

RIPARIAN OWNERSHIP AND RESPONSIBILITIES

Flood Risk Management | Warwickshire County Council



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1 | Introduction

Warwickshire County Council's Flood Risk Management Team take the lead in understanding and reducing the risk of surface water and ground water flooding across the county as well as flooding from ordinary watercourses.

The LLFA role was created in response to the widespread flooding in 2007 and was one of the number of recommendations of The Pitt Review enacted into law under the Flood and Water Management Act 2010.

We are committed to providing information and raising awareness of flood risk, which enable people to help themselves. This short guide aims to inform riparian owners of their rights and responsibilities as well as providing some useful watercourse maintenance tips to protect the environment and reduce the risk of flooding.

As Warwickshire experiences increased levels of development and more intense and heavy rainfall events, the importance of maintaining the capacity of the county's land drainage system has never been greater. Drains, ditches, and watercourses play an important role in allowing surface water to drain

freely away from properties, highways and land. For watercourses to remain effective they usually require regular inspection and maintenance.

The maintenance of rivers, streams and ditches is usually the responsibility of the riparian owner. Riparian owners have both rights and responsibilities associated with the watercourses flowing through or adjacent to their land.

Watercourses in England are defined as either an Ordinary Watercourse or Main River. Main Rivers are usually the larger watercourses and are shown on the map linked below. The Environment Agency have responsibilities to regulate works on Main Rivers and have permissive powers to carry out works on these too. Ordinary Watercourses are considered to be any watercourse that is not a Main River. Warwickshire County Council as Lead Local Flood Authority have powers to regulate works on Ordinary Watercourses in Warwickshire and permissive powers to carry out works themselves.

The main river map can be found [here](#)



2| What is a riparian owner?

A riparian owner is termed as anyone who owns or has operational control of an area of land on which a stretch of watercourse runs on, under or adjacent to. A watercourse is defined under the Land Drainage Act 1991 as “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”. These are typically natural features which drain the surrounding catchment. These may be ephemeral, meaning that they do not contain a flow of water all year round, however they still require regular maintenance. Ordinary watercourses do not form part of the main river network.



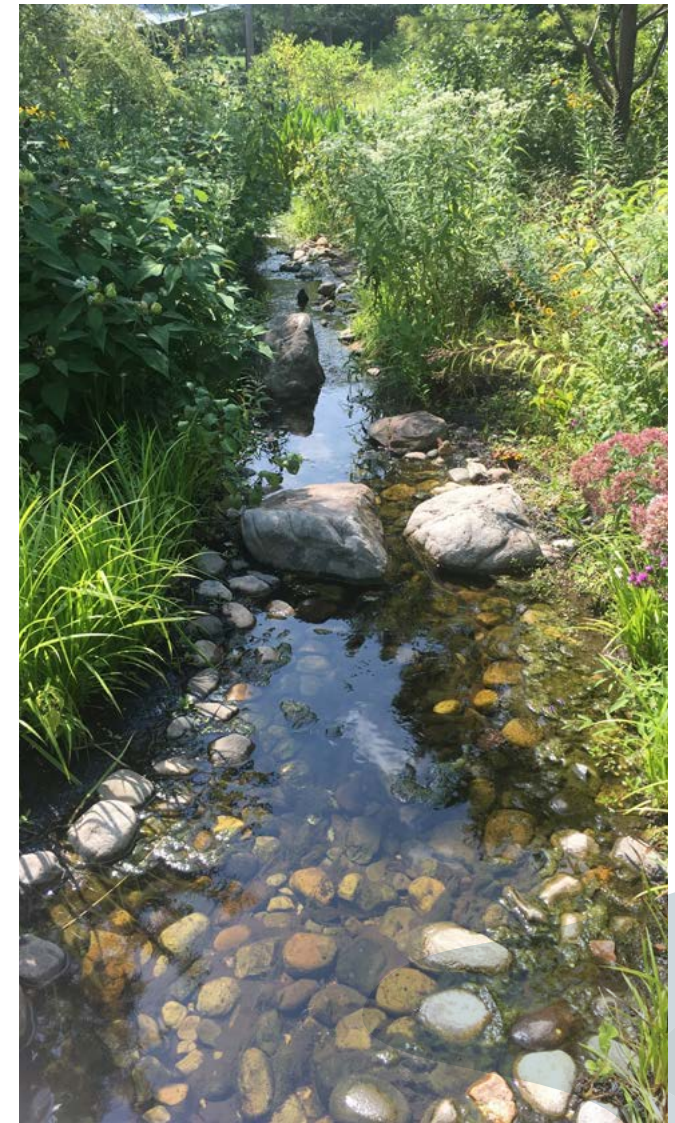
3| Riparian responsibilities

Under common law, as the riparian owner you have the responsibility for the maintenance of a stretch of watercourse that passes through your land or forms the part of the boundary. This means ensuring the beds and banks of the channel, or the inside of a culvert if the watercourse runs below ground, are well maintained. Any pre-existing flood defences or any other structures that may be in place should be functional when needed and free from obstructions, such as leaves and litter. In addition to this you also have the responsibility of allowing the natural flow of water through your land to be uninterrupted in its quantity and quality, without causing pollution.

It is important to ensure ordinary watercourses are maintained and fully functional for the benefit of your own land and for the wider community. Maintenance can help reduce flood risk from regular rainfall events, providing an effective surface water drainage system which allows water to flow away from the land surface. It should be noted that extreme rainfall events may still exceed a well-maintained watercourse.

If a riparian owner does not carry out their responsibilities, the local authority can request that they maintain the watercourse and they could face legal action under The Public Health Act 1936, The Land Drainage Act 1991, the Water Resources Act 1991. Failure to do so may result in a claim for damages that any resulting flooding may cause. This will be on a risk-based approach based on the specific location and subsequent consequences.

As a riparian owner you have the right to protect your property from flooding, protect the watercourse and surrounding land from erosion and to receive a flow of water in its natural state in flow, quality, and quantity. However, these activities must not increase flood risk to other property and/or land, either directly or by impacting other sources of flooding.

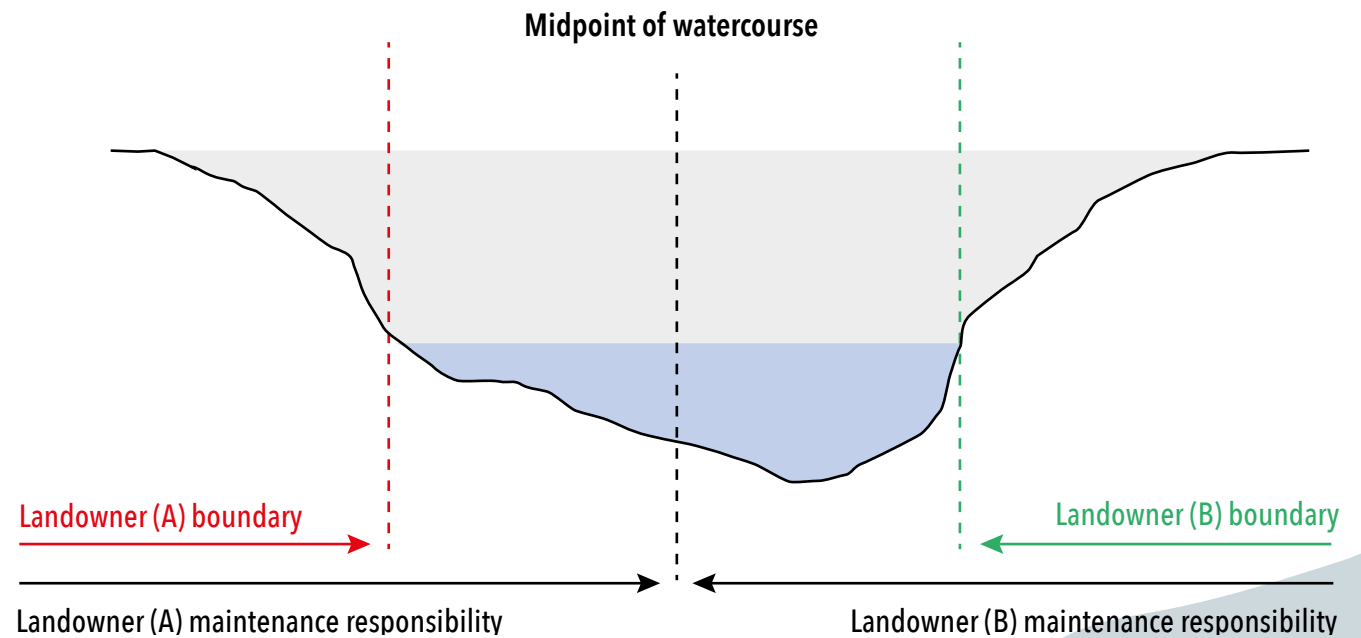


During the winter months, it is especially important to carry out frequent maintenance checks due to the increased likelihood of organic matter blocking the drainage system and causing flooding.

4| Who has riparian ownership?

Usually if a watercourse is situated on the boundary between two or more properties, joint riparian ownership is held between all parties, unless stated otherwise on land deeds or other legal agreement. Where a landowner owns the land on both sides of the watercourse, then typically they are the sole riparian owner of that stretch of watercourse.

An example of typical ownership responsibilities is shown opposite.



The Hedge and Ditch Rule

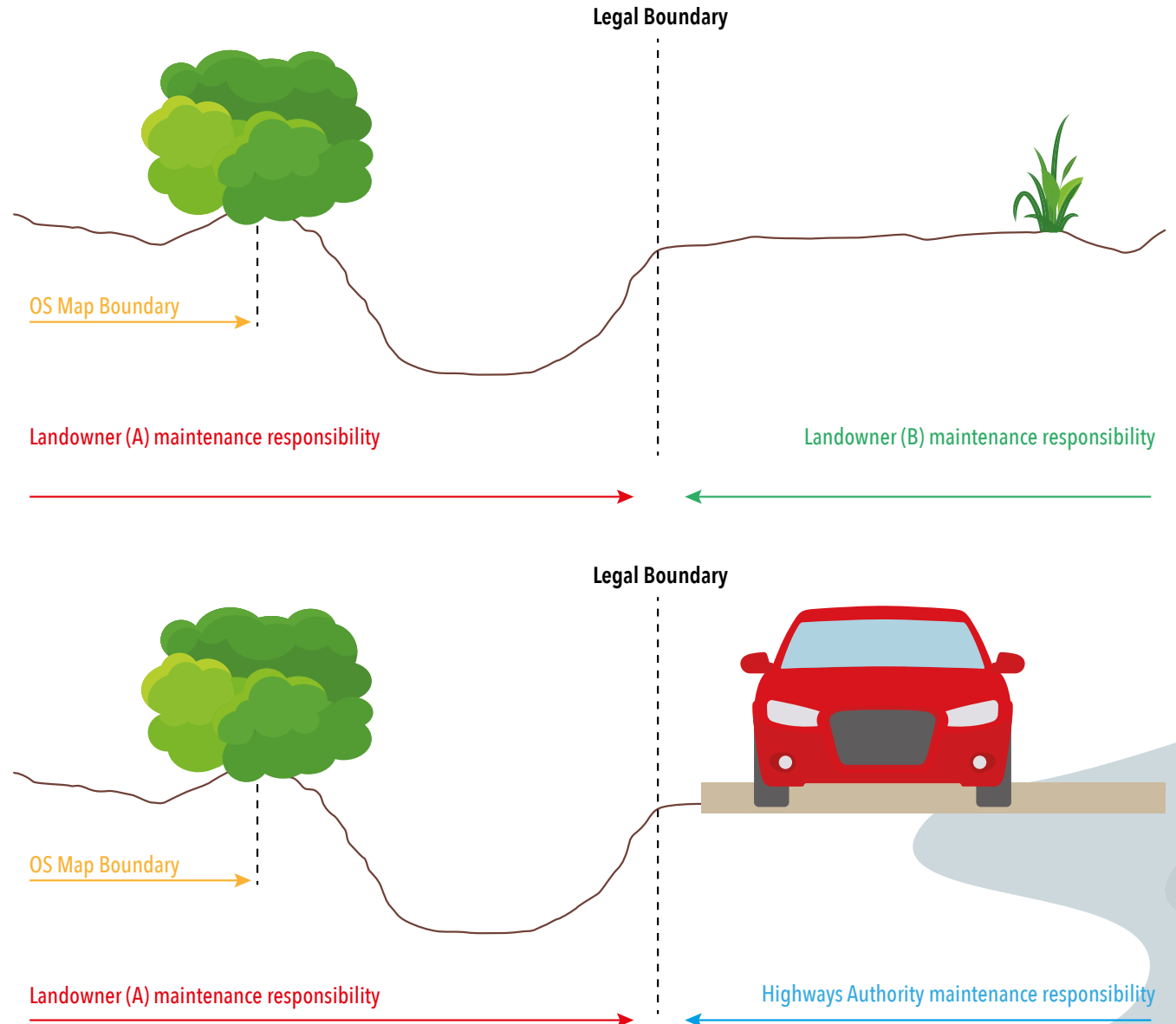
Under common law, where two properties are divided by a hedge and a ditch, there is a legal presumption that the person who owns the hedge is responsible for the ditch and its maintenance (see example below). However, land ownership is sometimes unknown, disputed, or difficult to determine, so it is important to check your title plans, Land Registry, and the highway extent to find out if you are the responsible party.

Ditches adjacent to the highway

Ordinary watercourses may also include roadside ditches, in this instance the landowner may be legally responsible for these ditches if they drain water from both the land and the highways. In most cases, roadside ditches are the responsibility of the adjacent landowner, not Warwickshire County Council or the National Highways who maintain the highway. An example of the typical ownership responsibilities can be found opposite. Warwickshire County Council are responsible for regular maintenance and cleansing of gullies and grips.

There are some limited exceptions where Warwickshire County Council's Highways team may take additional responsibility for maintenance of ditches and drains.

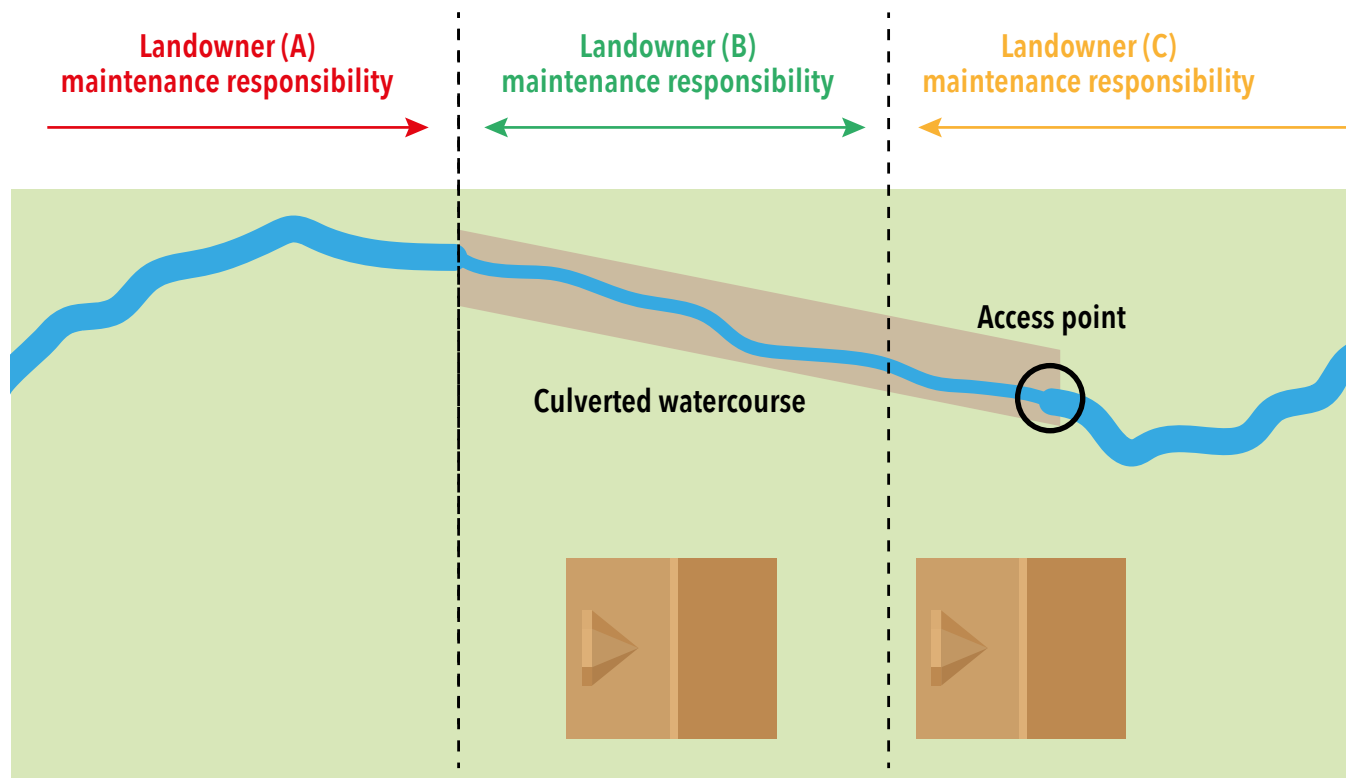
- Where Warwickshire County Council own the land on both sides of the watercourse.
- Where the ditch does not drain any adjacent land, only the highway.
- Where an historic agreement in place for WCC's Highways team to maintain a ditch.



Please note the legal boundary shown in the image above is an example of where the boundary is presumed. Always check your title plans as this may differ.

Culverted Watercourses

Where a culverted (piped) watercourse runs beneath an area of land, the landowner above typically holds riparian responsibility to ensure the culvert is working and free from blockages.



5| Riparian maintenance

As a riparian owner, it is good practice to develop a custom maintenance programme for the watercourse on your land that sets out when, how often and what work needs to be carried out.

You should remove all physical obstructions as fallen trees, large rocks, litter and any other man-made waste materials from the channel and banks so that the water is able to flow freely. All waste should be disposed of appropriately. Contact your local authority to find out about disposal.

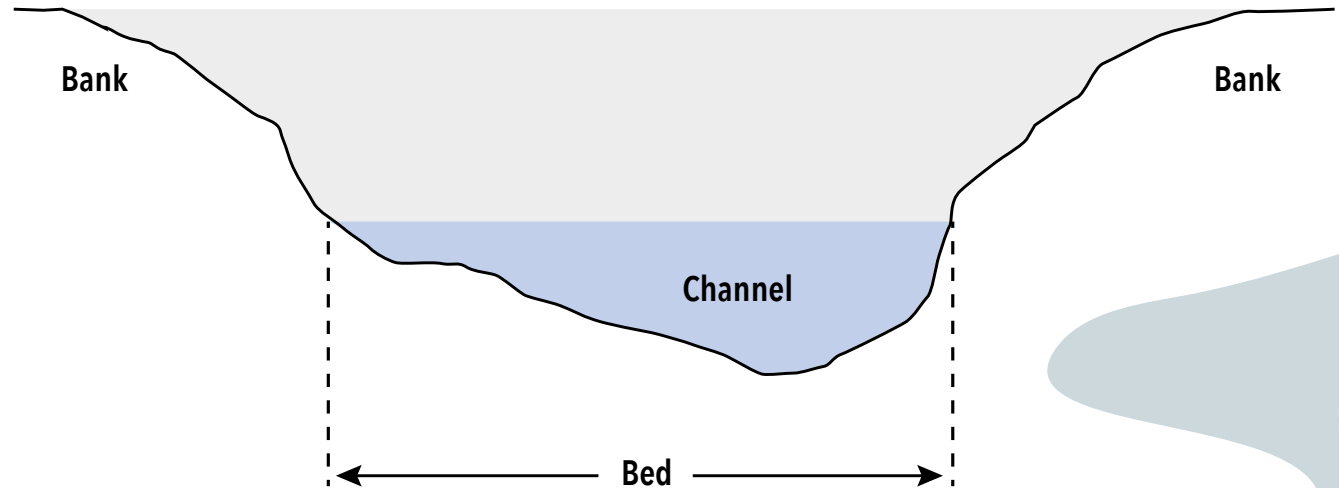
Natural Flood Management (NFM) is a means by which we can hold back water by replicating/restoring natural landforms and processes, aiming to reduce peak discharge and increase lag time. NFM actively encourage landowners to place obstructions in the watercourse to allow water to flow out of the channel, typically in upland rural catchments.

Additional guidance for Natural Flood Management can be found [here](#)

Vegetation can help to prevent erosion to the banks of the watercourse and provide habitats for wildlife, however it should not cause an increase in flood risk. Where vegetation maintenance is necessary, keep some marginal vegetation on both sides of the channel. As a minimum, a small amount of vegetation on one side of the channel should be left uncut. Deposit any cut

vegetation clippings away from the top of the bank to ensure they do not re-enter the channel which could cause a blockage elsewhere and ensure your works do not impact wildlife. Remove large branches and tree trunks that fall into the channel that cause an obstruction of flow, as they could increase the risk of flooding up or downstream. Leave smaller dead tree branches and roots in the channel as they provide habitats and during

high flows will be naturally flattened by the weight and velocity of the river. If you are concerned that the watercourse may be home to any protected species, that may be harmed during routine maintenance, you should seek the advice of a suitably qualified ecologist.



Autumn is typically the best time of the year to carry out major clearance and maintenance work on the watercourse, in preparation for the winter rainfall.

Watercourses will naturally find their own equilibrium whilst transporting materials. Silt build-up may be required to be removed from the bed of the to allow the typical capacity of the channel to be maintained, however this should be on a case-by-case basis to limit the interference with the ecology and geomorphology.

If you have joint ownership of a watercourse, maintenance programmes should be discussed with the adjacent landowner to ensure the upkeep of the channel in a holistic manner.

The images opposite show examples of well-maintained watercourses (Source: Warwickshire County Council, 2023)



Health and Safety

When carrying out maintenance work on a watercourse it is important not to put yourself or anyone else at risk of harm. The appropriate clothing, footwear and personal protective equipment should be worn when working on or around a watercourse. An appropriate assessment should be carried out to determine if suitably qualified contractor is required to carry out the maintenance works.

Blocked culverts

A culvert is simply a watercourse that has been enclosed in a structure such as a pipe and the same maintenance principles apply to them as to watercourses. Responsible landowners must keep any structure such as culverts (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 blockages. If you take no action, and it becomes blocked and flood risk increases as a result, you could be held liable for this damage.

Regular inspections and the removal of debris from within the culvert or at the inlet can reduce the risk of blockages. This is particularly important during winter months or after periods of heavy rainfall when debris may accumulate quickly. Culverts may require a skilled drainage company to rod or jet the pipe to de-silt and free the culvert from any full or partial blockages.

Permit requirements

As a riparian owner, you should be aware that consent or a permit may be required before carrying out temporary or permanent work that changes the channel profile or interferes with watercourse on your land. This includes:

- Culverting (covering or introducing pipes)
- Creating bridges or crossings
- Adding structures such as headwalls, trash screens
- Adding structures on or adjacent to the riverbank
- Implementing natural flood management techniques
- Any work that is likely to obstruct the flow of the watercourse

Permission will be required from the appropriate authority before any works can take place. For any works or alterations taking place within 8m of a main river, you may require an Environmental permit from the Environment Agency.

Guidance for Main River Environmental Permits can be found at:

[gov.uk/guidance/flood-risk-activities-environmental-permits](https://www.gov.uk/guidance/flood-risk-activities-environmental-permits)

Works affecting ordinary watercourses that are not classified as a main river may require Land Drainage Consent from the Lead Local Flood Authority (LLFA). Works that require consent under section 23 of the Land Drainage Act include constructing, removing, or making alterations to dams, weirs or culverts. In some cases, proposed structures may not require consent as it does not affect the natural flow of 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.

Guidance on applying for Warwickshire County Council Ordinary Watercourse Land Drainage Consent can be found at:

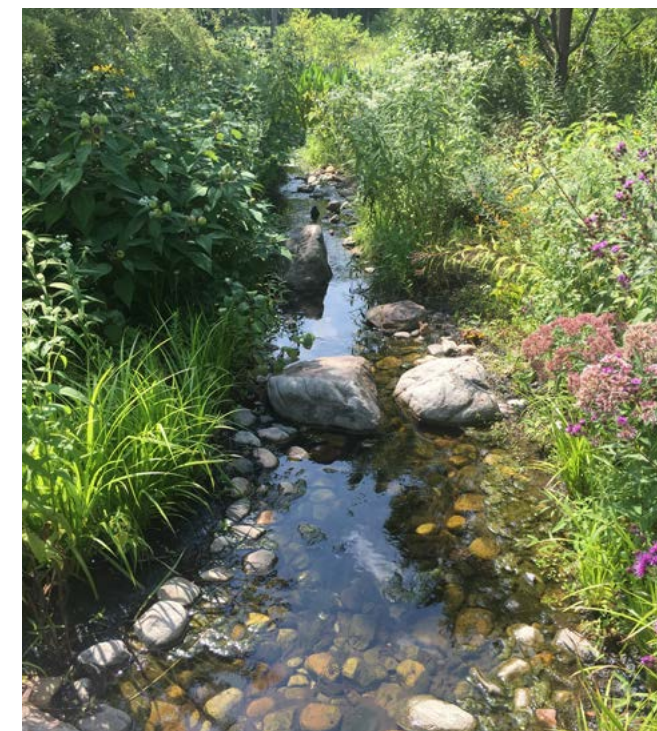
[warwickshire.gov.uk/watercourse](https://www.warwickshire.gov.uk/watercourse)

Ordinary Watercourse Land Drainage Consent application should be sent to Warwickshire County Council Flood Risk Management team for approval. You may also require permission from a conservation body as well as the appropriate authority if the proposed works are on or may affect a site protected by law such as a Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) or Special Area of Conservation (SAC). Contact Natural England or your local wildlife trust to find out if

you need permission. The need to undertake works as part of your riparian duty does not absolve you of any other environmental legislation applying to the watercourse

Guidance for carrying out works in a conservation area can be found at:

www.gov.uk/government/organisations/natural-england



6 | Enforcement of maintenance responsibilities

Under the Land Drainage Act 1991, as Lead Local Flood Authority (LLFA) Warwickshire County Council have the powers to enforce on riparian landowners of Ordinary Watercourses. This act allows the enforcement of nuisance caused by:

- Unconsented works,
- Failure to repair or maintain watercourses, bridges, or drainage systems,
- Impediments to the natural flow of water that could increase flood risk to property or neighbouring land.

The Flood Risk Management team will consider if the risk of flooding is likely to be increased as a result of any of the above, taking a risk-based approach based on each location and subsequent consequences. This assessment will be based on parameters for formal flood investigation by the Lead Local Flood Authority. If deemed appropriate, the Flood Risk Management team may serve notice for work to be completed to remedy the nuisance.

In the event that WCC do not consider enforcement action to be either appropriate or proportionate, affected parties may proceed with their own civil action, or may choose to settle a dispute through the First-tier Tribunal (Property Chamber). Enforcement action by WCC is unlikely where flooding is confined to land, gardens, driveways or outbuildings/garages.

Guidance relating to disputes over property and land:

[GOV.UK/courts-tribunals/first-tier-tribunal-property-chamber](https://www.gov.uk/courts-tribunals/first-tier-tribunal-property-chamber)



*This image shows an unconsented culvert and fence which is blocking the natural flow of the watercourse.
(Source: Warwickshire County Council, 2021)*

7| Useful links

Further Reading and advice

Warwickshire County Council – Flooding
www.warwickshire.gov.uk/flooding

Warwickshire County Council – Local
Flood Risk Management Strategy
api.warwickshire.gov.uk/documents/WCCC-1039-29

GOV.UK - Owning a Watercourse
gov.uk/government/publications/riverside-ownership-rights-and-responsibilities

8| Contact Us

Warwickshire County Council Flood
Risk Management Team
Email: consenting@warwickshire.gov.uk



9 | Glossary of Terms

Lead Local Flood authority (LLFA): Lead Local Flood Authorities consist of county councils and unitary authorities. LLFA's were established following the Flood and Water Management Act 2010 and exist to assist in the management of local flood risk.

Surface Water Flooding: Surface water flooding occurs when the volume of rainfall exceeds the capacity of the drainage system (drains and surface water sewers) meaning water is unable to drain away as it falls. Due to this, surface water remains above ground and can result in flooding.

Groundwater: Groundwater is water that is situated within the spaces between soil and rock, beneath the Earth's surface. Groundwater can rise, which can result in groundwater flooding.

Ordinary Watercourse: Ordinary watercourses are watercourses which do not form part of a main river. Whereas main rivers are the responsibility of the Environment Agency, LLFA's hold responsibility to ensure issues regarding ordinary watercourses are tended to. Ordinary watercourses may include streams, ditches, brooks and culverted areas of watercourses.

Riparian Landowner/Ownership: Riparian owners are those who own land adjoining or containing a watercourse that flows through it. If you are a riparian landowner, you are responsible for the maintenance of the stretch of watercourse that runs through your land, even if it is culverted or piped. Failure to do so can result in enforcement action.

Culvert: A culvert is a covered channel or pipe which prevents the obstruction of a **watercourse** or drainage path by an artificial construction. A culvert has a maximum capacity, which depends on its size, slope, roughness, and its inlet/outlet design.

