**DECEMBER 2020**

**SUMMARY OF THE MILL MEAD/CAUSEWAY FLOODING**

**REPORT OF THE CLERK BROAD CHALKE PARISH COUNCIL**

1. **Purpose of this report.**

To summarise the recent history and the actions taken, and to seek a decision from the Parish Council on the way forward.

1. **Background**

This issue has now been before the PC for over 18 months and no sign of a resolution.

The standing water that accumulates on the bend at South Street/The Causeway has extended in area and remains for longer than it did previously. It is not known whether this is a consequence of resurfacing and drain improvements on Manor Farm Road; general clearing of drains and gullies (particularly South Street/Bulls Lane); the property development works at Blicks cottage; high rainfall in recent weeks; or that the drainage ditch in Mill Mead has further silted up. In all likelihood it is some combination of all and it poses a real danger, especially over winter with possible freezing and black ice.

On the face of it, this would appear to be a simple matter: runoff from surrounding roads and farmland arrives at this low point and has nowhere to go because either the road grate gets blocked; and/or the drainage ditch in Mill Mead is silted up, probably exacerbated by a tree lying across the ditch that had been felled by a utility company some years ago. If the gulley and ditch were maintained water would be able to flow away.

Between March and October 2019, a number of discussions and meetings took place between various agencies. These are recorded in the extracts of the Council Minutes at Appendix 1.

The position of each party can perhaps be summarised as:

* Highways see it as a drainage ditch issue on private land and a landowner responsibility.
* The landowner sees it as a highways issue and is of the view that he may be prosecuted/be liable for pollution entering the River Ebble from works undertaken on his land.
* The Environment Agency have confirmed that no liability would arise from drainage ditch works and tree removal that would allow standing water to drain freely from the road. (Appendix 5).
* Natural England are seeking an environmental and wider catchment solution that stops/reduces pollutants entering the River Ebble and have been advising the landowner (appendix 4).
1. **What has been done**

In March 2019, the matter was raised at PC. The Clerk took advice from relevant agencies that resulted in letter from the PC to the landowners (Katie and Richard Jowett) raising this as a concern and seeking a way forward.

This letter was based on the advice from the Highways Authority that it is a landowner responsibility to maintain the drainage infrastructure on their land and that the standing water on The Causeway was as consequence of the ditch in Mill Mead being blocked.

The outlet gulley draining the road is significantly lower than the current level of material in the ditch. Water cannot flow so backs-up in the road gulley and accumulates at this low point in the road.

Wiltshire Council Highways has advised that their preferred approach is for a cooperative working to achieve a solution rather than them taking formal enforcement, at least at the start of the process. This has been the approach we have embarked upon with the landowner and various agencies.

Concern was expressed by the landowners that they could be prosecuted for undertaking work on their land that could lead to a pollution event or large quantities of silt entering the water course. The advice the Clerk received back from the Environment Agency was that the removal of the tree would not be an offence nor would allowing surface water from the road to drain into the river (see email extracts from EA at Appendix 5).

Despite that in many areas road water drains directly into the River Ebble (the ‘lets’ along the High Road being good example), Natural England strongly argued for an environmentally sensitive solution and, together with the landowner and their advisor (Back Sheep consulting), determined that a wider area assessment was required to look at ways to mitigate runoff from surrounding land arriving at this point. They also suggested that some form of natural filter system (reed bed) in Mill Mead could be the answer, funding available through Natural England.

It was agreed (October 2019) that these parties would investigate further and report back on these environmental approaches and the Parish Council would liaise with Wiltshire Council on road drain and gulley clearance which has been actioned and continues.

1. **Current Position**

Now some 18 months on, not having heard anything on environmental solutions and the position worse than it was, the Clerk, has raised this matter again with the landowner.

The landowner has advised that a survey report was undertaken in February 2020. This was not provided to the Parish Council. Apparently, a number of conclusions were drawn by the surveyor;

* The Causeway road appears to have sunk over time - due to the nature of the underlying geology.
* There is a huge amount of water that feeds to this low point from South Street / Bulls Lane, it needs dealing with / diverting along the way, rather than where it currently collects.
* There is a huge amount of water that feeds to this low point from Bury Lane / Howgare Road, it needs dealing with / diverting along the way rather than where it currently collects.
* In Conclusion water that currently collects at ’the puddle’ needs to be diverted before it reaches 'the puddle'.

In the past few days, the landowner has corresponded further with the Clerk indicating that Natural England do not have funding available to undertake work but that Black Sheep consulting (The landowner’s advisor) are keen to work to find a long-term solution and funding.

The landowner has also stated that as a short-term measure they would reluctantly allow the PC (at the PC’s cost) to undertake some temporary work in Mill Mead to enable the current standing water to drain into the ditch in Mill Mead, but that they would not accept any liability (see appendix 2).

The Clerk has written again to landowner of land along Church Bottom to see if some mitigation could be undertaken to prevent runoff from their land onto Manor Farm Road. The landowner’s comments in summary are that a solution at the puddle is required as perhaps are more drains in the roadway.

The Clerk and Wiltshire Councillor Jose Green have had further email dialogue with Wiltshire Highways. The Area Engineer remains of the view that it is because of a lack of proper maintenance of the ditch that water is pooling on The Causeway and that it is the landowner’s responsibility to clear the ditch. He also points out the length of time this issue has been debated and the dangers it poses. He restates that a softer local approach to achieve agreement (pre-enforcement action) is preferred, but that legal enforcement notices being served would be the next stage if no work on the ditch is undertaken. See Appendix 6.

1. **Conclusion**

We are 18 months in with no solution with a dangerous situation that appears to be getting worse and winter upon us with the potential of black ice. We have an accident waiting to happen.

We have sought to find a collaborative approach to what in essence is a simple problem. The water cannot drain into a ditch that is there for this purpose but, because it is not being maintained, water is backing-up and pooling on the bend. It is not being maintained because the landowner is concerned of liability if work causes a pollution event. There is probably also landowner concern as to cost although this has not been mentioned.

Natural England want to see an environmentally sensitive solution to prevent ‘polluted’ water entering the Ebble, but to date, they have not been able to come up with a cost-effective plan or funding. It should also be noted that along the High Road, water is allowed to drain through the ‘lets’ straight into the Ebble.

The Clerk is seeking the direction of the Parish Council on next step.

**Recommendation:** That the Clerk summarises the position to the partners involved and that, having given 18 months for an environmental approach to be implemented, with the situation worsening and with the very real concerns of potential accident, the Parish Council have taken further advice and are seeking mitigation works from the landowner to the ditch. If no action is taken then the Parish Council will pass the matter to Wiltshire Council for formal action.

**APPENDIX 1**

**RECORD FROM THE MINUTES OF PARISH COUNCIL**

**MARCH 2019**: Mr Jowett had reported that he was not in a position to remove a tree crossing a ditch in Mill Mead as to do so would encourage drainage water into the river Ebble. It would therefore remain as it is.

**APRIL 2019:** Whilst the flooding on the corner appears to have been resolved by Wiltshire Council by the clearance of the drain, the tree on private land that is believed to prevent the free flow of the drain has not been removed. The Clerk reminded the meeting that the landowner was concerned that if he removed the tree he could be liable for pollution from the road entering into the water course and had not therefore taken any action.

ACTION:The Assistant Clerk to contact the Environment Agency for their advice.

**MAY 2019**: The Clerk reported that he had been in contact with the Environment Agency and that, on providing a specific grid reference, they would advise further.

ACTION: Mr Fry to meet with the Clerk to identify location.

**JUNE 2019**: The Chairman advised that the Clerk had reported that he had been in contact with the Environment Agency and Wiltshire Council and their advice is that it is landowners responsibility and that there is no issue with the tree removal and unblocking/clearing drainage ditch and any run off and pollution from the road. The suggested course of action is that this is raised with the landowner.

 ACTION: The Clerk to draft a suitable letter to the Landowner (Richard Jowett).

**JULY 2019:**The Clerk had written to the landowner and received a reply that he is seeking further advice from Natural England whom had originally advised on the matter.

ACTION: Clerk to report back when further information is received.

AUGUST 2019: The Clerk had met with the landowner and Natural England having had some initial dialogue with both Wiltshire Council and The Environment Agency. The Parish Council’s concern about dangers posed by the flooding on the bend and the views that the other agencies had expressed were presented to the Meeting. The site meeting noted blocked drainage gullies and made observations from the surrounding road and track network as to likely sources of runoff.

Natural England were concerned that runoff from the highway would bring ‘pollution’ into the River Ebble. Their view was that this should be ameliorated as far as possible and it was noted that runoff does channel down from Church Bottom. The Clerk had subsequently raised this with relevant landowners.

Natural England considered that a reed bed system developed in Mill Mead would be an appropriate way of combatting the problem of ‘polluted water’ entering into the River and that such a scheme could possibly be put forward for grant aid under the Stewardship scheme by the landowners. This would be discussed further between those parties.

The Parish Council noted that the site meeting had taken place; expressed concern as to the continuing flooding and consequent dangers until a solution could be found; that clearing blocked gullies and drains via the Wiltshire Council gully service may reduce runoff on to the Causeway. The Parish Council also noted that there are many drains that are taking water from the highway directly into the river.

SEPTEMBER 2019: The Clerk had circulated a comprehensive summary on the position from Simon Smart and updated the Meeting on information from WC Drainage section. A follow up site meeting will be arranged next month. The Clerk will maintain contact with the agencies and landowner to seek a solution.

**OCTOBER 2019:** A further meeting is being held on 14 October 2019 with the agencies and landowner.

**NOVEMBER 2019:** The Clerk had met with landowners and representatives from Wiltshire Council and other agencies on 14 October. The proposed approach is to instigate a regime of gulley/drain clearance via Wiltshire Council’s Gulley Service and then for the landowners to consider further measures to intercept runoff to prevent pollutants entering into the river Ebble.

**APPENDIX 2**

**NOVEMBER 2020 letter from Richard Jowett**

To try and help with this particular problem we managed to secure funding for a ‘Catchment Sensitive Farming Survey’ which was carried out on the 26th February this year.  They can often help identify the causes and propose solutions with issues such as this. The consultant/surveyor was strongly minded that the problem on the Causeway had nothing to do with the land at Mill Mead per se and that alternatives solutions needed to be considered.

 The key points the surveyor made were:

 ·       The Causeway road appears to have sunk over time - due to the nature of the underlying geology.

·       There is a huge amount of water that feeds to this low point from South Street / Bulls Lane, it needs dealing with / diverting along the way, rather than where it currently collects.

·       There is a huge amount of water that feeds to this low point from Bury Lane / Howgare Road, it needs dealing with / diverting along the way rather than where it currently collects.

·       In Conclusion water that currently collects at ’the puddle’ needs to be diverted before it reaches 'the puddle'.

 Therefore the only area I can realistically help with is to dig out some drainage gulleys along ‘our’ part of Howgare Road, in a few points from the 'Scaffolding Barn’ to Alltype Fencing, this would divert the water off the road into our fields (and delay its arrival at Millmead), would you like me to do this?

I expect that if I & all other people along the roads made an effort to divert some of the runoff, 'the puddle' could be significantly reduced.

 I hope this helps a little, sorry we are not in a position to provide a 'one stop’ solution to this problem.

 Best wishes

 Richard

**APPENDIX 3**

**Second letter December 2020 from Richard Jowett**

Dear Chris

As a summary it seems to me that we have:

A potentially dangerous puddle that regularly occurs and has nowhere to go.

Too few drains in the wrong places, as pointed out by Andrew & now a smooth impermeable road surface enabling runoff to happen even quicker.

Highways seem to have no concern about the issue, so it falls to others to sort out.

The easy solution to it is to feed the water into Millmead & run it into the Ebble. This is not legal or at all desirable. As farmers we are working hard to improve water quality and we need to strive to protect the river.

We have sought funding from ‘Catchment Sensitive Farming’ to try and find a way to allow the water into Millmead then filter it before it eventually reaches the Ebble. Unsurprisingly they count it as a highways issue so were not keen to get involved.

So it now looks like an issue that falls the PC to resolve.

We are happy for you to look into an acceptable long term solution & if you come up with a suitable plan we would allow it to be carried out on our land, however given the legal issues surrounding such projects it would need to be funded & managed by a suitable body, we cannot provide the expertise and are not happy to pay for the disposal of highways' dirty water. This will probably take you some time though.

This leaves the puddle going nowhere for the moment and the continuing risk of an incident.

We would therefore reluctantly and against our better judgement allow the PC to have access to dig a sump (position to be agreed) so that the water (or some of it) could be removed off the road surface, so long as the PC accept full legal responsibility for any pollution or other incident that arises from their actions.

This is not a long term solution or something we feel happy offering, as in reality a clean healthy Ebble is a far higher priority than good roads to enable people to safely speed through our village!!

If you choose this temporary option I am only offering it for Winter 2020/21 on the understanding that a more acceptable / responsible solution is achieved either in Millmead or elsewhere before winter 2021.

I have spoken to Simon Smart (ecologist for many of the farms in the valley & Facilitator of the Chalke Valley Farmers Environmental Cluster) who is copied into this email, he would be keen to help to find a solution to this and may be able to find some funding options.

I hope this helps a little, but I must re-iterate it is an uncomfortable compromised short term stop gap and not a cure.

Regards

Richard

**APPENDIX 4**

Black Sheep Consultancy. SIMON SMART 2019 email. On behalf of NATURAL ENGLAND.

With regards to funding the project, as Rohan said in his response, we have arranged for an independent specialist in track management and surface water run off pollution to audit the situation and provide a technical report, which will identify the most appropriate course of action. This is funded by Natural England. Once we have identified what we need to do to address the issues, we can investigate a number of funding sources available which could support the required management, such as a small scale wetland/silt trap.

In reply to the Parish Council’s queries regarding the proposed approach suggested by Natural England (ie filter and redirect the road run-off rather than simply discharging it in to the River) this relates to the impact on the River. As you and your colleagues rightly point out there are plenty of locations where run-off from the road directly enters the River and in part this is because the Highways Agencies main focus and priority is to remove the water from the road as quickly as possible; what happens to the water after that is of less concern to them.

Natural England and myself have a wider environmental remit and need to consider the impact on the surrounding environment, with particular focus on any nearby watercourses, in this case the River Ebble.  As the parish Council will know the River Ebble is a chalk stream of which there are only 200 known globally, 85% of which are found in the UK in southern and eastern England. The Ebble is a classic example, forming part of the River Avon which is one of the most biodiverse chalk streams in the UK characterised by a unique wildlife community. The international importance of the River Avon and its major tributaries is recognised by its designation as a Special Area of Conservation (SAC), reflecting the river’s rare habitats and species, including flowing water vegetation (Ranunculus, water-crowfoot), populations of Atlantic salmon, bullhead, Desmoulin’s whorl snail, as well as brook and sea lamprey. The River Ebble is also an exceptional chalk stream fishery for wild brown trout and important for populations of water voles and otter, which are both making a recovery following years of decline. In fact, the Ebble was the first ever river to receive the coveted Wild Trout Designation from the Environment Agency.

Chalk rivers emerge from the chalk aquifer, so the water is naturally very pure and rich in minerals which is why it supports such a diverse aquatic flora and fauna. As such nutrient enrichment and sediment from surrounding land can have a very significant impact on the River.

The long term impacts of road run-off pollutants are not fully understood, but the short term effects can be acute and contribute to fish kills in so-called ‘first flush’ events. This happens when a long dry period is followed by rain. Organic material, hydro-carbons (major components of petroleum) and other chemicals (road surface, tyres, brake pads and fluid, antifreeze, winter de-icing grit and salt) build up on roads, becoming more concentrated. When it does eventually rain, this sediment washes into the River. When this happens oxygen levels crash as bacteria use oxygen to break down the organic material entering the river (known as eutrophication), leaving fish struggling to breathe and in worst instances, die. These contaminants also freely bind to sediment which itself smothers gravels vital for invertebrates and fish whilst the turbid water reduces light penetration so plant communities suffer due to limited photosynthesis. Furthermore, the sediment blocks the feeding mechanisms of filter feeders and gills of other aquatic organisms. Multiple studies have shown that heavy metals can also cause long term impacts as they bio-accumulate within the food chain. Therefore, if we can remove the sediment and chemicals before it reaches the River Ebble this could be very beneficial.

You will remember that we saw significant areas of sediment on the road when we met. As discussed there is a particularly long length of road and track which carries a cumulatively high sediment load to the point of flooding and the River, and as such is a priority to address, perhaps more than sections which are fed by smaller sections of road. Whilst we can look to undertake measures which filter the run-off at Mill Mead we will also look to minimise the run-off and water reaching this point by managing existing grips on the road network feeding it and by reviewing management of Church Bottom track (using camber, cross drains, sediment traps, for example). Effectively this is in part addressing the issue at source reducing the volume of water accumulating in the road by Mill Mead.

Equally important is that the Ebble is an important, valuable landscape feature and a beautiful part of the local Broad Chalke area, you are very lucky! A significant part of its visual appeal is the crystal clear water so we should be supportive of anything which maintains or enhances this. What the Jowetts and Rohan Smith, on behalf of Natural England, are offering is a great opportunity to help reduce water collecting on the road whilst also filtering it before it enters the River.

It is also worth adding that this work will protect Mill Mead which is obviously a valued area for the village, with its permissive access provided by the Jowetts. Additions of nutrient laden sediment will cause drying out and vegetation becoming dominated by nutrient responsive plants such as nettles and dock, which is already evident where the run-off currently enters Mill Mead.

Management on farmland, tracks and roads is being looked at throughout the catchment to help improve water quality in the River Ebble so this is not an isolated case but part of wider efforts to reduce road flooding and protect the Ebble within the Chalke Valley.

If you or the Parish Council have any further queries please get in touch.

Kind Regards

Simon

**Simon Smart I** Black Sheep Countryside Management **I** 3 White Horse Cottages, Bratton, Westbury, Wiltshire. BA13 4RS **I** 07748 155143 **I** simon@blacksheepcm.co.uk

**APPENDIX 5**

**ENVIRONMENT AGENCY RESPONSE JUNE 2019**

Please find below a response from a colleague in the Blandford Environment Management Team who look at potential pollution incidents. In summary the removal of the tree would not be an offence nor would allowing surface water from the road to drain into the river, I think the only caveat being not to release excessive volumes of silt into the watercourse whilst removing the tree.

 If you need any further information regarding this please let me know.

 Regards,

 Dan

 As discussed, the removal of a tree from a drainage ditch should not result in a pollution.  The occupier will only be liable for causing a pollution should they be found to be discharging anything other than clean surface water without or other than in accordance with an environmental permit authorising the activity.  Enabling the flow of surface water from a road is not an offence.

 I can only think that soil erosion is being considered.  In which case, removing the tree when the ground conditions allow so machines/trampling will cause minimal soil damage would be advised.

**APPENDIX 6**

**WILTSHIRE HIGHWAYS EMAIL 4 DECEMBER 2020**

Good afternoon Chris,

While I understand and appreciate the position the parish council find themselves in with regard to this matter, the lack of proper highway and land drainage at this location due to the landowner’s lack of action and it would seem intransigence, has with respect been going on for too long now. Should loss or injury result from this issue’s lack of resolution, the courts are likely to be unforgiving as a result of the timescales experienced to date with regard to liability.

The parish council can have delegated powers under the Highways Act 1980, but in this instance we are simply asking for the parish council to take the initial “softer” pre-enforcement approach with the landowner known to them, before, in the event of no action being forthcoming, Wiltshire Council have to step in and take formal legal enforcement action.

Accordingly the policy of parish councils taking the initial pre-enforcement steps for overgrown hedges, trees and ditches, is the agreed one voted on by elected members, on the basis that the softer “local” non legal approach is usually better received than the formal legal enforcement notices and that those in the parishes know who the landowners are usually and indeed may be able to approach them personally.

I can confirm that your parish has been provided with copies of the 2 successive pre-enforcement letters by Wiltshire Council’s Renate Malton in the highway and land drainage team previously, at the same time as the flood packs etc. If in doubt you can contact Renate on renate.malton@wiltshire.gov.uk for fresh copies and advice. If the parish letters are not used by you first, subsequent court action by Wiltshire Council may fail, as we have to demonstrate that all reasonable and local solutions have been explored first.

I note that to date, nobody has actually identified the landowner(s) concerned to me. If you send the 2 letters, or better still inform the landowner what process will commence if he doesn’t act and then he is still uncooperative, on proof of the 2 letters being sent, you can then ask WC’s drainage team to commence formal legal action.

I hope this information is useful and I look forward to news of progress with the matter in due course.

Kind regards,

***David Button***