

# **Hertfordshire County Council**

## **Draft Ordinary Watercourse Service Standards**

### **1. Introduction**

In April 2012 powers relating to ordinary watercourses were transferred from the Environment Agency to Lead Local Flood Authorities (LLFAs) (as required by the Flood and Water Management Act 2010).

This transfer of powers means that Hertfordshire County Council is now the regulatory body for construction in, and maintenance of flow in all ordinary watercourses in Hertfordshire, except for the small area of the county north of Hitchin (Ickleford & Pirton) that is covered by the Bedford and Ivel Internal Drainage Board (IDB).

The purpose of ordinary watercourse regulation (consenting and enforcement) is to control certain activities and works that might disrupt the ability of the watercourse to drain areas or transfer water.

Ordinary watercourses are deemed to be all rivers and streams and all ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers vested with utilities) and passages, through which water flows that are not classified as Main River by the Environment Agency.

All LLFAs are required by the National Flood Risk Management Strategy to adopt a proportionate and risk based approach to the management of local flood risk. These service standards set out how Hertfordshire County Council will meet that requirement in its regulatory role on the ordinary watercourse network.

### **2. Context**

There are over 1200km of known ordinary watercourses in Hertfordshire. In order to focus inspection and regulation activity on the appropriate stretches of ordinary watercourses a GIS tool has been developed to identify each stretch of known ordinary watercourse in Hertfordshire and provide it with an indicative risk score. This indicative risk score for each stretch of ordinary watercourse is based on its interaction with infrastructure and flood zones and is derived by correlating a range of datasets that would be consulted in a desk based assessment of the potential flood risk linked to a stretch of ordinary watercourse.

The indicative risk score is a guide for high level screening and prioritisation rather than an empirical measure of flood risk and can (will) be adjusted manually where appropriate.

The indicative risk scores have been divided into 3 bands; High, Medium and Low. For example, an ordinary watercourse confined in an urban area with a relatively large catchment would be in the High band as there

is the need to properly assess the potential for property to be flooded if the performance of the watercourse were to be compromised. An example in the Low band would be a watercourse in open countryside where any failure would result in water temporarily leaving the channel before flowing back in once the obstruction was passed.

This approach is intended to be appropriate and proportionate, and will guide resources deployed to the regulation of the ordinary watercourse network in Hertfordshire.

Activity linked to regulation includes:

- The determination of applications for the purpose of consenting certain activities within the channel.
- The inspection of ordinary watercourses, to identify unconsented structures which may pose a risk and identify where maintenance is required.
- The investigation of complaints by the general public or other risk management authorities which can lead to enforcement action being taken.

### 3. Legislation

The changes to ordinary watercourse management that have been made by the Flood and Water Management Act 2010 mean that Local Authorities (except in IDB areas) now lead on ordinary watercourse consenting and enforcement, as per the following sections in the Land Drainage Act 1991:

- **Section 21 – Enforcement of obligations to repair watercourses, bridges, etc.** This Power is used to ensure that maintenance of structures and features that are situated on an ordinary watercourse are undertaken proactively to prevent them from collapsing into the watercourse and causing an obstruction to the flow.
- **Section 23 – Prohibition on obstructions in watercourses.** This Power relates to the consenting of structures on an ordinary watercourse for both construction and removal. For each application a nationally set fee is charged of £50 per structure. This gives control and regulation over what can be constructed in the channel and prevents unsuitable structures increasing the level of potential flood risk associated with the watercourse.
- **Section 24 – Contraventions of prohibition on watercourses.** This relates to enforcement against structures in watercourses constructed in contravention of, or without consent under, section 23 mentioned above. This gives the LLFA powers to remove the

unconsented structure or obstruction and recover the costs associated with doing so.

- **Section 25 – Powers to require works for maintaining flow of watercourse.** Associated with the maintenance of watercourses, land owners (riparian owners) are required to manage their watercourse to maintain the flow and should not impound the water and deprive the watercourse downstream.

#### 4. Responsibilities

The risk management authorities listed here have the following responsibilities in relation to the regulation of ordinary watercourses:

- **Hertfordshire County Council.** As LLFA, Hertfordshire County Council is the regulatory body for ordinary watercourses. This role includes advice and guidance about structures or enquiries about ordinary watercourses.

The county council also has the responsibility to ensure that any action undertaken on an ordinary watercourse in connection with its responsibilities do not compromise the water bodies' capability to meet its objectives under the water framework directive.

- **District Councils.** Section 14A Land Drainage Act 1991 gives Hertfordshire district councils the power to carry out flood risk management work under certain conditions. In addition district councils have powers to make bylaws for ordinary watercourses but this is limited to those which are vested in them, i.e. they have operational control.
- **Environment Agency.** Previously held the powers relevant to ordinary watercourses but these Powers have been transferred to Hertfordshire County Council in accordance with the Flood and Water Management Act 2010. The Environment Agency remains the regulating body for the Water Framework Directive, Pollution, Impoundment, Abstraction and Discharges into the river network. Hertfordshire County Council pays due regard to all of these wider aspects in its role of ordinary watercourse regulation.

In addition responsibilities are also assigned to the land owner in respect of the riparian ownership assigned to the land within which the watercourse is located. Where a watercourse forms a land boundary it is assumed that the ownership (and therefore, the riparian responsibilities) of the watercourse rests with the owners of the adjoining land. Ownership is usually taken to be to the centre of the watercourse. Riparian Ownership is assumed unless there is further knowledge to suggest otherwise, i.e. property deeds or land registry.

Riparian owners have a responsibility to keep their watercourse clear of obstruction, in that they should manage their stretch of watercourse to maintain flow. More information of Riparian Ownership can be found in Annex 1.

## 5. Service Standards

All LLFAs are required by the National Flood Risk Management Strategy to adopt a proportionate and risk based approach to the management of flooding, including their ordinary watercourse network. In order to comply with this requirement all known ordinary watercourses in Hertfordshire have been assessed using a desk-based approach applied through a GIS tool, whereby every 100m stretch of mapped ordinary watercourse has been assigned an indicative risk score of High, Medium or Low.

This score gives an indication of potential likelihood and severity of flooding linked to a watercourse on housing, roads and other critical infrastructure. This approach forms the platform from which our Service Standards are decided. The lengths of ordinary watercourse for each local authority area divided by risk level is shown in Table 5.1.

**Table 5.1 Risk designations of ordinary watercourse by district**

District	Length of ordinary watercourse (km)		
	High	Medium	Low
Broxbourne	6.19	21.27	53.24
Dacorum	2.04	15.26	32.80
East Hertfordshire	23.39	102.66	385.46
Hertsmere	2.01	18.12	72.47
North Hertfordshire*	7.64	67.75	200.19
St Albans	2.96	22.74	22.29
Stevenage	1.64	3.15	2.08
Three Rivers	1.85	23.97	27.94
Watford	1.56	2.41	2.92
Welwyn Hatfield	2.85	31.17	117.05
<b>Hertfordshire</b>	<b>52.13</b>	<b>308.50</b>	<b>916.44</b>
%	4.08	24.16	71.76

\* excludes ordinary watercourse falling within the IDB area

A Summary table of services offered, the standards relating to them and the relevant legislation is included as Table 5.2 at the end of this section.

A set of district based maps showing the indicative designations of ordinary watercourses in the county is available online to support this consultation document.

## 5.1 Monitoring and inspection of watercourses

The monitoring and inspection aspect of the ordinary watercourse regulation has been set up to be proactive. This is so that any minor faults or obstructions found on watercourses can be picked up and corrected before the problem leads to significant flooding or damage.

The Monitoring & Inspection timeframes are as follows:

- High Risk - Annual inspection.
- Medium Risk - Inspected every five years.
- Low Risk - Inspected on notification of issue (however, most low risk stretches will be covered by their proximity to high and medium risk stretches).

On first visit, each stretch of watercourse will be checked against its provisional risk level to ensure that the level given by the tool is deemed accurate and proportionate. This also applies to newly created watercourses that Hertfordshire County Council become aware of.

## 5.2 Responding to complaints

Upon receipt of a complaint or notification of an issue an initial desk-based assessment will be made using the information that is received and the GIS tool. An appropriate course of action is then determined, relative to the risk grading given to the relevant stretch of ordinary watercourse.

The timeframe for a response is relative to the risk assessment of the watercourse and they are as follows:

- High Risk - response within 5 working days.
- Medium Risk - response within 10 working days.
- Low Risk - response within 20 working days.

For all complaints and notification of issues, an initial desk-based assessment and acknowledgement will be completed within 3 working days and the informing person notified of the actions to be taken to resolve the problem(s).

Complaints or notification of issues can be made directly to the flood risk management team in the Environment Department at the county council or via e-mail at the address below:

[floodandwatermanagement@hertfordshire.gov.uk](mailto:floodandwatermanagement@hertfordshire.gov.uk)

### **5.3 Consenting of works**

The ordinary watercourse consenting process is in place to ensure that any works carried out do not have a detrimental effect on other property or the environment. It also ensures that any works which may affect flood risk are properly designed. If works are carried out without consent, Hertfordshire County Council has enforcement powers to remove or modify them.

Any works that directly affect the flow of the water in the ordinary watercourse will need to be consented. These works can be the construction or removal of structures within the ordinary watercourse; they can also involve temporary works within an ordinary watercourse to aid repair or maintenance activities around or within the ordinary watercourse. A guidance note summarising the types of works that do and do not require consent is provided in Annex 2.

Structures constructed within an ordinary watercourse cannot be given retrospective consent. A flow diagram setting out the consenting process is shown in Annex 3.

Legislation currently sets the charge for each application for consent at £50.

Confirmation will be given within five working days of an enquiry as to whether or not the proposed works will require a full consent application. However, without an appropriate method statement it will not be possible to establish whether temporary consent may be required.

Site visits for consent applications are done at a time that is convenient for all parties; usually within 5 working days of an enquiry.

### **5.4 Enforcement**

In exceptional circumstances, enforcement action may be required and this depends on the severity of the obstruction and/or the level of risk associated to the stretch of watercourse.

The stages of enforcement are:

- Early notification and discussion with parties involved.
- Written notification of unconsented structure on watercourse.
- Formal Notice asking that unconsented structure is removed.
- Removal of unconsented structure from the watercourse and the recovery of any costs incurred.

Due to its nature, the duration of an enforcement case will vary between one day and several months. In extreme circumstances or when a person or body responsible for an unconsented structure is uncooperative court action may be required.

**Table 5.2 Summary of HCC Service standards for Ordinary Watercourse activities.**

	<b>Service Standards</b>	<b>Legislation</b>
Monitoring & Inspection	High Risk - Annual inspection Medium Risk - Inspected every five years Low Risk - Inspected on notification of problem	
Complaint about Watercourse	High Risk - response within 5 working days Medium Risk - response within 10 working days Low Risk - response within 20 working days  All complaints are subject to a desk-based risk assessment and will have an initial response within two working days.	<ul style="list-style-type: none"> <li>• S.21 Land Drainage Act 1991 – Enforcement to repair watercourses, bridges etc</li> <li>• S.23 Land Drainage Act 1991 – Prohibition on obstructions in the watercourse</li> <li>• S.24 Land Drainage Act 1991 – Contraventions of prohibition on obstructions</li> <li>• S.25 Land Drainage Act 1991 – Powers to require works for maintaining flow of watercourse</li> </ul>
Consenting	On receipt of full application, a scheduled response will be sent within five working days and a site visit agreed at a convenient date and time for all parties. Statutory 8 weeks to determine the outcome of application.  A full application consists of the following: Completed forms; Location map of proposed works; Indicative plans and cross sections of works; Thorough method statement of works; Environmental report; Application fee (£50 per application).	<ul style="list-style-type: none"> <li>• S.23 Land Drainage Act 1991 – Prohibition on obstructions in the watercourse</li> </ul>

## 6. Performance monitoring

As part of its monitoring of the Local Flood Risk Management Strategy (LFRMS) the county council publishes an annual report on progress achieved against the actions contained within the LFRMS. Monitoring of performance against these service standards will be included in this annual report. The performance indicators that will be used are as follows:

<b>Service area</b>	<b>Performance indicator</b>	<b>Target</b>
Monitoring and Inspection	% planned inspections undertaken within the year:	
	<ul style="list-style-type: none"><li>• High risk category stretches of ordinary watercourse</li><li>• Medium risk category of ordinary watercourse</li></ul>	100% 80%
Complaints and issue notification	% responses completed within stated response period.	90%
Consenting	% of applications dealt within in the statutory 8 week period.	100%
Enforcement	% of enforcement activity resolved without recourse to court proceedings.	90%
	% of court proceedings decided in favour of the county council.	100%



## **Annex 1. Guidance Notes for Riparian Owners**

Hertfordshire County Council is the Lead Local Flood Authority and as such, holds the powers to require riparian owners to manage and maintain the flow of water in their section of any ordinary watercourse. This role is defined within the Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010.

An ordinary watercourse is deemed to be all rivers and streams and all 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 that is not recorded as Main River by the Environment Agency.

### **Riparian Owners**

If you own the land adjacent to an ordinary watercourse, it is presumed that you are the riparian owner for this stretch of the watercourse, unless it is known that the ownership is in another person(s) name.

All riparian owners have rights and responsibilities and these are highlighted below;

#### **Rights as a riparian owner:**

- Ownership of the land to the centre of the ditch; unless it is known to be in another person's ownership;
- To receive water from upstream, without interference to its quality or quantity;
- To protect your property from flooding and erosion. However, this will most likely need prior consent from your Local Authority and/or the Environment Agency (please check before works start).
- To fish within your boundaries of the watercourse, subject to Environment Agency rod licensing.
- To abstract up to 20 cubic metres of water per day for domestic or agricultural use. Anything over and above this will require prior consent from the Environment Agency.


#### **Responsibilities as a riparian owner:**

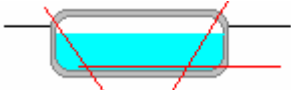
- To pass on flow without interference to its quality or quantity.
- To accept flood flows through your land, even if it is caused by inadequate drainage capacity onwards of your property.
- To maintain the beds and banks of the watercourse in its natural state. (This includes trees and shrubs that may be growing on the banks).
- To keep the channel clear and free of all debris, even if the debris did not originate on your land.
- Not to cause any obstruction to the passage of fish.


- To maintain any structures that you own such as culverts, trash screens, weirs, or mill gates etc.
- To take responsibility for protecting your property from seepage through natural or man-made banks.
- You may have flood defences such as walls and embankments on your property, which are vital for the protection of yourself and others. This should be discussed prior to works commencing.


**Annex 2. Ordinary watercourse - Cross sections of consentable activities**





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**Pipe Culvert (including extension and removal of) - Consent Required** under Section 23 (1)(b).
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**Oversized Box Culvert (including extension and removal of) - Consent Required** under Section 23 (1)(b).
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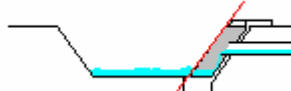
**Trash Screens - Consent Required** as it is an alteration to a culvert and has the potential to obstruct flow under Section 23 (1)(c).
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**Bank Protection Works - Not Consentable** under LDA 91, (Temporary works may require consent).
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**Pipe Crossing (in channel) - Consent Required** under Section 23 (1)(a) if placed on bed and under Section 23 (1)(b) if above bed.
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**Pipe Crossing (above bank) - Not Consentable** under LDA 91 as it does not affect the watercourse.
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**Pipe Crossing (below bed) - Not Consentable** under LDA 91 as it does not affect the watercourse – Potential temporary works consent.
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**Protruding Pipe Outfall - Not Consentable** under LDA 91 as it will not act like a dam/weir or like obstruction.
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**Outfall within Bank profile - Not Consentable** under LDA 91 as it does not act like a mill dam or weir.
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**Weir/Dam or impoundment or temporary works that obstruct flow - Consent Required** under Section 23 (1)(a).
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**Bridge (where soffit level is below bank top level) - Consent Required** under Section 23 (1)(b) as it acts like a culvert.
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**Bridge (abutments not reducing flow area/width) - Not Consentable** under LDA 91 as does not interfere with flow.
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**Bridge (Abutments restricting flow) - Consent Required** under Section 23 (1)(b) as it acts like a culvert.
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**Clear span bridge - Not Consentable** as it does not affect the watercourse.
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**Bridge with support in channel - Not Consentable** under LDA 91 as it will not act like a dam/weir or like obstruction Need to consider size of pier against size of watercourse, but would want to discourage the use of a pier in the watercourse.

Note: “flow” should be determined as bank full flow conditions

Annex 3. Ordinary Watercourse Consenting Process Flow Diagram

