

Riparian Owner Responsibilities and Roadside Ditches

Kent County Council is committed to reducing the risk of flooding and has prepared this leaflet to provide information for landowners. It outlines their responsibilities for the maintenance of watercourses on or adjacent to their land as set out in the Land Drainage Act 1991 (the Act).

What is a Watercourse?

A watercourse is defined as any channel through which water flows. It may range from a river, through a reasonable sized ditch with a constant flow to a shallow depression which carries water infrequently. Within the meaning of the Act watercourses may flow through a pipe, known as a culvert.

Watercourses are classified as either:

- **Main Rivers** – These are managed by the Environment Agency (EA). The responsibility for their maintenance and repair lies with the “Riparian Owner(s)”, although the EA also have powers to maintain and improve them. For more information on your responsibilities regarding Main Rivers, refer to the EA document “Living on the Edge” which is available on the EA website.
- **Ordinary Watercourses** – These include any rivers, streams, ditches, drains or channels which do not form part of a Main River as designated by the Environment Agency. The responsibility for their maintenance and repair lies with the “Riparian Owner(s)”

Land Drainage Authority

Kent County Council and the Internal Drainage Boards are the local Land Drainage Authorities in Kent for ordinary watercourses and have powers under the Land Drainage Act 1991.

The Act gives Land Drainage Authorities powers to deal with obstructions in ordinary watercourses where obstruction to the flow of water creates a risk of flooding. If an obstruction impedes the flow, the relevant Land Drainage Authority may serve notice on the Riparian Owner to remove the obstruction. If no action is taken, the Land Drainage Authority may carry out the work itself and recover the cost from the Riparian Owner.

Land Drainage Authorities do not have a duty to carry out any works on ordinary watercourses.

Land Drainage Consent

The Act requires that consent is sought from the relevant Land Drainage Authority for any structure proposed within a watercourse or any activity causing a diversion to the flow.

For example, consent would be required from the Environment Agency to culvert a Main River while consent would be required from Kent County Council or the relevant Internal Drainage Board to culvert an ordinary watercourse. Inadequately culverted watercourses can cause flooding as well as safety, maintenance and environmental problems. The Environment Agency and Kent County Council are generally opposed to the culverting of watercourses and consent will usually only be granted if there is no practical alternative.

Who is a Riparian Owner?

Under common law a property or land owner is the Riparian Owner of any watercourse within or adjacent to that property or land. Where a watercourse is sited between two or more properties, each owner will be equally responsible.

What are the responsibilities of Riparian Owners?

A Riparian Owner must:

- Accept water from an upstream neighbour and transfer this, together with drainage from their own property, to their neighbour downstream. They must accept water ponding on their land, even if caused by inadequate capacity downstream, as there is no common law duty to improve a watercourse downstream.
- Carry out, at their own expense, any necessary maintenance of a watercourse to the satisfaction of the relevant Land Drainage Authority.
- Maintain the banks and bed of a watercourse including any culverted sections to avoid any obstruction to the flow of water.
- Apply for land drainage consent to the relevant Land Drainage Authority for any structure proposed within a watercourse or any activity causing a diversion to the flow.

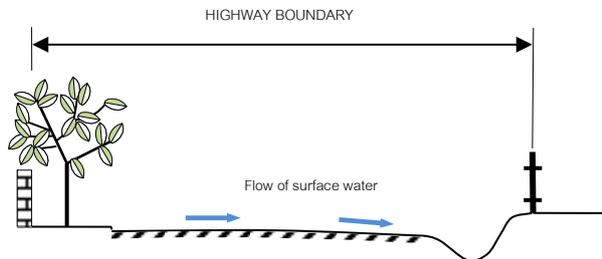
What are the responsibilities of the Highway Authority?

As the Highway Authority, Kent County Council has a common law duty to maintain the highway and “put the highway in such good repair as renders it reasonable passage for ordinary traffic of the neighbourhood at all seasons of the year without danger caused by physical condition”. This duty to maintain includes a duty to keep the highway free from flooding and provide adequate drainage. The Highway Authority also have responsibility for the maintenance and repair of culverts and bridges located beneath adopted highways.

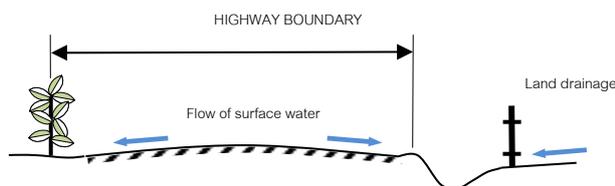
Roadside Ditches

There are three categories of roadside ditch:

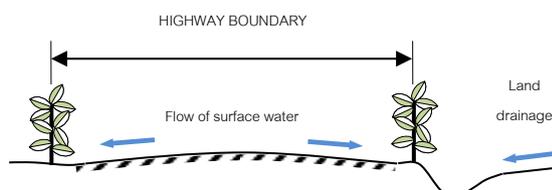
- A ditch created by the Highway Authority and owned by them solely for draining the highway, which is the responsibility of the Highway Authority:



- A ditch on the road side of fences and hedges taking land drainage as well as highway drainage, which is the responsibility of the Riparian Owner:



- A ditch on the field side of a fence or hedge taking land drainage as well as highway drainage, which is a responsibility of the Riparian Owner:



The Highway Authority has a prescriptive right to drain the highway to any adjoining roadside ditches. Rural roads rely to a great extent on ditches to remove water and their effectiveness is vital to keeping them in good condition. Common law imposes a duty on the owner of land adjoining a highway to maintain these ditches that provide natural drainage for both the land and highway. In the majority of cases the responsibility for ditch maintenance rests with the adjacent landowner.

Common problems affecting watercourses are:

- Allowing silt to build up which can reduce the capacity of, or block watercourses
- Failing to keep vegetation growth under control
- Disposal or storage of garden or domestic rubbish or waste on the banks of watercourses
- Failing to clear the entrances to culverted sections of watercourse
- Failing to obtain consent for any building, planting or alterations within eight metres of the bank

What are the consequences of a Riparian Owner's failure to look after a watercourse?

- A drainage problem for the property owner and neighbouring land owners.
- Potential flooding of properties, the highway and surrounding land.
- Possible enforcement action taken against the Riparian Owner by the Land Drainage Authority under the Land Drainage Act 1991.

We are happy to discuss any problems with you. To contact us, please telephone our 24 hour helpline on **0300 333 5540**. Your call will be logged and will be passed on to an officer who can help.

Thank you for your co-operation

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