

ROTHERHAM METROPOLITAN BOROUGH COUNCIL

Streetpride Service

Policy for Consents or Approval of Works Affecting and Ordinary Watercourse

Introduction

On the 6th April 2012 Defra announced a transfer of power under Floods and Water Management Act in 2010, whereby Lead Local Flood Authorities (LLFA) have the responsibility for managing local flood risk.

It is a duty of the LLFA to determine Flood Defence Consents on ordinary watercourses, with the exception of ordinary watercourses which are the responsibility of the Internal Drainage Board i.e. in the Wath Upon Dearne area of Rotherham.

The following table defines terms set out in the Flood and Water Management Act 2010 for LLFA.

Term	Definition	Source
ordinary watercourse	a "watercourse" that does not form part of a "main river"	Flood and Water Management Act 2010
watercourse	includes all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991) and passages, through which water flows.	Land Drainage Act 1991 [section 72(1)]
main river	watercourse shown as such on a main river map. Main river maps are held by Defra and Welsh Government and copies are available to LLFAs as a GIS layer on GEOSTORE.	Water Resources Act 1991 [Section 113]
culvert	a covered channel or pipe designed to prevent the obstruction of a watercourse or drainage path by an artificial construction. There is no definition in current legislation. This definition will be added to Section 72 of the Land Drainage Act	Flood and Water Management Act 2010 Paragraph 39

Aims of determining a consent

To determine a Consent the following should apply :-

- Consents apply to the channel within the ordinary watercourse only.
- Controlling obstructions to flow on ordinary watercourses.
- No increase in flood risk upstream and downstream.

- Works are carried out in such a way as to avoid unnecessary environmental damage
- Consents can not be given to retrospective works

Works that REQUIRE a consent

- Box Culverting, (extension or removal of under Land Drainage Act 1991 Section 23 (1) (b), including trash screens Section 23 (1) (c)
- Culverts within channel (extension or removal of under Land Drainage Act 1991 Section 23 (1) (b))
- Bridge structures or pipe crossing structures within channel (under Land Drainage Act 1991 Section 23 (1)(a) if placed on bed and under Section 23 (1)(b) if above bed)
- Weirs and Dam like obstructions, this could include temporary works (under Land Drainage Act 1991 Section 23 (1)(a))
- If the structure is “likely” to impede the flow of a watercourse
- Temporary works may require consent, e.g. scaffolding, a dam, overpumping, or significant in-channel works

It is important to note that the proposed consent may require other permissions such as environmental or ecological permission, SSI sites, heritage site, IDB, Environment Agency for water quality or pollution issues etc.

Consent does not give right to go on third party land, or cause environmental harm.

Works that would normally NOT REQUIRE a consent but may require Written Approval from the LLFA

- Bank protection works (under Land Drainage Act 1991, Temporary works may require consent).
- Pipe Crossings below or above channel (under Land Drainage Act 1991 as it does not affect the watercourse – Potential temporary works consent)
- Outfalls (under Land Drainage Act 1991 as it will not act like a dam/weir or like obstruction)
- Clear span bridges (under Land Drainage Act 1991 as does not interfere with flow).

Routine maintenance of ordinary watercourses should not normally require consent, e.g. tree works, removing debris, but may require written permission from the LLFA.

For all consents or written approvals, consideration should be given to future maintenance and where necessary works should be designed to allow for extreme storm events and climate change.

Consent Process

The consent process is normally carried out in four stages and is detailed in Appendix A and Appendix B.

All Consents or written approval for all works affecting an ordinary watercourse are entered onto the LLFA Register for record purposes.

Objectives

It is a duty of the LLFA to provide adequate surface water management within its catchment area. The main aims for works on ordinary watercourse are to provide maintenance of the watercourse, protect the environment, prevent damage to the channel and embankments and to ensure that all flows are not being impeded.

It is essential that all consents and approval are adequately recorded in the LLFA register and are in strict compliance with the Floods and Water Management Act 2010.

APPENDIX A

Consent Process

The consent process is normally carried out in four stages. Guidance on each stage is provided as follows:

1. Pre-application

- It is normally better to encourage applicants to undertake works in such a way that a consent is not required
- A clear span bridge is better than a culvert
- Scaffolding outside of the channel is better than within the channel
- Directional drilling is less disruptive to a watercourse than an open cut trench

2. Determination

When determining a consent the following should apply :-

- TWO MONTHS from the date of receiving the application, or on receipt of a fee, whichever is later
- Consultation with other relevant internal functions, particularly ecology
- Conditions can be included, but must be relevant and linked to the “timing and manner” of the works
- Always condition the time for works to be completed (e.g. 36 months maximum)
- Consent can either be granted or refused, there is no mechanism for an extension. If consent is not determined within 2 months, then it is automatically granted
- Need for decision making audit trail (e.g. for ombudsman purposes, appeals and challenges)

There are TWO types of refusal based on :-

- Insufficient information
- Design and manner

3. Design Guidance

Before any consent within a watercourse is considered the works must be designed and carried out to an approved standard. The following documents provide the necessary information and should be considered at the consent stage:

- CIRIA design manual for culverts
- EA/DEFRA guidance on trash screens
- EA can provide general information on most types of structures, such as pipe crossings, bridges, weirs and bank protection (EA Fluvial Design Guide – on-line)

Examples of work within a watercourse which WOULD require consent are as follows:

a. Weirs or Dams



b. Culverts



c. Trash Screens or Grids



d. Highway Works or Culverts



4. Appeals

Appeals are the 'last option' and should be avoided if possible. If the situation reaches the Appeal Stage then it will be necessary to provide and evidence all records, documentation, reasoning for refusing a consent. In extreme situations LLFA representatives may be required to attend a Court hearing, therefore ALWAYS seek Legal advice.

The following guidance should apply in all cases:-

- Try to resolve issues in the first instance
- If it goes to Arbitration, both parties agree an arbitrator
- An Arbitrator will look at whether consent has been unreasonably held
- Seek legal advice

Compliance

To comply with the requirements of the consents the following actions should be carried out :-

- A record should be kept of consents which have been determined

- Details of when works have commenced and completed should be kept
- Compliance checking of completed works should be undertaken, particularly high risk applications
- Recommend a data retention process, i.e. GIS, hard copies, electronic copies

Enforcement

The Land Drainage Act 1991 provides the LLFA with enforcement powers which are provided to ensure that the flows within the watercourse are not impeded. All enforcement actions taken by the LLFA will be against the riparian owner (or landowner) for failure to maintain the flows within a watercourse or for works carried out which causes the flows to be impeded.

The following is for guidance purposes:-

- Enforcement action is used to rectify unlawful or potentially damaging works, using risk based approach
- It is recommended that the following Enforcement Actions are taken:
 - a) Site visits and face to face meetings
 - b) Sending advisory
 - c) Sending warning letters
 - d) Serving notice under the relevant Section of the LDA enforce, prohibit or carry out works
 - e) Prosecution and reclaiming costs of prosecution
 - f) Remedial action plus recharge of costs of remedial action

NB – Serving Notices and Prosecution should be the last option, avoid this course of action if possible)

- Planning Enforcement action can be taken by the Planning Officer if the applicant is in breach of Planning Conditions

Enforcement Powers

The following Sections of the Land Drainage Act 1991 apply to enforcement powers which are as follows:-

Section 24 of the Land Drainage Act 1991

- Works which have been undertaken without consent

Section 25 Land Drainage Act 1991

- Where an ordinary watercourse is in such a condition that the proper flow of water is impeded
- Powers to serve notice so that the condition of the watercourse is remediated

NB – Section 23 of the Land Drainage Act 1991 is NOT an enforcement action. Section 23 relates to consents only.

Ordinary Watercourse Enforcement Activities

The table below outlines the typical steps in an ordinary watercourse enforcement case. The individual circumstances of each case, both legal and factual, will inform and determine which step in the enforcement process is applicable at any one time.

Activity	Description	Suggested Action
Legislation	The Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010, underpins regulation of ordinary watercourses.	<u>Land Drainage Act 1991</u> (particularly section 23) and <u>Flood and Water Management Act 2010</u> (principally paragraph 32 of schedule 2).
Training prior to carrying out enforcement	Persons undertaking an enforcement role should be trained and authorised in writing to do so. This will ensure that the required enforcement tasks are carried out safely and legally and that they have the right to lawfully enter land.	Receive training and ensure necessary authorisations in place prior to undertaking enforcement work.
Establish if an offence has been committed	A report or visual inspection of an asset may identify a problem which could be deemed an enforcement case.	Keep a record of any enforcement action taken including all relevant correspondence and telephone calls. - Seek advice from other colleagues or stakeholders with an interest in the case; - Assess whether consent has or may have been issued for problem; - Collect further information e.g. initial site visit to understand issues involved and extent of damage.

Classify risk and decide appropriate response	Carry out an initial assessment on whether the issue could cause a risk to life and property. Consider: <ul style="list-style-type: none"> - criticality of location (e.g. proximity to critical assets e.g. culverts); - visible extent of damage to any assets or any water escape; - potential consequence of a failure - forecast weather conditions 	If damage is considered high risk consider compiling a recommendations record. The final version forms part of any case file. Prepare for undertaking site specific enforcement action. If damage is considered low risk consider sending a warning letter with future monitoring to measure change.
Investigate and gather evidence	Evidence is collected for a case.	Consider requirements for setting up an investigation, collecting evidence and bringing a matter before the courts, including preparation of a case file.
Choose and apply response to offence	If you intend to issue a letter or legal notice you should give: <ul style="list-style-type: none"> - written explanation of problem; - outline of what needs to be done and by when. Where time permits, aim to serve a notice to give the offender an opportunity to rectify the problem without needing to go to court.	Consider issuing appropriate Notice or letter. ! Important cases for prosecution must be presented within 6 months of the Notice lapsing. Within this period you must leave sufficient time to prepare a case. A delay could lead to a situation where no prosecution can be commenced.
Review	Ongoing monitoring and review is important feedback to inform future approach and work effectively with customers.	Consider raising public awareness by: <ul style="list-style-type: none"> - door to door visits; - letter and booklet drops; - speaking to Parish Councils or other community groups.

Appendix B
Flow Chart for Applications for Works on Ordinary Watercourses

Payment
 Location Plan
 Application Form
 Drawing
 Method Statement
 Calculations

Interaction with other procedures such as planning, water abstraction etc.

EA
 IDB
 Ecologist
 Natural England
 WFD?
 English Heritage?
 See transferring of powers Q and A re RMBC applications

Change in end date required?

