

To: Kent Flood Risk Management Committee

From: Michael Harrison, Chairman of the Kent Flood Risk Management Committee

Subject: Riparian rights and responsibilities

Classification: Unrestricted

Summary:

Riparian owners have rights and responsibilities over watercourses on or adjacent to their land. This paper explains the basic riparian rights and responsibilities and the authorities who have regulatory powers over watercourses.

Recommendation:

That Members:

- Note the paper.

1 Introduction

1.1 Land that adjoins a watercourse is known as riparian. Owners of riparian land are known as a riparian owner and they have rights and responsibilities over the watercourse their land adjoins. This paper explains the basic riparian rights and responsibilities.

1.2 The rights and responsibilities explained in this paper only apply to watercourses, they do not apply to overland runoff or groundwater, nor do they apply to public sewers. Additionally, planning policy does not necessarily follow common law riparian rights.

1.3 A watercourse is any channel through which water flows, whether it is natural or man-made. A watercourse can range from a river with a regular flow to a shallow depression which carries water infrequently, and includes streams, drains, ditches and sewers (other than public sewers). A watercourse may flow through a pipe, known as a culvert, as long as it is not designated a public sewer. A culvert that carries a watercourse is regarded as a watercourse and riparian rights apply.

1.4 Watercourses are divided into two categories, which affect how they are regulated. These categories are:

- Main River - these are watercourses that are designated as a main river by the Environment Agency. They are usually designated for their flood risk significance. This term does not necessarily reflect the size of the watercourse, as main rivers can be quite small and ephemeral (that is water only flows in them some of the time). They are shown on maps held at local Environment Agency offices and online.
- Ordinary watercourse – these are any watercourse that is not a main river.

2 Riparian ownership

- 2.1 Under common law, a riparian owner is someone who owns land that adjoins a watercourse. Land title deeds often do not show the entire land a property owner is responsible for.
- 2.2 Where a natural watercourse is located between two property boundaries the owner on each side is assumed to own up to the middle of the watercourse, under the principle of “ad medium filum” (to the middle of the line).
- 2.3 If the watercourse is man-made, for instance a field drain, it is assumed that the drain was constructed wholly on one property (as the property owner would not have had the right to dig his neighbours land), therefore it is solely that riparian owners responsibility.
- 2.4 These are only guidelines, they are not rules and there may be variations and other overriding factors that mean they do not apply to a particular piece of land.
- 2.5 If land is rented, who exercises the riparian rights should be agreed between the tenant and landlord.
- 2.6 Drains adjoining a highway are usually owned by the neighbouring land owner, the highway authority rarely has riparian rights over them as they do not normally own the highway (they are only responsible for maintaining it). Highway authorities have the right to discharge to watercourses, but this does not necessarily confer on them a duty to maintain the watercourse. Where a road was built by the highway authority on land that they purchased, they may be responsible for any highway drains. Most drains adjacent to the highway in Kent are not highway drains and are not the responsibility of KCC to maintain.

3 Riparian rights and responsibilities

- 3.1 Riparian rights and responsibilities have developed through common law and are not set out in statute. Below is a summary of the common law rights and responsibilities of riparian owners.
- 3.2 A riparian owner has the following rights:
 - to receive flow of water in its natural state, without undue interference in quality or quantity.
 - to protect their property from flooding, and their land from erosion.
 - to fish in their watercourse, although this must be by legal methods and with an Environment Agency rod licence.
 - to abstract a maximum of 20 cubic metres per day of water for the domestic purposes of their own household or for agricultural use (excluding spray irrigation) from a watercourse at a point that directly adjoins their land without a licence from the Environment Agency. Most other types of abstraction will require a licence from the Environment Agency.
- 3.3 A riparian owner has the following responsibilities:
 - to pass on the flow of water without obstruction, pollution or diversion which could affect the rights of others.

- to accept flood flows through their land, even if caused by inadequate capacity downstream, as there is no common law duty to improve a watercourse.
- to maintain the bed and the banks of the watercourse (including trees and shrubs growing on the banks) and for clearing any debris, natural or otherwise, including litter, even if it did not originate from their land.
- to not cause any obstructions to the free passage of fish.
- to not dispose of waste in the watercourse.
- to keep the bed and banks clear of any matter that could cause an obstruction either on their land or by being washed away by high flow to obstruct a structure downstream.
- to keep clear any structures that they own such as culverts, trash screens or weirs.
- to protect their property from seepage through natural/manmade banks. Where such seepage threatens the structural integrity of a flood defence, it may become the concern of the Environment Agency.
- to maintain any culvert that connects a ditch on their property to another ditch where the culvert passes under the highway. The exceptions to this are where Kent County Council (KCC) has adopted the culvert.

3.4 These riparian rights and responsibilities are not absolute and riparian owners may have to obtain consent for works from the Environment Agency, Kent County Council or Internal Drainage Board.

4 Watercourse regulation

- 4.1 Aside from riparian owners' rights and responsibilities a number of bodies have powers to regulate activities in and the function of watercourses. Generally these powers are permissive, that is it is not a duty of the holder of the power to exercise them.
- 4.2 A number of different bodies have powers over watercourses, these often overlap and it is not always clear which bodies have powers. These powers are set out in the Water Act 1991 (as amended) and the Land Drainage Act 1991 (as amended).
- 4.3 The Environment Agency (EA) has powers over for main rivers. Many activities on main rivers require the consent of the Environment Agency. Powers over ordinary watercourses are held either by an Internal Drainage Board (IDBs), Lead Local Flood Authorities (LLFA, KCC in Kent) or district council in two-tier areas.
- 4.4 The EA and IDBs also have powers over activities near watercourses, any activity within 8 m of a watercourse they maintain requires their consent.
- 4.5 Construction activities in watercourses, or near them for main rivers and IDB watercourses, require consent. This consent is obtained from the EA for main rivers and, for ordinary watercourses, from the LLFA or from an IDB in an IDB area.
- 4.6 The EA, IDBs and LLFAs have powers to enforce the maintenance of watercourses or the restoration of unconsented works. These powers only give

the authority the power to undertake the works on behalf of the riparian owner, if they are unwilling to do the necessary works themselves. Enforcement does not give the enforcement authority the power to compel riparian owners to undertake works. The enforcement authority can recharge the riparian owner for the costs incurred, they must also reimburse them for any damages. Enforcement like this is generally not a successful route to maintaining ordinary watercourses and is only considered for very serious risks.

4.7 Where there are concerns about the maintenance of watercourses, the most successful approach is for local communities to work in partnership with landowners to resolve problems.

5 Further reading

5.1 More information about riparian rights and responsibilities can be found in the EA's guide *Living on the Edge*, which can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454562/LIT_7114.pdf

7 Recommendations

That Members:

- Note the paper.

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