

Land Drainage. Rights and Responsibilities

Introduction

As we experience increased levels of development and more intense and heavy rainfall events, the importance of maintaining and improving the capacity of the county's land drainage system has never been greater.

Not only is an effective drainage system essential to prevent flooding, it is also important to keep our highways safe and enable productive farming. Ditches and drains play an important role in allowing surface water to drain freely away from highways, fields and adjacent land. In order for them to remain effective they require regular management to enable them to function.

The maintenance of rivers, streams and ditches is usually the responsibility of the "Riparian Landowners" who own land on either bank. If you are such a landowner you will have both rights and responsibilities associated with the ditches, or other watercourses, flowing through or adjacent to your property.

The EA has produced a guide to the rights and responsibilities of riverside ownership called 'Living on the Edge' which is available from:

www.gov.uk/government/publications/riverside-ownership-rights-and-responsibilities

Who is responsible for maintaining what?



Land Drainage law is complex, and is the result of historic common law, case law and specific legislation such as the 1991 Land Drainage Act. There are, however, some general rules which can be applied to ascertain responsibility for ditch or watercourse maintenance.

If you are a landowner, to reduce the risk of flooding to neighbouring properties, the law requires that you maintain your ditches and drains to prevent flooding. Failure to do so may result in a legal liability for the damage that any resultant flooding may cause.

Drains

Keep the **drains** clear on your property and ensure that you do not drain water into your neighbour's property or foul drain. There is a right of drainage that allows water that flows across your land to flow downhill naturally to your neighbour's land. But you are not allowed to artificially channel water in a way that will cause damage your neighbour's land. If you do, you may face a civil action. (Example: **Allowed** - rainwater that falls on your lawn is allowed to flow downhill through your neighbour's land. **Not allowed** – water from your property is channelled through a down pipe or other pipe onto your neighbour's property.)

Watercourses and Ditches

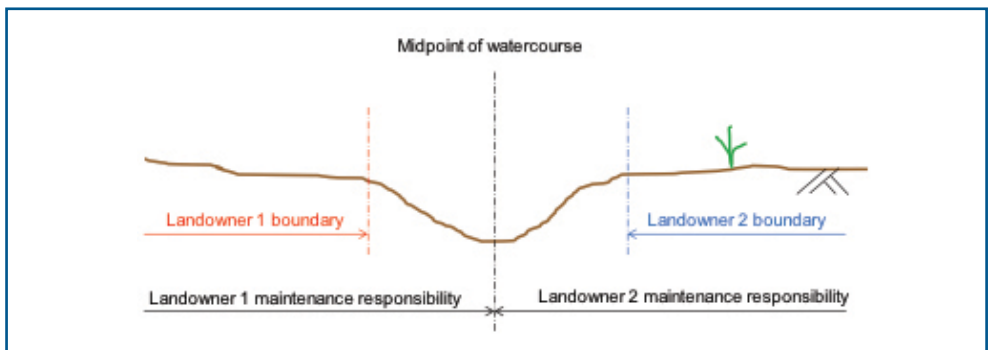
The normal position in connection with who is responsible for the maintenance of **watercourses and ditches** is shown in the illustrations below.

A **watercourse** is a natural feature which drains the surrounding catchment and normally has some water flowing in it.

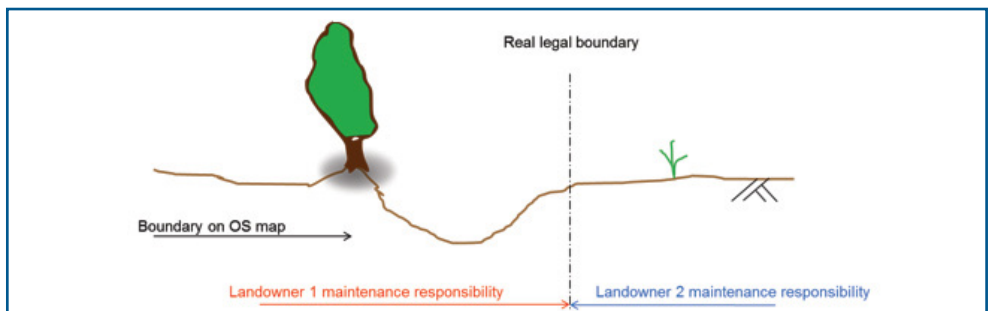
A **ditch** is a man-made feature which has been created in order to drain an area of land. Historically these were normally dug by a landowner at the edge of their field and the spoil deposited on their land, on which hedges grew over time.

As a result, the **common law 'hedge and ditch' rule** says the landowner responsible for maintaining the ditch is *normally the landowner on the opposite side of the hedge*.

Watercourse:



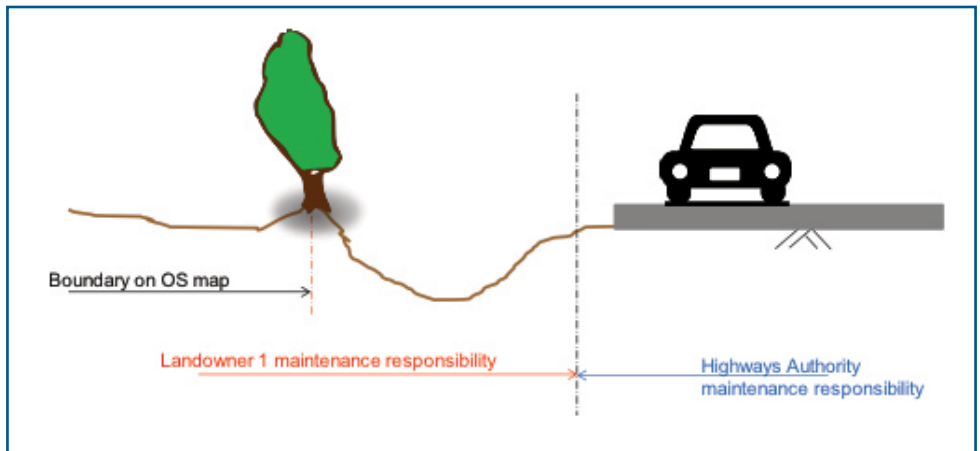
Ditch:



Highway Ditches

The common law hedge and ditch rule has particular relevance in relation to **highway ditches** which are normally

the responsibility of the adjacent landowner (see illustration below).



There are some limited exceptions where Warwickshire County Council may take additional responsibility for maintenance of ditches and drains as follows.

1. A historic agreement is in place where Warwickshire County Council have agreed to maintain a ditch.
2. Highways own land on both sides of the watercourse.
3. A ditch does not drain any adjacent land, but only the highway.

Warwickshire County Council is responsible for regular maintenance and cleansing of gulleys and grips on the highway.

The National Farmers Union have also produced guidance on this subject: www.nfuonline.com/about-us/our-offices/north-east/north-east-key-content/environment-hub/flooding-rights-and-responsibilities/

Blocked Culverts

A culvert is simply a covered watercourse and the same maintenance principles apply to them as to watercourses. Responsible landowners must keep any structure such as culverts (but also trash screens, weirs, gates etc.) on their property clear from debris. If you are a landowner and have a culvert under your land, you need to maintain it free from leaves and debris. If you take no action, and it becomes blocked and flood damage results, you could be held liable for this damage.

Flood Defences

Maintain your **flood defences** (if you have any). If failure to maintain these defences leads to flooding, you could face a claim in negligence or nuisance.

How to maintain water features

For all ditches for which you are responsible, it is good practice to develop a programme that sets out how often and at what time of the year you will carry out maintenance works and agree this with neighbouring landowners. Often costs can be reduced by landowners working

together and local issues can normally be resolved at a local level through the Parish Council or local community.

We have a separate guidance document regarding how to maintain drains, ditches and watercourses which is available on our website.

Resolving maintenance issues



Warwickshire County Council, through its Flood Risk and Water Management team, holds the role of Lead Local Flood Authority to oversee surface water flood risk within Warwickshire. This role was created in response to the widespread

flooding in 2007 and was one of a number of recommendations of The Pitt Review enacted into law under the Flood and Water Management Act 2010.

We will always take a proportionate and risk-based approach to managing flooding within Warwickshire, but where we suspect that an offence has occurred or is about to occur, we will take appropriate action. Action will range from the provision of advice and guidance to serving notices and prosecution.

However maintenance issues are normally resolved more quickly at a local level through the intervention of the Parish Council or local community before any enforcement action is needed.

Disclaimer

Warwickshire County Council hopes that this document is useful. However, it is not intended to be a definitive statement of the law on all particular instances. If you are in any doubt as to your legal position regarding a specific drainage issue we would advise you to seek independent advice.

For further information contact the Warwickshire County Council Flood Risk Management team on flooding@warwickshire.gov.uk, or tel. 01926 412982.