

## **LAND DRAINAGE**

### *(and The Riparian Land Owner's Responsibility)*

The land drainage system deals with a large proportion of the water arising inland from rainfall and surface water run-off, as well as groundwater. It includes rivers, watercourse, ditches, culvert, pipes, lakes & ponds.

### **DEFINITION AND OVERVIEW**

Riparian water rights (or simply riparian rights) is a system for allocating water among those who possess land along its path. It has its origins in English common law.

Under the riparian principle, all landowners whose properties adjoin a body of water have the right to make reasonable use of it as it flows through or over their properties. If there is not enough water to satisfy all users, allotments are generally fixed in proportion to frontage on the water source. These rights cannot be sold or transferred other than with the adjoining land and only in reasonable quantities associated with that land.

The Environment Agency lists the riparian rights and duties in England and Wales.

The rights include :-

- ownership of the land up to the centre of the watercourse unless it is known to be owned by someone else
- the right for water to flow onto land in its natural quantity and quality
- the right to protect property from flooding and land from erosion subject to approval by the agency
- the right to fish in the watercourse unless the right is sold or leased if an angler has a valid Environment Agency rod licence

They also include the right to acquire accretion and the right to boamage (a fee charge for securing a boom, generally for the retention of logs).

Duties arising from the model include the following:

- 1) Pass on the flow of water without obstruction, pollution or diversion affecting the rights of others
- 2) Maintain the bed and banks of the watercourse and to clear any debris, whether natural or artificial, to keep any culverts, rubbish screens, weirs and mill gates clear of debris
- 3) Be responsible for protection of land from flooding and cause no obstructions, temporary or permanent, preventing the free passage of fish
- 4) Accept flood flows even if caused by inadequate capacity downstream, but there is no duty to improve the drainage capacity of a watercourse

Riparian land ownership is a legal term given to a landowner who owns land adjacent to a watercourse (river, stream, ditch etc.). Riparian landowners are responsible for maintaining the flow of water through their land and obtaining prior approval before carrying out any alterations.

Locally, Staffordshire County Council has the power to regulate ordinary watercourses and if issues are found can enforce the following, the requirement to :-

1. Carry out repairs
2. Remove or modify unconsented works

### 3. Undertake routine maintenance to maintain the flow of water

The Environment Agency has the power to regulate the main river network and the Sow and Penk internal drainage board is responsible for the regulation of ordinary watercourses within their operational area, which is located in a small catchment in and around Stafford.

When an issue is brought to the County Council's attention, they will take a risk-based approach when determining whether works should be carried out. There are many factors that may influence our decision, but key issues include the potential for :-

- internal flooding of residential or commercial buildings
- flooding of important infrastructure
- adverse environmental effects

The majority of issues will be resolved through co-operation with riparian landowners, thus avoiding the need to use any formal enforcement powers. However, as the Highway Authority, works can be carried out in relation to flooding and drainage affecting the public highway.

### **THE LEGISLATION**

The Land Drainage Act 1991 requires that a watercourse is maintained by its owner in such a condition that the free flow of water is not impeded.

### **LAND OWNER RESPONSIBILITY**

Staffordshire County Council only has responsibility for land drainage ditches where it is adjacent or abuts Council owned land – i.e. County Farms land – or in a small number of cases where land has been acquired for new road building.

All land owners with land immediately adjacent to or abutting a drainage ditch, river or any other inland body of water is - in legal terms – the Riparian Owner and they have certain common law responsibilities and rights.

Even if the Title Deeds for land owner's property show the boundary stopping at a fence or fence-line, then they still have riparian responsibilities and rights - to the centre of the watercourse if the ditch is located between two properties. Alternatively, if the ditch joins a highway then the land owner has responsibility for maintaining the whole of the ditch. This is collectively known as Riparian Land Owner responsibility.

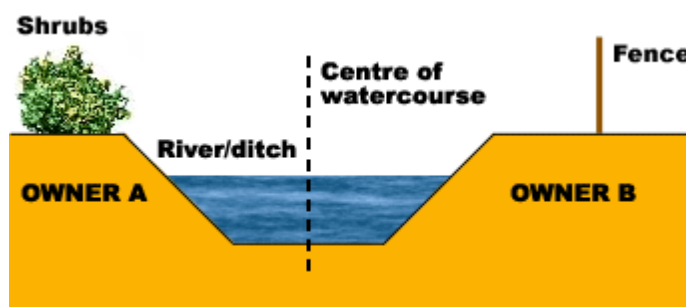
The Highway Authority can discharge highway water into a roadside ditch and may maintain it but is under no obligation to do so. Grips cut in verges however are the responsibility of the Highway Authority, as they are cut to assist with road drainage.

Piped watercourses and culverts generally are the responsibility of the landowner, as the riparian land owner. Where a watercourse or a ditch in a highway has been piped it remains the responsibility of adjoining landowners unless the piping was at the request of the Highway Authority in order to make the highway wider, safer or more convenient. In this situation the Highway Authority would need the consent of the ditch owner and evidence of this consent would be evidence of the Highway Authority's liability. This also applies to pipes,

whether they cross a highway or run along it. The same duties, responsibilities and rights exist for piped watercourses and culverts as for ditches.

These responsibilities and right are governed under common law, and any advice on legal responsibilities should be sought from an appropriately qualified legal body.

### **A WORKING EXAMPLE - Joint Ownership (Owner A & Owner B)**



A ditch located between two riparian owners

An example of this is a ditch between two land owner's properties, where the two riparian owners (A and B), each have to maintain their side of the ditch up to the centre of the water course. As the ditch is located behind land owner Bs' fence line they may not realise that they still have 'a Riparian responsibility' under the Land Drainage Act 1991 and need to maintain the ditch.

### **A ditch running alongside a Public Highway (One Owner)**



A ditch running alongside the public highway is the responsibility of the private land owner, as per the above.

In this case, there is a field but the riparian owner of this ditch is the owner of the field, and they are required to maintain the whole ditch and ensure that they meet all of their riparian responsibilities.

A ditch running alongside a public highway, but with a blocked Culvert (- with one land owner)



This is the responsibility of the private land owner.

### **DITCH MAINTENANCE**

A well maintained ditch



The ditch runs between the Public Highway, a property and under a drive way / access. The riparian owner of this ditch and culvert (- this is an area of ditch which has been piped) is the owner of the property next to the ditch. They are required to maintain the whole ditch, including the culvert under the driveway and to ensure they meet their riparian responsibilities. If the driveway gives access to more than one property then the riparian owner may wish to approach the other property owners to assist with the maintenance of the culvert.

The above culvert is blocked and the water in the ditch is not able to flow, which may lead to flooding in the immediate area and further upstream, under situations of heavy rain.

This is a free flowing ditch and clear of any obstruction. It is also deep enough to accept water from upstream during times of increased rainfall.

Versus a flooded ditch



Where flooding has occurred, if a Riparian Owner has failed to maintain their section of a ditch or culvert, they have responsibility for the knock on consequences. And it can have devastating consequences both up and down stream of the blocked ditch or culvert by causing flooding to homes, transport infrastructure and increase the risk of injury.

### **UNMAINTAINED DITCHES**



If a ditch is left to over-grow, it can become blocked and the water can stagnate. This may encourage unwanted insects to breed, such as mosquitoes.

### **RIPARIAN RESPONSIBILITIES AND RIGHTS**

The land owner has the responsibility to :-

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County Councillor Jeremy Pert, Eccleshall Division, Staffordshire County Council  
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- 1) Pass on flow without obstruction, pollution or diversions affecting the rights of others
- 2) Accept flood flows through owned land, even if these are caused by inadequate capacity downstream
- 3) Maintain the bed and banks of the water course - and also the trees and shrubs growing on the bank.  
Land owners must clear any debris, even if it did not originate from their land or person
- 4) Keep the bed and banks clear of any matter that could cause an obstruction, either on owned land or downstream, if it is washed away
- 5) Keep any structures owned clear of debris.  
These structures include culverts, trash screens, weirs and mill gates
- 6) Protect their own property from water that seeps through natural or man-made banks

### **ALTERATIONS TO DITCHES AND WATER COURSES**

Before starting any work on, or adjacent to, a watercourse, the land owner must submit the plans of any work to the County Council to determine whether a land drainage consent or planning permission is required.

Environmental issues, including flood risk, wildlife conservation, fisheries, reshaping of the river and landscape, must all be considered

Under the Land Drainage Act 1991 certain types of work within a watercourse may not be permitted due to the potential increase in flood risk. In order to allow work to take place, the County Council can issue consent for a proposed scheme by checking that it does not increase the risk of flooding and that it does not adversely affect the environment.

Both permanent and temporary works affecting a watercourse may require consent. Temporary works could be the damming of a watercourse to allow permanent work such as the installation of a bridge. Only certain types of work require consent. When considering if works require consent, consideration should be given to whether they would affect the flow of the watercourse when it is full to the top of the bank. If the flow of the watercourse, when it is full to the top of the bank, will be affected the work will need consent.

The County Council issues consent for work on ordinary watercourses and if certain works are planned to be undertaken on a watercourse then the land owner would need permission from the appropriate body. This depends on whether the watercourse is classed as a "main river" or an "ordinary watercourse". Works affecting an ordinary watercourse may require consent from either the County Council or possibly the Sow and Penk Internal Drainage Board, if the works are in the Stafford area.

If the watercourse is classed as a main river, consent will need to be obtained from the Environment Agency for any works proposed to be carried out within eight metres of the top of a river bank. Where works include excavation of a highway, a permit to dig may also be required. Please consult with Highways for more information on this.

Further details can be found at : [www.staffordshire.gov.uk/environment/Flood-Risk-Management/Applying-for-consent-for-watercourse-works.aspx](http://www.staffordshire.gov.uk/environment/Flood-Risk-Management/Applying-for-consent-for-watercourse-works.aspx)

## **RELEVANT LEGISLATION AND FURTHER INFORMATION**

Land Drainage Act 1991 Section 28 & Section 25

The Local Authority can serve a 'Notice to Improve' land drainage.

Public Health Act 1936 Section 262 & Section 264

The Local Authority may require the culverting of a watercourse or require the repair and cleaning of a culvert and it's accessories, if it is a nuisance to Public Health.

Highway Act 1980 Section 299

The Highways Authority are can discharge into a water course with no maintenance responsibility.

## **HIGHWAY DRAINAGE**

Highways Act 1980

The Highways Authority have the responsibility to maintain the highway drainage system, which is only designed for draining the highway network – and not the riparian land owner's water.

As part of their duty, the Highways Authority is responsible for carrying out routine and reactive works to these systems to ensure they are working to maximum capacity. However, they are not responsible for private ditches located next to the Highway.

## **USEFUL CONTACTS**

Concerns can be reported at

MyStaffsABpp : [www.staffordshire.gov.uk/MyStaffs-App/MyStaffs-App.aspx](http://www.staffordshire.gov.uk/MyStaffs-App/MyStaffs-App.aspx)

Web : [www.staffordshire.gov.uk/Contact-compliments-and-complaints/contactus.aspx](http://www.staffordshire.gov.uk/Contact-compliments-and-complaints/contactus.aspx)

Staffordshire County Council Customer Services telephone – 0300 111 8000 Monday to Friday 9am – 5pm

Staffordshire County Council Flood Risk Management team

[www.staffordshire.gov.uk/environment/Flood-Risk-Management/About.aspx](http://www.staffordshire.gov.uk/environment/Flood-Risk-Management/About.aspx)

Environment Agency telephone : (General enquires)

Web: [www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

Email: [enquiries@environment-agency.gov.uk](mailto:enquiries@environment-agency.gov.uk)

The Sow and Penk Drainage Board

Web : <https://www.shiregroup-idbs.gov.uk/idbs/sow-penk/>

Citizens Advice Bureau Tel: 0845 1202969

Web [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)