South Northamptonshire Council

Cabinet

14 November 2016

Kings Sutton Wales Street
Flood Alleviation Scheme

Report of Director of Operational Delivery

This report is public

Purpose of report

To update Cabinet of the current position and to seek a decision on the next steps.

1.0 Recommendations

The meeting is recommended:

1.1 To note the strenuous effort made to deliver the agreed scheme as designed and funded.

1.2 To withdraw with regret from the project.

2.0 Introduction

2.1 The Council has for many years attempted to put in place a flood alleviation scheme to protect 48 homes in Kings Sutton. Despite the lead responsibility for flooding resting with Northamptonshire County Council, the Council has attempted to honour its intent to complete this project.

2.2 Delivery during the summer of 2016 looked promising with a scheme which had the necessary statutory consents in place and full funding from a variety of sources. However, the actual delivery of the approved and funded scheme depended on the agreement of all the households where the works extended on to their legal land title. Such agreements were expected to be achieved as each householder would be benefiting from the protection against flooding to their property which the scheme provided.

2.3 Regrettably, whilst most householders have indicted their willingness to support the scheme, there is one householder who has steadfastly refused to provide their agreement. Without full agreement from all householders affected by the works, the scheme as designed cannot proceed.
3.0 Report Details

3.1 The total funding secured for the agreed scheme is £672k which included a range of contingencies and non-construction costs. This is made up of £503k Environment Agency (EA) funding, £124k SNC contribution and £45k Kings Sutton Parish Council contribution. The Council has already committed at risk £66k of its contribution to the scheme to progress it to this stage.

3.2 With full funding from a variety of sources and the necessary statutory approvals in place, the Council earlier in 2016 conducted a competitive procurement process to engage a construction contractor for the works. The planned commencement of the works was August 2016 subject to all the agreements in place from the householders affected by the construction of the agreed flood alleviation measures.

3.3 As a consequence of one householder refusing to agree to the scheme despite the strenuous efforts of Council officers, the appointed contractor was unable to start and the delay meant that the summer weather window required for this type of work was lost for 2016. This in turn has meant that should the Council wish to continue with a flood alleviation scheme, a 2017 works programme will be required.

3.4 Given the above and also that the scheme as designed could not be delivered without the agreement of the final householder who was withholding their consent, officers have put the scheme on hold. Attention has however been given to the options available to the Council in these circumstances. These are as follows;

Option 1 - Resolving the Landowner Issues

3.5 It is considered highly unlikely that agreement can be reached with the one outstanding landowner given the consistent stance of rejection adopted to date. Even if this was achieved, the Council would face an estimated increase in scheme costs of c£50k due to the delay incurred into 2017. As a consequence of any increase in costs, there would also be the possibility of a potential review by the EA funding which is based on a cost benefit analysis (necessary for all EA funded schemes) which could result in a reduction in the EA funding. It is also anticipated from the ongoing dialogue that no further funding could be secured from the EA and the Parish Council and therefore if this option became a possibility, the increase in scheme costs would fall to this Council.

Option 2 – Revise the Scheme to Avoid the Need for Householder Consents

3.6 It is possible based on EA advice to provide an alternative flood alleviation design which might overcome the remaining householder objection. This involves retaining the existing ditch and watercourse with the addition of control valves at either end to restrict flow in the watercourse at times of flooding. The proposed earth bund, required to protect the properties in Wales Street, would then be constructed along the northern edge of the existing ditch with the new channel, required to drain the flood waters away, constructed across the paddock as originally planned. The principle concerns regarding this course of action are the delay and resultant increased cost estimated to be £56k, a potential review by the EA of the revised scheme’s cost benefit analysis and new agreements with land owners for the maintenance and repair of the valves which the proposed scheme did not have. This course of action would also require an application for the revision of the planning permission.
Option 3 - Taking legal action to Enable the Planned Scheme to be Implemented

3.7 Whilst there is a possibility of using legislation to circumvent the objection of the landowner who will not agree to the works being undertaken, it is likely that the Council would need external legal advice to assist with this, given that the lead authority for flooding matters is the County Council. This would incur a further cost to this Council beyond that arising from the delay to the scheme as external expertise would have to be sought. The extent of the further cost is uncertain as the legal action may be challenged and therefore, given the whole range of additional costs and risks with this, this option is not recommended.

Option 4 – Withdraw the Scheme

3.8 Whilst this would offer the least financial and other risk to the Council, the Council will be unable to deliver the flood alleviation measures as it had intended and will be unable to derive any value from the funding it has already committed at risk to progress the scheme to this point.

4.0 Conclusion and Reasons for Recommendations

4.1 This report has set out the cost and other implications of four options for the future of the Kings Sutton Wales Street Flood Alleviation Scheme. At this stage, it can be concluded that there is some risk associated with every option and a certainty of cost increases for Options 1 to 3.

4.2 In reality Option 1 and Option 3 require negotiation with a landowner who has not cooperated to date even when benefit to their property will be derived from the scheme. This renders these options unlikely to succeed.

4.3 Option 2 is viable subject to additional capital funding from the Council of c£56K and the landowners agreeing to take on repair and maintenance of the additional assets assuming the Environment Agency does not reduce its funding from a cost benefit analysis review of the revised scheme. There is therefore both additional risk and ongoing uncertainty with this option.

4.4 The only remaining option is Option 4 which given all the factors above in relation to ongoing risk, continued uncertainty and increased cost is therefore recommended.

4.5 Further dialogue is taking place over these options with Northamptonshire County Council given that it is the lead local flood authority. If anything material emerges from these discussions between now and the date of the Cabinet meeting, this will be reported at the meeting.

5.0 Consultation

Householders for the original scheme only.
6.0 Alternative Options and Reasons for Rejection

6.1 The alternative options have been identified in the body of the report.

7.0 Implications

Financial and Resource Implications

7.1 The Council has committed £124k capital funding to this scheme and of that, has spent £66k to date. In addition, and over the years, the Council has committed a very significant number of officer hours to a scheme which is not its core business, the cost for which it has absorbed in its day to day running.

Comments checked by:
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Legal Implications

7.2 The Council does have compulsory purchase powers, as well as powers under the Land Drainage Act 1991, that it could exercise unilaterally to progress the flood alleviation scheme, but there are timing issues with this approach, the risk of legal challenge could not be dismissed, and would also involve the Council paying compensation to affected owners for which no budget is available, whereas the effort to date has been around securing agreement of landowners to the flood works, which has so far enabled the Council to limit any compensation to the reimbursement of owners’ legal costs.

Comments checked by:
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Risks

7.3 The main risk is reputational should the Cabinet agree with the recommendation to withdraw the scheme as per option 4. However, if the Cabinet was minded to proceed with any of the other options, then there would be many legal, financial, timescale and technical risks which would require very careful management.

All of these risks will be managed as part of the services operational risk register and escalated to the corporate risk register as and when necessary.

Comments checked by:
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8.0 Decision Information

Key Decision

Financial Threshold Met: No

Community Impact Threshold Met: No

Wards Affected

Kings Sutton

Links to Corporate Plan and Policy Framework

Protect the District

Lead Councillor

Councillor Dermot Bambridge

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