

Ordinary Watercourse Land Drainage Consents in Warwickshire Advice Note

Warwickshire County Council as Lead Local Flood Authority

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*Please note, this advice note will be updated in a year from the publish date unless legislative or best practice changes require an update in the interim

What requires a consent?

Section 23 of the Land Drainage Act 1991 requires that before the erection or alteration of any obstruction to the flow in an ordinary watercourse, a written consent is obtained from the Lead Local Flood Authority (LLFA) for the area. These obstructions include; any mill dam, weir or like obstruction, or a culvert. There is no national map of ordinary watercourses, but a map of designated main rivers can be found at the below link. All other watercourses will be classed as ordinary watercourses.

<https://www.arcgis.com/apps/webappviewer/index.html?id=17cd53dfc524433980cc333726a56386>

In some cases, the proposed structure itself may not require a consent as it does not affect the flow in the watercourse, however the temporary works to construct the structure may include obstructing the flow to make a dry working area or to provide access. If this is the case, a consent application should be made.

What information must be submitted?

The amount of information required to support an application is generally proportionate to the complexity of the proposals and the flood risk associated to the location or proposals.

As a minimum, a complete application should include;

- A completed application form
- A location plan (showing coordinated positions of the structure(s) covered by the application)
- Plan and section drawings of the structure(s), including how it will fit into the existing watercourse.
- A method statement and site-specific risk assessment detailing how works will be done. Particular consideration should be given to what measures are in place both during and after the works to address;
 - o pollution to the watercourse (silt, spillage, etc),
 - o damage to the watercourse (scour, destabilising the bank, etc),
 - o damage to the environment (surveys, habitats, vegetation, etc),
 - o an increase in flood risk during and after the works particularly if the work area is to be dewatered (monitoring of flood alerts, weather forecasts, evacuation plans, etc).
- application fee (see section below)
- details of who will be taking ownership of the structure and will be responsible for its ongoing maintenance. We will also need to see evidence of maintenance agreements if the party responsible for maintenance is anyone other than the applicant.

Additionally, if the watercourse is not within your ownership, we will need to see some form of written agreement from the landowner stating that they are happy for you to work on their land and construct the structures. If you need to cross third-party land to access the area of work, we would also need to see evidence of this agreement with the third party landowner

Please note that until all of this information is received an application may not be considered 'live' and the determination period referred to below will not have started.

How to pay

There is an application fee of £50 per consentable structure, if you are unsure what the total fee will be, please contact the consenting team to discuss the proposals.

Warwickshire County Council are unable to take cheque at the moment due to the majority of the council working from home in line with government guidance about social distancing. Therefore, our preferred payment method at this time is via card or by bank transfer as per the details provided on all invoices issued. We are also introducing GOV pay which will allow you to pay by clicking on a payment link which will be sent to you via email. All payments should be made within 21 days of receipt of the invoice and approval paperwork cannot be issued until payment has been received.

Standard determination period

A determination period from the date both the application and fee are received is set out within the act. Applications are usually determined well within this period, particularly if any additional information requested is provided promptly. If further information is not forthcoming and the two-month period expires, we may decide to refuse the application or give the applicant the option to withdraw the application until such time that the information is available.

Culverting Ordinary watercourses

WCC's policy on culverting is that we do not accept the culverting of ordinary watercourses unless it is deemed absolutely necessary. Culverts destroy wildlife habitats, damage natural amenity and interrupt the continuity of the linear habitat of a watercourse. Culverts can also impact on water quality due to the change in structure of the watercourse bed and removal of natural systems that benefit water quality. Under section 3.5, Table 22, of all River Basin Management Plans, it is stated that improvements should be made to the condition of the channel/bed and/or banks/shoreline if physical modifications are to be made to the watercourse in order to allow the watercourse to still maintain a good ecological status. As part of any culverting proposal we would want to see evidence that this requirement has been met.

<https://www.gov.uk/government/collections/river-basin-management-plans-2015>

However, WCC recognises that there may be instances where culverting is unavoidable, such as short sections to accommodate highway access. WCC prefers a single span bridge rather than a culvert, i.e. keeping a more natural riverbank and channel bed to facilitate a habitat. If a culvert is required, it should be the minimum length possible. Oversized box culverts sunk 150mm below bed level are preferred to round pipe sections. This reduction in flow area from lowering the invert should be accounted for when calculating the flow capacity.

The sizing of culverts should be done by calculating the contributing flow rates. However, maintenance should be considered and a practical minimum pipe size of 600mm diameter, to reduce the likelihood of blockage. If culverting is part of your proposal, we will need to see evidence of how the culvert has been sized before approval can be given. This evidence may include an extract from Hydraulic tables or hand calculations.

Discharging from a Package Treatment Plant

If your proposal involves discharging into a watercourse from a package treatment plant, you may require an Environmental permit from the Environment Agency. Under the General Binding Rules, you must apply for a permit if you are discharging more than 5 cubic metre (5000 litres) per day. New discharges are not allowed to a ditch or a surface water body that does not contain flowing water throughout the whole year. That is unless there is a drought or an unusually long period of dry weather.

New discharges to watercourses that seasonally dry up are not allowed under the general binding rules, nor are discharges to enclosed lakes or ponds. If you are unsure whether a permit is required or not for your proposal, please get in contact with the Environment Agency. If a permit is required, we will need to see evidence that it has been obtained before any Land Drainage Consent can be given by us as the LLFA. The approval given by the LLFA is for the outfall structure only.

<https://www.gov.uk/permits-you-need-for-septic-tanks/general-binding-rules>

Erosion and Bank Stabilisation works

Works to stabilise banks and manage erosion will require a Land Drainage consent application to be submitted to ourselves. When doing works of this nature on smaller watercourses we would recommend and encourage them to be soft engineered and be as natural as possible. Works such as willow fencing, hazel faggots and brushwood mattresses are all examples of works we would like to see when managing bank stabilisation.

Some examples of soft engineering solution could be as follows:

Revegetation – increasing vegetation cover through the establishment of young plants and trees on or behind the exposed bank face.

Geotextiles – woven mats, rolls or bags of natural fibres (coir, hessian or jute) or synthetic materials (open weave polythene mesh) that are placed on the bank surface or at the bank toe to prevent fluvial scour and removal of fines from the bank face.

Brushwood bundles and mattress – consist of bundles of wood that are tied together and secured onto the bank surface to slow the flow of water and collect sediment. They are installed parallel to the direction of flow and are typically set into shallow trenches and staked into position.



(<https://terraqua.co.uk/>)

Faggots – consist of bundles of branches or coppice that are secured in place at the base of the riverbank and are used to provide flexible solutions to many scour problems particularly below water level.

Willow spilling – traditional soft engineering technique used to stabilise eroding banks. It works by weaving live willow rods between live willow stakes set into the affected bank at regular intervals.



(<https://www.salixrw.com/>)

Coir rolls – consists of fibre hydraulically pressed into a polypropylene or coir net bag and tied. Coir rolls are available as either an unplanted, pre-planted or mature planted product and are typically used to protect the toe of the bank from erosion.



(<https://jands-scapes.co.uk/>)

However, WCC recognises that there may be instances where soft engineering options are not viable. In these scenarios we may accept hard engineered options such as gabions. As part of the submission however we would require a justification as to why a more natural approach was deemed unviable.

An alternative option that could be used are vegetated wall systems such as Flex MSE or Rootlok. Vegetated wall systems allow the user to put hard engineering options in place but have the soft engineering element to it as they still allow vegetation to still grow.

HS2

If you have any queries relating to HS2 or wish to submit a Schedule 33 part 5 application for consent, please email our designated HS2 team at hs2consents@warwickshire.gov.uk whilst also

copying in hs2floodconsents@warwickshire.gov.uk. Our HS2 team will then assign the application or query to the appropriate officer who will then get in touch.

Trash Screens

WCC does not favour the use of trash screens on newly built culverts. Trash screens provide extra maintenance responsibilities and if not maintained properly can increase the risk of flooding in an area if the screen becomes blocked. Trash screens can also pose a health and safety risk if an incident occurs and someone falls into the watercourse.

If a trash screen or security screen is being considered as part of the structural design, we will require a full site-specific assessment to be carried out as part of the submission to determine if a screen is necessary for your site. If this assessment indicates a screen is necessary, we would require the screen to be designed in accordance with the CIRIA Culvert, Screen and Outfall Manual (C786). A technical justification will also need to be submitted as part of your application, demonstrating how your proposed design meets the requirements set out in the CIRIA document.

<https://www.ciria.org/ItemDetail?iProductCode=C786F&Category=FREEPUBS>

Natural Flood Management (NFM) consenting

NFM is a means by which we can hold back water by replicating/restoring natural landforms and processes. NFM aims to reduce peak discharge and increase lag time. NFM consenting works slightly differently to our usual way of consenting as we actively encourage applicants to place obstructions in the watercourse to allow water to flow out of the channel.

For NFM to work effectively, early engagement is encouraged to make sure all the proposals are acceptable, and you are not increasing flood risk in the surrounding areas. Please contact us to discuss NFM consenting fees as the statutory £50 per structure may not be appropriate for this type of work.

Other approvals

If your proposed works are on or over the Warwickshire boundary, depending on the location of the structure, you may need approval from the neighbouring Lead Local Flood Authority. This is because as Lead Local Flood Authority for Warwickshire, we are only able to consent structures in Warwickshire. In situations like this, we are likely to discuss the application with the neighbouring LLFA, so if you have contact details of anybody you may have been dealing with, please provide them to speed things up.

In addition to an Ordinary Watercourse Land Drainage consent, some works may also require planning permission. The two approvals are separate and the granting of one does not necessarily indicate that the proposals are acceptable for the other. This is also the case for S278/S38 proposals. If you are unsure whether planning permission is required, please contact your local planning authority to discuss further. Please note that the requirement for Ordinary Watercourse Land Drainage Consent does not absolve you of responsibility under any other requirements or legislation that may apply to the works being undertaken. As an applicant you are responsible for identifying and making suitable provisions for any such requirements that may apply.

Some works in and around a watercourse also fall within the Environmental Permitting regulations managed by the Environment Agency. If your proposed works involve or affect the following, please contact the Environment Agency;

- Impounding (holding back a watercourse),
- Abstracting (removing) water,
- Fish or fisheries,
- Disposing of waste material,
- Water quality

More information on Environmental Permitting can be found on the GOV.uk website.

Works involving the use of culverts over 900mm in diameter will require structures technical approval from the WCC Design Services team. We would recommend going through this process before submitting an application for Land Drainage consent as we will need to see evidence that structure technical approval has been obtained before we can grant the consent.

As mentioned above, this consent only relates to works within an ordinary watercourse and not main rivers. Main rivers are the responsibility of the Environment Agency and further details can be found on the GOV.uk website.

Enforcements

No provision has been made in the Land Drainage Act that allows the LLFA to retrospectively grant consent for works that have already begun construction or have been completed.

Works on ordinary watercourses that take place without consent or that can remain without enforcement action can result in increased flood risk or environmental damage. Section 24 of the Land Drainage Act allows the LLFA to serve a notice for the watercourse to be restored to its previous condition within a specified time. If this is not done, the LLFA can carry out these works and recover the costs.

The applicant may choose to provide evidence that the unconsented works have not increased the flood risk. However, as retrospective consent cannot be granted, this evidence will not remove liability for any future flooding found to be a result of the unconsented works.

The LLFA does not accept any responsibility for the design and construction of the works that are the subject of the consents they grant, and any liability for any loss or damage which may arise out of their design, construction, maintenance or use.

<https://www.legislation.gov.uk/ukpga/1991/59/section/24>

Historic structures and consent applications

The LLFA were given consenting responsibilities in the Spring of 2012 so we only hold records of applications since then. The Environment Agency held this responsibility prior to us so they may hold records of applications and structures built pre-2012.

For further information, please contact
FRMConsenting@warwickshire.gov.uk and we will get back to you.

FAQs

1. What is the definition of an ordinary watercourse?

Under Section 72 (1) of the Land Drainage Act 1991, an ordinary watercourse is defined as a 'watercourse' that does not form part of a 'main river'.

A watercourse is defined as and 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.

2. Do we have a formal consent pre-app process, or can we set up a meeting on site to discuss a proposal before submitting an application?

Currently we do not offer a formal consent pre-app process. However, if you would like to call us on 01926 412982 we would be happy to discuss your query further.

3. Does the maintenance of existing culverts require consent?

Depending on the proposed works a consent may or may not be required. We would recommend getting in touch with the team to discuss the proposal. For example, works to install a plastic liner into a culvert or significantly widening or deepening a channel will require a consent.

4. Do we need consent for a headwall structure that is fitted into the profile of the bank?

If the headwall structure is fitted into the profile of the bank, no permanent Land Drainage Consent application will need to be submitted. However, it is most likely a temporary consent will be required for the enabling works of putting the headwall in place.

5. Can we gain consent even if a contractor has yet to be appointed to supply a method statement?

If we are in a position to approve your application however are yet to receive a method statement, there is a way to still gain approval. In this situation we would expect to see an outline method statement demonstrating a high-level outline of how the works will happen and any important hazards that would need to be addressed whilst on site. We would then add in a site-specific condition on the approval paperwork requesting the applicant to apply for a temporary consent when the method statement is available.

6. What happens to the fee we paid if we withdraw our application or it gets refused?

If an application is withdrawn with a fee having already been paid, the first resubmission of that application will be covered by the fee paid initially. However, if an application gets refused by ourselves and then you choose to re-submit, you will be required to pay a new application fee. If you choose to not resubmit an application, no refund will be issued.

7. Is there a minimum size of culvert we request where culverting is deemed necessary?

Where the calculations return a smaller size, we would ask that any proposed culvert is a minimum of 600mm diameter, sunk 150mm below the bed level in order to allow the bed of the watercourse to re-naturalise. We specify this diameter of culvert as it minimises the likelihood of a blockage scenario occurring.

As stated previously, as part of any culverting proposal we will need to see evidence of how the culvert has been sized to adequately convey the flows passing through it.

8. Why do we need to apply for temporary consent?

Occasionally the proposed works being carried out will not require a consent but the enabling works to install the permanent structures will. In these situations, the developers should apply for a temporary consent from us so the enabling works can take place. These enabling work may consist of a temporary diversion or over pumping works. Temporary consent should also be obtained from applicants who have gained permanent consent for a proposal, however are required to submit a method statement to the LLFA as a contractor was yet to appointed during the permanent application.

9. Would we accept sandbag headwalls as a proposal?

We do accept sandbag headwalls depending on the site and its requirements. Our preference however is where possible for a precast concrete/brickwork headwall to be put in place due to its increased robustness. If the headwall is being adopted by a third party such as WCC Highways or Severn Trent Water, we would also take into consideration the adoption requirements of these parties.

10. Why are you not taking enforcement action?

WCC enforce land drainage issues using a risk-based approach. This means that enforcement action is usually taken only where it is deemed that a structure has created a significant and unacceptable increase in flood risk such as internal property flooding. Structures that present minimal or low risk, will typically be dealt with on an advice basis, however should it later transpire that the risk has been underestimated, this decision can be reviewed.

In the event that WCC do not consider enforcement action to be either appropriate or proportionate, affected parties may if they wish proceed with their own civil action, or may choose to settle a dispute through the First-tier Tribunal (Property Chamber).

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber>

11. Should we obtain consent before going through the Highways approval process?

We would recommend obtaining Land Drainage Consent before going through the Highway technical approval process for S278, S184 and S38 agreements. The reason for this is that once a Highways agreement is in place, it makes it very difficult for us as the LLFA to make any changes to the design of structures as it has already been agreed.

12. I have filled out the online form but wasn't given the option to attach supporting documents?

Unfortunately, due to the limitations of our online application form you will not be able to attach supporting documents onto your online application. We would encourage you to email over any supporting documents linked to your online application to frmconsenting@warwickshire.gov.uk, making us aware of your application and which site these documents relate to.