

# Living next to a watercourse

An ordinary watercourse is any natural or artificial channel through which water flows, such as a river, stream or ditch. If you own land bordering an ordinary watercourse, you have certain rights and responsibilities established in common law for many years.

In legal terms you are a 'riparian owner'.

If you have an ordinary watercourse or a main river running through your land or along the boundary of your property you are likely to be the riparian owner or joint riparian owner, unless the watercourse is known to be owned by someone else.

If the land on the other side of the watercourse is not in your ownership you are presumed to be the joint riparian owner together with the landowner on the other side. In the case of joint riparian ownership each party is presumed to own up to the centre line (the middle) of the watercourse and therefore is responsible up to this point.

## Works on ordinary water courses

Read our advice on [applying for consent to works on ordinary watercourses](#).

## Your responsibilities as a riparian owner

As a riparian owner you have responsibilities in relation to the watercourse flowing through or adjacent to your property. Your legal duties are to:

- Pass on flow without obstruction, pollution or diversion affecting the rights of others
- Accept flood flows through your land, even if caused by inadequate capacity downstream, as there is no common law duty to improve a watercourse
- Maintain the bed and banks of the watercourse (including trees and shrubs growing on the banks), and clear any debris, natural or otherwise, including litter and animal carcasses, even if it did not originate from your land. Your local district council can give you advice on the removal of animal carcasses.
- Not cause any obstructions to the free passage of fish
- Keep the bed and banks clear of any matter that could cause an obstruction, either on your land or by being washed away by high flow to obstruct a structure downstream. Rivers and their banks should not be used for the disposal of any form of garden or other waste.
- Keep clear any structures that you own such as culverts, trash screens, weirs and mill gates
- Protect your property from seepage through natural or man-made banks. Where such seepage threatens the structural integrity of a flood defence, it may become the concern of the Environment Agency. You may have flood defences such as walls and embankments on your property, which are vital for the protection of both yourself and others. You should discuss the maintenance of such defences with the [Environment Agency](#) if you have any concerns relating to these.

These are some but not all of your responsibilities, and failure to carry these out could result in possible civil action from others up stream of the water course.

Your responsibilities as a riparian owner are based on the following legislation:

- Flood and Water Management Act 2010
- The Land Drainage Acts of 1991 and 1994
- Water Resources Act 1991
- National Rivers Authority (now the Environment Agency) Land Drainage byelaws 1981
- The Public Health Act 1936

## **Your rights as a riparian owner**

As a riparian owner:

- You are presumed to own the land up to the centre of the watercourse, unless it is known to be owned by others
- You have the right to receive flow of water in its natural state, without undue interference in quantity or quality
- You have the right to protect your property from flooding, and your land from erosion. You may need the consent of the LLFA or EA for such works.
- You have the right to fish in your watercourse, but this must be by legal methods and with a valid EA rod licence
- Without needing a licence, you can abstract a maximum of 20 cubic metres of water per day for the domestic purposes of your own household or for agricultural use, excluding spray irrigation, from a watercourse at a point that directly adjoins your land. Most other types of abstraction will require a licence from the Environment Agency.

Before starting any work on or adjacent to a watercourse, you must submit plans to the LLFA to determine whether you require our consent or that of other authorities. You may also require planning permission if you propose to go beyond the curtilage of your boundary.

If the work affects sites of known conservation or archaeological value, you may need further permissions from the relevant Authorities. Environmental issues, including flood risk, wildlife conservation, fisheries, and reshaping of the river and landscape, must all be considered.

## **What is Norfolk County Council responsible for?**

Under the Land Drainage Act 1991, Norfolk County Council is the 'operating authority' for ordinary watercourses in 79.3% of Norfolk (the rest is maintained by the IDB). Whilst riparian owners are responsible for maintaining watercourses, Norfolk County Council may take action where an event has or is likely to increase flood risk and relates to:

- Internal flooding of a residential property which can include an attached garage (please note - a detached garage or shed is not considered internal)
- Flooding of critical infrastructure eg hospitals
- Flooding of main roads eg priority 1 and 2 winter gritting routes

In such circumstances the Council will, in line with the Council's [Flood and Water Management Enforcement Protocol](#):

- Inspect ordinary watercourses
- Contact riparian owners where maintenance is required and if necessary, serve notice to require maintenance if water flow is seriously impaired
- Coordinate work along a watercourse where a number of residents
- Take action to prevent unauthorised piping or culverting of watercourses

# Consent for work on ordinary watercourses

Norfolk County Council is responsible for consenting on works that affect the flow of an ordinary watercourse under the terms of the Flood and Water Management Act 2010, Land Drainage Act 1991 and Water Resources Act 1991.

In line with good practice, the Council seeks to avoid culverting, and its consent for such works will not normally be granted except as a means of access.

## Who do I need to apply to for consent to alter my watercourse?

If your watercourse is part of a main river then you will need to apply for consent to the [Environment Agency](#) and not Norfolk County Council.

If your watercourse falls within an Internal Drainage District then you will need to apply to the Internal Drainage Board (IDB) responsible for that area and not Norfolk County Council. [Find your local IDB](#).

**To check who is the responsible organisation for consenting works on ordinary watercourses follow these links:**

- [Breckland District Council \(pdf - 5mb\)](#)
- [Broadland District Council \(pdf - 2mb\)](#)
- [Great Yarmouth Borough Council \(pdf - 2.4mb\)](#)
- [King's Lynn and West Norfolk Borough Council \(pdf - 4mb\)](#)
- [North Norfolk District Council \(pdf - 4mb\)](#)
- [Norwich City Council \(pdf - 7mb\)](#)
- [South Norfolk Council \(pdf - 4.8mb\)](#)

If your watercourse is not part of a main river, or within an IDB area then you will need to apply to us for consent. Download our [consent application form](#) and [guidance](#). Our [Ordinary Watercourse Consent Protocol](#) provides more information.

## How much does it cost to get consent?

Once an application has been submitted the application fee cannot be refunded, so contact us before you send in your application and we will help you check that you are sending the right amount for the consent.

There is a charge of £50 for each structure associated with the application.

## How long does it take to get consent?

You will receive a written decision within eight weeks from the date of receipt of the application. Failure to provide all relevant information will result in an automatic refusal by the seventh week. You will then have to submit a new application.

## Can consent be refused?

There are many reasons why an application could be refused. Two of the most common reasons for refusal are insufficient information within the application form to determine whether the consent can be issued and where it is deemed that a watercourse's flow could be obstructed.

Read the [guidance](#) notes and make sure you provide enough detail. If you are not sure, contact us before you send in the application.

## **Who can I contact to get advice from before making an application for consent?**

Email [water.management@norfolk.gov.uk](mailto:water.management@norfolk.gov.uk) or [contact the Customer Service Centre](#)

# **Norfolk County Council Flood and Water Management Enforcement Protocol**

## **1.0 Introduction**

This document provides supplemental guidance to Norfolk County Council's Community and Environmental Services (CES) Enforcement Policy, and is provided in the context of specific requirements arising from the Flood and Water Management Act 2010 and the Land Drainage Act 1991.

Norfolk County Council (NCC) is the Lead Local Flood Authority (LLFA) for the county. This role is fulfilled by the Flood and Water Management team.

This Protocol and guidance note has been adapted from best practice identified within local authorities in England. It is intended for use as guidance by Risk Management Authorities, developers and landowners.

## **2.0 Regulation of Ordinary Watercourses**

The Lead Local Flood Authority has powers under the Land Drainage Act 1991 to exercise its regulatory powers in relation to watercourses outside of Internal Drainage Board areas and where they are not Environment Agency designated main rivers.

The Lead Local Flood Authority will take a risk-based and proportionate approach to exercising its regulatory powers under the Land Drainage Act 1991, taking into account the location and nature of any nuisance caused by;

- the failure to repair or maintain watercourses, bridges or drainage works
- un-consented works
- impediments to the proper flow of water

This approach will take into account whether the contraventions have or are likely to increase flood risk and what the consequences of any increase in risk may be. Where works are un-consented the Lead Local Flood Authority would require the landowner, person and/or Risk Management Authority responsible for the works to prove that the un-consented works would not cause a nuisance or increase flood risk.

With regards to the causes of the nuisances described above, the Lead Local Flood Authority has powers under Sections 21, 24 and 25 of the Land Drainage Act 1991 to serve notice on individuals who have caused contraventions.

In issuing a notice the Lead Local Flood Authority may set out the works required to resolve the contravention to an acceptable standard and the date by which the works should be completed.

If the works are not completed by the date set out in the notice, the Lead Local Flood Authority may take action to remedy the effect of the contravention or failure and seek to recover the costs incurred, as well as pursue any necessary prosecution.

## **3.0 Guiding Principles**

Enforcement under the Land Drainage Act, 1991 will be carried out using the guiding principles as set out in the CES Enforcement Policy.

## **4.0 Process**

### ***a) Initial response***

Where the Lead Local Flood Authority receives a complaint in relation to an ordinary watercourse, we will carry out an initial assessment to establish whether the actual or potential flood risk meets our threshold for intervention. We aim to complete this assessment within 21 days. However, there will be occasions when it is necessary to extend the period of assessment for more complex matters and/or to accommodate

exceptional circumstances e.g. weather, flood conditions, etc.. At the outset the complainant will be informed of the case officer who will follow up the enquiry and of the outcome of the assessment.

#### ***b) Initial assessment***

The threshold for intervention will be based on the Lead Local Flood Authority's [impact criteria](#).

To assess the potential impact the initial assessment will consider the on-site conditions, any available historical data and high level indicators of potential risk, such as Environment Agency (EA) Flood risk maps for surface water flooding and flooding from rivers. It will also consider any other status of land e.g. conservation designations, common land etc.

To substantiate incidents of actual flooding as part of the initial assessment we will need to be provided with one or more of the following types of evidence:

- I. An insurance claim
- II. Records of emergency services and utility companies i.e. fire brigade attending to pump out a property
- III. Dated photos of the event
- IV. Written report from a Risk Management Authority

The evidence supplied will be determined in line with the guiding principles as set out in the CES Enforcement Policy.

The Lead Local Flood Authority may close an enforcement case file, where there is a lack of physical evidence to corroborate the impact of a flood event. If further relevant evidence was to come forward then the Lead Local Flood Authority may re-open the case file and undertake a further investigation.

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#### ***C) Further Investigation***

Where the initial assessment has identified an actual or potential risk of flooding that exceeds the adopted impact criteria, but where a site inspection has failed to identify the primary cause of the problem the authority may;

- consult with other organisations including other local authorities, Highway Authorities, Environment Agency, Natural England as appropriate.
- require or commission appropriate site surveys and inspections.

In deciding whether or not to carry out the above steps the LLFA will consider whether it is in the public interest to do so. Having regard to the actual and potential impacts of the flooding, the costs of carrying out the works and the likelihood of obtaining sufficient evidence to enable enforcement activity. Where the Lead Local Flood Authority is made aware of breaches of other legislation it will advise the appropriate authorities.

#### ***D) Outcome of initial assessment/Further Investigation***

Once an initial assessment/further investigation has been carried out the complainant will be informed in writing as to the next course of action and this may include;

- I. Informing relevant party(s) of works that are required to be undertaken within the set timescale OR
- II. No further action by the LLFA and:

- Providing advice to those affected on referral to the [First Tier Tribunal \(Property Chamber\)](#), [Agricultural Land and Drainage \(AL&D\)](#) or other relevant organisation, where appropriate
- Informing relevant parties of their [riparian responsibilities](#)

Where it is considered that further action needs to be taken by the relevant landowner, person and/or Risk Management Authority responsible this will be explained within the letter that sets out the outcome of the initial assessment/further investigation. This will include the following:

- An explanation of the problem and the remedy required in accordance with the Land Drainage Act 1991.
- Depending on the nature of the problem we aim to ensure that remedial work is carried out within the timeframe specified in the letter (between 7 and 21 days of the date of the letter). However, there will be occasions when it is necessary to extend the period of compliance for more complex matters and/or to accommodate exceptional circumstances e.g. weather, flood conditions, etc. The time allowed will be reasonable in the circumstances. The extent of the work required will be proportionate to the scale of the problem.

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- In certain circumstances practicalities may not allow for works to be done within the timeframe specified in the letter. The Lead Local Flood Authority will assess the circumstances with regards to enforcement and whether any works need to be deferred or amended to take into account the impacts of any works on wildlife. Examples where this may occur include:

- Seasonal farming practices and Environmental Schemes can restrict access or time schedules to carry out works;
- The nesting season for some birds occurs between the 1 March and 31 August and works might cause disruption if nests are present;
- Presence of protected species will influence when it is most appropriate to carry out work.

### ***Seeking resolution prior to serving notices***

The Lead Local Flood Authority will seek to resolve the situation by means of negotiation with the person responsible and obtain compliance with a request to satisfactorily undertake the work required.

### ***Serving notices under the Land Drainage Act 1991***

If a positive response to the Lead Local Flood Authority's letter has not been received within the timescale specified and on inspection no work has been satisfactorily undertaken as required, a notice under the relevant section of the Land Drainage Act 1991 will be served. The notice will include the nature of the work to be carried out, the period within which it is to be carried out and any relevant right of appeal to a magistrates' court within 21 days of service of the notice (where applicable). A Notice under the Land Drainage Act 1991 is a legal document formally requiring specific work to be carried out within a set timescale.

A letter will accompany the notice and inform the responsible person that in the event of their failure to satisfactorily undertake the work, the Lead Local Flood Authority may carry out the work itself and recover from the person responsible the expenses reasonably incurred in doing so which will include recovering the costs of pursuing the case.

### ***Enforcement of notices***

Following service of the notice, one of four things will happen:-

- The responsible person will carry out the work to the satisfaction of the council.
- The responsible person may appeal the notice.
- The responsible person will fail to carry out the work to the satisfaction of the Lead Local Flood Authority and the Lead Local Flood Authority will seek to recover their expenses; and /or

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- The Lead Local Flood Authority will, where appropriate, decide whether to take a prosecution against the responsible person, in addition to carrying out the work and seeking to recover the costs of that work.

### ***Completion of proceedings***

If the responsible person complies with the notice and completes the work to the satisfaction of the Lead Local Flood Authority, the Lead Local Flood Authority will write to the responsible person confirming the closure of the case and the end of the action.

### **No further action**

The Lead Local Flood Authority may take no action where:

- there is no actual or potential risk to properties or infrastructure; and/or
- that the matter complained of is not the cause of the drainage problem; and/or
- the matter is trivial in nature

If this is the case, the complainant will be advised accordingly and a written communication will be sent to the complainant explaining the reason why no action is to be taken. The complainant will also be referred, where appropriate, to the [\*First Tier Tribunal \(Property Chamber\), Agricultural Land and Drainage \(AL&D\)\*](#) or other relevant organisation. The riparian owner will also be informed, as appropriate.

Examples of matters not requiring action may include minimal silting of the watercourse, slight vegetation overgrowth, the accumulation of a small quantity of debris etc

### **Advice**

The Lead Local Flood Authority will provide basic information and advice to individuals of their riparian ownership responsibilities and of the route for appeal against other riparian owners where appropriate. The Lead Local Flood Authority may suggest that independent legal and/or technical advice is sought, where appropriate.

### **Further Information**

Please consult the Glossary of terms document which supports this protocol.