flooding and the effectiveness of any measure which could be supported by a grant;

- (iii) Whether any planning approvals would be required in relation to the works and how this would be reflected in the grants approval and award process;
- (iv) The approval of grants. For example, the approval of housing repairs grants is delegated to the Director of Housing and Property and relevant Heads of Service. Without such delegated authority, each individual grant would require prior Board approval;
- (v) What action the Council could take if the grant was not used to the Council's satisfaction or the work was not carried out properly, or not maintained in the future.

4.4 Notwithstanding the above, it should be noted that a grant is a donation to a person and this impacts on the Council's ability to control and compel the recipient of the grant to use the money in certain ways.

4.5 The financial implications of providing such grants will require further consideration. However it should be noted that the Flood Prevention (Scotland) Act 1961 provides that "approved" contributions under that Act shall be paid out of moneys provided by Parliament at the direction of the Secretary of State. "Approved" in relation to any contribution means approved by the Secretary of State. If the contribution paid under the Act is not so "approved" this will have to be paid for from within the Council's existing resources.

4.6 If the works are brought within an approved Flood Prevention Scheme, the Flood Prevention (Scotland) Act 1961 provides a compensation mechanism for owners where their interest in land has been depreciated or damage has been suffered as a consequence of flood prevention operations carried out by or on behalf of local authorities. This same mechanism would not apply to works outwith the Scheme. The Board may therefore wish to make further investigation into insurance and liability issues which may arise as a consequence of the Council's involvement in funding such works.

4.7 In this submission, the terms of reference referred to "grants to owner occupied households". It should be noted that this submission has therefore addressed the issue of grant payments as opposed to, for example, loans for such works.

In addition, whilst such a measure would assist those living in their properties, it should be noted that it would not necessarily benefit all property owners. For example, it would not assist owners who rent out their property.

5. Future Developments

- 5.1** At the time of writing this submission, an overhaul of the existing law is imminent and the Scottish Government is expected to issue a new Flooding Bill for consultation later this year. This may clarify existing powers or, indeed, introduce new options which may have a bearing on this submission.
- 5.2** In addition to this, grants to help “flood proof” homes have recently been piloted by the Environment Agency in England where one in ten houses is located in a high flood risk area. The initiative was launched last year with an initial budget of £400,000 to be divided between five locations identified by the Environment Agency. It was expected that the maximum grant offered would be £5,000 including professional and administrative costs, for which 20% of the value of the grant would be available. Issues which had to be considered by areas applying to be included in the pilot scheme included how the local authority, Environment Agency and other relevant groups would work together to implement the grant scheme; how local professional advice on the flood defence solution would be obtained and how the grant scheme would be promoted locally. It was assumed that the grant would only be paid provided the works were completed and it was not intended that authorities would supervise the works or provide any professional advice as to the most appropriate solution for each application, nor that the authority would assume any liability for issues arising from the installation of the flood defence measure. It should be noted that in these pilot schemes there was no direct financial implication to the Councils as the grant funding was made available to them by the Environment Agency. At the time of writing, the findings from the pilot schemes have not yet been published but these should be taken into consideration in any further investigations into this area.

6. Conclusion

- 6.1** In conclusion, as detailed in this report, powers are available to the Council to provide such grants. However the main constraints on the Council in the use of any of the available powers may be the more practical issues of the resources and priority the Council is able to devote to this.