

From: Jane Robertson <
Date: 27 April 2021 at 12:15:08 BST
To: Joanna Vincent <Joanna.Vincent@gateleyhamer.com>
Subject: Re: FOI 16/434 Complaint COM/16/71400372 and FOI 16/199

Hello, this is regarding this mornings earlier request for the full SFRA.

The EA commissioned the work in 2011 in partnership with Tonbridge and Malling council. It is this technical work and the full report within which it sits that we request to see. We think this document is important to fully understand how Leigh outflows affect flood risk.

Jane Robertson

On 26 Apr 2021, at 17:59, Jane Robertson <[REDACTED]> wrote:

Dear Joanna,

We would like to see the complete SFRA referred to in the link below, including the modelling and technical work.

Best wishes,
Jane Robertson

I note that the report in the report to the Council's Planning and Transportation Advisory Board on 22 February 2011: [https://democracy.tmbc.gov.uk/Data/Planning%20and%20Transportation%20Advisory%20Board/201102221930/Agenda/\\$Report%20of%20Director%20of%20Planning%20Transport%20and%20Leisure%20-%20att10913.doc.pdf](https://democracy.tmbc.gov.uk/Data/Planning%20and%20Transportation%20Advisory%20Board/201102221930/Agenda/$Report%20of%20Director%20of%20Planning%20Transport%20and%20Leisure%20-%20att10913.doc.pdf) that the information was updated following new operating procedures. Para 1.2.3 below highlights this:

The second reason for the update was a purely technical one. An opportunity to improve the accuracy and currency of the flood mapping with updated and more detailed modelling presented itself in 2010. Consultants Mott MacDonald, were commissioned by the EA, in partnership with the Council, to undertake the technical work to produce the mapping, based on more advanced modelling and hydrology work, using improved ground surface data that looked at both the depth and velocity of flow along the Medway. Significantly, the latest technical work also took into account the latest revised operational procedures for the Leigh Barrier, which is a significant factor affecting the flow rate and volume of water running through Tonbridge during a major flood event.

Jane Robertson

Begin forwarded message:

From: "Jane Robertson" <[REDACTED]>
To: "Joanna Vincent" <Joanna.Vincent@gateleyhamer.com>
Subject: Fwd: FOI 16/434 Complaint COM/16/71400372 and FOI 16/199

Dear Joanna, please find below email correspondence from Tonbridge and Malling Borough Council and my husband Alasdair concerning the Leigh Flood Storage Area (or Leigh Barrier as it was known previously). It does seem to us that there has been obfuscation about this issue. We do not find it credible that TMBC could find no records concerning the operation of Leigh given they commissioned a SFRA report jointly with the EA (see report below 22/02/11).

Best wishes,

Jane Robertson

From: Andy Edwards <Andy.Edwards@tmbc.gov.uk>
Date: 4 October 2016 at 15:55:03 BST
To: Alasdair Robertson <[REDACTED]>
Cc: JaneRobertson <[REDACTED]>, foi foi <foi.foi@tmbc.gov.uk>, Joanne Sonnex <Joanne.Sonnex@tmbc.gov.uk>, Denise Tate <Denise.Tate@tmbc.gov.uk>
Subject: RE: FOI 16/434 Complaint COM/16/71400372 and FOI 16/199

Dear Mr Robertson,

Further to your query. Can I apologise for not picking up the reference within the report you have identified. I have subsequently asked our Committee Services Team to review the public documents and reports that they hold.

I have attached copies of previous committee reports that have a reference to Leigh in some form.

If you are dissatisfied with this response, you are entitled to use the Council's Complaints Procedure, full details of which are available on the Council's website. If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Borough Council. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Regards

Andy Edwards
Head of Technical Services
BEng, DML, PgCert, MCMI
Tonbridge and Malling Borough Council
Email andy.edwards@tmbc.gov.uk
www.tmbc.gov.uk

Order your green recycling box at
www.tmbc.gov.uk/waste

<image001.png>

From: Alasdair Robertson [REDACTED]
Sent: 19 September 2016 17:07
To: Andy Edwards <Andy.Edwards@tmbc.gov.uk>
Cc: JaneRobertson <[REDACTED]> foi foi <foi.foi@tmbc.gov.uk>; Joanne Sonnex <Joanne.Sonnex@tmbc.gov.uk>
Subject: RE: FOI 16/434 Complaint COM/16/71400372 and FOI 16/199

Andy,

I am very concerned about this response.

I have finally been able to get hold of information regarding planning considerations in T&M.

I note that the report in the report to the Council's Planning and Transportation Advisory Board on 22 February 2011:

[https://democracy.tmbc.gov.uk/Data/Planning%20and%20Transportation%20Advisory%20Board/201102221930/Agenda/\\$Report%20of%20Director%20of%20Planning%20Transport%20and%20Leisure%20-%20att10913.doc.pdf](https://democracy.tmbc.gov.uk/Data/Planning%20and%20Transportation%20Advisory%20Board/201102221930/Agenda/$Report%20of%20Director%20of%20Planning%20Transport%20and%20Leisure%20-%20att10913.doc.pdf) that the information was updated following new operating procedures.

Para 1.2.3 below highlights this:

The second reason for the update was a purely technical one. An opportunity to improve the accuracy and currency of the flood mapping with updated and more detailed modelling presented itself in 2010. Consultants Mott MacDonald, were commissioned by the EA, in partnership with the Council, to undertake the technical work to produce the mapping, based on more advanced modelling and hydrology work, using improved ground surface data that looked at both the depth and velocity of flow along the Medway. Significantly, the latest technical work also took into account the latest revised operational procedures for the Leigh Barrier, which is a significant factor affecting the flow rate and volume of water running through Tonbridge during a major flood event.

Your statement therefore is not correct. We have had a number of correspondences regarding this issue and the responses have been less than satisfactory on each occasion. Perhaps you searched for 'Leigh flood storage area' only and not the old name of 'Leigh barrier' which are of course the same thing?

Before we take this matter further, please can you confirm if this is the case.

Kind regards,

Alasdair Robertson MA(Hons), AORS, SSAf

Check our latest blog [Smarter ways to fund regeneration](#)



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Evidence Based Efficiency

Reg: 7194570
VAT no.: 988367251

From: Andy Edwards [<mailto:Andy.Edwards@tmbc.gov.uk>]

Sent: 26 August 2016 12:43

To: Alasdair Robertson <

Cc: Joanne Sonnex <Joanne.Sonnex@tmbc.gov.uk>; foi <foi@tmbc.gov.uk>

Subject: FOI 16/434 Complaint COM/16/71400372 and FOI 16/199

Dear Mr Robertson,

I have checked our records and I can confirm that we do not hold any correspondence, emails or minutes of meetings relating to the operation of the Leigh Flood Storage Area.

If you are dissatisfied with this response, you are entitled to use the Council's Complaints Procedure, full details of which are available on the Council's website. If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Borough Council. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Regards

Andy Edwards
Head of Technical Services
BEng, DML, PgCert, MCMI
Tonbridge and Malling Borough Council
Email andy.edwards@tmbc.gov.uk
www.tmbc.gov.uk

Order your green recycling box at
www.tmbc.gov.uk/waste

<image001.png>

From: Alasdair Robertson [REDACTED]
Sent: 03 August 2016 12:46
To: Joanne Sonnex <Joanne.Sonnex@tmbc.gov.uk>
Subject: Re: Complaint COM/16/71400372 and FOI 16/199

Joanne,

Thank you for spotting this and being so quick to respond. Yes it's s typo (the joys of dyslexia I'm afraid) so apologies for that. Here is the corrected foi:

Please can you provide us with copies of all correspondence (letters or emails) between TMBC and the Environment Agency and minutes of meetings relating to procedures for the operation of the Leigh FSA (for example, what procedures should be followed that impacts the level of protection provided to Tonbridge) since 2005. We are most especially interested in the period 2005/06 relating to the 2006 operating procedure review and since early 2013 relating to the 2013 review and subsequent amendments since the 2013 flood.

Please provide the information electronically

Alasdair Robertson
Sent from my iPhone

On 3 Aug 2016, at 12:17, Joanne Sonnex <Joanne.Sonnex@tmbc.gov.uk> wrote:

Dear Mr Robertson,

Thank you for email which I will ensure is logged as an FOI.

I note that the request refers to TWBC (which I acknowledge should read TMBC) but in order to ensure that the correct information is registered please could I ask you to resubmit this request and change this to TMBC

(Please can you provide us with copies of all correspondence (letters or emails) between TWBC and the Environment Agency...)

Many thanks,

Jo Sonnex
PA to Director of Street Scene, Leisure & Technical Services
Tonbridge & Malling Borough Council
Gibson Building
Gibson Drive
Kings Hill
West Malling
Kent ME19 4LZ
Tel: 01732 876161
Fax: 01732 876228

From: Alasdair Robertson [REDACTED]
Sent: 03 August 2016 10:21
To: Andy Edwards <Andy.Edwards@tmbc.gov.uk>
Cc: Joanne Sonnex <Joanne.Sonnex@tmbc.gov.uk>; Jane Robertson <[REDACTED]>;
foi foi <foi.foi@tmbc.gov.uk>; Robert Styles <Robert.Styles@tmbc.gov.uk>; stephen
<stephen@yalding.com>
Subject: RE: Complaint COM/16/71400372 and FOI 16/199

Andy,

Many thanks for your response and for looking into this for us which is much appreciated.

We have in the last few days been able to get hold of the document from the Environment Agency and it is very concerning to us.

Please could we therefore submit the following as a new FOI:


Please can you provide us with copies of all correspondence (letters or emails) between TWBC and the Environment Agency and minutes of meetings relating to procedures for the operation of the Leigh FSA (for example, what procedures should be followed that impacts the level of protection provided to Tonbridge) since 2005. We are most especially interested in the period 2005/06 relating to the 2006 operating procedure review and since early 2013 relating to the 2013 review and subsequent amendments since the 2013 flood.

Please provide the information electronically.

Kind regards,

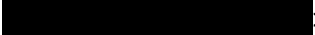
Alasdair Robertson MA(Hons), AORS, SSAf

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Reg: 7194570
VAT no.: 988367251

From: Andy Edwards [<mailto:Andy.Edwards@tmbc.gov.uk>]
Sent: 03 August 2016 10:11
To: Alasdair Robertson < >
Cc: complaints <complaints@tmbc.gov.uk>; Joanne Sonnex <Joanne.Sonnex@tmbc.gov.uk>; Robert Styles <Robert.Styles@tmbc.gov.uk>; foi <foi@tmbc.gov.uk>
Subject: Complaint COM/16/71400372 and FOI 16/199

Dear Mr Robertson,

I have now reviewed all the correspondence in this case in line with the Stage 2 complaints process.

I am able to confirm that as previously identified, we do not hold the document you are seeking in relation to the operation of the Leigh FSA.

With this being the case I am therefore (in line with regulation 12 (4) of the Freedom of Information Act) unable to provide you with the documents you have requested.

If you are dissatisfied with this response, you are entitled to use the Council's Complaints Procedure, full details of which are available on the Council's website. If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Borough Council. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Regards

Andy Edwards
Head of Technical Services
BEng, DML, PgCert, MCMI
Tonbridge and Malling Borough Council
Email andy.edwards@tmbc.gov.uk
www.tmbc.gov.uk

Order your green recycling box at
www.tmbc.gov.uk/waste

<image001.png>

Complaint to Tonbridge and Malling Borough Council -
Reference COM/16/71400372

Enterer Details:

The complaint was recorded internally.

Entered By: Jo Sonnex (PA to DSSLTS - Technical Services)

The complaint was received by the enterer.

Contact Details:

Name: Mr Alasdair Robertson
Email Address: Joanne.Sonnex@tmbc.gov.uk

Complaint Details:

The complaint was made in an email:

Date of Email: 22/07/2016
Time of Email: 13:21
Email Recipients: Denise.Tate@tmbc.gov.uk,
chief.executive@tmbc.gov.uk

Email Subject: FOI Complaint

Email Body: Dear Sir,

We asked recently for information to be made
available to us under an FOI.

We asked for information about the Mott MacDonald
(2006), Leigh Barrier Operating Procedures Review. It is referenced in this
document:

[https://www.tmbc.gov.uk/data/assets/pdf_file/0014/57200/Stage2 TMBC SFRA doc.pdf](https://www.tmbc.gov.uk/data/assets/pdf_file/0014/57200/Stage2_TMBC_SFRA_doc.pdf)

Your response was that you do not hold this
information.

We find this very hard to understand since you have
relied on as part of the SFRA.

I asked Andrew Young to treat this as a compliant
on 24 June (see attached).

Since then I have not had a response, not even an
acknowledgement of the complaint.

Please could I ask that you review this and if you
do have the information to make it available to us without further delay.

Kind regards,

Alasdair Robertson MA(Hons), AORS, SSAf

Have you tried contacting us at www.tmbc.gov.uk/do-it-online ?

This e-mail may contain information which is sensitive, confidential, or protectively marked up to OFFICIAL-SENSITIVE level and should be handled accordingly. If you are not the intended recipient of this e-mail or any part of it, please inform the sender immediately on receipt and do not copy it or disclose the contents to any other person. All e-mail traffic may be subject to recording and/or monitoring in accordance with relevant legislation.

<02 PTAB 271004 river medway catchment flood management plan.doc>
<04 ERAB 110913 Unlocking Kents Potential (1).docx>
<04.01 Annex B Unlocking Kents Potential (2).docx>
<05 ERAB 121113 wkpd ann 1.docx>
<07 TF 170214 EA Presentation_1.pdf>
<07.01 Hildenborough Parish Council Flood meeting of 4 2 14.docx>
<07.02 Public meeting Danvers Road residents of 5 2 14.docx>
<07.03 Questions from the Tonbridge public meetings .pdf>

Dear Joanna

This is material to the inquiry. Additional storage at Leigh FSA helps mitigate flood risk through climate change, allows Hildenborough (potentially though this takes up flood plain) but also allows development of land that was previously unable to be developed under SFRA 1 and needed a SFRA 2. This is why the inspector should see the SFRA 2 2011.

We consider this increases our flood risk as in protecting this development this additional flood water has to be stored and later released, and its this timing and duration that we are most concerned about as its release may impact the peak of the Beult which peaks usually much later than the Medway. This is why we need a condition attached re suitable modelling and operation of the barrier to protect communities further downstream.

If you cannot obtain TMBC SFRA 2, 2011 we have the TMBC SFRA 2, 2005 which may be of interest.

Best wishes,
Jane Robertson

Begin forwarded message:

From: Chief Executive <chief.executive@tmbc.gov.uk>

Date: 2 March 2017 at 15:40:51 GMT

To: Alasdair Robertson <[REDACTED]>

Cc: "[REDACTED]" <[REDACTED]> Callum Findlay <[REDACTED]>
Jane Robertson <[REDACTED]> Edward Raikes <[REDACTED]>

Subject: RE: Due diligence of the Environment Agency response to flood mitigation on the River Medway as it impacts Yalding area

Dear Mr Robertson,

I am replying to your e mail of 16th February and my remarks here will also be relevant to the subsequent e mail from Jane Robertson who has been copied and has responded in these e mail exchanges.

For the Borough Council to have taken any form of financial contribution in the case of any planning application, such a financial contribution would have to be secured via an agreement under s 106 of the Town and Country Planning Act 1990. There are strict tests to be applied in those circumstances, the principal one being that any financial contribution (or indeed any other requirements or works) must be required and necessary to enable the development to proceed. Put another way if development can be permitted without a financial contribution or works then the test would not be met and a contribution not be justified. There are also stringent regulations about the pooling of such contributions towards a single scheme in any event. I actually think that the document that you refer to recognises these factors in the language it uses. That is not to say that private sector voluntary contributions cannot be made. Indeed, for some businesses that might be an agreeable proposition if they can see commercial benefit to their operations.

Development that has taken place in Tonbridge in recent years has not been dependent on a financial contribution, because it hasn't been dependent on the implementation of the improved Leigh FSA. My reference to the constraints and costs on development was directed at the undoubted burden and inconvenience of designing-in flood mitigation measures that could be reduced if flood risk was eased by the construction of the Leigh Flood Storage Area.

I don't think I am able to offer anything further to you. I am very sympathetic to the plight of those at risk of flooding in Yalding and nearby areas and I say that with reasonably good knowledge of the flood risk characteristics that exists in those areas. However, my own efforts must be directed towards the Leigh FSA, and works at Hildenborough and East Peckham in the interests of communities within Tonbridge and Malling. I believe that you need to continue to advance your case for Yalding with the Environment Agency and other local authorities.

I note that you sign off by another reference to the Local Government Ombudsman (LGO) and in your previous e mail of 31st January you asked that this matter be dealt with as the final stage of the Council's complaints procedure in order for you to adopt the LGO route. In that context I do not intend to continue these exchanges but I do wish you success in finding solutions for Yalding. Please note that the Local Government Ombudsman can be contacted at PO Box 4771 Coventry CV4 0EH, telephone 0300 061 0614 or at www.lgo.org.uk

Yours sincerely

Julie Beilby BSc (Hons) MBA
Chief Executive



Have you tried contacting us at www.tmbc.gov.uk/do-it-online ?

From: Alasdair Robertson [<mailto:>]
Sent: 16 February 2017 17:23
To: Chief Executive <chief.executive@tmbc.gov.uk>
Cc: Callum Findlay <>; Jane Robertson <>; Edward Raikes <>
Subject: RE: Due diligence of the Environment Agency response to flood mitigation on the River Medway as it impacts Yalding area

Dear Julie,

Thank you for your kind response.

You appear to be unaware of the DERFA publication "Principles for implementing flood and coastal resilience funding partnerships". The document was published in 2012 but I believe it is still the current policy. On page 2 this states that:

"The planning system

If a developer relies on a project to improve an existing defence, the developer will be expected to make a contribution towards that project. The contribution should be in proportion to the benefit realised by the developer as a result of the project. Development in locations without existing defences, or where development is the only beneficiary, must pay for the full costs of all the required FCERM measures. New development must meet the aims of overall Government planning policy to be considered appropriate. A development cannot be made appropriate just because a developer will fund the required FCERM measures, but contributions from a developer can form part of the suite of measures for delivering safe and resilient development.... All funding partners should share the costs and risks associated with developing, designing, constructing and maintaining the assets for the period over which the benefits are being realised. ... Private or third sector contributors should be encouraged to contribute in proportion to the benefits that they will receive. This will reduce the funding needed from local public sector sources."

I have to say I find it difficult to reconcile this with the statements that you have made. You have said that there are constraints and costs of development and that development costs will be reduced by the construction of the enlarged FSA. This clearly evidences developer benefit and hence the expectation of contributions. I can see nothing that suggests this will be the case, and therefore there is a risk of the decision being reviewed or challenged which will lead to regrettable delays.

Once the FSA is built there can be no way to demonstrate that there are flooding limitations that prevent development since the flooding limitations would no longer be there! A s106 contribution to an existing asset seems to me unlikely. The policy makes it clear that the expectation is that developers will contribute to developing and designing the schemes. It must surely be the intention that developers who want to build in Tonbridge, (or who have recently done so?) should be expected to contribute their share.

It is also evident that no contributions are expected since this does not appear in any of the costing information that has been provided for the scheme.

In short, I can see no evidence that the above policy has been complied with. Perhaps you could let me know if you believe that this policy no longer applies or why it may not in this case?

I am very concerned that this project could be detrimental to our community either directly from the various works in Tonbridge or because the schemes absorb much of the available funding leaving insufficient for effective projects elsewhere. I am very sure that there will be robust objections until our community is satisfied that we are no longer at risk from the modification works in Tonbridge or the fact that spend per house in Tonbridge is notably higher than that in Yalding which is manifestly unfair given that we remain at a heightened risk of flooded.

I fear that this issue may prove to be one that may require ombudsman's assistance to resolve.

You say that you are encouraged by the catchment wide approach. I have to say that I am not. The 'form' suggests that Yalding will continue to be the poor relation and nothing of substance will be done to reduce water levels. However it may be that if representatives of all parts of the catchment apply pressure to the EA to find credible solutions then the level of anger will recede and the risk of challenges diminish.

Kind regards,

Alasdair Robertson MA(Hons), AORS, SSAf

From: Chief Executive [<mailto:chief.executive@tmbs.gov.uk>]

Sent: 16 February 2017 16:31

To: Alasdair Robertson <

Subject: RE: Due diligence of the Environment Agency response to flood mitigation on the River Medway as it impacts Yalding area

Dear Mr Robertson,

I note your further comments.

Rather as in your last email, I fear that you might have misunderstood or wrongly translated some of my comments. As I said, I am sure there are constraints and costs to development that arise due to schemes having to be designed to deal with flood risk. If those can be minimised by improvements to the Leigh FSA then investment in Tonbridge town centre, for example, becomes more cost effective and attractive to potential investors. That can only be to the benefit to the town in the long run, not to mention the very substantial relief to local residents and businesses currently at risk of flooding who would be very reassured by an improved Leigh FSA.

It is unlikely that development that would otherwise be prohibited by absolute flooding objections could be allowed with a financial contribution in advance of the works to reduce the level of flood risk being in place. In situations where there is scope for some local practical flood mitigation to enable a particular development to be permitted, that would most likely result in the scheme itself being designed accordingly and mitigation works being incorporated. If that required works outside of a planning application site or finance for such works that could be justified and carried out to enable the scheme to proceed, then the mechanism for that could be s 106 of the Planning Act 1990.

I am encouraged by the EA's catchment wide and multi-faceted approach to flood mitigation. However, I am not at all convinced that means delaying projects within the catchment approach that have a clear benefit to so many residents and can proceed in their own right. My Council has been clear about pursuing the improvements to the Leigh FSA and we will continue to do that in partnership with the EA and others.

Yours sincerely

Julie Beilby BSc (Hons) MBA
Chief Executive



Have you tried contacting us at www.tmbc.gov.uk/do-it-online ?

From: Alasdair Robertson [REDACTED]

Sent: 11 February 2017 07:50

To: Chief Executive <chief.executive@tmbc.gov.uk>

Subject: Re: Due diligence of the Environment Agency response to flood mitigation on the River Medway as it impacts Yalding area

Dear Ms Beilby,

Thank you for your email response.

You have confirmed that there are development opportunities in Tonbridge which would otherwise be acceptable but that would be unviable without flood relief measures.

You will be aware that under current policies developers in such circumstances would be expected to pay a contribution. You have not addressed this point. I have not seen any documentation which anticipates developer contributions as part of the project budgets so it is important that this apparent anomaly is cleared up. Please would you be kind enough to provide me with information about how

much contribution will be made and the mechanisms for this, or the reasons why this would not apply in this case.

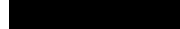
You say that you do not wish the Leigh project to be delayed because of downstream issues. This would indeed seem unfair to the residents in the effected areas. However, if the situation in Yalding is not resolved there can be no doubt that there will be delays, not least from challenges of various types and other factors. I suspect that this is already happening to some extent.

The EA are working towards a catchment wide solution which is entirely appropriate. A change to this would only lead to yet further challenges and a requirement to prove that reducing flooding in Tonbridge area does not result in more water being passed downstream for example, or the operation of the Leigh FSA for the benefit of Tonbridge and Hildenborough 'only' is not in breach of the act of parliament. Indeed, catchment wide solutions are the direction of travel encouraged by the Environment and Rural Affairs select committee and many others. Our problems are therefore interlinked. Seeking to uncouple them as you suggest would surely prove to be counter productive.

I would suggest therefore that your best approach to providing for the interests of your area would be to encourage the EA to urgently propose something that is acceptable for our area.

Kind Regards,

Alasdair Robertson



Sent from my iPad

On 10 Feb 2017, at 14:06, Chief Executive <chief.executive@tmhc.gov.uk> wrote:

Dear Mr Robertson,

Thank you for your e mail of 31st January.

Forgive me for not responding to your earlier e mail of 23rd December, but in all honesty I did not believe there was anything that either you requested of me or that I could usefully offer by way of advice, primarily because the majority of your submissions seemed to me to be directly aimed at the Environment Agency. Moreover you had expressly said that your previous e mail was not a complaint, although I notice that you now wish me to escalate this matter to the final stage of our complaints procedure. I think I am entitled to be a little puzzled given this background.

Nevertheless, perhaps I may make just a few remarks.

Firstly, you make a number of openings to various points such as, "You will doubtless be already aware", "it is well known", "the procedures have been recognised.." and others that seem to assume that the Borough Council has similar operational knowledge in aspects of river management and flood mitigation as the Environment Agency (EA). Or it assumes that we are somehow aware of shortcomings. The fact is that the EA are the statutory agency for these matters and the Borough Council, although of course very interested indeed on behalf of our communities, is not in a position to take on those responsibilities itself. Indeed, I believe we are entitled to rely on the statutory agency to soundly take the lead. That is not to say that we don't work in partnership on some matters – we clearly do so, but not with the level of expertise of the matters that you cover in much of your e mail. So, I am afraid I am not able to help you any further in your investigations about detailed and various matters concerned with the operation of the Leigh Barrier.

A few other specific comments:

It is not "obvious to me that any delays required to rectify inadequacies in the solutions for Yalding could impede progress in other parts of the catchment". What is clear to me, however, is that the project to improve the Leigh Flood Storage Area (FSA) and carry out flood mitigation at Hildenborough and East Peckham are now being advanced independently of project investigations elsewhere in the catchment. I would not wish that position to be changed.

I am not in a position to offer a view of the impact of the proposed improvements to the Leigh FSA further downstream. Nor am I in a position to advise on the situation for Yalding. I am, however, clear about the importance of those works for the communities in Tonbridge and Malling and have advised my Council accordingly as I am bound to do. There would be substantial risk to those communities if the Leigh FSA improvements were to be delayed.

As to development in Tonbridge, there are undoubtedly constraints and costs imposed on development as a result of flood risk. The improvements to the Leigh Barrier would assist in relieving those constraints. That is not simply in the interests of developers, as you put it, but helps development to be able to proceed (where it is otherwise acceptable) in order to provide an ongoing supply of homes and jobs for our growing communities. That seems to me to be a sound reason for supporting the flood mitigation works. But, first and foremost it is the safety and peace of mind of our existing residents and the reduction of risk to our businesses that has been a fundamental motivation for the Council to support the scheme.

I hope these few remarks are of assistance.

Yours sincerely

Julie Beilby BSc (Hons) MBA
Chief Executive
<image001.png>

Have you tried contacting us at www.tmbc.gov.uk/do-it-online ?

From: Alasdair Robertson [<mailto:> 
Sent: 31 January 2017 17:33
To: Julie Beilby <Julie.Beilby@tmbc.gov.uk>
Subject: RE: Due diligence of the Environment Agency response to flood mitigation on the River Medway as it impacts Yalding area

Dear Julie,

I don't appear to have had an answer from TMBC in response to this letter I sent before Christmas.

All the other agencies have responded other than yourselves and Mr Tuggendhat despite the agencies promising on your behalf that you would be in contact soon.

It is becoming increasingly difficult to believe that TMBC are not attempting to keep information from becoming public especially when information from other agencies and the MP conflicts with that emerging from your own.

Given that this issue has been the subject on previous complaints, I would like you to kindly regard this as a final stage complaint prior to engaging with the local authority ombudsman and I look forward to a full and complete response from you.

Kind regards,

Alasdair Robertson

Kind regards,

Alasdair Robertson MA(Hons), AORS, SSAf

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From: Alasdair Robertson
Sent: 23 December 2016 16:50
To: 'julie.beilby@tmbs.gov.uk' <julie.beilby@tmbs.gov.uk>
Subject: FW: Due diligence of the Environment Agency response to flood mitigation on the River Medway as it impacts Yalding area

To:
Permanent Secretary, Department of Environment and Rural Affairs
Leader, Kent County Council
Chief executives Environment Agency, Maidstone Borough Council, Tonbridge and Malling Borough Council,

You will be aware that efforts have been made to secure solutions to the flooding issues in the Yalding area since the flooding of 2000 and 2013. You will also know that many residents are not satisfied with the proposals as they stand and consider them inadequate, unfair, poorly thought through and insufficiently evidenced.

The points below are being formally drawn to your attention. You will doubtless already be aware of these issues and are robustly challenging them where you feel challenge is required. This letter is not a complaint regarding your organisation at this stage as there have been recent efforts by some local organisations and individuals to progress the issues with renewed vigour, including commissioning of independent experts. However should the need to initiate complaints to the ombudsman or other forms of inquiry be required in due course this letter will be produced as evidence that these issues have previously been raised with you.

It will be obvious that any delays required to rectify inadequacies in the solutions for Yalding could impede progress for solutions in other parts of the catchment. You may therefore feel it prudent to satisfy yourself that the inadequate solutions for Yalding are not risking delivery of solutions elsewhere.

The need for independent scrutiny.

It is well known that there has been a breakdown in trust in the Environment Agency and much of the grassroots community. This is partly due to the number of times the EA have been found to be using incorrect, conflicting, or misleading information. This has been persistent, repetitive and at times, clearly wilful. For example, the EA continued to make claims of having 'halved the flow' from the Leigh FSA during the flood of 2013 more than a year after the event. These claims were comprehensively dismissed by the independent review of 2014 as being based on a clearly erroneous interpretation of data and the use of data that was itself incorrect. In truth no more than a cursory glance at the charts shown at public meetings was sufficient to dispel the claims. Furthermore it is also known that the EA's figures for the number of flooded houses in some areas is significantly inaccurate, for example the figures substantially under estimates the number of damaged properties in our area. There are numerous examples of inconsistent information being presented.

This demonstrable history of the use of incorrect information and analysis makes it essential that the EA's views must be fully and independently verified and challenged if they are to be considered plausible and accepted.

Leigh FSA Operating procedures could be used to better help Yalding area

The existing and proposed Leigh FSA could be used to better protect Yalding area but choices have been choices which remove this potential benefit. The lessons of the 2013 flood have not been learned and as a result the situation is now worse than in 2013 giving an increased level of risk. Immediate action is needed to rectify this situation.

It has been the conventional wisdom that the Leigh FSA provides protection to Yalding since its design. The guidance for use of the facility has traditionally been very clear that the situation in Yalding should be carefully monitored at all times when water is being stored in order to optimise the timing of water release and capture.

However the procedures have been recognised as being sub-optimal for some time. Reports as long ago as 2006 state that:

“The development of the revised rules **originally** included an assessment of the benefits for communities **downstream** of Tonbridge... With the identification of serious errors in the water level records downstream of the barrier, used for the calibration of the Middle Medway Model, it became clear that the model will have to be recalibrated before it will be possible to use it with confidence. It was **therefore decided to focus on the optimum protection of Tonbridge**” (our emphasis).

There appears to have been a managerial choice regarding use of the asset to our detriment. The situation has not been rectified in the intervening decade, not even the clear recommendation to re calibrate the model.

The independent review completed in 2014 reports that the existing model failed to produce an accurate prediction in 2013 which led operators away from the ideal operating strategy. The report also found that it should be possible to improve the procedures for the benefit of Yalding which would reduce the water levels by around 40cms. This was not possible on the day of the 2013 flood because of:

1. The current operating procedures
2. The need for a 'perfect forecast'

Clearly procedures can be changed so the first reason is no barrier to a better approach in future (although it begs the question why a better procedure was not already in place). However EA have therefore decided not to make improvements citing the second point as a rationale. But this is insufficient. If it is true that a perfect forecast could lead to perfect operation, it must also be true that a *better* forecast would lead to *better* operation. The EA now (finally) have the tools needed to make a better forecast. With the benefit of their new river model they have dismissed the potential gain of 40cm reduction from the independent review as invalid. This is itself concerning but there is a contradiction. Put simply, if the data is good enough to allow the independent review to be dismissed as obsolete, it is good enough to form the basis of a better operating procedure for downstream communities. However this work has not been done.

A failure to even attempt to find a way in which the premier flood asset on the Medway could help an area with a large number of flooded houses could be considered negligence or at least a failure to exercise a duty of care. It may also contravene the River Medway (Flood Relief) Act 1976. This states that the Leigh FSA seeks flood relief for "Tonbridge & Hildenborough ... **and further downstream**". However the new procedures (October 2015) have been amended so that the Leigh barrier is now operated "to reduce flood risk to Tonbridge & Hildenborough only".

This change must be understood and explained yet the EA have persistently refused to tell us why and who made the choice to stop even attempting to offer us some relief. As things stand there is nothing to prevent the timing of releases from the FSA to avoid the peak of the Medway coinciding with that of the Beult which would exacerbate the problems.

Significantly this change to the procedures was done before the new modelling data was available. It is understood that different operating scenarios were not tested as part of the recent options appraisals so there is no evidence that the only asset in place on the Medway cannot be used for the benefit of Yalding. The new procedures are therefore a deliberate choice rather than an evidence based assessment that there is nothing to be gained.

Not only is the Leigh FSA being used in ways that fail to increase our benefit, it is also a matter of record that the operation of the Leigh FSA has been far from optimal in the two most recent major floods (the review of the 2000 event was officially described as having been a 'seat of the pants' operation). This leads to a major concern about the proposed expansion. More capacity gives more potential to produce bigger errors with potentially even greater impact.

The expansion must therefore be opposed until it can be demonstrated that downstream communities will suffer no detriment in the event of a further non-optimal operation (or preferably until it can be used to give benefit). Modelling MUST be done of scenarios involving operator or forecasting error. Both have occurred in previous floods so can not be ruled out as a potential risk. Yalding could be at risk from the extension, but according to the EA cannot benefit from it. There is therefore no cost to Yalding from a delay so authorities representing us should be pushing for this assurance before sanctioning its progression.

Development in Tonbridge

It has long been a question as to why Yalding seems to be the poor relation compared to other areas to a greater extent than flood risk alone would explain.

Tonbridge MP Tom Tugendhat stated recently in parliament (22/11/2016) regarding the extension to the Leigh FSA that "funding the barrier would enable house builders to plan more much needed homes without fear of flooding and help Tonbridge and Malling Council, currently drawing up its local plan". He further emphasised the opportunities for house building and new employment land on flood plains. It would seem that Mr Tugendhat feels that parliament should support funding the Leigh FSA extension to support the interests of developers.

On the face of it this may amount to illegal state aid since it self-evidently provides an advantage to one or more undertakings that may distort competition. Use of flood funding can only be applied to help developers under certain limited circumstances, and these do not appear to have been met.

Furthermore, it is hard to reconcile Mr Tugendhat's statement with those of Tonbridge and Malling Borough Council. In response to information requests they have stated that TMBC "that we do not hold any correspondence, emails or minutes of meetings relating to the operation of the Leigh Flood Storage Area" or its impact on planning. They also told us that they have "attached copies of previous committee reports that have a reference to Leigh in some form" none of which make reference to the purpose of the Leigh FSA extension being to support development. TMBC seem clear that neither the operation of the Leigh FSA or its expansion are in any way driven by considerations of new development which would of course be the correct policy.

Perhaps Mr Tugendhat has revealed a covert policy objective in funding the Leigh FSA extension or maybe he has he misspoken and inadvertently mislead parliament regarding the benefits that parliamentary approvable of the funding will provide? The alternative is that TMBC have not responded fully to freedom of information legislation. This situation warrants substantial further scrutiny if only because of the risk of perceived conflicts of interest given that the KCC cabinet member for flood issues is also a TMBC councillor.

It is also clear that part of the solution upstream involves a number of walls and barriers. It has not been confirmed that the removal of flood water upstream has no detriment to Yalding area. Again, this should be opposed until the case has been proven satisfactorily.

Problems with PLR as a solution

Many in our local community feel that PLR is most certainly not appropriate in the context of our local housing stock of the type of flooding we are subject to. In this there is strong agreement with the EA themselves since these limitations were among those highlighted in the briefing note prepared by the EA and sent on 18 May 2016 to the flood funding project exec group. Put simply, the description of when PLR may fail or be especially difficult are a near perfect 'pen portrait' of the circumstances in Yalding. For example, many of the houses flood to over 1.6m whereas PLR is effective to much lower depths. Furthermore flood durations can be 24-48 hours which is greater than recommended for PLR and housing stock is traditionally built, with timber frames

and/or direct to earth construction. The EA conclude that spending of £20k plus per house would be needed to provide a suitable level of protection. This figure would align closely with the spend in other areas, but is greater than that on offer. Where is the difference to be found?

Despite the EAs clear warning of the unsuitability of PLR, it appears to have been signed off as a solution by agencies who might reasonably be expected to better understand local conditions. They will doubtless be reconsidering their position now that more information is available.

Furthermore, if PLR is an 'equally effective solution' as claimed by the EA then it should certainly be deployed across the whole of Tonbridge and East Peckham. This would save substantial funding from KCC and others. Would it not be an undue extravagance to pursue more costly options in these areas? Yet figures shown this to be happening. A justifiable question would therefore be "If PLR is evidently not 'good enough' for other areas why would it be good enough for Yalding?"

There can surely be no pretence that PLR is anything more than the "cheap and nasty" option of last resort. In reality, PLR could be described as worse than useless since it could give a false sense of security.

The associated discussion of additional community resilience is no more satisfactory (the so called 'submerge and enjoy' option).

Finally it is highly relevant that any funding on PLP will mean that other solutions are disqualified due to the funding rules that exist. Were PLR to fail or other options emerge it will then be impossible to secure a more appropriate solution at a later date.

In sum, offering us community resilience and property level defences is akin to the Fire Service saying that to save cost they will no longer put our house fires out, but they will train local volunteers to tell us how bad the fire will be and give us a grant to buy our own hose pipe, while simultaneously upgrading the fire station in Tonbridge!

Yalding is short changed

Yalding is to get only the option of last resort and this is reportedly because of technical challenges. It would therefore be expected that at least as much money would be spent per house as in the areas which get 'proper' defences. However, spend per house is substantially lower than in East Peckham for example. The EA have not provided satisfactory figures on spend in other areas in a way that can be analysed, but from the figures that have been obtained it is evident that spend per house could be as much as 5-10 times greater in East Peckham and the spent per house is also far greater in Tonbridge. When the figures are calculated on spend per house that actually flooded the comparison is even more stark, yet the calculations are made based on assumed houses in a hypothetical flood.

Despite being the area with the greatest number of houses at risk with no defence whatsoever, Yalding is the area with the least spent on it.

Yalding is being sacrificed so that major spend can be applied to Tonbridge.

Undue rejection of viable options

The EA have been quick to reject certain options that could be beneficial. For example, they rejected improvements to conveyance on the basis that it would cost £95m to widen the whole river downstream from Yalding.

But this clearly is absurd. It would only be necessary to work on key pinchpoints and not the whole river. This could plausibly provide most of the benefits at a fraction of the cost. This situation is analogous to a plumber suggesting re-plumbing a whole house because of a blockage under the sink!

One of these pinchpoints is the bridge at East Farleigh where another part of the EA is spending £3m on a new fish ladder, seemingly with no thought as to how this project could also be used to improve flood flows without significant additional cost. When asked, the flood modelling team

were not even aware of this initiative. This shocking lack of integrated thinking clearly shows that the left hand is unaware of what the right hand is doing. There has also been a rejection of the Teise FSA despite it having a BCR that compares well with other, funded, options for other areas.

Lack of investigation of alternative solutions

The key contention is that insufficient thought has been given to how water levels could be reduced. Without this PLR is less likely to be effective which makes the “inches matter” agenda paramount.

With this in mind a list of 50 measures has been produced by the community that could be cheap and quick to implement and may each help given some inches of benefit. These have all been used in other parts of the country. Can it really be the case that Yalding is in the unenviable, and surely almost unique position where no solution known to hydrology can be successfully applied?

More creativity is required and solutions are needed that do not depend on hard engineering using a catchment wide approach as per recommendations 1-3 in the excellent report prepared by the Environment and Rural Affairs select committee (<http://www.publications.parliament.uk/pa/cm201617/cmselect/cmenvfru/115/115.pdf>), and better maintenance as per recommendation 5. The list of community options fit within this type of solution.

The list is doubtless hopelessly naive in places and is an unedited compendium of ideas from local people (including the Medway, Beult and Teise flood action group with the support of the Joint Parishes Flood Group). However within this could be a wide range of simple, practical and natural actions that can and should be taken and would provide at least some benefit at negligible cost such as the recent wetlands initiative by a local farmer. If this is viable as at least a small part of the answer why did this not emerge from the agency charged with finding answers?

The list of community options have not been tested, modelled or evaluated by the EA. Instead when suggestions to take measures such as clearing flood arches in historic bridges (where water backs up by 40-50 cms) or maintenance tasks these have been dismissed out of hand as ‘piecemeal tinkering’.

The Environment Agency have been asked what alternatives they considered before reaching their conclusions. They state that they have considered over 40 options and have referred to a range of historic documents where various options were previously considered but rejected for reasons we have not been able to see.

The historic nature of these reports is highly significant. The EA options were mostly traditional style ‘magic bullet’ solutions depending on old school hard engineering that are prohibitively expensive. They were not developed or evaluated in line with more recent thinking on flood prevention. And they have **not** been considered using the new river model which has been called a ‘step change’. Indeed, the same reports that contain these options concluded that the models available at the time were inadequate for the purpose and new models should be commissioned. Yet it is the same new model that found the previous thinking regarding the hoped for solution wont work! This leaves the absurd situation where the only option that has been rigorously tested using modern approaches is the one that has now been rejected, and neither the EA’s historic long list nor the community’s has had the benefit of the same analysis. The resulting analysis may therefore not in line with the EA’s own internal guidance for business case development which says that a wide range of plausible options should be considered.

Contaminated silt

The EA have confirmed that there is potentially contaminated silt in the Medway and this could become mobile in time of flood. This means it could enter the environment or houses. This has been brought to the attention of the EA who had not tested it as late as June 2016 (it is most likely still untested).

The area of potential contamination is on the Lees area of Yalding which is also an area where silt deposits have blocked the river by approx. 20%. This on its own should justify removal since this could increase the capacity of the river at exactly the point where the worst flooding occurred.

Perhaps without this single pinchpoint the water would not build up in the early part of a flood leaving more available capacity for the peak to be stored in the 'Yalding basin' with much less damage? Regardless of any potential flood benefits leaving it untested and 'hoping for the best' is insufficient.

The new catchment proposals

The EA have said in the last month or two they will start considering some unspecified catchment wide measures. This is welcome but it is of very great concern that this work is so late and is only happening after all the local funding has been allocated and approved.

If done with appropriate enthusiasm, commitment and funding the new approach could be the catchment wide trial that the above select committee report calls for and may help. Alternatively this may be a face saving, last minute exercise in damage limitation to quell local anger. Past performance suggests the later. For example,

- There have been many promises made by the Prime Minister down but, uniquely for this part of the catchment, nothing has actually happened.
- There was a comprehensive action tracker for the Tonbridge area after the 2013 flood but no equivalent for Yalding.
- There have been technical groups set up for other areas but this has been dismissed for Yalding on the basis that the issues "are not complicated enough to warrant it".
- The Beult FSA was dismissed on the grounds of there being "too little space". This is despite it being the preferred option for at least 16 years! The potential volume of water that can be stored is a trivial calculation to make so serious questions must be asked as to why it has taken 16 years to rule out on these grounds.
- As described above this is the most complex and at risk area, yet it is the one with the least funding.

The above examples raise serious doubts about how much genuine attempt has been made to find a solution during this time. The sincerity in seeking a meaningful solution now must be called into question. Exceptional diligence will be needed by your organisation to verify that there is no loss of focus or rigour in the EA's new approach. Furthermore, as raised above, the spend on PLR may preclude spend on more effective measures that emerge from this analysis. The conclusion could be that new options exist, but unfortunately the money has now been spent.

Business case

Given the above we consider that there is a very high likelihood that the current business case is flawed and has not followed either the HM Treasury 5 case model or the EA's own interpretation of this for internal purposes. Clearly if the guidance has not been followed there is a high chance of faulty conclusions and therefore challenge including through a judicial review or public inquiry. A proper independent audit of the business case process is surely called for to avoid this risk.

Conclusion

The points raised above highlight very serious concerns with the efficacy and thoroughness of work undertaken to date. The work has not been robust, carefully or systematically produced with reasonable endeavours.

If community trust is to be restored this will need to be addressed. If this is not achieved it seems certain that they will be further inquiries and persistent challenges either formally or otherwise. This would inevitably lead to significant delay and the planned solutions for Tonbridge, Hildenborough and East Peckham would be held up while it is confirmed if Yalding area has been correctly treated. It would indeed be ironic if the lack of priority given to Yalding led to problems for the very areas that has been inappropriately given more favourable treatment.

You will no doubt wish to satisfy yourself that Yalding and area have not been incorrectly treated and I look forward to hearing the results of your enquires. Please be aware that in the interests of transparency responses will be shared publicly.

Kind regards,

Alasdair Robertson

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