



Solihull

METROPOLITAN
BOROUGH COUNCIL

Riparian Ownership

Riparian ownership

As there are increased levels of development and more intense and heavy rainfall events, maintaining and improving the capacity of the county's land drainage system has never been more important.

An effective drainage system is essential to prevent flooding, but it is also important to keep our highways safe and enable productive farming. Ditches and drains play an important role in allowing surface water to drain freely away from highways, fields, and adjacent land. For them to remain effective, they require regular management to keep them functioning well.

The maintenance of rivers, streams and ditches is usually the responsibility of the "Riparian Landowners" who own land on either bank. As a Riparian Landowner, you will have rights and responsibilities associated with the ditches or watercourses flowing through/adjacent to your property.

This leaflet aims to provide a general overview of the responsibilities for Riparian Landowners. If you have any queries, please reach out to the drainage and flood risk team using the contact details overleaf. Please note this is not a definitive statement of the law. If you are in any doubt as to your legal position regarding a specific drainage issue, we advise you to seek independent advice.



Classifications

Drains

Keep the drains clear on your property and ensure that you do not drain water into your neighbour's property or foul drain. There is a right of drainage that allows water that flows across your land to flow downhill naturally to your neighbour's land. However, you are not allowed to artificially channel water in a way that will cause damage to your neighbour's land. If you do, you may face civil action.

Example:

Permitted – rainwater that falls on your lawn flowing downhill through your neighbour's land. Not permitted – water from your property being channelled through a down pipe or other pipe onto your neighbour's property.

Watercourses and ditches

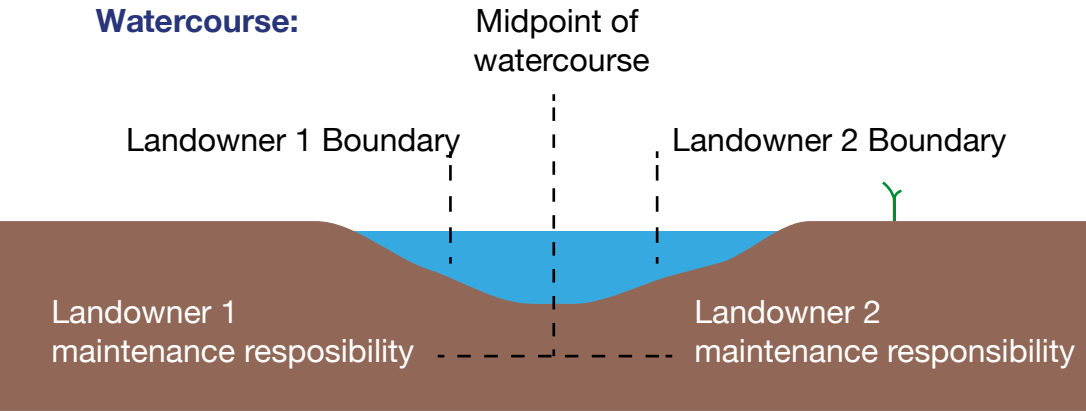
The normal position in connection with who is responsible for the maintenance of watercourses and ditches is shown in the illustrations on the next page.

A watercourse is a natural feature which drains the surrounding catchment and normally has some water flowing in it.

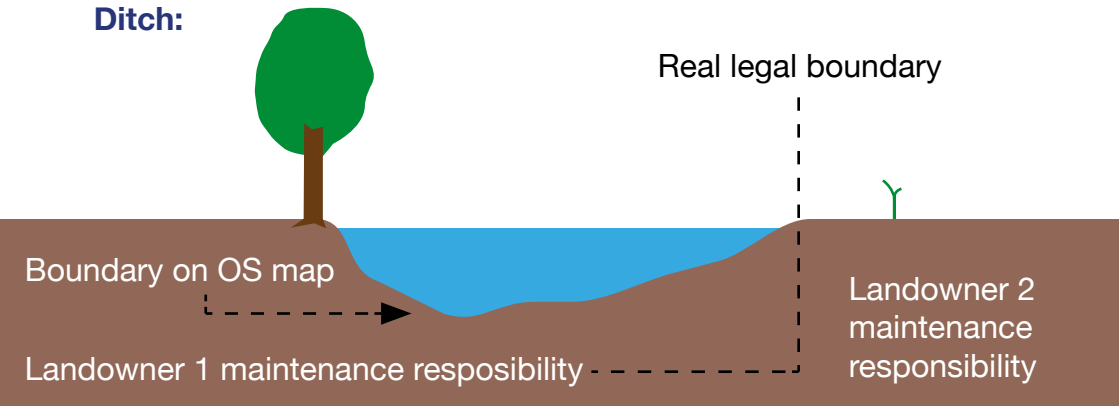
A ditch is a man-made feature which has been created in order to drain an area of land. Historically, these were most often dug by a landowner at the edge of their field and the spoil deposited on their land where hedges then grew over time. As a result, the common law 'hedge and ditch' rule says the landowner responsible for maintaining the ditch is normally the landowner on the opposite side of the hedge.



Watercourse:



Ditch:



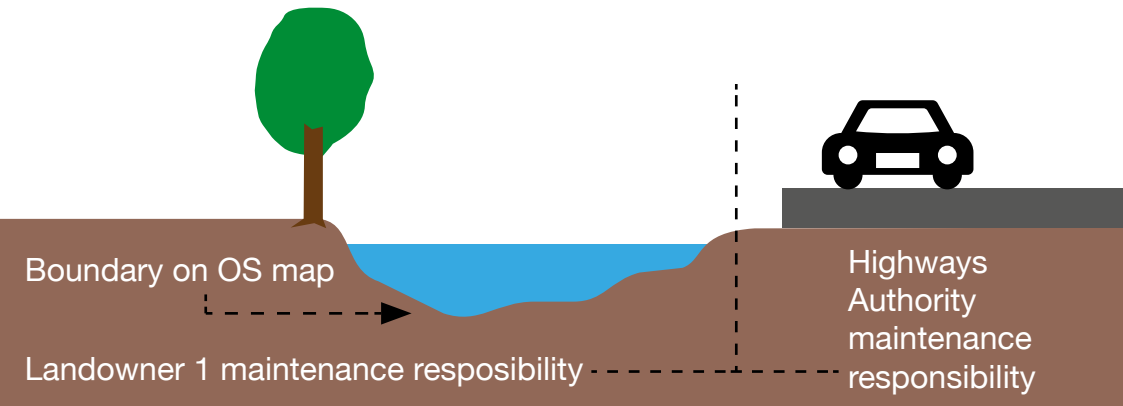
Highway ditches

The common law 'hedge and ditch' rule is particularly relevant to highway ditches which are normally the responsibility of the adjacent landowner (see illustration on the next page).

There are some exceptions. Where one of the following situations apply, Solihull Council may take additional responsibility for maintenance of ditches:

1. A historic agreement is in place where Solihull Council have agreed to maintain a ditch.
2. Highways own land on both sides of the watercourse.
3. A ditch does not drain any adjacent land, but only the highway.

Solihull Council is responsible for regular maintenance and cleansing of gullies on the highway.



Blocked culverts

A culvert is simply a covered watercourse and the same maintenance principles apply to them as to watercourses.

Responsible landowners must keep any structure such as culverts (as well as trash screens, weirs, gates etc.) on their property clear from debris. If you are a landowner and have a culvert under your land you need to keep it free from leaves and debris. If you take no action and it becomes blocked, resulting in flood damage, you could be held liable for this damage.

Flood defences

Maintain your flood defences (if you have any). If failure to maintain these defences leads to flooding, you could face a claim in negligence or nuisance.

How to maintain water features

It is good practice to develop a programme agreed with neighbouring landowners for all ditches that are your responsibility. The programme should set out how often you will carry out maintenance works and at what time of the year this will be. Often, costs can be reduced by landowners working together and local issues can normally be resolved at a local level through the Parish Council or local community.

We have a separate guidance document regarding how to maintain drains, ditches and watercourses which is available on our website.

Resolving maintenance issues

Solihull Council, through its Drainage and Flood Risk team, holds the role of Lead Local Flood Authority to oversee surface water flood risk within Solihull. This role was created in response to the widespread flooding in 2007 and was one of several recommendations of The Pitt Review brought into law under the Flood and Water Management Act 2010.

The Council will take a proportionate and risk-based approach to managing flooding within Solihull, but where it suspects that an offence has occurred or is about to occur will take appropriate action. Action will range from the provision of advice and guidance, to serving notices and prosecution.



Maintenance issues are normally resolved more quickly at a local level, however, through the intervention of the Parish Council or local community before any enforcement action is required by Solihull Council.

Roles and responsibilities

The Land Drainage system deals with a large proportion of the water arising inland from rainfall and surface water run-off, as well as groundwater. The Land Drainage system incorporates rivers, watercourses, ditches, culverts, pipes, lakes, and ponds.

The Land Drainage Act 1991 requires that a watercourse be maintained by its owner in such a condition that does not obstruct free flow of water.

The Council does not own any land drainage ditches unless they are adjacent to or on Council land.

If you own land located immediately adjacent to or bordering a drainage ditch, river or any other inland body of water then in legal terms you are a Riparian Owner and have certain common law rights & responsibilities.

- You have the responsibility to pass on water flow without obstruction, pollution or diversions affecting the rights of others.
- You must accept flood flows through your land, even if these are caused by inadequate capacity downstream.
- You must maintain the bed and banks of the watercourse as well as the trees and shrubs growing on the bank. You must clear any debris even if it did not originate from your land/person.



- You must keep the bed and banks clear of any matter that could cause an obstruction, either on your land or downstream if it is washed away.
- You must keep any structures that you own clear of debris. These structures include culverts, trash screens, weirs, and mill gates.
- You are responsible for protecting your property from water that seeps through natural or man-made banks.
- You are responsible for damage caused by any alterations on your land that modifies the natural discharge of surface water onto adjacent lower land. For example, changes in ploughing regimes or construction of impermeable surfaces.

The landowner has the right to protect their land from erosion or damage due to a watercourse. However, if this involves altering the watercourse in any way then Solihull Council must be contacted first to provide consent for the works to take place. Works that require this may include culverting or installing bridges/weirs which reduce or restrict the flow.

It is important that land is managed a way that increases the amount of infiltration and reduces the potential amount of runoff. Flood risk can be reduced through decreased runoff which will also reduce soil erosion.

Your rights

- You may own land up to the centre of the watercourse.
- You have the right to receive flow of water in its natural state, without undue interference in quantity or quality.



- You have the right to protect your property from flooding, and your land from erosion.
- You have the right to fish in your watercourse, although this must be by legal methods and with an Environment Agency rod license.
- You can abstract a maximum of 20 cubic meters per day of water for the domestic purposes of your own household or for agricultural use, excluding spray irrigation, from a watercourse at a point which directly adjoins your land without the need for a license. Most other types of abstraction will require a license from the Environment Agency.

These rights are modified by your duty of care to other Riparian Owners, the rest of the community, and to the environment. You must not do anything which harms or affects others.

Before starting any work on, in, or adjacent to a watercourse, you must submit the plans of any work to the Environment Agency and Solihull Council to determine whether you require land drainage consent and/or planning permission. Environmental issues including flood risk, wildlife conservation, fisheries, and reshaping of the river and landscape, must all be considered.

If you would like to know more or have had an incident of flooding, please contact Solihull Council and one of our flood risk team will be happy to help

drainage@solihull.gov.uk

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