Land Drainage Law and Case Studies

Lucy Shepherd Lead Local Flood Authority Manager

Glenn Shaw Watercourse Regulation Engineer Essex County Council were transferred powers under the Land Drainage Act 1991 in April 2012.

Section 23 – Determining applications for new pipes or other alterations to ordinary watercourses.

Section 24 – Taking enforcement action against works which have not been consented under Section 23.

Section 25 – Permissive power to enforce those responsible to undertake maintenance of watercourses where the flow is being impeded.

Changes to legislation: Lord Drainage his 1997 is up to done with all changes known to be in firee on or before IT January 2022. There are changes that may be brought into first or a future date. Changes that have been usual appear in the content and on referenced with amountains: the end of Discounter for details? These contenting changes in the content and one of the content of the end of



Land Drainage Act 1991

1991 CHAPTER 59

An Act to consolidate the enactments relating to internal drainage boards, and to the functions of such boards and of local authorities in relation to land drainage, with amendments to give effect to recommendations of the Law Commission. [25th July 1991]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (and alterian text

- C1 |A table showing the derivation of the provisions of this Consolidation Act will be found at the end of the Act. The table has no official status.]
- C2 Act restricted(01.12.91)by Water Resources Act 1991 (c. 57, SIF 130), vs. 15(2)(a), 225(2)
- C3 Act restricted(01.12.91) by Water Resources Act 1991 (c. 57, SIF 130), ss. 18(2), 225(2).
- C4 Act modified(W.12.91)by Water Resources Act 1991 (c. 57, SIF 130), ss. 137(4), 225(2).
- C5 Act excluded(01.12.91fry Water Consolidation (Consequential Provisions) Act 1991 (c. 88, SBF 130), ss. 2(2), 4(2), Sch. 2 Pt. II para. 15(1).
- C6 Act modified(91.12.91)by Water Consolidation-(Consequential Provisions) Act 1991 (c. 68, SIF 130), sr. 2(2), 4(2), Sch. 2 Pt. II para. 15(2).
- C7 Act definition applied(01.12.91)by Water Consolidation (Consequential Previouses) Act 1991 (z. 6 SIF 130), vs. 2(2), 4(2), Seh. 2 Pt. II para. 16(5).
- CS Act definition of "nutercourse" applied by Loudon Docklands Railway Act 1991 (c. xxiii), s. 14(1)
 C9 Act cortain functions its referred (1.4.1996) by 1995 c. 25, s. 2(1)(a)(iii) (with ss. 115, 117); S.L.
- 1996/186, art. 3 C10 Act certain functions insoftened (0.7.1999) by S.I. 1999/072, art. 2 Sch. 1
- C10 Act: curtain functions transformed (1.7.1999) by S.1.1999/672, art. 2 Sch. 1
- C11 Act arrandment to earlier affecting provision SI 1999/672 Sch. I (1.4.2004) by Water Act 2003 (c. 37), nr. 100(6), 105(3); S.I. 2004/641, art. I(x) (with Sch. 3 para. 7)
- C12 Act power to amend conferred (1.10.2010) by Flood and Water Management Act 2009 (c. 29), vs. 28, 49(3) (with n. 49(3)(8)); S1. 2008/2109, art. 4, Sch.

Land Drainage Act (1991)

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.... the drainage board or local authority concerned may, by notice served on a person falling within subsection (3), require that person to remedy that condition.

How ECC Approach this task:

- Delegation to EFDC who have byelaws
- Strong partnership and information sharing
- ECC Enforcement Policy
- Legal Information Note
- Ordinary Watercourse Maintenance Guide

October

2014

Information Note: Land Drainage Act (LDA) 1991 mmary of Essex County Council's powers and information on octions for individuals when a drainage problem is caused by another landowner, Essex County Council LDA 1991 power permissive powers to take enforcement action where it is deemed necessary, proportionate and in line with ECC's published Flood Enforcement Policy which you can access via the hyperlink HERE. It is important to be aware that very few flood issues will result in formal floor enforcement by ECC action taking place. This does not mean that you as a landowner cannot take your own action to rectify an issue. to lack of maintenance of ditches that are owned by somebody else. A ditch Part 2 of the LDA 1991 provides landraners with two ontions. Both involve making in application to the First Tier Tribunal for an Order to require 'persons' to undertak remedial works' in relation to ditches. Details of how to do this are found at the end If a ditch is in such condition as to cause injury to any land, or prevents the improvement of drainage of any land, an owner or occupier of that land may apply to the <u>Brest-liker</u> tribunal for an Order requiring persons named in that order to carry out. emedial works specified in that order. An order may name a person who is an owner or occupier of land through which the Sich passes, or which abuts the ditch, and any person who, though not an owner occupier, has a right to carry out the work specified in the order or any part of it. Once the order is granted by the tribunal, the persons named have the authority to carry out the work specified in the order and enter any land necessary for the purposes of carrying out that work. It is important to note that compensation may be

Ordinary watercourse maintenance



LAND DRAINAGE ENFORCEMENT POLICY Essex County Council

Background

On 6 April 2012, Essex County Council there was a change in the law relating to drindary water crusines. Essex County Council on what permissive enforcement powers under Sections 24 and 25 of the Act. Section 24 of the Act prohibits which impedes the flow of ordinary watercourses. Section 25 of the Act requires with appropriate maintenance is carried out by reparation owners or ordinary water courses. Section 25 of the Act requires which appropriate maintenance is carried out by reparation owners or ordinary water courses, action if it is considered that a lack of maintenance or alteration to a water course poses a flood risk of the course of the cours

If a landowner carries out actions that adversely impact on the flood risk to another landowner's property, ECC has the right to serve a legal notice on the responsible party to carry out remedial work to resolve the issues. It should be noted that the Council does not have a duty to act and the exercise of these powers is at the Council's discretion.

This policy sets out ECC's approach to the use of its powers under the Land Drainage Act 1991.

Aim

ECC believes that prevention is better than cure. The general approach will be to educate landowners, developers, farmers, and businesses to enable compliance.

The desired outcome is always to ensure compliance through discussions and negotiations. Where it is not possible to make progress due to lack of willingness to work with the Council, enforcement action will be commenced in order to ensure that lives and properties are not put at risk.

Enforcement Action

ECC lakes a risk based approach in managing flooting within Essex. Accordingly we have set an enforcement therebold which as designed to ensure that action is taken where someone's action or inaction causes a risk of flooding which will disrupt other people. ECC will take action where it is suspected that an offeron bas occurred or about 10 occur. This may range from providing advice and guidance, serving notices; through to prosecution for aliaute to comply with notices; or any combination which best achieves the desired outcome. In order to improve land drainage, the Council will use its powers of enforcement under the LDA 1991 to require water courses to be cleared if matters cannot be resolved by the provision of advice and guidance and if the orthrain in this policy are met.

If it becomes necessary for the Council to put right any breach of the above provisions, the Council will seek to recover the costs of both the activity to be rectified

Endorsed by the Essex Flood Management Partnership Board – 2 October 2014

An explanation of our policy regarding the enforcement of unconsented works or lack

Land

Policy

Drainage

Enforcement

1

ECC Enforcement Policy:

Enforcement threshold:

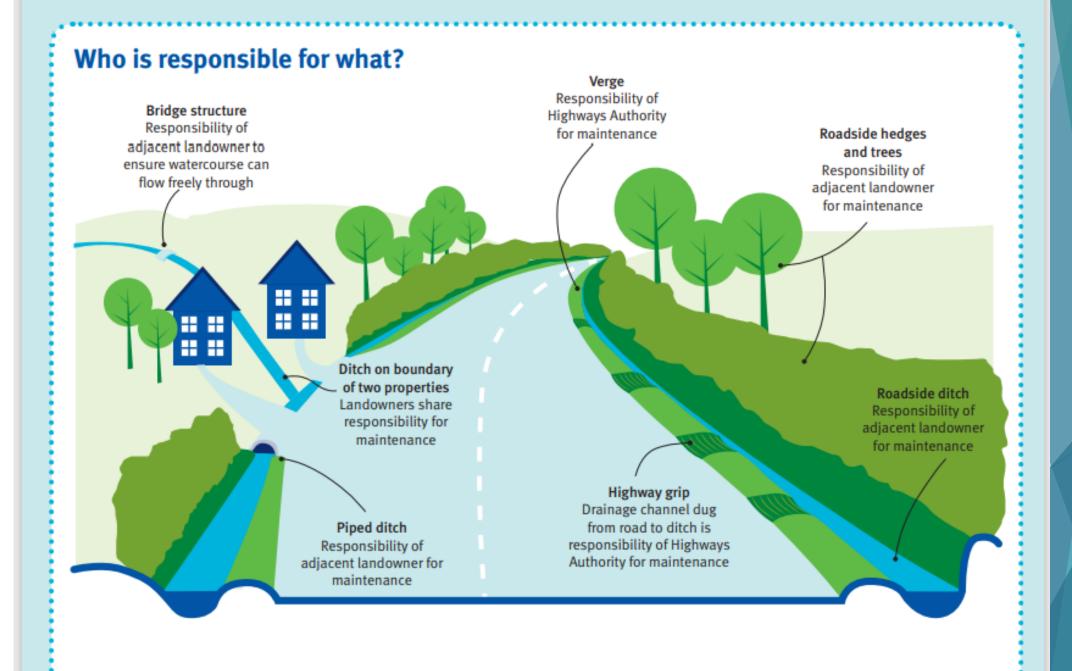
We will normally take enforcement action where we consider that an ordinary water course is in such a condition that the proper flow of water is impeded and that this impediment is causing harm to a receptor.

Receptor can include:

- A "habitable property" defined as any building or structure that is in a condition where it is capable of being used for human habitation or business.
- A "highway" as defined by the Highways Act 1980. This would include footpaths and bridleways.

The Council considers harm to be established where:

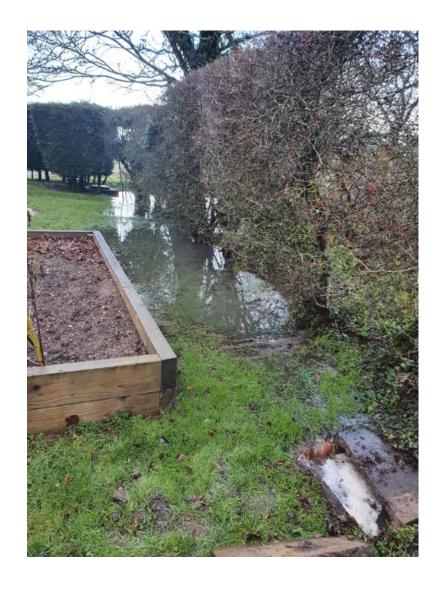
- There is damage to, or a risk of damage to or flooding of a receptor.
- Use or enjoyment of a receptor is affected or impaired.
- There is any other harm which in the opinion of the Council is causing or may cause either perceived or actual damage to a receptor.



Bartholomew Green Road



Bartholomew Green Road





Bartholomew Green Road

- Flooding of Garden due to blocked pipe
- Visited site and wrote all owners
- Issue caused by builders who had blocked pipe and filled
- Resolved by new inspection chamber
- Wrote and visited person who garden had flooded to say situation resolved.

Lolands



Lolands





Lolands

- ► WEAN 000169 Alteration of watercourse
- Developer removed old pipework due to age although had PP from UTT
- Sent to us by UTT after complaints from residents.
- Wrote to Developer S23 etc
- Met on site and discussed
- Resolved by submission of S23 for installation of new pipe.