

ARUN DISTRICT COUNCIL

GUIDELINES to the LAND DRAINAGE BYELAWS

Introduction

These Guidelines have been prepared to give information to owners of land on which there is an 'ordinary watercourse' or where there is one located adjacent to the boundary of their land. The Guidelines are to be read in conjunction with Arun DC's Land Drainage Byelaws approved by the Secretary of State for Environment Food & Rural Affairs on 30th September 2004 but do not form any part of the Byelaws and are issued for clarification of application and interpretation.

Reference in these Guidelines and Byelaws to the Act means the Land Drainage Act 1991.

The information particularly relates to a landowner's 'riparian' responsibilities in respect of 'ordinary watercourses', and a drainage authority's powers, where there is an obstruction to flow, a risk of flooding or flooding has occurred.

Main River & Ordinary Watercourse Powers

The Environment Agency has Byelaws applicable to 'main rivers' & 'Internal Drainage Board (IDB) watercourses' that are essentially similar. Under the Act, Arun DC Byelaws can only be applied to 'ordinary watercourses' in Arun DC's area that are not 'main rivers' or 'IDB watercourses'. In the Arun DC area IDBs are administered by the Environment Agency. As far as possible Arun DC Byelaws for 'ordinary watercourses' are consistent with Environment Agency Byelaws.

'Main rivers' are shown on a statutory plan, a copy of which is held at the local Environment Agency office at Guildbourne House, Chatsworth Road, Worthing, West Sussex BN11 1LD.

'Ordinary watercourses' are defined but not specifically identified on a statutory plan. In practice, 'ordinary watercourses' may range from a reasonable sized ditch with a constant flow to nothing more than a depression which carries water infrequently. Within the meaning of the Act 'watercourses' may also be culverted (i.e. Piped). Whilst these watercourses may now take run off from highways and surface water sewers serving properties, the original base flow will be from a land drainage source.

'Watercourses' are defined as a river, stream, ditch, drain, culvert, dyke, sluice and passages through which water flows (other than public and private sewers)

Roadside Ditches

Roadside ditches may be in one of 3 categories

- A ditch created by the Highway Authority solely for draining the highway 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 is a 'riparian owner' responsibility
- A ditch on the field side of a fence or hedge taking land drainage as well as highway drainage is a 'riparian owner' responsibility

Within Arun DC's area West Sussex County Council are the Highway Authority.

Riparian Owners

'Riparian Owners' are those who have an open or culverted (piped) watercourse either directly on their land or directly abutting the boundary of their land. This includes an open or culverted watercourse outside the property and adjacent to the road.

'Riparian Owners' are responsible for maintaining the watercourse and any associated structures (i.e. headwalls, screen, weir etc.) and primarily to keep them free of any obstructions that may impede flow in the watercourse. These land drainage obligations must be exercised with due care and must not cause or perpetuate a nuisance.

Failure by 'Riparian Owners' to maintain a watercourse and keep it clear of obstructions may result in

- a drainage problem for neighbours and other landowners
- surface water flooding that may enter houses
- enforcement action being taken by the local authority.

'Occupiers' may have control of the land and application of 'riparian ownership' obligations will be subject to an individual interpretation of the circumstances in each case.

Land Drainage Powers of Local Authorities

Arun District Council's powers to make Land Drainage Byelaws to 'secure efficient working of the drainage system in its area' originate from S66 of the Land Drainage Act 1991.

The Act confers powers on local authorities relating to flood prevention and maintaining flows in watercourses. These powers are permissive, giving local authorities discretion over their use.

Local authorities also have powers available to them under the Public Health Act 1936 which can be exercised when a land drainage problem creates a statutory nuisance or a situation which is prejudicial to health.

Where problems relate to ditches and culverts at the side of the road that cause flooding of the highway, Arun DC is likely to refer them to the Highway Authority, West Sussex County Council, who have similar powers to require 'riparian owners' to carryout remedial works.

Enforcement Action by Local Authorities

Arun DC may decide to exercise the permissive powers if it is approached by property owners affected by badly maintained or obstructed watercourses and they have been unable to get a 'riparian owner' to carry out necessary works.

In the first instance, Arun DC will try to resolve the problem informally by explaining 'riparian ownership' responsibilities and agreeing the work that is required to the watercourse to rectify the problem. If this approach is unsuccessful, Arun DC may require and enforce 'riparian owners' to carryout works using powers under S25 of the Land Drainage Act 1991 where the flow of water is impeded and the condition needs to be remedied.

A formal Notice will be served by the Council's Solicitor if there is no action by the 'riparian owner' to remedy the situation. Prior approval of the Environment Agency will be sought by the Council before issue of the Notice. The recipient of the Notice has the right of appeal to a Magistrate's Court. If the work is not carried out and the recipient does not appeal within the statutory time scales, the Council may carry out the work and recover the costs reasonably incurred.

Under S263 of the Public Health Act 1936 the Council has powers to remedy statutory nuisances which may include clearance of blockages. Arun DC will set up procedures for dealing with rubbish dumping, garden waste and fly tipping in ditches where there is no immediate risk of flooding.

Environment Agency Consent Approvals

In order to alleviate the potential risk of flooding, a Land Drainage Consent is required from the Environment Agency for anything which might affect the flow in an 'ordinary watercourse' including construction or alteration of dams, weirs, mills, channel diversions and culverts (piping).

No person shall without the previous consent of the Environment Agency construct a culvert or any flow control structure (such as a weir) on any ordinary watercourse. Culverting of any existing open watercourse requires specific consent from the Agency.

In due course Arun DC will develop and agree with the Environment Agency where new discharge consents to 'ordinary watercourses' are necessary.

Any proposals for construction or excavation (including temporary works) within 8 m of 'main rivers' will require a Land Drainage Consent from the Environment Agency.

Biodiversity and Ditch Clearance

The Council wishes to adopt a more active role in terms of biodiversity when undertaking ditch clearance and where possible the Council will respect the time of year for carrying out work subject to assessment of the flooding risks and impact.

All reasonable precautions should be taken to ensure that the work in any watercourse or waterbody is done in an environmentally sensitive manner such that it will not cause unnecessary damage to fauna, flora and habitats

The Council has prepared a Biodiversity & Ditch Management good practice guide (Appendix attached) for use by contractors and landowners where appropriate. It is based upon national guidelines from the Environment Agency and English Nature. In exceptional circumstances, any criminal sanctions would be related to specific statutory requirements and 'reasonable precautions' would be assessed against the national recommendations.

Fences & Access

The erection of post & rail fences crossing watercourses is acceptable but provision for access to undertake maintenance should always be borne in mind.

The erection of fences on either side of a ditch running between properties does not alter joint 'riparian ownership' responsibility for the ditch but clearly makes it more difficult and costly to practically meet their obligations. Unless specifically stated to the contrary, the normal convention is that the boundary will be along the centre line of the ditch and not at the fence or hedge.