

*If you are unsure about anything within these notes, then please contact the Flood Risk Management (FRM) team using the contact details at the end of this guidance note.*

In many instances the partial or full blockage of a watercourse can result in flooding to land or in the worst-case properties, businesses and/or critical infrastructure. The Lead Local Flood Authority (LLFA) is committed to raising awareness of riparian responsibilities for flood risk management and produces guidance notes to assist riparian landowners in understanding their responsibilities.

The key aims of enforcement in flood risk management are to ensure the proper flow of water in a watercourse and over the floodplain, the control of water levels and security of existing assets. To achieve these aims, enforcement action may be used to resolve matters, however, this will always be proportionate to the risk and subject to the approach set out below.

Where the FRM team has been made aware of a potential blockage or obstruction to an ordinary watercourse, the team will work with all parties involved to help resolve the problem before considering the use of their permissive enforcement powers.

### **The County Council's approach to enforcement**

The powers the LLFA has in relation to land drainage enforcement are permissive. The LLFA does not have a duty to carry out works or to take enforcement action.

It is at the LLFAs discretion as to when / if it exercises them. Prior to any enforcement action being considered:

- it will be necessary to determine the riparian owners of the watercourse in question;
- the riparian owners should be advised of their responsibilities, the risks, and the potential consequences of any neglect of these responsibilities.



**A partially obstructed trash screen**

- the cooperation of the riparian landowner will be sought in resolving the cause / source of the problem.

This may involve site meetings to agree the work required and the timescales for actioning the work. The FRM team will work with all parties involved to help resolve the problem before considering the use of their permissive enforcement powers.

Consideration will be given to the effectiveness of the action in managing, mitigating, or resolving the problem in the short, medium, long term and whether other options exist to provide a more effective and sustainable solution.

Only where all avenues have been exhausted will the FRM team consider recommending enforcement action.

In negotiating a solution or in exercising the LLFAs enforcement powers, it will do so using the following guiding principles:

- **Openness:** Provision of information and advice about how we carry out our work, including consultation with stakeholders.
- **Helpfulness:** Provision of advice and assistance on compliance in a courteous, efficient, and prompt manner.
- **Proportionality:** Action taken to be proportional to the risks posed.
- **Consistency:** Duties to be carried out in a fair, equitable and consistent manner, and with arrangements in place to promote consistency.

### Powers under Section 25 of the Land Drainage Act

It is the responsibility of the riparian landowner to ensure that watercourses are maintained properly so that they do not pose a flood risk. For more information regarding riparian landownership please refer to the [Riparian Landownership Guidance Notes](#).

Under Section 25 of the Land Drainage Act (1991) (LDA) the LLFA has permissive powers to undertake works to maintain the flow of an ordinary watercourse and to carry out the works in default and recover their expenses from the riparian landowner in the event they fail to resolve the problem in a reasonable timescale.



**A silted box culvert**

It is at the LLFAs discretion as to when it exercises these powers and the LLFA will determine whether to exercise its permissive powers on a case-by-case basis. In coming to a decision as to whether to exercise its powers, the LLFA will take into account:

- the past compliance performance of the landowner;
- the likely effectiveness and risk associated with enforcement action;
- the consequences of non-compliance; and
- the public interest.

A decision to take enforcement action will only be considered where all other avenues of communication have been exhausted and/or there is robust evidence to support that five or more residential properties have been affected or at direct risk of internal flooding and /or there is a risk to life and/or critical infrastructure.



**A partially obstructed culvert**

### **Powers under Section 24 of the Land Drainage Act**

Under Section 24 of the Land Drainage Act (1991) (LDA), the LLFA has permissive powers where damaging or potentially damaging works have been undertaken to an ordinary watercourse without consent or where works are in contravention to an approved land drainage consent under Section 23 of the LDA.

Failure to secure land drainage consent for a consentable activity prior to carrying out the works may be a criminal offence and any person acting in contravention of Section 23 of the LDA, may be liable, on conviction, to a fine of up to £5,000, and to a further fine of up to £40 for every day contravention is continued after conviction.



**A blocked culvert**

Under Section 24 of the LDA, the LLFA has permissive powers to take any action deemed necessary to remedy the effect of contravention of failure to gain consent and recover the expense of doing so.



For more information relating to the land drainage / ordinary watercourse consenting process please visit the County Council's **website**<sup>1</sup>.

### **Powers under Section 14a of the LDA**

Under Section 14a of the LDA, the LLFA has permissive powers to carry out improvements and construction works to mitigate flood risk from an ordinary watercourse.

### **Further advice for helping to resolve nuisance flooding**

The LLFA is committed to help resolve any flooding nuisance enquiries by mediation and an open and transparent dialogue with all parties.

Where nuisance flooding may be caused by new development (buildings, walls, or hard surfaces e.g., driveways, car parks, pavements), you may wish to contact the local planning team at your Borough or District Council to determine whether there has been a breach of planning permission.

There is no legislation to govern the management of surface water. As a property owner you have the right to defend your property from surface water; however, you cannot pipe or transfer surface water in a concentrated manner onto adjacent land.

You may wish to seek legal advice should you be minded to pursue your individual private legal rights through the civil courts. However, you should be aware that you may be responsible for not only your legal costs but those of the other party if unsuccessful, and you may have to bear some of their costs even if you are successful.

For further guidance please refer to the **[Surface Water Guidance Notes](#)**.

The LLFA is committed to promoting the awareness of land drainage laws and riparian landowner responsibilities (please refer to the **[Riparian Landownership Guidance Notes](#)**).

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<sup>1</sup> [www.derbyshire.gov.uk/environment/flooding](http://www.derbyshire.gov.uk/environment/flooding)