

Guidance Notes: ENFORCEMENT POWERS

If you are unsure about anything within these notes then please contact the Flood Risk Management (FRM) team using the details at the end of this document.

In many instances the partial or full blockage of a watercourse can result in flooding to land or in the worst case properties, businesses and/or critical infrastructure. The County Council are committed to raising awareness of riparian responsibilities for flood risk management. Where the FRM team have been made aware of a potential blockage or obstruction to an ordinary watercourse the team will look to work with all parties involved to help resolve the problem before considering the use of their permissive enforcement powers.

The key aims of enforcement in flood risk management are to ensure the proper flow of water in a watercourse and over the floodplain, the control of water levels and security of existing assets. To achieve these aims, enforcement action may be used to rectify unlawful and damaging, or potentially damaging works, always using a risk based priority approach.

The County Council's approach to enforcement

The powers that the County Council holds in relation to land drainage enforcement are permissive. The County Council do not have a duty to carry out works or to take enforcement action. It is at the County Council's discretion as to when/if they want to exercise them. Only where all avenues have been exhausted may the FRM team consider enforcement action. Therefore prior to the consideration of exercising enforcement powers members of the FRM team will exercise all other team functions including riparian landownership communication, education and awareness techniques. The County Council are committed to promoting the awareness of land drainage laws and riparian landowner responsibilities (please refer to the [Riparian Landownership Guidance Notes](#)). Please also refer to the [Relevant Legislations, Strategies and Plans Guidance Notes](#).



**A partially obstructed
trash screen**

If the County Council's enforcement powers were ever to be exercised the County Council will do so using the following guiding principles:

- **Openness:** Provision of information and advice about how we carry out our work, including consultation with stakeholders.
- **Helpfulness:** Provision of advice and assistance on compliance in a courteous, efficient and prompt manner.
- **Proportionality:** Action taken to be proportional to the risks posed.
- **Consistency:** Duties to be carried out in a fair, equitable and consistent manner and with arrangements in place to promote consistency.

Powers under Section 25 of the Land Drainage Act

It is the responsibility of the riparian landowner to ensure that watercourses are maintained properly so that they do not pose a flood risk. For more information regarding riparian landownership please refer to the [Riparian Landownership Guidance Notes](#).

Under Section 25 of the Land Drainage Act (LDA) the County Council have permissive powers to undertake works to maintain the flow of an ordinary watercourse and to carry out the works in default and recover their expenses from the riparian landowner.



It is at the County Council's discretion as to when they exercise these powers and the County Council will determine whether or not to exercise their permissive powers on a case by case basis. In coming to a decision as to whether to exercise its powers the Authority will take into account:

A silted box culvert

- The past compliance performance of the offender;
- The likely effectiveness and risk of the enforcement options;
- The consequences of non-compliance; and
- The public interest.

A decision to take enforcement action will only be fully considered where all other avenues of communication have been exhausted and/or there is robust evidence to support that five or more residential properties have been affected

or at direct risk of internal flooding and /or there is a risk to life and/or critical infrastructure. The County Council may exercise their permissive powers only in these extreme circumstances due to the overarching risk on the public purse. The County Council do not hold an earmarked financial reserve to which could be allocated to a risk based activity of this nature. There are often huge costs associated with these processes and in some instances the County Council may lose a case and therefore lose any money it was hoping to claim back. This again links back to the public's interest to pursue this legal avenue as it will be at the risk of public finances.

Powers under Section 24 of the Land Drainage Act

Enforcement action (not necessarily criminal sanction) may be taken where damaging or potentially damaging works have been undertaken without consent or are in contravention to issued land drainage consent under Section 23 of the LDA. It is also important to note that failure to obtain land drainage consent for a consentable activity prior to carrying out the works may be a criminal offence. Any person acting in contravention of Section 23 of the LDA, may be liable, on conviction, to a fine of up to £5,000, and to a further fine of up to £40 for every day contravention is continued after conviction. Under Section 24 of the LDA, the County Council has the power to take any action deemed necessary to remedy the effect of contravention of failure to gain consent, and recover the expense of doing so from the offender. For more information relating to the consenting process please visit the County Council's **website**¹.



A partially obstructed culvert

Powers under Section 14a of the LDA

Section 14a of the LDA gives the County Council the permissive powers to carry out improvement and construction works to mitigate flood risk from an ordinary watercourse. To date the FRM team have not exercised this power and would only be exercised using a priority based approach as explained earlier.



A blocked culvert

¹ www.derbyshire.gov.uk/environment/flooding

Further advice for helping to resolve nuisance flooding

The County Council are committed to help resolve any flooding nuisance enquiries by mediation and using open and transparent dialogue with all parties. Please contact a member of the FRM team at the details at the end of this guidance note for further support and assistance for helping to resolve flooding enquiries relating to land management.

Where nuisance flooding is being caused by new development (buildings, walls or hard surfaces e.g. driveways, car parks, pavements) you may wish to contact the your District/Borough Council local planning team to see if there has been a breach of planning permission. This can be investigated via their local planning enforcement team. For further guidance please refer to the [Planning and Development Guidance Notes](#) or Part 1 of the Local Flood Risk Management Strategy.

There is no law that governs the management of surface water. As a property owner you have the right to defend your property from surface water; however you must not pipe this water in a concentrated manner onto adjacent land. Historically there have been some surface water issues resolved under Case Law and therefore you could seek to pursue your concerns through the civil courts. You should seek your own legal advice if you are considering taking legal action and bear in mind that you may be responsible for not only your legal costs but those of the other party if unsuccessful, and you may have to bear some of their costs even if you are successful. For further guidance please refer to the [Surface Water Guidance Notes](#).

Derbyshire County Council
 Flood Risk Management Team
 Economy, Transport & Environment
 County Hall, Matlock, Derbyshire, DE4 3AG
 Call Derbyshire: (01629) 533190
 Email: flood.team@derbyshire.gov.uk