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Angela Hutchings
Chief Executive

AGENDA

**Policy and Scrutiny
Committee:**

ENVIRONMENT

Date and Time:

Wednesday, 13th July 2022 at 7.00 pm

Venue:

Council Offices, Council Chamber

Membership:

**Councillors Thomas (Chairman), Anderson, Ainsley,
Campagna, Cutler, Edwards, Egan, Mrs J. Payne, Mrs
J.Thornton and Walter**

**Cabinet Member
attending:**

Councillor Blackwell – Leader of the Council

Officers attending:

**Miss Ann Horgan - Scrutiny Officer
Mrs Amanda Parrott - Planning Policy Manager
Mrs Kim Fisher-Bright – Strategic Development Manager
Ian Butt – Head of Place and Policy**

Enquiries:

Loretta Hill – Ext. 2427

PART I

(Business to be taken in public)

- 1. Apologies**
- 2. Members' Interests**
- 3. Options to Manage Surface Water Runoff**

At the meeting of the Ordinary Council on 24.11.2021 the following Motion was approved

“Castle Point Borough Council explore the use of an Article 4 direction in relation to relevant permitted development rights to ban the installation of non-porous driveways and hard standing without planning permission to help reduce surface water runoff into local roads in times of heavy rain.”

The Motion was Policy & Scrutiny Committee for examination. A report is attached to assist the Committee.

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AGENDA ITEM NO. 3

**Policy Scrutiny
Committee Meeting:**

ENVIRONMENT

Date: **13th July 2022**

Subject: **Options to Manage Surface Water Runoff**

1. Purpose of Report

The purpose of this report is to provide the Committee with advice on the options available to the Council in respect of managing surface water in new development or the creation or replacement of new driveways in existing properties.

This report has been prepared following the agreement of a motion at the Council meeting of the 24th of November 2021 which sought for *Castle Point Borough Council to explore the use of an Article 4 direction in relation to relevant permitted development rights to ban the installation of non-porous driveways and hard standing without planning permission to help reduce surface water runoff into local roads in times of heavy rain.*

2. Links to Council Priorities and Objectives

Priorities

Environment

People

Enablers

Resources

3. Recommendation

The Policy and Scrutiny Committee review the contents of this report, and following discussion and debate make recommendations to the Cabinet as to:

- a) Whether, as sought by the motion, an Article 4 direction in relation to Class F of Part 1 of Schedule 2 of the Town and Country Planning General Permitted Development Order should be pursued; and/or
- b) Whether any other measures as detailed in the report should be pursued in respect of the management of surface water runoff and flood risk arising.

4. Background

Storm events that occurred in September and October 2021 have resulted in a number of residents and businesses experiencing flood waters within their

premises, gardens and homes. This is highly upsetting for the victims as well as being potentially costly to remediate.

The cause of the flooding are complex, but there is growing concern that the gradual replacement of front garden areas with hardstanding for the parking of private vehicles and in some instances the use of impermeable mortar jointed or tarmac material or the non-installation of adequate drainage, is a factor in the increased risk of property.

5 Report

5.1 What is Surface Water Flooding?

5.1.1 Surface Water, or pluvial flooding, occurs when rainwater does not drain away through the normal drainage systems or soak into the ground, but lies on, collects or flows over the ground surface creating hazards or causing damage to structures and features.

5.2 What are the causes?

5.2.1 Surface water flooding arises as a consequence of a complex interplay of factors including:

- climate change;
- geology;
- topography;
- hydrology and the capacity and management of the surface water drainage system.

Each of these factors is considered in turn.

5.3 Climate Change

5.3.1 Monitoring undertaken by the Meteorological Office and the BBC (the United Kingdom Climate Projections – 2018) has identified that within south east Essex temperatures have risen over the last thirty years and that we now experience hotter, drier summers and warmer winters.

5.3.2 A warmer climate means the atmosphere can hold more water, so we may have fewer wet days, but those wet days have the potential to be more extreme in terms of the quantity of water deposited.

5.3.3 Castle Point has already seen examples of such extreme rainfall – such as in 2014 when during a five-hour period over 1 million cubic metres of water fell on Canvey Island, which overwhelmed large parts of the drainage system and causing widespread flooding, including the inundation of 330 homes.

5.3.4 More recently in September and October 2021 heavy rain caused significant flooding and damage throughout the Borough. In the weeks 29th September to

5th October and 20th to 26th October, more than 40mm of rain fell on the Borough (Source: Met Office © Crown Copyright, 2021) causing widespread flooding.

- 5.3.5 The Chelmsford Weather Station records annual rainfall trends. This identifies that in the last 12 months rainfall in Essex was 758.6mm, compared to the average rainfall since 2013 which is 632.7mm for a 12-month period. The last year has therefore been, on average, almost 20% wetter.
- 5.3.6 Nationally, Summer 2021 was the wettest in a decade.
- 5.3.7 The Royal Meteorological Society suggests that wetter winters are likely to become the norm.

5.4 Geology

- 5.4.1 Much of the Borough presents a heavy clay soil. Clay is characterised by a small particle size and very small pore space. As a consequence, whilst clay is good at holding water, it has a slow absorption rate. Therefore, during extreme downfalls it is not as effective in soaking up water as other soil types.
- 5.4.2 Once clay soil is saturated it is no longer able to absorb water and can take several days to dry out. For this reason, prolonged periods of rain, or intermittent heavy rain over several days can be problematic.
- 5.4.3 Furthermore, due to its slow absorption rate, when clay soil becomes dry, it does not rapidly absorb water when it rains. Initially water will run off dried clay soils increasing surface water runoff during drier months.
- 5.4.4 The absorption capacity of clay is also adversely affected by compaction, so runoff will be greater from heavily worked fields than from more natural areas.

5.5 Topography

- 5.5.1 The Strategic Flood Risk Assessment (2018) identified that within Castle Point surface water flooding is particularly driven by local topography which predominantly slopes down towards water course channels and their tributaries including Benfleet Creek and Prittle Brook. Localised flooding can be attributed to topographic depressions, insufficient capacity in ordinary water courses and culverts and obstructions to surface water flow paths.
- 5.5.2 The SFRA also considers that surface water flooding may be associated with failures in the management of drainage network during high rain fall events.
- 5.5.3 The SFRA concludes that there is a high probability of surface water flooding on Canvey and several high-risk fluvial flow paths in Benfleet and Thundersley. Most of the risk extends along the courses of Hadleigh Ray and ordinary watercourses in the Borough.

5.6 Hydrology

- 5.6.1 The absorption capacity of soil is significantly influenced by the level of the water table. The higher the water table, the less capacity there is within the soil to absorb further water.
- 5.6.2 Rising sea levels is a consequence of global warming and can result in raised water table levels. Canvey Island is below sea level and has a naturally high water table. This is similarly the case in lower lying parts of South Benfleet. Elsewhere the retention of water in clay and the increase in rainfall increases the risk of surface water flooding.
- 5.6.3 Given the high-water table, permeable surfacing is not necessarily the most appropriate approach to managing surface water in all parts of Castle Point as quite simply excess water cannot be sufficiently absorbed. The provision of areas to which surface water can drain i.e. grassed areas, flower beds, rainwater gardens etc, and technologies such as eco-drains allow for excess water to be stored and enter the drainage system more slowly, preventing a deluge and overflow.

5.7 Drainage system capacity

- 5.7.1 The South Essex Surface Water Management Plan identifies the following ordinary watercourses and unnamed drainage ditches in Castle Point:
- Prittle Brook (upper reaches);
 - Tributary of Benfleet Brook;
 - Tributary of Rawreth Brook;
 - Janette Avenue; and
 - East of Haven Road.
- 5.7.2 In addition to these, there are more than 16 watercourses and dykes that form the drainage system for Canvey Island, which is partly pumped and with different sections operated and maintained by Castle Point Borough Council, Anglian Water and the Environment Agency. Flooding from this system is possible due to the flat and low-lying topography of the Island and the restrictions on flow caused by sea defences and pump drains at the downstream end of these watercourses. If water were to overtop these dykes, the flat topography of the Borough could cause it to disperse over large areas. The maintenance of ordinary watercourses that are not owned by Essex County Council (as the LLFA) or Castle Point Borough Council is the responsibility of the riparian owner.
- 5.7.3 Anglian Water is responsible for the cleaning and maintenance of nearly all private sewers and most drains outside property boundaries that connect to the public sewer network. This is the case for both residential and commercial properties and foul and surface water systems.
- 5.7.4 As with most places across the UK, much of the surface water drainage system dates to the original development of the area, most of which occurred in Castle Point during the period from the 1940's to the 1980's. The manmade elements of

the drainage system were not consequently designed to accommodate increased flows arising from the level of climate change we are experiencing.

- 5.7.5 During periods of heavy or prolonged rainfall the capacity of water channels, culverts and surface water pipes may be exceeded causing water to pool or flow in other directions, on the path of least resistance.
- 5.7.6 Capacity may also be exceeded because of blockages within the network caused by siltation in low-lying areas and also because of improper use.

5.8 Development

- 5.8.1 The construction of buildings will usually result in some land being covered by an impermeable surface.
- 5.8.2 Intuitively one might expect such development to adversely impact on the capacity of sites to absorb rainwater and thus contribute to surface water flooding. This however is not necessarily the case.
- 5.8.3 Paragraph 159 of the NPPF requires that development does not increase flood risk elsewhere. Consequently, all proposals considered by the planning authority must demonstrate that they can accommodate surface water runoff generated by the proposed development within the site. This will preferably be in the form of a sustainable drainage system (SuDS) incorporating natural features or, where this is not possible due to constraints on plot size, topography or geology, in the form of water retention and attenuation systems which allow for the storage of water on site, usually in underground cisterns, before allowing it to flow into the surface water drainage system at a controlled rate, when capacity within the wider system is available.
- 5.8.4 The corollary of such systems is that they can result in a reduction in previous levels of runoff onto neighbouring land (particularly run off from fields) as a consequence of managing and controlling the flow of water and thus can contribute towards a reduction in surface water flood risk.
- 5.8.5 A further advantage of proposals considered by the Planning Authority is that even in smaller proposals, such as extensions, the Planning Authority can seek to secure the provision of further surface water control mechanisms such as the provision of rainwater butts and rainwater harvesting schemes. Whilst individually the quantities collected may be relatively limited, collectively the impact can be significant.
- 5.8.6 However, a significant amount of development can occur under permitted development rights where planning permission is not required and therefore, the Council cannot seek the provision of measures to reduce flood risk through a planning application. However, in some cases such works do nonetheless require approval under the Building Regulations, where provisions with regard to the control of surface water runoff are separately imposed.

5.8.7 However, some development can be undertaken in the absence of planning permission and Building Regulations approval. Significant amongst which in terms of surface water runoff is the provision of hard surfaces and private drives.

5.8.8 Class F of Part 1 of Schedule 2 of the Town and Country Planning General Permitted Development Order states that planning permission is not required for:

‘Development consisting of—

- (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or*
- (b) the replacement in whole or in part of such a surface.’*

‘Development is permitted by Class F subject to the condition that where –

- (a) the hard surface would be situated on land between a wall forming the principal elevation of the dwelling house and a highway, and*
- (b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres,*

either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.’

5.8.9 To summarise, hard surfaces are permitted to the side and rear of most residential properties without restriction. However, hard surfaces typically to the front of properties where driveways are normally located can be provided if they are made of porous materials or drain to a porous area where that driveway is more than 5 square metres. Most single drives are at least 3m wide and 6m deep in order to accommodate the dimensions of a car. This equates to 18m². Therefore, all non-porous or impermeable drives which do not direct water towards a permeable or porous area or surface within the curtilage therefore require planning permission.

5.8.10 In theory the provision of a permeable or porous driveway or a driveway which directs water towards a permeable or porous area or surface within the curtilage, should not have significant adverse implications for surface water runoff.

5.8.11 However, there are a number of factors which can combine to result in surface water runoff arising from driveways provided under part F:

- (i) Because of the general perception that hard surfaces do not require planning permission people assume that all hard surfacing is permitted development and that consent is not required. Residents are unaware of the restrictions imposed by the conditions within the legislation. Permeable and porous surfaces are not therefore always provided when they should be.
- (ii) Where a permeable or porous surface is provided, the substrate may be formed of materials that are not sufficiently porous or permeable and do not therefore allow the percolation of water.

- (iii) The provision of permeable surfacing may not be appropriate to the location due to hydrological factors, affecting its effectiveness at preventing surface water run-off.
- (iv) Poor maintenance of the surface can result in dirt build up and the growth of weeds which can clog the available channels within the surface resulting in run off.
- (v) Where water is directed from impermeable and non-porous surfaces to other areas within the curtilage, these are of insufficient capacity to accommodate run off flows.

5.8.12 The result can be significant run off contributing to surface water flooding.

5.8.13 Further it should be noted that there is no conditional restrictions on the provision of hard surfaces within rear gardens or any other area of a site which is not located between the principal elevation of the dwelling and the highway. These can go ahead without the provision of permeable surfacing or drainage areas and can add significantly to run-off.

5.8.14 It should be noted that artificial grass is not a particularly efficient or effective permeable surface and even wooden decking can restrict absorption.

5.8.15 The provision of hard surfaces within curtilages has other implications for the environment, other than just contributing to increased run off.

5.8.16 Non permeable surfaces are not effective at absorbing pollutants and any deposits on the surface such as spilt fuel or other contaminants are likely to be washed off during rainfall, potentially resulting in pollutants entering the drains and potentially watercourses to the detriment of wildlife.

5.8.17 The paving of gardens has another adverse impact on wildlife and biodiversity as it can remove habitat and food sources for birds, insects and other small organisms.

5.8.19 Furthermore, in an almost self-fulfilling prophecy, hard surfaces soak up heat during the day and then release it at night. This contributes to the overall warming of the environment, which is thought to be at least partly responsible for the increase in cloud cover in the UK and the recent heavy storms.

5.9 What can we do about surface water flooding?

5.9.1 The fundamental conditions underlying the cause of local surface water flooding, namely climate change, geology, topography and the water table are matters over which the local authority and Lead Local Flood Authority can have little influence or control, albeit the Council is seeking to do its part to help manage and reduce climate change through its Climate Change Action Plan.

5.9.2 The Council has a limited role regarding surface water flooding. Essex County Council is the designated Lead Local Flood Authority for Essex with a duty to investigate, reduce and mitigate surface water flooding.

- 5.9.3 However, through joint working the Council is participating in schemes which seek to identify issues within, and improve the capacity of, the public surface water drainage system.
- 5.9.4 Following the storm of July 2014, which overwhelmed the drainage capacity of Canvey Island, this Authority, together with Essex County Council, Anglian Water and the Environment Agency engaged in a major study of the drainage system of the Island to identify capacity and areas most at risk of surface water flooding. Following this £1.7m was spent on infrastructure maintenance and a bid for £24.5m of Government funding for improvements was made. This was to secure:
- Property level protection from surface water flooding.
 - Improvements to drainage infrastructure at recognised pinch points to take excess rainwater from the centre of the island to the pumps located around the island.
 - Increased storm water storage area on the island providing areas where excess rainwater can be stored.
 - Increased storage capacity in Canvey Lake and re-profiling the surrounding area to provide additional storm water storage capacity.
 - Utilisation of new technology to enable a more reactive approach to deal with heavy rainfall, and
 - Enhanced education, awareness and local volunteer programmes to increase community resilience.
- 5.9.5 The full funding requirements have not yet been secured. However, elements of the improvements have begun to be delivered. A scheme is in place for property level protection from surface water with over 200 properties having already received funding towards measures which prevent inundation. Separately, a scheme called Thames21 has also commenced to develop community resilience.
- 5.9.6 Work has also commenced in terms of infrastructure improvements with a retrofit SUDS scheme on Park Avenue having been delivered to help manage surface water in that location through the creation of a rainwater garden. This was delivered by ECC in conjunction with Anglian Water and was a test case for further investment. Efforts to secure funding for the remaining elements will continue, and it may be the case that where a scheme is in an area where development is also occurring the Council could in the future use CIL to fund or part fund schemes.
- 5.9.7 Further as a Planning Authority the Council can influence development either through advice or regulation.
- 5.9.8 In the context of proposals which require planning permission, the ability to influence design and layout to secure no off-site flooding is relatively easy and can be administered through the Development Management process.
- 5.9.9 For proposals which do not require the formal consent of the Planning Authority potentially two avenues are available: advice and regulation.

5.10 Advice

- 5.10.1 The Planning Authority is not the Flood Authority and it is not therefore within the Council's remit to provide detailed advice and guidance on the mitigation of surface water flood risk.
- 5.10.2 It can however signpost and make accessible the guidance that does exist and there is a wealth of information available in respect of the provision of permeable surfaces.
- 5.10.3 The document '*Guidance on the permeable surfacing of front gardens*' published by the Government in 2009, is an excellent source of information however it only deals with hard surfacing within front gardens, is limited in terms of practical advice in clay areas or on detailed matters such as the use of appropriate materials within substrates, the relationship between impermeable and permeable surfaces and alternative means of achieving off street parking and would not appear to be widely known.
- 5.10.4 Information is also provided by suppliers of permeable and porous surfacing, but again often lacks consideration of detailed matters such as permeable: impermeable ratios and maintenance or alternatives to hard surfacing.
- 5.10.5 Essex County Council as the Lead Local Flood Authority published in 2020 '*The Sustainable Drainage System Design Guide for Essex*,' which recognises that the different parts of Essex will require different types of sustainable drainage approaches to reflect local geology, topography and hydrology. However, the guidance is focused on the types of development which typically require planning consent and does not deal specifically with driveways or other areas of hard surfacing.
- 5.10.6 It is therefore considered that advice, which addresses the circumstances in Castle Point, covering the provision of hard surfacing both of driveways and in garden areas, including advice on construction and appropriate approaches to drainage and alternatives to hard surfacing could be locally beneficial. If appropriately distributed, such advice would help to overcome the general lack of awareness identified as a key barrier to the successful implementation of the conditional requirements of the permitted development right in relation to driveways.

5.11 Next Steps on Advice

- 5.11.1 In partnership with the Lead Local Flood Authority, the Council could prepare advice on the drainage requirements of hard surfaced areas within residential properties in Castle Point. This could be published on the Council's website and distributed through a social media campaign in the first instance. Leaflets containing the advice could be produced which could be distributed by the Council and its partners and community groups at points of contact, and then distributed more widely alongside another Council mailout e.g. alongside Council Tax notifications. This is a low-cost option that could be achieved within existing Council resources.

5.11.2 A separate mailout of leaflets on this matter would cost of the order of £20k and would require additional resources which are not currently budgeted for.

5.11.3 If Members were supportive of providing additional advice to residents in relation to hard surfacing and managing the flood risk arising, consideration should be given to the following matters:

- (i) Is the advice to be aimed solely at residents or is it also going to advise businesses?
- (ii) Will it focus just on the hard surfacing of front gardens or will it deal with all hard surfaced areas?
- (iii) How should the information be disseminated?
- (iv) How will its effectiveness of the advice be monitored?

5.12 Regulation

5.12.1 There are three potential avenues to explore under the title of regulation: the wider use of conditions, the better enforcement of current regulation or the introduction of new regulation.

5.13 The wider use of conditions

5.13.1 The Council could choose, as standard practice, to impose a condition on the grant of planning consent for relevant proposals, removing the permitted development rights under Class F of Part 1 of Schedule 2 of the Town and Country Planning General Permitted Development Order.

5.13.2 Conditions may be attached to the grant of any planning permission. However, conditions must be:

- necessary;
- relevant to planning;
- relevant to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.

5.13.3 Conditions cannot be applied retrospectively, cannot be applied to development to which they have no relevance and cannot be applied to development which does not require planning permission. The capacity to secure the stated objective of limiting surface water run off therefore appears limited.

5.13.4 Even when applied, it should be noted that conditions are not registered as a land charge and will not be revealed in a standard land registry search. Purchasers may therefore be unaware of the condition and even when originally known, there is a tendency for conditions to be forgotten over time with the potential for unintentional breaches to occur.

5.13.5 It is considered likely therefore that the imposition of conditions could result in a heavy enforcement liability that cannot be met from existing resources.

5.13.6 The Planning Authority cannot refuse to determine applications for hard surfaces and any applicant receiving a refusal will have the right to appeal such a decision. This again has potentially significant resource implications for the Planning Authority. It should be noted that award of costs can be made against the Council if its action in refusing such applications is considered unreasonable. Given that there is a right to provide some hard surfaces without the need for planning permission, in the absence of very clear and robust evidence to support the decision, it is considered likely that cost awards against the Council could be made.

5.14 Better enforcement of current regulation

5.14.1 Only certain forms of development are permitted development. Any hard surfacing works that are undertaken and which do not comply with the provisions of the General Permitted Development Order constitute unauthorised development in respect of which the planning authority may take enforcement action.

5.14.2 The difficulty is however that the planning authority is not usually notified of this type of work and is currently inadequately resourced to undertake speculative reconnaissance trips around the Borough seeking it out. Therefore, it is considered likely that many private drives may, in fact, represent unauthorised development either as a consequence of being impermeable or inadequately drained.

5.14.3 As such work is not normally notified it is not currently possible to determine the scale of unauthorised activity being undertaken.

5.14.4 In order to determine the level of staff resource needed to appropriately enforce proper provision of permeable or porous hard surfaces at the front of dwellings, detailed analysis of the number installed each year is required. Once the scale of the issue is determined it will be possible to determine the resources required to police provision more effectively.

5.14.5 It must be remembered that only hard surfacing within front gardens would be considered under this provision and that action against any unauthorised development must be taken within four years. Under the Levelling Up and Regeneration Bill, this time limit may be extended to 10 years, although this is not certain at this time.

5.15 The introduction of new regulation

5.15.1 The provision of advice acknowledges that there will be circumstances where the Planning Authority's ability to control development is limited or non-existent.

5.15.2 It is however possible, under certain circumstances, to secure control where none previously existed. This is primarily through the imposition of an Article 4 Direction.

5.15.3 At this time, there are no examples of Article 4 Directions having been used in England to control this particular permitted development right for the purpose of managing local surface water flood risk. This does not mean it cannot be done, however there is no precedent to follow.

5.16 What is an Article 4 Direction?

5.16.1 An Article 4 Direction is a direction under article 4 of the General Permitted Development Order which enables the Secretary of State or the local planning authority to withdraw specified permitted development rights across a defined area. Such directions can be of temporary or permanent effect.

5.16.2 As a consequence of the imposition of an Article 4 Direction, an application for planning permission would be required for operations the subject of that Direction.

5.16.3 In determining such applications the Planning Authority will be able to influence design and construction and can actively monitor installation.

5.16.4 As an Article 4 Direction removes a right, the National Planning Policy Framework advises that they should be applied in a measured and targeted way, based on robust evidence and applied to the smallest geographical area possible.

5.16.5 In all cases, Article 4 Directions should be limited to situations where it is necessary to protect local amenity or the well-being of the area.

5.16.6 The potential harm that the Article 4 Direction is intended to address will need to be clearly identified and there will need to be a particularly strong justification for the withdrawal of permitted development rights relating to a wide area (e.g. those covering a large proportion of, or the entire area of, a local planning authority).

5.17 What is the process?

5.17.1 In procedural terms there are two main types of Article 4 Direction:

- Non-immediate Directions (permitted development rights are only withdrawn upon confirmation of the Direction by the local planning authority following local consultation); and
- Immediate Directions (where permitted development rights are withdrawn with immediate effect but must be confirmed by the local planning authority following local consultation within six months, or else the Direction will lapse).

5.17.2 Immediate Directions can only be used to withdraw a small number of permitted development rights, which relate to development within the curtilage of a dwellinghouse, minor operations, changes of use, temporary buildings and uses,

and demolition of buildings. These are permitted by Parts 1-4 and 31 of Schedule 2 to the General Permitted Development Order (GPDO).

5.17.3 The provision of a hard surface falls within Part 1 and can therefore be the subject of an Immediate Direction.

5.17.4 The immediacy of the threat and potential compensation liability are considerations in determining whether to use a non-immediate or immediate Direction.

5.17.5 Article 4 Directions cannot be used in relation to any type of development other than those explicitly granted permitted development rights through the GPDO, nor can they be applied retrospectively to development undertaken before a Direction comes into force, or to development that has been commenced at the time that a Direction comes into force.

5.17.6 Thus, any Article 4 Direction introduced now would only control future proposals and would have no impact on the current situation the remediation of which will require alternative action.

5.17.7 It should further be noted that whilst the introduction of an Article 4 Direction removing permitted development rights for hard surfaces is likely to generate a significant increase in workload with such applications only generating a modest application fee of £206 each.

5.18 Making an Article 4 Direction

5.18.1 If it was determined that an Article 4 Direction is appropriate, consideration would need to be given as to whether the Direction should come into force immediately or following consultation.

5.18.1 Given the compensatory provisions it is critical that any Article 4 Direction is carefully drafted to include all relevant information.

5.18.2 Annex A (of revised Appendix D) of Circular 9/95 provides model templates to assist in this matter. A copy is attached at Appendix 1

5.18.3 Regardless of the type of Article 4 being progressed, the procedure is that, as soon as practicable after the Direction has been made, the Local Planning Authority should give notice by,

- local advertisement (as defined in Article 1(2) of the GPDO)
- by site display at no fewer than two locations within the area to which the Direction relates for no less than 6 weeks
- by serving the notice on every owner and occupier affected by the Direction
- by notifying Essex County Council

- the notice must specify a period of at least 21 days in which any representations may be made.

5.18.4 In the case of an immediate Direction, it takes effect on publication and service of the notice.

5.18.5 Following this, the Local Planning Authority must decide whether to confirm the Direction within 6 months of its being made, having taken into account any representations received.

5.18.6 A non-immediate direction will come into force on the date specified in the notice.

5.18.7 The Secretary of State should be notified on the same day that the notice of an Article 4 Direction is first published or displayed locally, and as soon as practicable after the Direction has been confirmed.

5.18.8 Once confirmed both non-immediate and immediate directions are permanent (unless cancelled by the local planning authority or Secretary of State).

5.19 Role of the Secretary of State

5.19.1 Before April 2010 the Secretary of State confirmed certain Article 4 Directions, but it is now for local planning authorities to confirm all Article 4 Directions (except those made by the Secretary of State) in the light of local consultation.

5.19.2 The Secretary of State has the power to make a Direction modifying or cancelling most Article 4 Directions at any point. The Secretary of State cannot, however, modify Directions related to permitted development rights under Parts 1-4 and 31 of Schedule 2 to the GPDO that apply exclusively to listed buildings, and cannot cancel or modify Directions related to development specified in paragraphs 3(a) to (j) of Article 6 of GPDO which deals with changes of use from commercial, business and service uses to dwellings.

5.19.3 An Article 4 Direction controlling hard surfaces within the curtilage of a dwelling could be modified or cancelled by the Secretary of State but this power would only be exercised if there were very clear reasons why intervention at this level was considered necessary.

5.20 Compensation

5.20.1 Local planning authorities may be liable to pay compensation to those whose permitted development rights have been withdrawn if they:

- Refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction: or
- Grant planning permission subject to more limiting conditions than the GPDO would normally allow, as a result of an Article 4 Direction being in place.

- 5.20.2 Compensation may be claimed for abortive expenditure or other loss or damage directly attributable to the withdrawal of permitted development rights.
- 5.20.3 All claims for compensation must be made within 12 months of the date on which the planning application for development formerly permitted is rejected (or approved subject to conditions that go beyond those in the GDPO).
- 5.20.4 Additionally, for certain permitted development rights withdrawn by an Article 4 Direction, compensation may only be claimed if an application for planning permission is submitted within 12 months following the effective date of the Direction.
- 5.20.5 Compensation is not payable in the case of a non-immediate Article 4 Directions where they do not come into effect until 12 months after publication.

5.21 Next Steps on Article 4

- 5.21.1 As can be seen from the above, the procedure for making an Article 4 Direction is time consuming and potentially very expensive, not only in terms of the need to secure the robust evidence required to justify the making of the Direction, but also in terms of the consultation process and compensation provisions.
- 5.21.2 It is critical therefore that before embarking on the process the Authority is clear on the matters to be controlled, the outcomes to be achieved and the evidence to support imposition.
- 5.21.3 The following questions must be considered in determining next steps:
- (i) What is the robust evidence to demonstrate that hard surfacing is a significant contributory factor to surface water runoff?
 - (ii) What is the scale of development occurring under this permitted development right?
 - (iii) What is the robust evidence to support the contention that controlling hard surfacing within the curtilages of dwellings will have a measurable positive impact on surface water flooding? It should be borne in mind that the Article 4 Direction will not enable the planning authority to refuse planning permission for development which would have been permitted development if it were not for an Article 4 Direction. Furthermore, the Council will not be able to grant planning permission subject to more limiting conditions than the Permitted Development Order would normally allow, as a result of an Article 4 Direction being in place and will not be capable of retrospective application.
 - (iv) Given that all impermeable surfacing has the capacity to contribute to increased surface water runoff and thus surface water flooding, are Members seeking to regulate just the hard surfacing of front gardens or the control of all hard surfacing within the curtilages of dwellings?
 - (v) Is hard surfacing within commercial curtilages also to be considered?
 - (vi) What geographical area is to be covered by the Direction?
 - (vii) What is the desired outcome?
 - (viii) How will this be measured and monitored?

(ix) What are the resource implications?

5.21.4 At the present time there is no known available local evidence on the extent to which hard surfacing delivered under permitted development rights contributes towards the borough's surface water flooding issues.

5.21.5 Whilst Essex County Council is responsible for the investigation of surface water flooding, it is not adequately resourced to actively investigate and extrapolate data from local flood events, relying instead on models to inform decisions on large scale development proposals. Any research on this matter would therefore need to be commissioned and considered by the Authority before a Direction could be drafted.

5.21.6 Essex County Council advises that to understand how an element affects the water environment, it would need to be studied for an extended period. In addition, the character and surface conditions for the area will need to be surveyed in a lot of detail, taking into account the extent of hard landscaping, drainage capacity, porous and non-porous surfaces, drainage within curtilages, run-off space etc. Other causes of flooding will need to be considered, so that a reasonable assessment can be made as to the risk posed by hard standing in driveways.

5.21.7 Given the variables involved in each case achieving robust evidence is considered likely to be problematic, and require the expenditure of time and costs that cannot be accommodated within existing resources and would require additional staff and budget.

6.0 Conclusion

6.1 The fundamental conditions underlying the cause of local surface water flooding, namely climate change, geology, topography and the water table are matters over which the local authority and LLFA can have little influence or control.

6.2 However, there are opportunities available to the Council to help ensure that local residents are able to manage their exposure to surface water flood risk. The principal opportunity available to the Council is around raising awareness of the risk posed to residents around the choices they make in terms of hard surfacing at their homes. The provision of advice about hard surfacing and how it can be appropriately drained will not only bring the matter to their attention but also help them to make informed decisions about how they can improve their homes in ways that will keep them safe. This is a low cost option for the Council but is also an option that best engages the community.

6.3 There are also opportunities to improve enforcement of existing controls and the introduction of new controls. However, there are challenges around the introduction of these measures related to their justification, implementation, and outcomes. Furthermore, as detailed below, the resource requirements are significant and not capable of being met from existing resources. The use of regulations can also be adversarial and may not best engage residents in managing their own risks.

7.0 Financial implications

- 7.1 A review of existing advice and the preparation of improved advice will have implications in respect of staff resources and the cost of making the public aware of the advice. A project plan would be required to determine the costs associated with this approach, although initial thoughts are that this would be an approach with the lowest costs that could most likely be met from existing resources.
- 7.2 The better enforcement of existing regulation will, depending on the scale of the issue, be likely to generate a need for additional staff resources, in terms of both inspection and enforcement. Indicatively, an additional enforcement officer would cost circa £53,000 per annum.
- 7.3 The preparation of a new Article 4 Direction will have significant costs associated with evidence gathering, notification, implementation and compensatory provisions, the extent of the costs associated with this cannot currently be determined.
- 7.4 It should be noted that to support the imposition of an Article 4 Direction there must be clear and robust evidence of a link between hard surfacing and surface water flood events. Given that the Article 4 Direction is intended to address local events, the evidence for imposition should similarly be local. Starting from the basis of no empirical evidence, the achievement of a sufficiently robust body of evidence to support the imposition of an Article 4 Direction may take many months to collect and analyse. This could have significant financial implications.
- 7.6 It is estimated that evidence gathering, and notification alone would cost around £80,000. The scale of any compensation provision would be determined through evidence base gathering work but could be minimised using a non-immediate Article 4 Direction.
- 7.5 In terms of implementation, this again depends on the evidence, the scale of the issue and the geographical area of any article 4 direction. It is likely that there would be an increase in planning applications received because of the removal of permitted development rights which is likely to generate a need for additional staff resources. However, any standalone applications for such development would generate only a modest fee of £206 each. Unless there were substantial numbers of such applications this would not be sufficient to generate enough income to fund an additional post. As an estimate around 170 applications per year would be needed to fund a junior level post.
- 7.6 An Article 4 Direction is also likely to generate additional enforcement work, as people will not necessarily be aware of the need for planning permission, whilst some others will not necessarily implement those permissions granted in accordance with the agreed plans. The indicative cost of an additional enforcement officer is set at paragraph 7.2.

8.0 Legal Implications

- 8.1 The preparation, notification and implementation of Article 4 Directions is closely constrained by legislation. Any errors in drafting, notification or implementation could have significant legal implications and cause reputational damage.
- 8.2 Unless supported by a robust body of evidence it is considered likely that the Secretary of State would cancel the Direction.

9.0 Human Resources

- 9.1 The consolidation of existing and preparation of new advice on the provision of hard surfacing will have implications for staff resources within the Planning Policy Team. At this time there are limited resources to support this project alongside work currently underway or programmed, and a project plan would be required to determine how this work could be delivered.
- 9.2 The preparation of an Article 4 Direction would also have implications for the Planning Policy Team. Again, there are insufficient resources to support the preparation of the evidence for an Article 4 Direction and a project plan would be required to determine how this work could be delivered.
- 9.3 The Council has insufficient capacity within the Planning Service regarding planning enforcement work. Any proposals for enhanced enforcement of the permitted development rights related to driveways, or the implementation of an Article 4 Direction would require an additional dedicated enforcement officer. This is in addition to any need for additional resources already existing.
- 9.3 Any increase in the number of applications arising from operation of an Article 4 Direction will be likely to require additional staff resources within the Development Management team.

10.0 Equality Implications

- 10.1 There are no equality implications arising from this report currently. However, there is the potential for the consolidation or introduction of new advice or the imposition of an Article 4 Direction affecting driveway provision to have implications for disabled parking. An Equality Impact Assessment may therefore be required at a later stage.

11.0 IT and Asset Management Implications

- 11.1 The consultation process associated with the making of an Article 4 Direction and the potential increase in applications will make use of existing IT resources.

12.0 Background Papers

- Guidance on the permeable surfacing of front gardens DCLG/EA (2008)
- South Essex Surface Water Management Plan(2011)
- General Permitted Development Order (2015) as amended

- Canvey Island Integrate Urban Drainage Study (2015)
- Strategic Flood Risk Assessment (2018)
- Royal Meteorological Society: Met Matters: Wettest day on record. 2020
- National Planning Policy Framework (2021)
- Rainfall and River flow: Weekly Reports for England GOV.UK (2021)
- Building Resilience in Flood Disadvantaged Communities (2021)

13.0 Appendix

Models for Immediate and Non-immediate Article 4 Directions

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APPENDIX 1

Model for a non-immediate article 4 direction

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 1995 AS AMENDED

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 5 APPLIES

WHEREAS (insert council name here) being the appropriate local planning authority within the meaning of article 4(4) of the GPDO, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged/coloured on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990 as amended,

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description(s) set out in the Schedule below:

SCHEDULE

1.To be completed when making the article 4 direction. Made under the Common Seal of (Insert council name here)..... thisday of.....20..... The Common Seal of the Council was affixed to this Direction in the presence of Chief Executive Officer

2.To be completed when confirming the article 4 direction. Confirmed under the Common Seal of (Insert council name here) thisday of.....20..... The Common Seal of the Council was affixed to this Direction in the presence of Chief Executive Officer

Model for an immediate article 4 direction

TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) ORDER 1995, AS AMENDED

DIRECTION MADE UNDER ARTICLE 4(1) TO WHICH ARTICLE 6 APPLIES

WHEREAS (insert council name here) being the appropriate local planning authority within the meaning of article 4(4) of the Town and Country Planning (General Permitted Development) Order 1995, as amended, are satisfied that it is expedient that development of the description(s) set out in the Schedule below should not be carried out on the land shown edged/coloured on the attached plan, unless planning permission is granted on an application made under Part III of the Town and Country Planning Act 1990, as amended.

NOW THEREFORE the said Council in pursuance of the power conferred on them by article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995, as amended, hereby direct that the permission granted by article 3 of the said Order shall not apply to development on the said land of the description(s) set out in the Schedule below.

THIS DIRECTION is made under article 4(1) of the said Order and, in accordance with article 6(7), shall remain in force until (insert date) (being six months from the date of this direction) and shall then expire unless it has been confirmed by the appropriate local planning authority in accordance with paragraphs (9) and (10) of article 5 before the end of the six month period.

SCHEDULE

- 1.To be completed when making the article 4 direction. Made under the Common Seal of (Insert council name here)..... thisday of.....20..... The Common Seal of the Council was affixed to this Direction in the presence of Chief Executive Officer
- 2.To be completed when confirming the article 4 direction. Confirmed under the Common Seal of (Insert council name here)..... thisday of.....20..... The Common Seal of the Council was affixed to this Direction in the presence of Chief Executive Officer