

Report of Head of Planning

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To: Council

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Oxford Flood Alleviation Scheme – discharge of planning functions

It is recommended that Council:

Delegates the discharge of its District Planning Authority functions in connection with the processing and determination of any planning application for the Oxford Flood Alleviation Scheme to Oxfordshire County Council, under section 101 of the Local Government Act 1972

Purpose of Report

1. The report recommends and seeks approval for the discharge to Oxfordshire County Council of any planning responsibilities that would otherwise be exercised by the Vale of White Horse District Council in relation to the Oxford Flood Alleviation Scheme (OFAS).

Corporate Objectives

2. The OFAS aims to reduce the flood risk for homes, businesses and infrastructure. It is helping to manage climate change and working in partnership with other councils.

Background

3. Council considered a report on this matter on 17 February 2016. A copy of the report can be accessed [here](#). Council decided to delegate its functions to Oxfordshire County Council under section 101 of the Local Government Act 1972. When making the decision, Council inserted a long stop date of 18 February 2019. The effect of this was that the delegation was deemed to be revoked if not

exercised by this date. In the event, the planning application by the Environment Agency did not proceed by the long stop date as it was withdrawn and the delegation was therefore revoked. As the delegation has been revoked, it cannot be extended, and a fresh decision is necessary.

4. The Environment Agency has submitted a planning application to Oxfordshire County Council for the OFAS. Whilst officers are of the view that the proposals are within the jurisdiction of Oxford City Council and the Vale of White Horse District Councils (the majority of the proposals are within Oxford City), there is some uncertainty as to whether this application is a county function. Legal advice subsequently obtained from two different counsel in 2017, which is subject to legal privilege suggested the application is a County Matter i.e. for submission to and determination by the County Council. However, they advised out of an abundance of caution that it would be prudent for the district councils to make conditional delegations of authority under section 101 LGA 1972 to avoid any risk of challenge relating to the legal competence of either the tier one or tier two authorities determining the application.
5. The previous report was therefore brought on this basis. Also, as a matter of practicality, it makes sense to have one decision rather than separate planning applications and permission from two separate planning authorities i.e. submitting two separate planning applications, which could result in different decisions - and if approved, varying planning conditions.
6. Section 101 of the Local Government Act 1972 allows a local planning authority to delegate its functions to another authority. In this case the function for processing and deciding a planning application for the OFAS is proposed to be discharged to Oxfordshire County Council as happened in February 2016. This is logistically simpler, financially cheaper, avoids conflicting planning decisions and reduces the risks of legal challenge.

Climate and ecological impact implications

7. A decision to delegate our planning functions to another council for the OFAS has no climate or ecological implications. The council will be consulted on the planning application and any justified impacts will be considered and mitigated.

Financial Implications

8. None

Legal Implications

9. All legal implications are set out in the body of the report. Whilst the tenor of the legal advice is set out in this report as a relevant consideration, this is a summary and legal advice privilege is maintained in relation to both advices.

Risks

10. Taking this approach, under the Local Government Act reduces the opportunity for a legal challenge on any planning the decision regarding OFAS.

Conclusion

11. Discharging the function for determining the OFAS to the Oxfordshire County Council could simplify the application procedure and provide consistency in approach and decision making on the application.

Background Papers

None