

## Land Drainage

### Rights and Responsibilities

#### Introduction

These notes were prepared by Cornwall Council for the benefit of residents who are affected by streams, rivers, ditches and watercourses passing through their land/property. It is a simplified guide to the current law relating to riparian responsibilities and this should be noted by readers.

In cases of dispute or doubt, legal advice should be sought or reference made directly to the LAND DRAINAGE ACT 1991, available at the reference section of the local public library or online.

#### Who is a Riparian Owner?

The term "Riparian Owner" describes anyone who owns property alongside a natural watercourse. Under common law they possess rights and responsibilities appertaining to the stretch of the watercourse which follows or falls within the boundaries of their property. It is normally presumed that a riparian owner owns land up to the centre line of a non-tidal watercourse where the watercourse itself forms a boundary.

A riparian owner is responsible for accepting water from the section of watercourse owned by their upstream neighbour and transferring this, together with drainage from their own property, to their neighbour immediately downstream.

#### Rights of Riparian Owner

Riparian owners are entitled to:-

- protect their property from flooding; and
- protect their banks from erosion.

These rights are modified by a duty to the rest of the community and to the environment. Environmental issues including wildlife conservation, fisheries, reshaping of the river and landscape must all be considered.

Plans for any works other than general cleaning and routine maintenance must be approved by Cornwall Council and consents secured before going ahead with any such works (Section 23, Land Drainage Act 1991). This applies to any modifications which might affect the flow characteristics or capacity and include installation of dams, weirs, mills, bridges, pipe crossings, channel diversions and in particular, culverting or piping.

## Ordinary Watercourse

An 'ordinary' watercourse is every natural river or stream which is not a "main river" as defined by the Environment Agency (EA). Classifications of particular watercourses may be obtained from Cornwall Council by calling

0300 1234 222 or by emailing [highways-drainage@cornwall.gov.uk](mailto:highways-drainage@cornwall.gov.uk)

## Duties of Riparian Owner

Riparian Owners have a duty of care towards their neighbours upstream and downstream and must avoid any action likely to cause flooding of their neighbours land or property.

The ultimate responsibility for maintenance of the watercourse, including the banks, rests in perpetuity with the riparian owner, regardless of whether such works have occasionally in the past and without prejudice, been carried out by, and at the expense of the Council. This could include clearing obstructions, repairing the banks, and protecting vegetation/trees.

There are additional restrictions regarding the siting of any kind of structural work on or near river banks, or anywhere within a river flood plain. This is regulated by the Environment Agency from whom approval is required in addition to planning and building consents from the Local Authority. Other amenity considerations may apply, such as fishing, boating and conservation of the natural environment.

Water abstraction from and discharges into a watercourse are also regulated by the Environment Agency.

It is important that riparian owners preserve access to the banks of rivers and streams for maintenance and safety purposes. This will influence fencing and the control of undergrowth and vegetation on and around the banks and the provision of access tracks.

## Nuisance

The riparian owner must not cause or perpetuate a nuisance, such as causing obstruction to the flow of water in a stream by causing the channel to become blocked.

## Ownership

Purchasers of property rarely read the conveyance document but Section 26 of the Law of Property Act 1925 provides that "a conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey with the land all buildings, hedges, ditches, fences, ways, waters, watercourses, liberties, easements, rights and advantages whatsoever appertaining or reputed to appertain to the land or any part thereof". However, this section operates in the absence of any contrary intention expressed in the conveyance.