

# Ordinary Watercourse Regulation

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Essex County Council

# Introduction

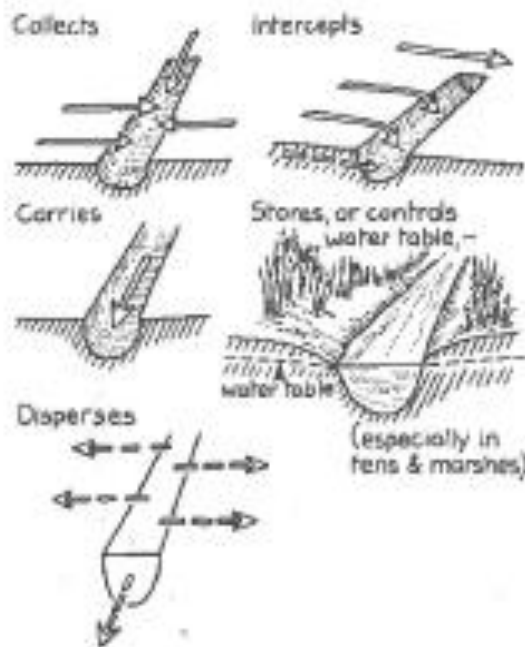
- Dave Chapman – Ordinary Watercourse Regulation Engineer (Braintree, Colchester and Tendring)
- Lee Sencier – Ordinary Watercourse Regulation Engineer (Uttlesford, Chelmsford, Maldon and Rochford)
- Tom Palmer – Ordinary Watercourse Regulation Engineer (Epping, Harlow, Brentwood, Basildon and Castle Point)
- Natasha Taylor - Solicitor Advocate (Essex Legal Services)

Southend on sea and Thurrock Unitary Authorities are responsible for administering powers under the Land Drainage Act 1991 and should be contacted directly for any Ordinary Watercourse Related issues.

# Definition of an Ordinary Watercourse

‘A watercourse that is not part of a main river... all rivers and streams, 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.’

*Land Drainage Act 1991*



# Some Other Definitions...

## **Surface water runoff:**

‘Rainwater (including snow and other precipitation – which is on the surface of the ground (whether or not it is moving), and has not entered a watercourse, drainage system or public sewer.’

*Flood and Water Management Act 2010*

## **Groundwater:**

‘All water which is below the surface of the ground and in direct contact with the ground or subsoil.’

*Flood and Water Management Act 2010*

## **Artesian spring:**

‘A spring whose water issues under artesian pressure, generally through some fissure or other opening in the confining bed that overlies an aquifer. Also known as fissure spring.’

*www.answers.com*

# Land Drainage Act 1991:-

## **Section 23 Prohibition on obstructions etc. in watercourses**

*(1) No person shall —*

*(a) erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or*

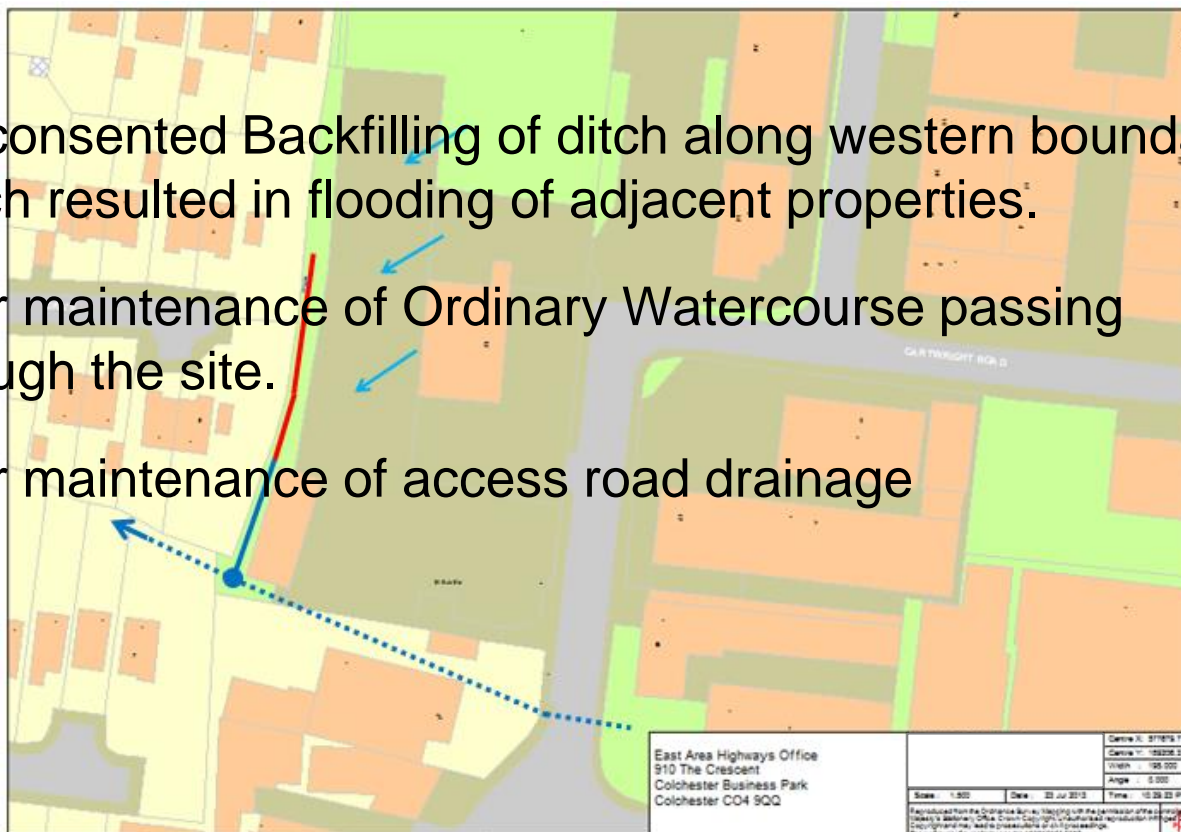
*(b) erect any culvert that would be likely to affect the flow of any ordinary watercourse or alter any culvert in a manner that would be likely to affect any such flow, without the consent in writing of the drainage board concerned.*

## **Section 24 Contraventions of prohibition on obstructions etc.**

*(1) If any obstruction is erected or raised or otherwise altered, or any culvert is erected or altered, in contravention of section 23 above, it shall constitute a nuisance in respect of which the drainage board concerned may serve upon such person as is specified in subsection (2) below a notice requiring him to abate the nuisance within a period to be specified in the notice.*

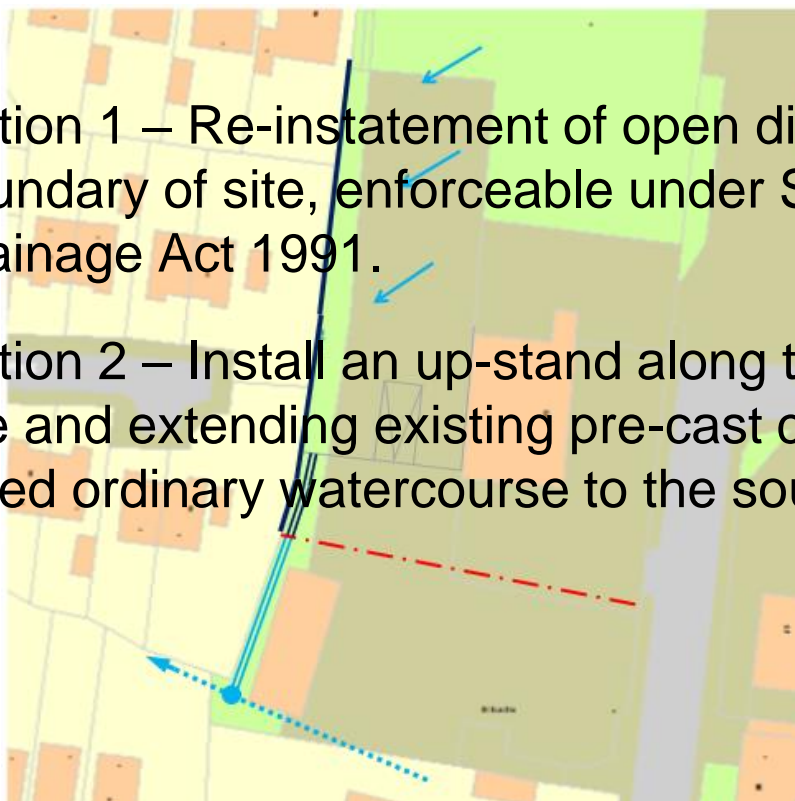
## Example (S23/ 24 Un-consented Works)

- Un-consented Backfilling of ditch along western boundary of site which resulted in flooding of adjacent properties.
- Poor maintenance of Ordinary Watercourse passing through the site.
- Poor maintenance of access road drainage



## Example (Con't)...

- Option 1 – Re-instatement of open ditch boundary of site, enforceable under S Drainage Act 1991.
- Option 2 – Install an up-stand along the site and extending existing pre-cast concrete piped ordinary watercourse to the south.



Picture 0

Picture 04 – Site Visit on 02<sup>nd</sup> December 2013



# Land Drainage Act 1991 (Con't)...

## **Section 25 Powers to require works for maintaining flow of watercourse.**

*(1) Where any ordinary watercourse is in such a condition that the proper flow of water is impeded, then, unless the condition is attributable to subsidence due to mining operations (including brine pumping), the drainage board or local authority concerned may, by notice served on a person falling within subsection (3) below, require that person to remedy that condition.*

# Highways Act 1980:-

## **Section 100 Drainage of highways.**

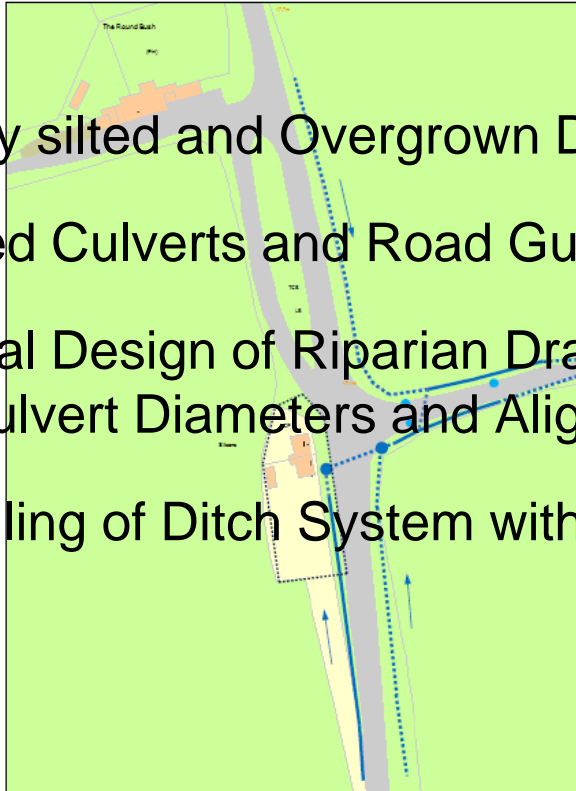
*(1) The highway authority for a highway may, for the purpose of draining it or of otherwise preventing surface water from flowing on to it, do all or any of the following:—*

- (a) construct or lay, in the highway or in land adjoining or lying near to the highway, such drains as they consider necessary;*
- (b) erect barriers in the highway or in such land as aforesaid to divert surface water into or through any existing drain;*
- (c) scour, cleanse and keep open all drains situated in the highway or in such land as aforesaid.*



# Example (S25 Watercourse Maintenance)

- Heavily silted and Overgrown D
- Blocked Culverts and Road Gul
- General Design of Riparian Dra  
(i.e. Culvert Diameters and Align
- Backfilling of Ditch System with



Picture 01

Picture 02 – Site Visit on 28<sup>th</sup> February 2014

# Challenges Moving Forward:-

## Educating Riparian Landowners (Rights and Responsibilities):-

- **Rural Areas** – Less of a challenge as Landowners commonly have the knowledge and capability to carry out work, there are fewer stakeholders and drainage systems are more visible/ accessible.
- **Developed Areas** – More of a challenge as generally Landowners have less knowledge and capability to carry out work, there are a greater number of stakeholders and drainage systems are less visible/ accessible. Land also changes hands more frequently and the appropriate records/ information associated with the watercourse are not transferred with it.

# Challenges (Con't)...



# Challenges (Con't)...

## **Identifying who is responsible (Land Boundaries):-**

- Land Registry
- Rules of Common Law
- Unregistered Land

## **Compiling a Legal Case (Evidence that an offence has taken place):-**

- Historic Records (Ordinary Watercourse Mapping)
- Photographic Evidence
- Witness Statements

## Challenges (Con't)...

### **Threshold for Enforcement Activity (When to take Action):-**

- Risk Based Approach to Enforcement
- When has an Incident been reported (Timescales)

### **Exceedance and Improvement:-**

- Climate change and increased rainfall mean there is a higher chance that capacity of a watercourse will be breached
- Riparian landowners are only required to maintain a watercourse to ensure a state of proper flow, powers do not exist to enforce an improvement to a watercourse
- Increased maintenance liability when a landowner agrees to an improvement, how can this issue be addressed ?

## Challenges (Con't)...

### **Raising Awareness with Local Planning Authorities:-**

- Restriction, obstruction or alteration of a watercourse taking place under planning permission without Section 23 Land Drainage Act (1991) consent
- Awareness to be raised with Local Planning Authorities of requirements under Section 23 of LDA and potential conditions placed on permission to acquire consent from the LLFA before applicant commences with works
- Where offence has been committed, negotiate alternate solution to the problem (i.e. diversion) without requirement for formal Section 24 enforcement action as a reasonable approach

# Summary

## **What role do landowners have in terms of flood mitigation and what are their third party responsibilities ?**

- Allow water to flow through their land without any obstruction, pollution or diversion which effects the right of others.
- Must accept flood flows through their land, even if these are caused by inadequate capacity downstream.
- Must keep banks clear of anything that could cause obstruction and increase flood risk, either on their land or downstream.
- Must always leave a development free edge on the banks next to a watercourse to allow easy access for maintenance.
- Must keep any structures such as Culverts, Trash Screens, Weirs and Mill Gates clear of debris.
- Must notify the relevant RMA if they would like to build or alter a structure that acts as an obstruction to a watercourse.



## Summary (Con't)...

### **What actions should landowners take in order to fulfil their responsibilities?**

- Ensure proper flow is maintained within the watercourse through regular inspection and maintenance
- If unable to do works themselves employ a competent Land Drainage contractor to carry out appropriate maintenance works (See National Flood Forum Website – Blue Pages for lists of approved contractors)
- Where a restriction, obstruction or alteration to a watercourse is required ensure consent is obtained from ECC as LLFA
- Work with neighbouring Landowners to ensure a holistic approach to watercourse maintenance

## Summary (Con't)...

### **How are home and landowners likely to be aware that they have third party responsibilities?**

- Riparian responsibilities are not normally indicated on title deeds and it is not compulsory for legal professionals to inform home buyers of these responsibilities
- Often in more urban areas watercourses become completely fenced off meaning landowners are unaware of their existence until a flooding incident occurs. This also causes issues with access for maintenance

## Summary (Con't)...

**If they fail to fulfil their responsibilities, what courses of action may be taken against them?**

- Failing informal negotiations with a Landowner potential escalation to formal enforcement action using powers under the Land Drainage Act (1991). Powers of enforcement are discharged in accordance to Essex County Councils Enforcement Policy and Protocol

### **Actions Required by the committee:**

To consider the responsibilities of home and landowners in the mitigation of flooding.

# Answers to Flood Quiz Questions

## **Question 1:–**

**How many Essex homes are at risk from flooding in 2014?**

- 108,000 Homes

## **Question 2:–**

**What is the main risk of flooding in Essex**

- Surface Water Flooding

## **Question 3:–**

**What percentage of central government funding is directed to surface water flooding?**

- 8 %

# Questions?

*If you have any questions please contact the Flood and Water Management team at: [watercourse.regulation@essex.gov.uk](mailto:watercourse.regulation@essex.gov.uk)*