

**October
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Land Drainage Enforcement Policy

An explanation of our policy regarding the enforcement of unconsented works or lack of maintenance to ordinary watercourses which result in a flood risk

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

LAND DRAINAGE ENFORCEMENT POLICY

Essex County Council

Background

On 6 April 2012, Essex County Council there was a change in the law relating to of ordinary water courses. Essex County Council now has permissive enforcement powers under Sections 24 and 25 of the Act. Section 24 of the Act prohibits the erection of obstructions or the making of alterations to existing structures which impedes the flow of ordinary watercourses. Section 25 of the Act requires that appropriate maintenance is carried out by riparian owners on ordinary water courses. Failure of riparian owners to comply with sections 24 or 25 can result in enforcement action if it is considered that a lack of maintenance or alteration to a water course poses a flood risk.

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 takes a risk based approach in managing flooding within Essex. Accordingly we have set an enforcement threshold which is 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 offence has occurred or about to occur. This may range from providing advice and guidance; serving notices; through to prosecution for failure 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 criteria 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

and any operational and legal costs that the Council will incur as a result of taking such enforcement action.

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**.

In line with the above statement the following elements are necessary before a notice can be served:

1. Existence of an ordinary water course (as per definition below).
2. With an impediment to prevent the proper flow (impediment is defined below).
3. Which is causing harm (harm includes risk of harm and is defined below).
4. To a receptor (defined below).

Exceptions

The above threshold will normally trigger enforcement action,

We will not normally take action for the immediate consequences of wholly exceptional precipitation, but where the threshold is met we will take action if necessary to deal with the consequences of such an event.

Definitions

Ordinary water courses

This term has a statutory definition; it means any water course that does not form part of a main river regulated by the Environment Agency. This includes all rivers and streams and all ditches, drains, cuts, culverts, dykes, sluices, sewers (other than public sewers) and passages, through which water flows. This would include channels that are dry other than at times of high rainfall.

Impediment

An impediment to flow can arise for many reasons. It does not matter whether the impediment has been caused by a wilful act leading to a blockage or may be due to lack of maintenance or neglect of the water course if it became blocked.

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.

- An “ancillary property” defined as any building or structure that is used for any purpose ancillary to a habitable property.
- Features of “acknowledged importance” including but not limited to listed buildings, scheduled ancient monuments and other sites and objects recognised to be of special archaeological, architectural or historic interest and designated wildlife sites.
- Any other land that is in the opinion of the Council considered to be of significant amenity value to the residents of the affected area.

Harm

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.

Before



After enforcement Action



Scope of Policy

This policy is designed to be used by officers of the Council where there is an impediment to the flow of an ordinary water course, which they have either discovered themselves or where it has been reported to them by members of the public, which is causing harm (as defined above) to a receptor. Upon discovering a problem, and where negotiations with those responsible do not resolve the problem, the Council may serve a notice requiring those responsible to remedy the problem.

A notice served pursuant to this power may be served on the owner/occupier of the land adjoining the affected water course or any other person having control of the water course where the impediment occurs or any person causing the impediment to occur. The Council will serve the notice on the person or persons considered to be most appropriate, which will be considered on a case by case basis.

Purpose of Policy

The threshold criteria are designed to cover the situations where it is considered the biggest problems arise from watercourses becoming impeded which will have the biggest impact for residents.

ECC believes in firm but fair regulation. Underlying the commitment to firm but fair regulation are the principles of:

- Proportionality in the application of the law and in securing compliance. All enforcement action will be proportionate to the risks posed to people and the environment and also to the seriousness of the breach and its impacts on the local community.
- Consistency of approach, by the operation of the threshold criteria.
- Transparency about how we operate and what those we regulate may expect from us.

The Council has produced or is producing protocols and guidance documents which will set out procedures which will normally be followed. It is intended that any such documents will be published on the Council's website.