

Planning and Environmental Appeals Division



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Report to Perth and Kinross Council

FLOOD RISK MANAGEMENT (SCOTLAND) ACT 2009

Report by Paul Cackette, a reporter appointed by Perth and Kinross Council

- Case reference: FPS-340-1
- Name of Scheme: Comrie Flood Protection Scheme 2020
- Promoting authority: Perth and Kinross Council
- Objector: Ms Fiona Smith, Achomer, Commercial Lane, Comrie PH6 2DP
- Date of hearing session: 22 June 2021
- Date of site visit : 22 May 2021

Date of this report and recommendation: 7 July 2021



Perth & Kinross Council
2 High Street
Perth
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DPEA case reference: FPS-340-1

Perth & Kinross Council
Perth

In accordance with my minute of appointment dated 26 April 2021, I conducted a hearing in connection with an objection into the Council's Flood Protection Scheme at Comrie in relation to property at and to the rear of Achomer, Commercial Lane, Comrie on 22 June 2021.

The Scheme proceeds under the Flood Risk Management (Scotland) Act 2009. After promoting the Scheme and receiving and considering objections to it, the Council resolved on 24 June 2020, as a preliminary decision, to confirm the Scheme without modification.

Scottish Ministers decided on 18 January 2021 not to require an inquiry into the objections, by way of call-in under paragraph 6 of Schedule 2 to the 2009 Act. As provided for at paragraph 8 of Schedule 2 to the 2009 Act, the Council were in consequence required to hold a hearing into the objections before making a final resolution as to whether to adopt the Scheme. I was appointed as the independent reporter to hold that hearing and report.

My report into the outstanding objection is attached. I took into account the documents lodged by the Council and from the objector (including her initial email of objection, the responses to it and subsequent communications with her), the Council's Statement of Case and Scheme Justification, matters arising during the hearing and impressions from my site visit. I had regard to the Environmental Impact Assessment prepared in relation to the Scheme and the relevant Flood Risk Management Strategy and Flood Risk Management Plan.

In my view, the Comrie Flood Protection Scheme 2020 is a legitimate, proper and proportionate exercise of the powers of the Council under the Flood Risk Management (Scotland) Act 2009. It appears to me that there is a clear and rational connection between the legitimate aim of minimising the risk of future flooding in the area and the need for the Scheme as promoted as the means of securing that aim in relation to the town of Comrie. That conclusion is supported by the Flood Risk Management Strategy and Plan in identifying that need and that aim.

I am satisfied that all the required procedures and processes under the 2009 Act and the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010 have been met.

I have considered the various grounds set out in the outstanding objection. I have considered the impact of the proposal on the private ownership rights and the amenity of the property of the objector.

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OFFICIAL-SENSITIVE

The principal objection relates to the need for the access stairs over the flood defence wall proposed to be located at Commercial Lane, Comrie and the proposal to locate the stairs close to the properties at Achomer and Earnmhor. In my view the need for the stairs is established under the Scheme in order to provide the benefits of public access to and over the amenity ground known locally as the Boulevard. That is an appropriate outcome to have pursued under the Scheme. I consider that locating the stairs there on publicly used and maintained amenity land is preferable to a location on private land further to the east.

None of the other grounds of objection in my view support the making of modifications of the Scheme.

I recommend that the Comrie Flood Protection Scheme 2020 be confirmed without modification.

BACKGROUND

1. The Flood Risk Management (Scotland) Act 2009 rationalised and updated flood risk related functions of public bodies in Scotland. This required them to take necessary steps to reduce overall flood risk. Public bodies were given functions under that Act to that end. The Scottish Environment Protection Agency (SEPA) and local authorities must act with a view to achieving the objectives in their Flood Risk Management Plan for the district. They must act co-operatively with a view to managing flood risk in a sustainable way, promoting sustainable flood risk and contributing to sustainable development and raising public awareness. Regard is to be had to the social, environmental and economic impacts of such steps. Duties are imposed on local authorities to establish a framework for assessing and mapping flood risks (Part 3 of that Act) and to take necessary steps to reduce the risk of flooding in their area, as may occur imminently and have serious adverse consequences for human health, the environment, cultural heritage or economic activity (Part 4 of that Act).
2. To those ends, planning to prevent or minimise those risks was undertaken by SEPA through the adoption on 14 December 2015 of a Flood Risk Management Strategy for the area of the River Tay. In respect of the Perth and Kinross District, this Council took a leading role in developing similar planning steps, working in conjunction with SEPA and other local authorities in the area concerned, to develop and adopt the Flood Risk Management Plan for the Tay Local Plan District. That Plan covered the first planning cycle under the 2009 Act covering the period 2016-22. It was published by the Council on 22 June 2016.
3. As part of that planning, consideration was given to the risk of flooding as may affect the town of Comrie.
4. In the Flood Risk Management Strategy, the importance of taking action at Comrie was recognised in the foreword to the Strategy. It identified a potentially vulnerable area extending to 168 square kilometres in the area of the River Earn catchment, including the towns of Comrie and Crieff. In that potentially vulnerable area, the areas identified as being at the highest risk of flooding were at Comrie from the Water of Ruchill, River Earn and River Lednock and at Crieff. SEPA identified a range of objectives to manage flooding in that potentially vulnerable area including the reduction of economic damage caused by flooding in the area and reduction of disruption to the roads network in the area.
5. In the Flood Risk Management Plan for the Tay Local Plan District, the same potentially vulnerable area was identified. It too recognised the areas at the highest risk of flooding included Comrie from the Water of Ruchill, River Earn and River Lednock. The Plan identified a history of flooding in that area. Significant flood events occurred in January 1993, February 1997, December 2006 and in August and November 2012. The Comrie Scheme priority was ranked 7th nationally in Scotland. After that latest set of flood events mainly affecting the Dalginross area of Comrie, flood protection works were carried out to reduce the risk from the Water of Ruchill.

THE SCHEME

6. It was considered by Perth and Kinross Council however that the wider risk from the River Earn and River Lednock (as well as combined flood risk) remained. A series of actions was identified, involving enhanced planning policies, emergency planning, improved forecasting and modelling, raising awareness and community engagement and maintenance.

7. An action was identified, consistent with the Flood Risk Management Plan, to take forward a proposed flood protection scheme at Comrie to provide flood walls and embankments, erosion protection measures, utility and service diversions and hard and soft landscaping. These defences, extending to around 2.8km, would be located at the right bank of the Water of Ruchill and at both banks of the River Earn and River Lednock. They would incorporate seepage cut-off, improved drainage, road works and accommodation works. Historic flood defences would be demolished to allow provision of suitable replacement structures.

8. The purpose of the Scheme was to reduce that combined flood risk from the Water of Ruchill, River Earn and River Lednock. It would be designed to benefit 189 properties in the event of a 1 in 200 year flood. The Council indicate that the estimated benefit/cost ratio over time is 1.38. The Scheme is designed to secure and deliver social and environmental advantages in the area.

9. The range of environmental benefits include an improved events space with seating and soft landscaping, replacement tree planting, traffic calming, protection of riverside walks against erosion, use of local stonework and cladding and increased provision of bat roost habitat and otter holts.

10. On 6 September 2017, the Council's then Environment, Enterprise and Infrastructure Committee was updated on progress on implementation of the Scheme consistent with the Flood Risk Management Plan and agreed a recommendation to progress the Scheme, including to publication.

11. In pursuance of that, the Council resolved to proceed with a [flood protection scheme](#) for the town of Comrie.

12. The Comrie Flood Protection Scheme was developed under the powers in section 60 of the 2009 Act. Promotion of such a Scheme under the Act requires to comply with the provisions of the Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010. Those Regulations were amended in 2017 to reflect the implementation of the Directive 2014/52 on the assessment of the effects of certain public and private projects on the environment. The current Scheme post-dates that implementation and so the 2010 Regulations as amended applies to it.

13. The powers under that Act are to be read with guidance issued by the Scottish Government entitled The Flood Risk Management (Scotland) Act 2009, Local Authority Functions under Part 4 Guidance.
14. A number of steps in relation to the Scheme were required to be taken by the Council in terms of the 2009 Act and the 2010 Regulations, as amended.
15. These were the preparation of an environmental impact assessment (having determined that the Scheme would have a significant environmental impact), giving notice of the Scheme in terms of regulation 7(1) of the 2010 Regulations and the publicising, on a website used by it, of the proposed Scheme in terms of regulation 7(2) of the 2010 Regulations.
16. Under regulation 11, the Council were required to include a full description of the Scheme making clear the extent and scale of the operations thereunder, the land affected under them and land necessary to enter in order to implement the Scheme. The Scheme requires to indicate an estimate of the cost of it. Regulation 12 makes provision for objections to the Scheme.
17. The Council undertook a series of steps by way of public consultation in relation to the Scheme, both on the preferred option and on alternatives. They went to public consultation over the period from September 2016 to May 2019.
18. A public exhibition on the proposals was held in Comrie on 30 April and 8 May 2019. The exhibition was attended by around 150 people over the two days, demonstrating in the view of the Council a high level of interest in the proposed flood scheme. The view of the Council was that *“the response to the exhibition was generally positive with the majority of the community being supportive of the proposed outline design for the flood scheme. Some concerns were raised and these have been... addressed”*. Responses were made to concerns that had been raised and, where possible, amendments have been made to the proposed outline design. The Council indicate that responses will continue to inform future detailed design and the development of the proposals.
19. The Council have published both a [short public consultation response](#) and a [full public consultation response](#).
20. Wider than the points made in the outstanding objection, I note that there is support for public access to the stretch of the river bank running east from the River Earn crossing at Bridge Street towards Ancaster Lane, but also a recognition of the complex land ownership position in that area. The response documents accept that *“the proposed access provision in this location was not popular with local residents”*. I note that, in consequence of the consultation, the originally proposed disabled person’s ramps at the foot of Commercial Lane have been removed from the proposed design.
21. Beyond that local consultation in the town, other bodies consulted included SEPA, Forestry Commission Scotland, Scottish Natural Heritage (as then was), Historic Environment Scotland, Scottish Water, Perth & Kinross Heritage Trust and the British Horse Society.

22. As was confirmed as necessary by the Council in November 2016, an Environmental Impact Assessment (EIA) was required in relation to the Scheme. It was carried out by Sweco (a firm of consulting engineers) commissioned on behalf of the Council to develop the design of the Scheme and undertake that EIA. Amongst other things, the EIA assessed the landscape and visual impact of the Scheme, the water environment and fluvial geomorphology, hydrogeology and contamination, ecology and nature conservation, cultural heritage and socio-economics, public access and amenity. Sweco produced a [Non-Technical Summary of the EIA](#) when the Council were seeking representations on it.

23. Thereafter, by Notice dated 28 February 2020, the Council gave notice of the Scheme at Comrie as comprising a range of flood defence walls and embankments, including along the banks for the Rivers Earn and Lednock and Water of Ruchill, erosion protection measures, utility and service diversions and hard and soft landscaping. The notice indicated an intention of the Scheme to reduce the risk of flooding to 189 properties, set out the intended operations and indicated that an EIA had been carried out. To the nearest thousand, the estimated costs of the operations was stated as £25,686,000.

24. That Notice set out the process to follow, including how objections could be made in respect of the Scheme or the associated environmental assessment. Notice included arrangements to view or inspect Scheme documents, both at the offices of the Council and on a website used by it.

25. Within the required period for making objection, 2 objections were received along with 14 other representations. The view of the Council was that these representations were of a general nature and did not require material change to the Scheme. One objection was withdrawn on 27 March 2021 but the objection by the owner of property at Achomer, Commercial Lane, Comrie remains. Her objection was made by way of an email dated 18 March 2020.

26. In an exchange of letters and emails in the period from then until 19 June 2020, discussions took place seeking to address those concerns. The objector however remained dissatisfied with the responses by officials of the Council and Sweco.

27. The Council's Head of Environmental & Consumer Services then prepared a report with an update on the Scheme for consideration by Council. It recommended approval while noting the then 2 objections and the terms of the Environmental Impact Assessment. The proposed Scheme was approved in full Council (without modification) as a preliminary decision made on 24 June 2020. That decision is a preliminary decision under paragraph 5(1) of Schedule 2 to the 2009 Act. Notice of that preliminary decision was given to the current objector, as required by paragraph 5(3) of Schedule 2 to the 2009 Act, by letter of 9 July 2020.

28. In terms of the Scheme as a whole, I am satisfied that the Scheme is a legitimate, proper and proportionate exercise of the powers of the Council under the 2009 Act. It appears to me that there is a clear and rational connection between the legitimate aim of minimising the risk of future flooding in the area and the need for the Scheme as promoted as the means of securing that aim in relation to the town of Comrie. That conclusion is supported by the Flood Risk Management Strategy and Plan in identifying that need and

that aim. I am satisfied that all the required procedures and processes under the 2009 Act and 2010 Regulations have been met.

29. These matters are of importance not least because, by virtue of compliance with regulation 14 of the 2010 Regulations, the confirmation of the Scheme will result in a deemed planning permission for the development which the Scheme sets out. That is provided for by section 57(2B) of the Town and Country Planning (Scotland) Act 1997.

HEARING INTO THE OBJECTION

30. In terms of the 2009 Act, where objections are maintained but a preliminary decision is made to confirm the Scheme, the matter is referred to Scottish Ministers to consider whether the nature and extent of outstanding objections requires the holding of a public inquiry. That would be by way of call-in of the Scheme under paragraph 6 and inquiry under paragraph 7 of Schedule 2 to the 2009 Act. Otherwise, the matter falls to be considered by a hearing held by an independent person. A preliminary decision under paragraph 5 of Schedule 2 to the 2009 Act to confirm was made by the Council on 24 June 2020. Ministers decided on 18 January 2021 not to proceed by the holding of a public inquiry. Accordingly, following my appointment on 26 April as such an independent person, a hearing was held by me on 22 June 2021.

31. As the objector did not attend the hearing, it is helpful in my view to summarise the procedure adopted, and steps taken, by me in order to understand her objection and give due consideration to it.

32. Guidance has been issued by the Scottish Government into the functions of authorities under the 2009 Act. In accordance with that Scottish Government guidance, consideration of outstanding and un-withdrawn objections are to be carried out under a Code of Conduct for Hearings set out at Appendix G, if agreed by parties. By letters of 10 May issued to parties with my agreement by the Council, agreement to the use of that Code was sought (by 19 May). Those letters included a suggested time line for the provision of written statements of case, lists of documents to be relied on, lists of witnesses and an indication of whether the objector intended to be represented or accompanied by a person supporting her at the hearing (by 2 June). The letter to the objector of 10 May is the notice is as required by paragraph 8(4) of Schedule 2 to the 2009 Act.

33. A hearing date was fixed for 22 June 2021, with a view to proceeding as a virtual hearing. Public notice of that hearing was given by newspaper advertisement to allow members of the public to call in to attend as observers. This notice is as required by paragraph 8(5) of Schedule 2 to the 2009 Act. Notice was given in the Perth edition of the Dundee Courier and Advertiser on 21 May.

34. The Council agreed to the use of that Code in considering the outstanding objection to this Scheme. The objector did not respond to the suggestion of the use of that Code. I therefore wrote to her on 24 May indicating the procedure I intended to adopt in respect of the hearing. In addition to re-iterating the invitation to submit a statement of case and evidence by way of documents by 2 June, I gave an indication to the objector of the headings of her objection as I had interpreted them, in order to assist the smooth running of

the hearing. That of course was without prejudice to how she could choose to present her case. Mindful that part of her objection related to (or at least referenced) intrusion on her land, I sought confirmation of the position on land ownership, as required by regulation 12(2) of the 2010 Regulations.

35. I did not seek formal precognitions (or witness statements) from council witnesses but asked their witnesses to prepare short written summaries of their respective areas of expertise (& professional qualifications), to assist both the objector and myself to identify the witnesses to whom specific questions could be addressed at the hearing.

36. A [Statement of Case](#) and [Scheme Justification](#) was provided by the Council on 2 June along with a list of intended attendees and their qualifications. No statement nor confirmation on land ownership was provided by the objector. She did though [email on 10 June](#) re-iterating her objection, relying on her previous comments and indicating that she was unable to attend the hearing. She emailed further on 1 July, though that email raised no new substantive issues relevant to the Scheme.

37. I sought further information on 9 June from parties on a range of questions concerning the extent of the objectors title to her land, the ownership position of neighbouring land, especially Earnmhor and seeking information regarding the proposed double steps at The Limes and East Riverside. The Council [replied to my request on 17 June](#). This issue was explored at the hearing and further land ownership information was provided on 24 June. The objector was given an opportunity to comment on that further land ownership information. No further comments in detail in relation to title to land were received from her.

38. At the hearing on 22 June, I heard evidence concerning the purpose and justification for the Scheme, the environmental impact assessment and the general approach taken to consultation. The main focus of the hearing though was on the objection. In the absence of the objector, I sought in a range of ways to test the responses to the points set out in her reasons for objecting. I gave an opportunity but did not require the making of closing submissions by parties.

39. In order to better familiarise myself with the area, the Scheme and the issues in the objection, I made an unaccompanied site visit to Comrie and the area around where the objector lives on 22 May.

THE OUTSTANDING OBJECTION

40. The objector was consulted on the Scheme in terms of the statutory framework. Her objection was validly and timeously made on 18 March 2020. Her objection is set out in a range of email communications dated 18 March, 4 May and 1 June 2020 and 10 June 2021, as well as a meeting with Council officials and Sweco on 29 March 2019.

41. She does not oppose the Scheme in principle. It appears to me from my consideration of the material, that her objection can be summarised under five headings, addressed by me as follows.

Objection to the stairs over the flood defence wall at Commercial Lane

42. The objector raised initial concerns in this respect at an early stage of consultation, where the then proposal was for pedestrian access stairs over the flood defence wall at the foot of Commercial Lane, including access ramps for disabled users. The extent of the works concerned is shown on drawing 119398/400/217.

43. As the development of detailed plans continued, through consultation in conjunction with local interests affected, the plans for pedestrian access stairs at this location were amended to remove the proposal for access ramps for disabled users. Disabled access will be secured by other means. The proposals as they stand at present can be seen from [drawing 119398/400/304](#). The objector however maintains her position that she objects to any stairs at this location, even where no longer envisaging such access ramps.

44. Her objection on this ground takes two parts – an objection in principle; and an objection based on a refusal to agree use of part of her private land for this purpose. The objector is the proprietor of property called Achomer, Commercial Lane, Comrie. Her title deed is produced with the hearing documents.

45. There is a degree of read-across between these parts of the objection. In order to consider its merits, it is necessary both to set out the aspirations underpinning this part of the Scheme and to consider the balance properly to be struck where private property and publicly exercised property rights and interests exist.

46. It appears to me that the Council's policy aspirations in this specific regard are to maintain and maximise the scope of public use of the stretch of the river bank running east from the River Earn crossing at Bridge Street towards Ancaster Lane. That area is known locally as "the Boulevard". It is maintained by the Council as amenity green space. The extent of the area maintained is set out in the Council's response to my questions on land ownership of 17 June. At the hearing it was indicated that it had been used for such purposes for a considerable period of time. Witnesses were unable to say for how long but there seems little doubt that this use of the area is long established. It is designated as open space in the Perth & Kinross Local Development Plan. There is support to maximise public access to the Boulevard, including as a means of promoting formal and informal path networks.

47. Chapter 10 of the EIA addresses socio-economic impacts and issues concerning public access and amenity. It recognises the Council view that the Boulevard is "*well-used and is an important aspect of the community*". At paragraph 10.5.2 of the EIA, it is noted that "*one of the key topics the locals raised frequently related to accessibility to the Boulevard area*". The modified improvements are stated, at paragraph 10.8.15, as having a minor beneficial residual impact to that area. The EIA identified that "*design of the proposed Scheme has improved connectivity to the Boulevard area and includes landscape planting*

and seating resulting in a minor benefit'. Construction impacts are recognised but described in the non-Technical Summary of the EIA as "*short term and reversible*".

48. From what I saw on my site inspection (on a Saturday lunchtime), this area of river bank appears to me to be a small but valued part of the community assets at Comrie.

49. At present, access can be taken by the public from Bridge Street, by a path running next to and behind public toilets. But as being the only public access (once the flood defence wall is built), that would not allow access eastwards by a circular route along the river bank. Users would need to return via that access, if unable to utilise access over land privately owned between Commercial Lane and Ancaster Lane. I consider that facilitating such circular access to the Boulevard for members of the public is a proportionate and proper objective for the Council to pursue, within the framework of the Scheme. It assists in off-setting part of the wider impact on amenity in the town. These policy aspirations are not essential to the underlying purpose of flood prevention. They are nevertheless consistent with benefits to the wider amenity in the town and the identified environmental benefits of the Scheme. Accordingly, in my view, these aspirations are legitimate.

50. In order to deliver that circular access and avoid the need to double back, a second means of access over the proposed flood defence wall is required. The need and options for location of that was explored at the hearing. Council officials in addition pointed out that such second means of access by way of unlocked access has health and safety advantages, on the occurring of a flood event, for any person caught on the wrong side of the wall.

51. The objector feels that, even if they are considered necessary (which she disputes), locating the stairs elsewhere is feasible and preferable. She argues for locating them further east.

52. In order to address this part of the objection, it is necessary to set out the distinction between privately and publicly owned and maintained land in this area. On the information provided to me, the position is that each landowner of the properties between Commercial Lane and Ancaster Lane owns a stretch of the river bank running from the south-most end of their land (beyond the lane) down to the river. The same is true for Earnmhor to the west of the objectors land. For that reason, the proposed access stairs to the river bank south of The Limes and East Riverside will comprise a lockable double set of stairs, either side of the proposed flood defence wall. This allows private access over the wall (in effect by doubling back) to the owner of The Limes without going onto land outwith the owner's title. The same applies to the owner of East Riverside.

53. The effect of that approach to those stairs is that it cannot be relied upon with certainty that the circular access desired can be guaranteed as being achievable based on public use of those stairs. This is important as being the explanation provided by the Council as the answer to the suggestion by the objector that stairs at Commercial Lane are unnecessary and that access over the flood defence wall is possible further east.

54. The objector asserts that the stairs as proposed would in part be located on her land. More specifically such impinging on her land might involve a longer stretch of the flood

defence wall being built on her land and involve the area necessary at the foot of the east most stairs, to allow access to the stairs.

55. The objector maintains that assertion but did not respond to my questions on the detail of her title position. The Council provided an explanation and further information after the hearing of their understanding of the title position. That explanation set out the position as they understand it of ownership of Commercial Lane (a private road) and a southerly extension of it down to the river. The view of the Council is that such land down to the river is part of the title to Earnmhor to the west of the objectors property. This can be seen from the [title ownership plan](#) prepared by the Council. That view is consistent with the plan attached to the objectors title deed. This suggests, based on the information before me, that the proposed stairs would not impinge on the objectors land.

56. In my view, land ownership in itself is not the determining issue. Impinging on private land or private rights in any event is not prohibited in a flood protection scheme. Clearly that can at times be unavoidable. In my view, the long standing maintenance by the Council of the amenity green space for public use, as described at paragraph 46, is a more important factor in this context. I observed that use on my site visit. Evidence from the Council is that public access over that amenity green space is unchallenged and has been unchallenged for some time. The proposed stairs fall within this area of amenity green space.

57. Accordingly, I accept that, in order to secure the desired circular access, these stairs are essential and that their being located on that publicly accessed amenity green space better secures that circular access to the Boulevard.

58. Reliance on use of the private access at the stairs with lockable gates to the south of The Limes and East Riverside will not secure that outcome. Neither would reconfiguration of such an access where located on private land. The Council are in any event keen to respect private land rights as far as feasible. They indicated at the hearing a desire to actively encourage use of the public stairs over the flood defence wall in preference to that private access or use of private land in the area (including of course the private land of the objector).

59. Notwithstanding that acceptance of the need for the stairs and even if not directly located on the objectors land, I have considered other impacts on her land. I do so in order to be satisfied that the impact on her amenity and her private property rights is minimised.

60. Given where the proposed stairs are intended to be located, I have considered the point made by the objector about loss of privacy and about gardens being overlooked. I am not persuaded that this is a basis to modify the Scheme either not to install the stairs or move them further away from Achomer (either to the west or the east). The current proposed location is closest to Earnmhor where the impact is potentially on the residential (as opposed to garden) amenity. The owners there have not objected. The impact on the garden of Achomer is in my view marginal and oblique. It seems to me likely to be fleeting. I have noted an offer by the Council to consider screening, if a solution were required. Moving the stairs west to reduce the impact on Achomer will increase the impact on Earnmhor. As above, relying on access stairs provided further east runs into issues of

private land rights. The benefits of having the stairs set out above in my view outweigh that limited loss of privacy.

61. I have also considered the issue of the owner's of Achomer's own access to their land on the river side of the flood defence wall when built. The objector does not make this point, but, without the stairs, could only access that land from the public access under the bridge or by consented access over the stairs to the south of The Limes and East Riverside. This factor in my view goes some way to offsetting any adverse impact on the amenity or enjoyment of ownership of Achomer.

62. I should record to this point that the objector considers that, where there is to be intrusion on amenity or private rights, weight should be given to the fact that her land is owned by a long standing resident of Comrie. Other land in the area is regularly let out for self-catering. She suggests that less regard should be had to the interests of owners whose land is regularly let out for self-catering. I disagree. In my view, no weight should be given to the type of tenure or such use of affected land. What is in my view relevant is the degree of impact on the occupiers affected. That includes impact on the residential elements of property affected. If anything, the impact on the residential parts of the properties adjacent to the river bank is greater than on the residential part of the objectors property, located at the Drummond Street end of Commercial Lane.

63. I recognise at paragraph 49 above that the installation of these stairs is not essential to the purpose of the Scheme. It is nevertheless is justified and legitimate, in light of the wider amenity benefits in the town and in securing environmental benefits. That conclusion requires to be considered alongside the impact on private property rights of affected persons, including the objector. The impact on the private property rights of the objector in my view is very marginal. Indeed, there are benefits as well as dis-benefits in what is proposed. I do not consider such an impact is unacceptable or provides a basis to refuse confirmation or recommend any modification.

Inappropriateness of breadth of consultation

64. The objector flags up a contrast between consultation appropriate to neighbour notification in the context of a planning application and the steps taken by the Council to offer consultation in the context of the Scheme. She notes that a range of people with no connection to her property can nevertheless express views impacting on her and her property.

65. I see no force in that objection. The Council are required to follow the statutory consultation requirements and have done so. In any event, the Scheme requires to be viewed as a whole in its proposed community benefits as well as in relation to the individual impacts on those most directly affected. The consultation process is even-handed. It may allow others to express views as the objector says, but lets her too comment on aspects of the Scheme beyond any impact on her and her property, so long as relevant to the Scheme as a whole.

66. I understand the concern if the Council had placed equal weight on all objections, regardless of whether there is to be an impact on the property rights of any one objector.

However, I am satisfied from the evidence that proper regard was had, and proper weight given, to the objectors objection, taking into account that there was a direct impact of the contested stairs on her amenity and her property, due to their location.

Construction risks

67. The objector makes the legitimate point that care is needed in the construction phase to ensure that the phasing of construction work does not give rise to unnecessary risks of flooding in areas whose works are scheduled later in that construction phase. The point has force when considering that the flooding history indicates, with just one example, that flooding occurred in the month of August in 2012. The risks cannot be avoided by timing of construction works alone. It appears to me that the location around Commercial Lane may be vulnerable to that risk, if appropriate care is not taken when carrying out work on the opposite bank adjacent to Strowan Road.

68. In addition, the objector raises concerns about construction traffic and the potential impact on her residential property as well as her garden ground to the rear.

69. I cannot comment or make findings in relation to what is alleged to have happened during construction works at Almondbank. In respect of this Scheme, the full detail of the necessary steps to minimise impacts is not as yet developed.

70. The Council's evidence is that a Construction Environment Management Plan will be prepared prior to commencing works and is already in hand. This will address a range of issues in connection with measures applicable during the construction phase.

71. On the sequencing of works, the objector raises an issue about the relative flood risks on her side of the river as compared to the Strowan Road side. The Council point out that risks do in fact remain on her side based on a 1 in 200 year flood mapping.

72. Assurances have however been given that the construction timings concerns will be addressed through construction sequencing in programme construction to mitigate risks of flows deflecting to the opposite bank. Where that is not possible, the northern bank defences will be constructed first. The reasoning stated for this is that the properties at the southern bank are at a slightly higher elevation and accordingly are less prone to flooding. At the hearing, these issues in relation to the order of construction were recognised and this was described as being "*to the forefront of flood modelling*".

73. On temporary impacts arising from construction itself, assurances have been given that the Management Plan will address issues relating to traffic movements, pollution, noise and dust. The Council accept that disruption will occur with temporary increases in traffic movements. Access for construction works may be needed down Commercial Lane, Ancaster Lane and Manse Lane. The Management Plan may require one-way systems, temporary road closures, parking restrictions and speed limits. The Council indicate that any necessary condition surveying of property will be carried out in advance and that post construction re-instatement will be done.

74. Such a Management Plan is an appropriate step in works of this nature. It is not in my view a matter of concern that the full detail of the Management Plan is not finalised at this stage. With assurances that it will be done to address all these issues, I see no reason based on this objection not to confirm that Scheme or to make any modifications.

75. At the hearing it was confirmed that full engagement with the community would be undertaken on the more detailed design of the Scheme as it develops. Certain mitigation has already been addressed but this work will continue. The Council will continue to consult with affected persons as they develop the detail and will maintain maximum transparency in indicating the steps proposed in the Management Plan.

Risk of anti-social behaviour

76. The objector flags up a range of risks relating to anti-social behaviour. These concern dog fouling, parking issues, garage access blocking, loitering of teenagers and other unsocial behaviours. She believes that building the stairs at this location will leave her unsafe and vulnerable.

77. The response of the Council to these issues in correspondence and at the hearing appeared to recognise that there may be an issue in these respects. However, their view is that any such issues are not created nor worsened by the installing of the stairs. They point out that there is and will remain a dog waste bin in the vicinity. On completion, the Council consider that there would be no long term impact on traffic use volumes or parking in the area.

78. I do not seek to diminish the concerns of the objector in relation to these matters. I agree from seeing the location that room for parking is very limited. However, I am not persuaded from the information before me either that (a) these risks are significantly increased in consequence of the Scheme by building the proposed stairs over the flood defence wall at the foot of Commercial Lane or (b) any higher risk outweighs the benefits from facilitating the circular access proposed at this stretch of the river bank.

79. In my view it will remain important going forward that the concerns of the objector are understood, respected and addressed by the Council as far as they reasonably can be, within the framework of Scheme.

Confidence in council officials

80. The objector in her initial objection expresses concern about her confidence in what she has been told by Council officials at earlier stages of discussion. She feels that she has been misled in a range of ways.

81. I cannot of course arbitrate on what may have been said at meetings in the past. I note though that stress is placed by the objector on a promise to remove plans for the disabled access ramps. This however has in fact been done. I should also record that, although disagreed with, Council officials have engaged with and corresponded with the objector on all her communications concerning her objection. The initial response was dated 17 April

2020. Later emails were issued on 22 May and 1 and 19 June 2020. A formal response was sent to her on 9 July 2020.

82. There is no doubt how strongly the objector feels about how she has been treated in this process and regard had (or not had) to her views. I consider and hope that she should feel assured that her concerns have been clearly aired and understood, not least through the hearing process.

CONCLUSIONS AND RECOMMENDATION

83. In my view, the Comrie Flood Protection Scheme 2020 is a legitimate, proper and proportionate exercise of the powers of the Council under the Flood Risk Management (Scotland) Act 2009. It appears to me that there is a clear and rational connection between the legitimate aim of minimising the risk of future flooding in the area and the need for the Scheme as promoted as the means of securing that aim in relation to the town of Comrie. That conclusion is supported by the Flood Risk Management Strategy and Plan in identifying that need and that aim.

84. I am satisfied that all the required procedures and processes under the 2009 Act and 2010 Regulations have been met.

85. I have considered the various grounds set out in the outstanding objection. I have considered the impact of the proposal on the private ownership rights and the amenity of the property of the objector.

86. The principal objection relates to the need for the access stairs proposed to be located at Commercial Lane and the proposal to locate them close to the properties at Achomer and Earnmhor. In my view the need for the stairs is established under the Scheme in order to provide the benefits of public access to and over the amenity ground at the Boulevard. I agree that that is an appropriate outcome to have pursued under the Scheme. I consider that locating the stairs there on publicly used and maintained amenity land is preferable to a location on private land further to the east. I have considered but rejected the option of recommending making a modification to the Scheme in light of this part of the objection.

87. None of the other grounds of objection in my view support the making of modifications of the Scheme.

88. I recommend that the Comrie Flood Protection Scheme 2020 be confirmed without modification.

David Cawthra

Reporter