

Allowenshay Private Water Supply

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Purpose of the Report

1. For Members to consider the options available following partial non-compliance with a notice served under Section 80 of the Water Industry Act 1991 regarding improvements to the private water supply in the village of Allowenshay.

Forward Plan

2. This report appeared on the District Executive Forward Plan with an anticipated Committee date of 1st February 2017

Public Interest

3. One of the functions of the Environmental Health Service is to regulate private water supplies within the district. A private water supply may come from a spring, well or borehole and will be under the control of private individuals or companies. Where such a supply provides water to more than one dwelling, or commercial premises, the Council has duties and powers to ensure it is wholesome, sufficient and safe for use.
4. To achieve this Environmental Health staff routinely sample water from such supplies and carry out risk assessments of such supplies. Where problems are identified, notices can be served on the persons responsible for the provision of the water requiring them to carry out work needed to improve the supply.
5. This report concerns the private water supply in Allowenshay where a notice was served requiring works to improve the supply. Some of the work in question has not been completed and the Council now needs to consider what, if any, further action it should take. This could include continued informal negotiations with the relevant persons concerned or carrying out the works in default.

Recommendations

- a. For members to approve option 3 which is for the Council to agree to offer the opportunity to all residents of Allowenshay to apply for low cost loans from Wessex Home Loans to assist with the cost of connecting to the private water supply owned by the Allowenshay Water Company.
- b. For members to approve a change to the Council's Home Loans Policy to allow, in this specific situation only, for all the residents of Allowenshay to apply for a Wessex Home Loan irrespective of their income.

Background

6. The properties in the village of Allowenshay are provided with water from a private water supply. The supply consists of 5 wells in Halcombe Copse on Windwhistle Hill from which water is piped 3km to Allowenshay via Hill Farm. At Hill Farm the water is held in a reservoir tank with the overflow filling a second reservoir that feeds Allowenshay. In Allowenshay a borehole, on land owned by the company Rutter Brothers, supplements the spring supply. The water is distributed onwards around the village via pipework that has been managed and maintained by Rutter Bros for at least the last twenty years.
7. The Council are the regulatory authority responsible for ensuring that private water supplies are wholesome and sufficient in accordance with the Private Water Supply (England) Regulations 2016, previously the Private Water Supplies Regulations 2009. The authority carries out routine sampling of the supply at Allowenshay to test the water quality and has undertaken a risk assessment in accordance with the Regulations. The water quality has generally been satisfactory, although there have been some aesthetic issues mainly to do with the borehole water.
8. In early 2012 the council was made aware of concerns that started to arise relating to the integrity of the pipework and infrastructure which supplies the water to the residents. Due to its age, it was believed that the pipework was deteriorating and there were increasing risks of breaks and leaks. Some villagers were experiencing issues with poor pressure and discoloration of the water.
9. In 2013 there were discussions between Rutter Bros and the villagers regarding the possibility of connecting the village to mains water. Rutter Bros had obtained an estimate for the work to do this from Wessex Water (£261,442 (plus VAT)) and had suggested that the villagers all pay a share of this cost. At this point concerns were raised with the Council, by the villagers, about who should pay for any works to be carried out to the existing supply, and the position regarding the condition of the pipework.
10. Over the course of the next eighteen months various discussions were held between the villagers, Rutter Bros, the Council and respective legal representatives. The Council and residents also sought advice from the Drinking Water Inspectorate (DWI) who advise on matters regarding private water supply and regulation. The main point of disagreement was to do with who was responsible for paying for whatever work was required. Many of the residents believed Rutter Bros were responsible, but this was disputed by the company. The legal position is complicated and differs from property to property. Historic agreements and covenants between property owners and the water supplier are set out in individual property deeds. The exact agreement does vary between properties.
11. In an attempt to provide a solution to the problem, discussions were held between Rutter Bros and the village regarding the setting up of the Allowenshay Water Company (AWC). This was a new company set up to be jointly owned and run by those participating, for the provision of new pipework around the village and ongoing maintenance of a new supply. Residents were asked to join the company at equal cost (around £8k per property) and be connected to this 'new' water supply. An annual maintenance charge would also be payable. The company was initially formed by the farm and four properties owned by Rutter Brothers and three privately owned properties. However, other villagers were reluctant to join the new AWC, largely due to their belief that the cost of connection should be borne by Rutter Brothers not individual residents. The option of connecting to the main supply was also rejected due to cost and other considerations.

Enforcement position

12. The supply of water and payment for such is a private matter between supplier and user, and so the Council's initial role was to facilitate discussions between the relevant parties in the hope that a way forward could be agreed.
13. The Council do, however, have enforcement powers under the Water Industry Act 1991, to deal with a private water supply which is failing or unwholesome. A notice can be served on the 'relevant person(s)' to require works to remedy any defect. The relevant person(s) can include the owners and occupiers on whose land the supply arises, the owners and occupiers of the premises supplied by the water and any other person who exercises powers of management and control over the source. Exactly who is responsible can vary from case to case and will be dependent on the various legal agreements in place.
14. The Council sought advice from DWI regarding this responsibility and as a result served a notice on all parties requiring provision of any legal documents relating to the water supply. It subsequently also sought additional evidence from several residents. As a result a decision was made that Rutter Brothers were the relevant persons on whom a notice should be served, based on their being the only ones who had ever exercised any management and maintenance of the supply and the ones being in receipt of payments from villagers in relation to the supply of water. A notice under section 80 of the Water Industry Act 1991 was therefore served on Rutter Brothers on 19th January 2015 requiring improvement works to the private water supply. The notice required Rutter Brothers to undertake the works set out in the notice, but did not stipulate anything regarding who pays for any work or any recovery of costs. In the view of the Council, if Rutter Brothers were correct in their assertion that residents should be jointly liable for the cost of the works, this would be a private matter for them to separately pursue.
15. Any person served with a notice under section 80 of the Water Industry Act 1991 has the right to make representations and objections regarding the Notice. If this is done the local authority serving the notice must submit the notice to the DWI for confirmation. Such a representation was made by Rutter Brothers on 27th February 2015. The grounds for this were varied but centered around the case that whilst they had undertaken maintenance to the supply over the years they were not obliged by any legal agreement for wholesale replacement of the pipework, and that the cost of doing so should not fall solely on themselves. Whilst they have received 'water rates' over the years, they stated that the amount received is not sufficient to cover the costs of renewal of the system. In addition they argued that they had made endeavors to provide alternative options and to seek co-operation of the community to share the cost.
16. As a result of the representation a meeting was held by DWI. This meeting included Rutter Brothers and their solicitors, officers from the Council's Environmental Health and Legal Services, representatives from the Allowenshay Water Company and representatives on behalf of the residents. Further information was provided by all parties regarding issues including land ownership, history of the supply and works thereto.
17. The DWI made a decision on 4th September 2015 that confirmed the Notice as served by the Council subject to a modification requiring an asset condition survey to be undertaken of the existing water supply. Specifically, the DWI concluded that the notice had been served on the appropriate relevant person and the matter of whether any costs or contribution to any works could be sought by Rutter Bros from the villagers was left as a matter for them to resolve privately.

Compliance with the Notice

18. Following the confirmation of the Notice, Rutter Bros made further contact with the villagers to invite them to discussions regarding the cost of the works and made an offer to put proceeds from the sale of a plot of land towards the cost of the works.
19. In January 2016 a Director of Rutter Bros sadly passed away, and because of the circumstances an extension of time was granted to the company to carry out the asset condition survey. The survey report was received in June 2016 and confirmed the poor condition of the pipework and infrastructure of the spring fed water supply. By this time new water pipes had been laid around the village for those who were part of the Allowenshay Water Company. New treatment plant was provided on this water supply and those properties involved with the new company were connected to it.
20. In July 2016 further legal representations were made on behalf of Rutter Bros that they had complied with the notice as far as it was reasonable to do so. These representations were considered carefully by the Council's Legal Services and Environmental Health Services and the decision was reached that the Council was not persuaded that it should change its position in relation to the Notice.
21. The deadline for the works required by the Notice and identified by the asset condition survey expired on 9th December 2016. The work has not been completed. The residents who have not signed up to the Allowenshay Water Company are still being served by the old pipework which is deteriorating. The most recent incident was a leak in November 2016 which caused low pressure at a number of properties and one property had no water for a short period of time.

Further action

22. The exercise of powers under s80 of the Private Water Industry Act 1991 is discretionary, and even where issue of a notice is justified due to unwholesomeness or sufficiency issues, it is clear that the intention of the legislation is not to impose significant costs on local authorities to resolve problems based in private civil law issues. The Council has taken steps by the service of a Notice to try and secure improvements to the private water supply at Allowenshay by identifying the most appropriate persons to undertake the works but without adjudicating on the question of who should pay for those works. It has been made clear throughout, both to Rutter Brothers and the residents, that the notice did not deal with the issue of liability for the cost of the works.
23. The Rutter Brothers have made efforts to resolve the issue, up to and including the establishment of the AWC, who have offered to connect all residents to the system upon payment of connection and on-going maintenance fees.
24. It is also the case that residents have purchased their properties in the knowledge that they would be reliant on a private water supply and the potential implications associated with that.
25. However, the Notice has not been fully complied with and the Council must decide whether to take any further action in relation to this matter. New pipework and associated equipment has been installed around the village by the Allowenshay Water Company but the company is not liable for the works required by the Notice served on Rutter Bros. The new supply would however meet the needs of the village if the remaining properties were connected to it.
26. The options now available to the Council are believed to be:

Option 1

27. All parties agree that work to the infrastructure of the existing private water supply is required. The main point of disagreement is regarding who should pay for the work. This is not a matter for the Council to resolve. The service of the Notice does not preclude Rutter Brothers from recovering costs from other parties, or apportioning them elsewhere.
28. Rutter Bros legal representatives have contacted residents setting out their understanding of the legal position and their responsibilities. Essentially they are inviting residents to become part of the Allowenshay Water Company and to contribute towards the costs and agree to requirements regarding the future provision and maintenance of that supply.
29. The Council could therefore consider that it has made all reasonable efforts to resolve the matter and that it need take no further action. If the residents are correct in their belief that they benefit from rights granted by their conveyances, and that Rutter Brothers alone are responsible for the cost of maintaining the system, they can seek to enforce those rights to ensure the repair and continued maintenance of the existing supply.
30. If residents choose to remain on the existing supply, the Council has further statutory powers in the event the water supply becomes a danger to life or health.
31. If this option is followed the Notice will not be fully complied with and will remain in abeyance until such time as the work is completed by some other means or the notice is formally modified or revoked.

Option 2

32. Under section 82 of the Water Industry Act 1991 the Council may themselves carry out the work required by the Notice. Any costs incurred can be recovered from the relevant person who failed to do the work, in this case Rutter Bros. The Notice requires that the works identified in the asset condition survey are carried out. This confirmed that the pipework from the spring supply required replacement. The options presenting themselves therefore were to either replace the pipework from the spring, or to provide new pipework from the borehole and discontinue use of the spring supply. The pipework installed by the Allowenshay Water Company has gone a long way to fulfilling the requirements of the latter option. Clearly though, only properties who have contributed to and joined this scheme have been connected to the supply.
33. The Council is currently of the opinion that it is unable to legally connect villagers to the supply owned and provided by AWC without overcoming considerable legal difficulties. It may be necessary to serve further legal notices and/or to compulsory purchase land and/or property which, along with legal costs, would be a significant expense.
34. The only other option for works to be carried out by the Council would be for the replacement of the original pipework from the spring or provision of further distribution pipework from the borehole around the village, possibly requiring provision of a new borehole. It is estimated that the cost of doing this would be well in excess of £200,000 based on the works that have been carried out so far by AWC.
35. Once the works were completed the expectation would be that the Council would seek to recover its costs and all expenditure incurred from all relevant persons concerned. Given the circumstances outlined above, this option is likely to be extremely problematic and expensive in itself and could take years to conclude. It would result in the duplication of distribution networks and there can be no absolute guarantee that the Council would be able to recoup its costs. It may also be viewed as privately benefitting a small group of residents, at considerable public cost, whose property values may also increase as a result.

36. If the works are carried out by the Council the Notice requirements will be fulfilled and the Notice will no longer be in force.

Option 3

37. If members consider that the Rutter Brothers/AWC offer of connection to the new system is fair and reasonable in all the circumstances, the Council could nonetheless offer a subsidised low interest loan (of up to £8,000 repayable over 5 years unless otherwise agreed) via Wessex Home Loans to all Allowenshay householders to help them meet the cost of connecting to AWC’s supply. This could be made available to those who have already connected as well. The cost of connection is believed to be approximately £3,800 per household. There may be legal costs for householders regarding changes to property deeds and private agreements between the parties involved. Householders may also need to agree to ongoing maintenance payments. From the letter that has been sent out to residents by Rutter Bros legal representatives it is also understood that they would be required to make a payment towards the cost of work already undertaken. The amount of this payment is not currently known.

38. To make the offer of loans possible it will be necessary to agree an amendment to the Council’s current loan policy whereby all residents of Allowenshay, irrespective of income, are allowed to apply for a Wessex Home Loan. Individuals may only apply for a Wessex Home Loan if referred by the Council. The loans are offered at a fixed rate of 4.2 % APR Representative and are only available if the client meets the Wessex Home Loan criteria.

39. If the loans are taken up and all properties connected to the AWC supply then the requirements of the Notice would be met. If some properties remain unconnected then the Notice will remain as outstanding unless formally modified or revoked.

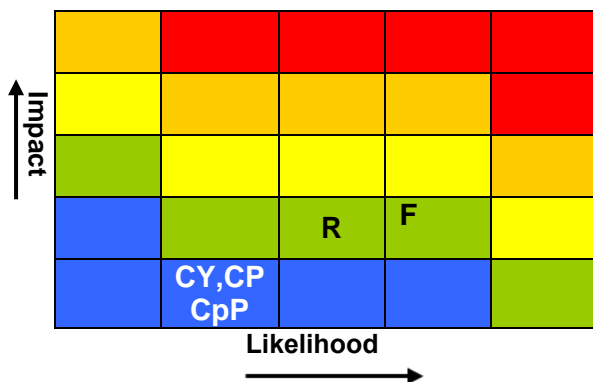
Financial Implications

40. If Members agree the recommended option of offering low interest loans to the villagers via Wessex Home Loans there are no direct financial implications to the Council.

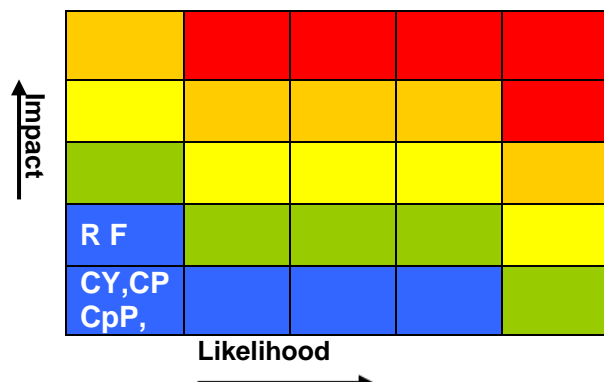
Risk Matrix

41. The risk matrix shows risk relating to the Corporate Plan headings.

Risk Profile before officer recommendations



Risk Profile after officer recommendations



Key

Categories	Colours <i>(for further detail please refer to Risk management strategy)</i>
R = Reputation	Red = High impact and high probability
CpP = Corporate Plan Priorities	Orange = Major impact and major probability
CP = Community Priorities	Yellow = Moderate impact and moderate probability
CY = Capacity	Green = Minor impact and minor probability
F = Financial	Blue = Insignificant impact and insignificant probability

Council Plan Implications

42. There are no specific implications of this report for the Council Plan. The Council Plan aim to 'Improve health and reduce health inequalities' and the priority to 'Help keep our communities safe' are relevant.

Carbon Emissions and Climate Change Implications

43. No implications for carbon emissions or climate change have been identified

Equality and Diversity Implications

44. An equality impact assessment has been completed. This is attached at Appendix 1.

Privacy Impact Assessment

45. No privacy implications have been identified.

Background Papers

46. Policy for Awarding Private Sector Grants/Loans and Other Financial Assistance January 2017