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South
Cambridgeshire
District Council

Memo

To: Pat Matthews, Drainage Manager

From: Colin Tucker, Head of Legal Services
Ref: CT/SCA

Date: 23rd September 2005

Re: **Covell's Drain Swavesey**

Thank you for your memorandum of 13th September.

The law relating to land drainage is particularly complex and is contained within a variety of legislation. The major pieces of legislation are the Land Drainage Act 1991, the Water Resource Act 1991 and the Environment Act 1995.

In outline, the Environment Agency exercises a general supervision over all matters for flood defence. The Agency has power to maintain works, improve works, or construct new works. But the Agency is only empowered to do such works in connection with a main river, and for defence against sea or tidal waters.

A local authority (and this includes a District Council) may not carry out, or maintain any drainage works, except with and in accordance with reasonable conditions imposed by the Agency. There is an exemption to this rule for works carried out under a scheme for the drainage of a small area.

Importantly, the law provides that where injury is sustained by any person by reason of the exercise by Agency, internal drainage board, or a local authority of any of their general powers to carry out drainage works, the body is liable to make full compensation to the injured person.

The above is only an outline of the legal position and should not be seen as a definitive description thereof.

Turning now to your numbered points on page 2 of your memo, I would advise as follows:-

(a) If the Council does not carry out works

The powers available to the District Council are discretionary; they are not mandatory. It would therefore be difficult for a potential litigant to sustain an action for negligence if we failed to perform a statutory discretionary power. But it is possible.

(b) If the Council does not carry out this and flooding occurs

See (a) above.

(c) If the Council carries out work and flooding occurs

Clearly this is the scenario of most concern. In this situation, the District Council would have taken positive action, and thereafter flooding (and presumably damage) would have occurred. The District Council could be liable in negligence.

In order to protect the Council, I suggest we only do works formally required by the Environment Agency, and before we then do so, obtain a full indemnity from it for any damage caused as a result of the works.

On a practical note, it will always be difficult to prove that the damage suffered had a direct link to the works (or lack thereof) undertaken by the Council.

I hope this all helps, please let me know if I can help further.

Colin Tucker
Head of Legal Services