

P-05-801 Save the trees and ground in Roath Mill and Roath Brook Gardens before it's too late - Correspondence from the petitioner to the Committee, 28.06.18

Response on behalf of Roath Brook Trees Campaign Group to letter from NRW dated 21st June 2018 and letter from Cardiff Council

Note: If members do not have chance to consider the whole document they are invited to consider solely NRW response 6 and the response on pages 4 to 5 below as an example of how NRW continue to maintain what appears an untenable position.

Update on discussions with Campaign Group

It is correct that discussions continue between the Campaign Group and Natural Resources Wales, although the tenor of those discussions, from NRW's side, appears focussed on a justification of their work to date as opposed to an open and realistic assessment of the Phase 3 works, their "consultation", the need for them and the alternatives available. Such an approach is particularly difficult to reconcile with the Welsh Governments recently renewed strategy "Woodlands for Wales" and its commitment to urban trees and their value to the community¹ (see further response 3 below).

Those discussions, in many respects, are reflected in the content of NRW's responses to the Petitions Committee in that they include general statements and assurances which appear not to be backed up, or in cases simply contradicted, by the factual evidence (see the specific responses below).

It is correct that the provisional report from the hydrologist engaged by ourselves contained an error. That error was caused by an assumption (based on incorrect area mapping) that the reservoirs at Llanishen and Lisvane were online (i.e. the Brook flowed into and out of those reservoirs as opposed to running around them). That assumption itself, whilst incorrect, was hugely insightful in that the effect of the reservoirs being online would have almost entirely negated the need for any flood protection works in phase 3 (and possibly also significantly mitigated against the need for the destructive works which have occurred in Phases 1 and 2).

Dwr Cymru have in fact intimated publicly that Llanishen reservoir may be refilled directly from Roath Brook, suggesting that the placing of the same online is eminently possible. Large bodies of water such as the reservoirs and Roath Lake being online allow for attenuation of floods, meaning that the extent of any peakflows are significantly reduced. On a similar note it appears that NRW have not accounted for, and seem unwilling to account for, the effect of proposed works (contained within Cardiff Council's budget) to improve the spillway at Roath Lake which will also have an attenuation effect, although unlikely to be of a similar magnitude. This lack of communication and planning between NRW and another public body (Cardiff Council) and between NRW and a not for profit organisation responsible for public assets (Dwr Cymru) is disappointing to say the least. The Council's response to the Petitions Committee is similarly demonstrative of this.

The Campaign Group is, as a result, engaging with experts, using funds raised from the local community, to investigate these options further.

¹ "Woodlands for Wales" para 2.6, page 18

The Campaign Group also welcomes NRW's intention to engage in July with property owners who would benefit from the Phase 3 works and would welcome input into such engagement to ensure that the mistakes previously made as to the true extent of the flood risk, and resident's understanding of the same, are not repeated (see further responses 4) to 6) below).

In relation to the specific responses provided by NRW we would comment as follows:

- 1) See 3) below
- 2) This response is simply an example of the rhetoric demonstrated by NRW to date. Whilst NRW continue to discuss with us the recalculation of the position on the Communities at Risk Register (something which would take a knowledgeable NRW employee no more than a few hours to do at most) they either have chosen not to do so, or not to release the results. This is despite the fact that discussion in relation to this began in excess of 6 months ago. It remains the Campaign Group's firm view that such a recalculation will show that there are at least 100 other communities in Wales at greater risk of flooding, and in greater need of funding for flood protection works, than Roath (following Phases 1 and 2 of the works).

NRW have stated that prioritisation is not based solely on the Communities at Risk Register, however they do accept that it is the primary measure for initial consideration of an area and Roath's original listing as 17 on the register has been a constantly quoted justification for the project by both NRW and the Minister for the Environment.

The simple fact remains that if Phase 3 was considered as a stand alone project (without even accounting for the huge associated cost and environmental damage) it would never have been prioritised above other areas at a far greater risk – a fact which even NRW would find hard to argue against.

The suggestion that one area of a community should not be protected to the same standard as other areas is wholly misconceived. It ignores the more fundamental fact that other areas of the Welsh community, at a far greater risk of flooding, are failing to receive funding for protection because of this controversial, and largely unwanted, scheme.

In short areas of Wales in greater need are being ignored, or placed at a lower priority.

- 3) Once more NRW's response provides vague assertions without any supporting information. The Arboricultural Impact Assessment is no more than a document which identifies those trees which will be damaged by the proposed works and need to be removed and how others may be protected and saved. The Environmental Impact Assessment is similarly designed to mitigate the impact of the final proposed scheme.

iTree and similar tools such as CAVAT (Capital Asset Value for Amenity Trees) are used to place a value on the benefits provided by urban trees so that those benefits can be effectively assessed and taken into account at the planning stage. With knowledge of the value, informed decisions can be taken to hopefully save valuable trees or put in place objectively assessed measures to offset their loss. This is what the Minister for the Environment is advocating in "Woodlands for Wales" when stating that there

should be “continued use of “iTree Eco or similar tools to quantify the structure and environmental effects of urban trees and calculate their value to society.”

The reality is that nothing even approaching this methodology has happened here (if any environmental factors were taken into account at all at the planning stage). In fact since 30th November the Campaign Group has been seeking an answer from NRW about what they actually took into account on an environmental level under the Freedom of Information and Environmental Information Regulations. The Committee are referred to Appendix 1 in that regard and can draw their own conclusions.

The Campaign Group have engaged with one of the creators of CAVAT and are at a very early stage of working with him on the valuation of the trees. By way of example, one tree already removed by NRW as part of Phase 3 prior to the pause in the works was valued at £24,009. The Committee should bear in mind that once more this work is being done at the expense of residents to discuss with NRW, the body which should actually be an exemplar for such works and recently stated² in support of “Woodlands for Wales”:

“As custodians of one of Wales’ greatest natural assets, we look forward to helping deliver the Minister’s ambitions. The Welsh Government Woodland Estate supports our economy, provides world class opportunities for recreation, and enriches our culture and heritage”

We have been informed that one use of CAVAT in planning is to ensure that trees of a similar value are planted so that the scheme is CAVAT neutral after 5 years. Anyone who has seen the replacement trees NRW has planted, and plan on planting can see that it would take nearer 50 years for this scheme to be CAVAT neutral.

- 4) Appendix 2 sets out the history of the efforts of the Campaign Group (through FOI and EIR requests) to discover what figures NRW actually communicated to people about flood risk given its constant assertions that the correct figures were given prior to October 2016. As pointed out to NRW on many occasions it was hoped that, FOI obligations aside, NRW would wish to make clear when the correct figures were stated.

NRW’s response to the group, as with the Petitions Committee, relies almost entirely on quantity of information rather than quality (i.e stating simply what was said and when), effectively hiding what specific information they actually provided to residents.

In appendix 6 of its submissions of 20th February 2018 (attached for ease of reference) the campaign group summarised these documents and the minimal and contrasting information actually given. If NRW genuinely had issues with that document, or could genuinely provide a list of the times the actual flood risk was communicated and what was stated, it has been open for them to do so.

Members of the Committee are asked to consider Appendix 6 and any of the public consultation documents relied on by NRW in reaching their own conclusion whether those documents even come close to satisfying the test for effective public consultation on the risks faced.

² Tweet from @natreswales 27/6/18

- 5) The campaign group have received a copy of a letter which was sent to a significant number of local residents in the Waterloo Gardens area in or around September 2016³. This letter was written by land agents representing NRW either acquiring, or gaining access over private land, for the purpose of the scheme. This letter states:

“The flood risk in Roath from river and seas is one of the highest areas in Wales; currently there is a 20% risk per year that properties around Roath Park Gardens will become flooded.”

Whilst this letter was not written by NRW it was on their instruction and shows that the extent of the “mistake of 20% flood risks to homes” is greater than admitted by NRW to date. Despite being given the opportunity to revisit their records NRW had failed to find any record of incorrect flood risk earlier than October, which in light of this letter is evidently troubling, as is the fact that NRW sought to enter on to people’s properties based on wholly incorrect information.

In light of this, the campaign group find NRW’s position that it has adequately informed residents of the flood risk difficult to reconcile when they have failed to produce, despite repeated requests, a summary of what they told residents and when, and when their own project manager (and others in his team or instructed by him) himself misunderstood the flood risk for a prolonged period of time.

- 6) The FoI request and the response from NRW (which the campaign group were relying on) was as follows:

Campaign Group 8/12/17

Could you let me know in which document you told us [the public] the specific information below” and “I am asking you whether you have ever provided this information as part of the public consultation and if so in which documents.

Note: the specific information referred to is that flooding from Roath Brook Gardens is discrete to properties on Cressey and Alma Road at between a 1 in 30 and 1 in 50 chance.

NRW 16/1/17

From the records, we hold we cannot identify if this specific information was provided, other than through the flood risk map which shows the different risk profile from Waterloo Gardens (high risk) and Roath Brook Gardens (medium risk).

It is notable that in response to the Petitions Committee the rhetoric has changed and NRW now contend that they “*expressly communicated [this discrete risk] to residents*”. Members of the Petitions Committee are invited to view the links now provided by NRW in response to request 6 and to judge for themselves whether the low resolution “flood risk map” adequately does so, whether expressly or otherwise..

To the extent that any member of the committee is able to identify Alma or Cressey Road (which is unlikely even if they were a resident and knew the area well) they are reminded that:

³ copy seen by Campaign Group is dated 19th September

- a) there is no indication whatsoever of the minor extent of flooding from Roath Brook Gardens (as opposed to from Waterloo Gardens – the Phase 1 and 2 works); and
- b) a similar map produced after completion of the Phase 3 works would show identical shading for those properties (as those properties remain at medium risk after completion of the works – as acknowledged in NRW’s letter).

In short, a resident in those streets viewing that map after completion of the works would have exactly the same indication of the flood risk to his property as when he viewed it before those works were carried out (this is accepted in NRW’s letter where they accept the risk band as still medium).

A suggestion therefore that this document (the only one relied on by NRW) forms the basis of a consultation explicitly informing these residents of the risks which they face is patently absurd.

Summary

NRW’s current rhetoric which seeks to maintain their position, in the face of evidence to the contrary, is disappointing to say the least. Whilst it is accepted that there are many things which NRW has done right (but the campaign group have still been forced to investigate behind the rhetoric) there is also clear evidence that there are many things which were done wrongly, or according to best practice could have been done better:

1. The consultation exercise did not clearly inform residents of the risks which were faced;
2. Prior to commencement of the works the risks were hugely exaggerated for a significant period of time and not understood correctly by NRW’s own staff including the project manager;
3. No proper assessment of the significant environmental impact of the project was undertaken at the planning stage (with minimal steps taken to mitigate once NRW had chosen what works were to be done);

Further were the project to actually be evaluated today it is clear that things would be done differently:

1. It is unlikely that consideration would even be given to the project given the placing of Roath on the Communities at Risk Register after Phases 1 and 2; and
2. In line with Welsh Government’s commitment the environmental effects of the project would be assessed at the planning stage (including use of iTree or CAVAT) and proper account taken of them of planning a scheme.

It is disappointing that the campaign group in these circumstances continues to have to raise and expend funds to undertake these investigations and valuations itself (when they should properly be the role of the public body not only championing the project but also tasked with being the custodian of these assets).

Roath Brook Trees

28/6/18

Appendix 1 re: request 3) [Extent to which environmental factors are taken into account]

Campaign Group 30/11/17

Please provide [details of] the extent to which NRW takes in to account other environmental issues (including the fact the area is a conservation area) in deciding whether to carry out works, or whether that is only assessed in relation to the nature of the works to be carried out

NRW 5/12/17

We consider a range of criteria when appraising all flood risk management options, to inform our selection of the preferred option. This includes environmental aspects, as well as technical, safety, cost, programme and risk.

Campaign Group 13/12/17

The answer given did not answer the question

NRW 9/1/18

As Gavin confirmed he believes he has responded to this question, apologies if you feel it does not. Please could you elaborate on how the response is inadequate and what information you are requiring? We would encourage you to meet / call to discuss with Gavin should you wish.

Campaign Group 17/1/18

Once more Gavin has given a very general response to this question. What I require is any information such as guidelines or policies which relate to how environmental issues (including the fact that works are carried out in a conservation area) are factored into decisions over a) whether to carry out works in that area and b) the type of works to be carried out.

NRW 5/3/18

I apologise as I do not believe that you requested guidelines or policies initially. I can confirm that we followed the Flood and Coastal Erosion Risk Management appraisal guidance. This is available here: <https://www.gov.uk/government/publications/flood-and-coastal-erosion-risk-management-appraisal-guidance> [link to a 325 page document with no guidance as to where answer may be located].

Note: Regulation 9 of the Environmental Information Regulations places an obligation on public bodies to provide advice and assistance to requesters to help them identify the extent of the information which may be held.

Appendix 2: Request 5) [Consultation on discrete flood risk from Phase 3]

Campaign Group 01/12/17

You also state that “previous consultation” had used “the correct figures” and provide a table of “consultation” but no evidence of the figures provided at each stage. Certainly, having considered the newsletters and much of the documentation there is little reference to figures. Please can you therefore provide, by reference to the table provided if possible, details of any stage when the public (or the council for planning purposes) was provided with the current flood risk;

- 1. The figure given for the flood risk;*
- 2. Whether that flood risk was said to be fluvial or tidal;*
- 3. The number of homes said to be affected; and*
- 4. Where recorded or evidenced in documents a copy of those documents"*

NRW 16/1/18

Please refer to the individual consultation materials provided above for this information [link provided to all newsletters and planning application consisting of 108 documents].

*We do not hold the information in the form you have requested. Under the provisions of the Environmental Information Regulations 2004 (EIR) we believe that exception 12.4a applies **we do not hold the information**. Under the EIR we are not obliged to create information to answer a request and this work has not been previously undertaken. As we do not hold this information the public interest test has not been considered. However as outlined above, you can ascertain this information from the individual consultation materials provided above.*

Campaign Group 17/1/18

The request for a summary of the available information is not unreasonable. Please see the ICO guidance and particularly paragraphs 20 to 26. **This is particularly so given the fact that NRW are specifically referring to the fact that they believe the correct information was given earlier and then refer to voluminous documents in support, many of which make no reference to flood risk.** The number of documents attached to the planning permission alone number 108 (of which the vast majority have nothing to do with the information requested).

Link to ICO Guidance: (<https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>)

Campaign Group (following a failure to respond) 23/3/18

*Your further response to question 2 on 16th January was that you did not hold the information in that form, and then in response to question 5 you once more provided a link to numerous materials (which was why we provided details of the ICO guidance). **The purpose of the initial request is relatively clear and we would have thought it was in everyone’s interests (including NRW’s) for NRW to clarify what flood risk information it provided and when** so we look forward to receiving a response.*

NRW 29/5/18 (over two months later)

We believe our previous response is adequate and do not intend to create new records to respond to your request, as the information is available electronically in another format and has been provided

Should you wish for further assistance on this matter please contact the Roath project team at Roath@naturalresourceswales.gov.uk.

Note: NRW have been asked to provide details of when they gave correct flood risk details and merely pointed to their website and the planning application (together with 103 supporting documents). This is a summary of the relevant information in those documents

| “Consultation Document” | Statement about Flood Risk | Circulation |
|---|--|----------------------------------|
| Newsletter 1 (April 2014) | <i>“We estimate 440 properties in the area have a 1 in 100 chance of flooding in any year from high river flows, high tides or combinations of both.”</i> | Mailshot Website |
| Newsletters 2 to 8 (June 2014 to Easter 2015) | <i>“Many homes and businesses in the Roath, Penylan and Newport Road areas are at risk of flooding from the Roath Brook and Rover Rhymney”</i> | Mailshot Website |
| July 2015 Information Board (figure 1) | <i>“Today some 390 homes and 50 businesses in the area are at a medium risk of flooding caused by high river flows, high tide and combinations of both.”</i> | Drop In Meeting Web-site |
| Newsletter 9 (September 2015) | <i>“Many homes and businesses in the Roath, Penylan and Newport Road areas are at risk of flooding from the Roath Brook and Rover Rhymney”</i> <i>“The main changes we have made since October 2014 relate to changing the level of flood protection offered by the scheme to a 1:75 year standard of flood protection”</i> | Mailshot Website |
| “Flooding Problem” (October 2015 in support of planning) | <i>“Today some 390 homes and 50 businesses in the area are at a medium risk of flooding caused by high river flows, high tides and combinations of both.”</i> | Cardiff Council Planning Website |
| “Roath Flood Risk Scheme” (October 2015 in support of planning) | <i>“Today some 390 homes and 50 businesses in the area have a 1 in 100 chance of flooding in any year from high river flows, high tides or combinations of both.”</i> | Cardiff Council Planning Website |
| “Flood Consequences Assessment” (October 2015 in support of planning) | <i>“The overall aim of the Scheme is to provide protection against the 1 in 75 year (1.33%) fluvial (Roath Brook) annual probability flood and the 1 in 150 year (0.67%) tidal (River Rhymney) annual probability flood with 50 years climate change, which will reduce the flood risk to 360 residential and 52 commercial properties.”</i> | Cardiff Council Planning Website |
| Newsletters 10 to 12 (October 2015 to December 2016) | <i>“Many homes and businesses in the Roath, Penylan and Newport Road areas are at risk of flooding from the Roath Brook and Rover Rhymney”</i> | Mailshot Website |

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| Press Release | <i>“Over 400 homes and businesses in the area are at risk of flooding from Roath Brook. The Scheme will increase the level of protection for the community from 1 in 5 to a 1 in 75 chance of flooding in any given year.”</i> | Website (for 4 months) 35 press/media recipients |
| Newsletter 13 | “Clarification <i>Some of our consultation material has previously incorrectly stated that over 400 properties are at risk of flooding at a 1:5 (20%) chance event. This is incorrect. 405 properties are at risk of flooding at a 1:75 (1.33%) chance event, and will hence benefit from the flood defences. We apologise for any confusion. “</i> | Mailshot Website |