

Meeting to discuss Shotley erosion protection

Tuesday 27th March 2018 at Shotley Village Hall

Present:

B Powell; R Wrinch, N Green, R Green, E Williams, B Nichols, - Shotley Parish Councillors
Dina Bedwell - Shotley PC Clerk
Cllr David Wood - SCC/AONB
Cllrs Tina Campbell, Derek Davis -,BDC
Matt Hullis, Jane Burch, Annette Robinson - SCC
Chris Knock, Peter Garrett - BDC
Kim Thirlby, Chris Keeling - Natural England
Gary Watson - Environment Agency
Pete Roberts, Ali Bloomfield - East Suffolk IDB
Andrew Hawes
Rick Vonk - RSPB
Tony Lawford Randall, Gary Richens, Geraint Pugh, Marian Pugh, Ian Peters, Ian Saunders - Shotley Open Spaces

Apologies:

Simon Amstutz, AONB; Mark Nowers, RSPB; Chris Fry, BDC; Cllr Matthew Hicks, SCC; Cllr Peter Patrick, BDC; Jim Friend, SALC; Tom Pavitt, MMO

NOTES & ACTION

1. Welcome, Aims of the Meeting & Rules of Engagement

Matt Hullis welcomed everyone to the meeting and introductions were completed. He confirmed the aims of the meeting were

- to understand the current situation with regard to technical issues, legal responsibilities and views of key stakeholders
- agree actions with regard to damaged gabions and phase 3 erosion control
- agree how to inform the public of the outcome of the meeting.

He asked that everyone remained positive and focussed on moving forward rather than going back over past issues.

2. Background to SCC involvement and overview of issues

Jane Burch reminded the meeting of Suffolk County Council's involvement with Shotley PC since 2008. At the time the community sought help from all statutory agencies to manage the eroding cliffs, but due to an anomaly with the Coast Protection Act 1949 no agency had responsibility for the issue. This matter was taken to Government level but cannot be easily resolved.

After local interventions with tyres and rubble, which was regarded as contravening the waste regulations, SCC agreed to lead a partnership to support Shotley PC in a project to manage erosion, using stone filled gabions. At the time the PC used its powers under Section 43 of the Highway Act as the works protected the footpaths on the eroding cliffs. Phases 1 & 2 were completed in 2011 as designed by Andrew Hawes. The PC laid a footpath behind the gabions.

The single layer of gabions (at the Erwarton end) was not part of the original design and required the Parish Council to seek retrospective consent from the local planning authority, which has been granted. It is this section of the gabions that had started to rotate and was damaged by Storm Eleanor, resulting in further rotation of the gabions and damage to the footpath behind.

3. Parish Council view

Barrie Powell and other members of Shotley PC outlined their position, firstly noting that successful erosion control and a new footpath had been established by Phase 1 & 2 works. The works had gone over budget, and the need for retrospective consents for the single layer of gabions, had together caused concern locally.

The PC had sought legal advice about their role in leading repairs to the damaged sections and Phase 3, from the National Association of Local Councils. A summary of this advice is reproduced at the end of these notes. They have been strongly advised not to take the lead in any further works and would be limited to the amount they could spend as the PC by Section 137 of the Local Government Act 1972.

The PC confirmed that it feels the repairs and Phase 3 are still needed.

It also confirmed that it is the landowner for the Heritage Park (land behind the sheet pilings up as far as the Pill Box). The PC's role and legal responsibilities as landowner was questioned, but it was re-stated that the PC was restricted in the money it could spend to undertake works to protect the land from erosion.

4. Key stakeholders' views

It was again confirmed that none of the key agencies – SCC, BDC nor EA - had a duty to undertake this work but could use their permissive powers to intervene if there was an over-riding public interest to do so. All agencies re-stated their willingness to assist any community group wanting to take the lead to repair the existing defences and deliver the last phase but were not prepared to take responsibility for the work. This position reflects the original community lead approach to taking action and there being no legal duty on any of the agencies mentioned above to take responsibility for this issue.

The RSPB confirmed they had no objections in principle to repairs to the single layer of gabions which falls on/very near their property but would want to be closely involved in any proposals, particularly with respect to ways of working. Rick Vonk suggested a more robust design was needed to prevent a repetition of the gabion damage.

Annette Robinson, SCC Rights of Way reminded the meeting that there are 3 footpaths on the Definitive Map, one of which now lies under the water due to previous erosion. SCC maintained the

path behind the sheet piling (in spite of not being on the original route of the map) but had not taken on responsibility for the path behind the gabions.

Kim Thirlby, NE Coast Path manager stated that his original thoughts for the England Coast Path route had been along the new path behind the gabions, but following the recent damage his new proposal was to use the footpath half way up the cliff as the most sustainable route.

Both Andrew Hawes and the IDB had been asked to assess the damage to the single layer of gabions and suggest remediation. Papers outlining their thoughts had been circulated prior to the meeting. They agreed that it should be possible to carry out repairs without taking plant onto the foreshore unless buttressing was deemed desirable. The need for an MMO licence will be dictated by design and ways of working. Cost estimates for repairs differed between Andrew Hawes and the IDB due to differences in specifications, etc – basically the standard of repair would be dictated by the budget available.

5. Way forward

Disappointingly, none of the parties at the meeting were willing/able to take the lead to manage the repairs and Phase 3.

Shotley Open Spaces were asked if they would be willing/able but confirmed they were not suitably constituted and due to past history felt unable to work with the PC.

It was agreed that a new community-led body was needed to take on this role (in-line with the PC legal advice). The example of the Waldringfield Flood Management Group was cited – which was made up of community members and their PC. Cllr Woods suggested a public meeting be called with the aim of seeking members of the community willing to work with the various agencies to set up an appropriate body and lead the necessary work.

ACTION: It was agreed that the PC would convene such a meeting asap.

Chris Knock advised the meeting that the Coastal Communities Fund was open for applications and this could be a source of funds to complete Phase 3. He was willing to put a draft bid together so that any community body coming forward could submit it in time for the June deadline.

6. Public Communications

It was agreed that the notes from this meeting, together with the PC's legal advice paper would be circulated to all invitees and made public on the PC website. Further discussion would take place at the public meeting, which would be supported by the key agencies as requested by the PC.

Shotley Parish Council- Phase 1 repairs and Phase 3

Summary of current legal position:

The SPC has **no direct role in coastal defences**. The lead body for coastal defence issues is the Environment Agency with local responsibilities falling to the County or District Councils. For further information refer to the House of Commons Briefing Paper [7514](#) (paras 2.6 and 2.11 deal with flood defence and coastal erosion, respectively). **Parish Councils are not mentioned through the entire document.**

Legal Power to receive funds: The PC is allowed to receive funds either for a specific or for a general purpose.

Legal Power to spend funds: The PC can only currently spend funds on coastal erosion/sea defence work using **Section 137 of the Local Government Act 1972** (1972 Act) but there is an annual limit to this spend and it must be commensurate with the benefit to the community. The S137 budget for 2018/2019 is £3,350 and the annual cap (based on £7.57 per elector for 1872 electors) is £14,171. If the budget or cap amount were to be spent wholly on this item, a number of local groups/causes would not be able to receive the funding they rely on.

However, an **independent Charity** could be set up for coastal defences/cliff erosion and any money raised would be spent by the charity so the Parish Council rules would not apply nor would the council be liable.

Contractual risks: If the Parish Council enters into a contract, then it has an obligation to pay-failure to pay could lead to law suits (Auditors have already warned of risks and advised against- Financial Regs, Internal Controls and Financial Risk Assessments changed as a result).

Environment Agency Flood/Coastal consent to take on ongoing responsibility for works once they are in place: Being equated to “signing a blank cheque” and therefore strongly advised against it by legal representative. Not something the Parish Council can even consider.

Existing coastal defences-repairs to footpath: PC strongly advised **not to undertake work to a footpath that is not maintainable at public expense; footpaths maintainable at public expense are the responsibility of Suffolk County Council**. The fact that the PC Has the power to undertake repairs to a footpath maintainable at public expense **does not mean it should exercise that power**.

If further repair costs are incurred it is likely to increase the general view that that PC has taken on responsibility, which would **not be legally correct** as the PC would have to exercise its power on each occasion on the basis of the then facts and demonstrate best use of limited financial resources.

The section of the gabions where the repair is needed is not on Parish Council owned land, **did not form part of any of the plans, was not part of Hawes’ design, was not included on the FEPA licence, breached all the permissions that were in place and had not been approved by the Parish Council**.