

THE "MEDWAY" LETTER

Ministry of Agriculture and Fisheries,
10 Whitehall Place
SW1

28 June 1933

Sir

Land Drainage Act 1930
Scheme under Section 4 (1) (b)

I am directed to refer to the Scheme prepared by the River Medway Catchment Board under section 4 (1) (b) of the Land Drainage Act 1930, for the constitution of the Upper Medway and Lower Medway Drainage Districts, and to inform you that the Minister has had under consideration the report of the officer who conducted the Public Inquiry which was held at Maidstone on the 14th, 15th and 16th March into the objections which had been lodged against the Scheme.

As you are aware, the proposals of the Catchment Board depart in several respects from the usual practice hitherto followed by the Ministry in determining the limits of drainage districts, and the Minister has, therefore, given most careful consideration to the arguments advanced by the Catchment Board at the Inquiry for the adoption of the principles on which they have prepared their Scheme. As a result the Minister regrets that he is unable to accept the departures from the Ministry's usual practice which the Catchment Board propose.

The Scheme of the Catchment Board is intended to involve the inclusion within internal drainage districts of all land in non-tidal limits up to the 8 ft flood level, whether it is in rural or urban districts, and in the case of tidal lands 8 ft above the ordinary spring tides in both rural and urban districts, whether embanked from the tide or not. In addition the Scheme provides for the inclusion in certain cases of lands well above the 8 ft limit, on the grounds that such lands derive benefit from drainage operations, because, if such operations were not carried out, access to such lands would be cut off, and in other cases such lands have been included simply because they adjoin the river banks.

The Minister thinks it desirable that he should set out in some detail what are the principles upon which he considers that a Catchment Board should proceed in preparing a scheme under Section 4 (1) (b) and I am, therefore, to make the following observations:-

1. The areas which may be brought within the limits of drainage districts are those which will derive benefit or avoid danger as the result of drainage operations. There is no definition either in the Land Drainage Act 1930, or in the previous Acts which that Act repeals as to what constitutes benefit or avoidance of danger. The Minister agrees that the term "benefit" is a wide one, having regard to the decisions in *Soady v Wilson* and *Hammersmith Bridge Company v Hammersmith Overseers*, and he fully appreciates that the Royal Commission on Land Drainage held the view that the proper and fitting interpretation of "benefit" should be somewhat wider than that which had

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hitherto been placed upon it. In this connection, however, it is important to note that the Royal Commission go on to say that benefit is not confined to the discharge of water beyond the boundaries of a given area, but includes also some responsibility for its passage to the sea. This principle has been recognised in the Land Drainage Act 1930, which enables a catchment board to obtain a contribution towards its expenses from the whole of the catchment area by precepts on the county councils and the county borough councils within the area. In the opinion of the Minister, therefore, the view of the Royal Commission could not properly be prayed in aid of a proposal to include within an internal drainage district areas which cannot be said to be likely to obtain some benefit or avoidance of danger as the result of drainage operations either of the catchment board or of the internal drainage board.

2. The Minister can see no reason why land should not be brought within an internal drainage district even if the only benefit it can obtain is from the work of the catchment board on the "main river," and circumstances may well arise where an internal drainage board have no drainage work themselves to carry out and the whole of the drainage rates collected by them would be to meet a precept of the catchment board. The mere fact that a watercourse is marked as "main river" does not in general appear to the Minister to be a valid reason why the lands adjoining that watercourse should make no contribution by way of drainage rates towards its upkeep, whereas if such watercourse were not "main river" the whole of its maintenance would fall on the internal drainage district, subject, of course, to the possibility of a contribution from the catchment board in the circumstances set out in Section 21 (3) of the Act.
3. Dealing first with the non-tidal areas, the Minister takes the view that agricultural land up to 8 ft above the highest known flood may properly be brought within a drainage district, while in general the limit in the case of developed urban areas should be flood level. As you are aware, this has been the Ministry's practice in the past, and the justification for this differential treatment is based on the different effects of a shallow water saturation level in such areas. The Ministry is convinced that as a general rule of practice this is the only satisfactory policy. It must be remembered that under Section 1 (5) of the Act, the lands which ought to be brought within the limit of a drainage district are those which will derive benefit or avoid danger as a result of drainage operations. The 8 ft line above flood level was originally adopted by the Minister after consideration of the matter from the point of view of agricultural land, and the probable effect of a shallow water saturation level upon plant life. In the Minister's opinion, quite different considerations apply in the case of developed urban areas, as a shallow water saturation level would not in general adversely affect the foundations of buildings. The effect of the saturation level would, in the case of buildings, presumably be provided for by, *inter alia*, the kind of materials used in the foundations, the depth of these materials

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and the damp courses. The benefit to shallow saturation from drainage work must, in the case of urban properties, be of an entirely different kind and, from the point of view of annual value, much smaller in degree than that which agricultural land derives by freedom from waterlogging and consequent improvement in productivity. Furthermore, the general adoption of an 8 ft line above flood level in the case of fully developed urban areas would in the Minister's opinion, give rise to the gravest practical difficulties. The determination of a contour not defined by an actual flood through an urban area is certain to give rise to anomalies, for as a rule the properties on either side of an 8 ft line above flood level are exactly similar, and there is no more reason for including one than the other. On the other hand if urban properties are known to flood, it is possible to draw a line to include these properties, except perhaps in the few cases where there are deep cellars which are difficult to locate, and in the Minister's view these may properly be disregarded. It is improbable in most cases that much benefit can be conferred on urban properties above flood level and such benefit as they do derive is, in effect, a community service for which the urban areas concerned are already paying the Catchment Board through the precept of that Board on the County and County Borough Councils.

4. The exposition of the Minister's views as given in the preceding paragraph as to the limitation to flood level of the line through urban properties would not in general apply to small isolated urban or semi-urban areas surrounded by agricultural land below the 8 ft flood line. It is intended to apply to those urban areas which are on or near the outer limit of a proposed drainage district, and the Minister does not suggest that a catchment board in determining the limits of a drainage district, should in general exclude therefrom urban properties between the flood level line and the 8 ft line above flood level which are not near or on the outer limit of the proposed district.
5. There are, of course, certain exceptions to this 8 ft rule as, for instance, lands above that level which would be cut off by floods may properly be included on the grounds that they derive benefit from the provision of access to them by drainage operations, and lands liable to subsidence in the comparatively near future. In some cases lands below the 8 ft level may be excluded when conditions of soil or slope are taken into consideration. In the first case differential rating would probably be required, but this is a matter which can only be dealt with by the Internal Drainage Board when it is constituted.
6. So far as tidal areas are concerned, the Minister is satisfied that the Ministry's normal practice, which is to include agricultural land up to a limit of 5 ft above ordinary spring tides, where the land adjacent to sea embankments is below the level of ordinary spring tides, and urban areas only to tidal levels can alone be fully justified. The

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justification for the reduction of the limit of the area of benefit from 8 ft to 5 ft above tidal limits in the case of agricultural land in tidal areas may be found in the fact that the tide is at its height for a very short period during the day and therefore the saturation level must necessarily be lower in the case of tides than in the case of flood-water. When urban areas are considered the distinction is even more marked. If these are protected by embankments or sea walls, which are a responsibility of the Catchment Board or of an Internal Drainage Board, then quite clearly they may derive benefit from drainage operations – namely, the maintenance of those walls – and can therefore properly be brought within a Drainage District. Where, however, there are no walls or embankments, and the properties are above ordinary spring tide level, and therefore there are no protective works for the Catchment Board or Drainage Board to maintain, it is difficult to see what works can be carried out to prevent the flooding of such areas at periods of exceptional tides. Clearly, the general raising of levels of properties within an industrial area is not a proper function of a drainage authority. In such cases, generally, there are conservancy or navigation authorities, and in any event, the private owners concerned may be expected to maintain their wharves at a height sufficient for the normal needs of their business.

7. There is another point to be borne in mind. It is contemplated by the Land Drainage Act 1930, that in certain circumstances local authorities will contribute specially to the cost of drainage works, and this may be done either under Section 32 of the Act or by an arrangement under Section 6 (4). Where work of a special kind on "main river" is required within a developed urban area, it is a matter for consideration whether a Catchment Board would not be well advised to proceed under one of those sections, rather than to bring a very limited area into an internal drainage district for rating purposes.

The adoption of the principles outlined above will involve substantial amendments to the scheme of the Medway Catchment Board. So far as the Upper Medway District is concerned, considerable portions of the towns of Tonbridge and Maidstone will have to be excluded, but the floodable part of Tonbridge and Maidstone will still be included. Amendments may also be required in other parts of the District.

In the Lower Medway District the following exclusions will be necessary:-

1. The built-up portions of Rochester and Chatham, on the grounds that
 - (a) any flooding that is due to tides and remedial works would involve the raising of wharves and properties generally; and

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- (b) drainage works in the creeks, eg Jane's Creek, opening out of the main river is really a matter for agreement between the Catchment Board and the Town Council, under Section 6 (4) of the Act of 1930.
- 2. The Borough of Gillingham up to the westward limit of the embanked area, on the grounds that
 - (a) wharves exist along this stretch of the river and the Catchment Board should not undertake works of this nature, and
 - (b) certain lands which have been reclaimed by the Gillingham Corporation and laid out as pleasure gardens are not embanked in the sense that they protect lands in the hinterland, but have merely been raised above the level of tides and protected from erosion for amenity purposes.
- 3. The sea-walls on either side of Sheerness, as it seems undesirable to disturb the maintenance of some of these by the Admiralty, whilst the maintenance of the others, which are important to the Sheerness Urban District Council for amenity purposes, is a matter for agreement between the Urban District Council and the Catchment Board under Section 6 (4).
- 4. Those portions of Sittingbourne and Faversham which are above ordinary tide level and which are unprotected by embankments and are only fringed by wharves. The same considerations which apply to Rochester and Chatham are, of course, applicable here.

The minister is prepared to include the high lands in the Isle of Sheppey, as, in times of flood, they are cut off from all access with the mainland. It should be understood, however, that these lands are only included on the understanding that they will be differentially rated by the Drainage Board, though, as the Catchment Board are aware, this cannot be provided for in the Scheme nor in the Order in relation thereto. In the Minister's opinion a reasonable differential rate would be not more than one-third of the full rate.

Amendments will also have to be made in regard to certain "arms" of the Upper Medway District where the Catchment Board have included minor areas where the streams are very small indeed.

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In order to give full effect to these decisions and to arrive at proper boundaries, the Ministry has caused the two proposed Districts to be re-surveyed, and is now preparing a 6 in. map of the Districts as amended. This map, which will show the amendments indicated above and certain other consequential alterations, will be forwarded to you before the Ministry proceeds further in regard to the Scheme, in order that the Catchment Board may be in a position to offer any observations which they may desire to make. At a later date the Ministry's draft confirming Order and the map will be deposited for public inspection.

A copy of this letter is being sent to each objector.

I am, Sir,
Your obedient Servant
(Signed) A T A Dobson

P T Baker Esq
Clerk to the River Medway Catchment Board
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Maidstone