

## **RESPONSIBILITIES FOR DRAINAGE FEATURES & INVESTIGATIONS**

### **DRAINAGE FEATURES**

The definition of diverse drainage features in the UK is notoriously difficult. It is important to make the definitions as clear as possible, because this affects which body or person is responsible for maintenance. Even within a body – such as the Council – the precise details of definition can have important implications.

Within Leeds City Council the following responsibilities apply:-

#### **Ordinary watercourses:**

- (a) The **Flood Risk Management Section** has the enforcement powers from the Land Drainage Act, 1991, and the Land Drainage Byelaws (2001), making sure that owners of ordinary watercourses (public and private) keep them free of blockage. It also exercises the Council's permissive powers to carry out flood alleviation works in relation to watercourses.
- (b) The **Flood Risk Management Section** is responsible for keeping all Council-owned ordinary watercourses free of significant impediments to flow. This applies both to open channel and culverted lengths – including (from 2<sup>nd</sup> Nov 2009) culverted watercourses under highways.
- (c) The **Bridges Section** is responsible for the adequacy, material condition and structural integrity of ordinary watercourse culverts under highways that are  $\geq 900$ mm in diameter or width.
- (d) **Highway Maintenance** is responsible for the adequacy, material condition and structural integrity of ordinary watercourse culverts under highways that are  $< 900$ mm in diameter or width.

#### **Main rivers:**

- (a) The **Flood Risk Management Section** is responsible for keeping all Council-owned main rivers free of significant impediments to flow. This applies both to open channel and culverted lengths – including (from 2<sup>nd</sup> Nov 2009) culverted main rivers under highways, but excludes blockages at the bridges over the rivers Aire and Wharfe.
- (b) The **Bridges Section** is responsible for the adequacy, material condition and structural integrity of main river culverts under highway that are  $\geq 900$ mm in diameter or width. It is also responsible removing significant blockages at the bridges over the rivers Aire and Wharfe.
- (c) **Highway Maintenance** is responsible for the adequacy, material condition and structural integrity of main river culverts under highway that are  $< 900$ mm in diameter or width.

#### **Highway gullies:**

- (a) **Highway Maintenance** is responsible for the provision and structural maintenance of highway gullies.
- (b) **Environmental Services** (Neighbourhoods and Housing) is responsible for the cleansing of highway gullies.

#### **Highway Drains:**

- (a) **Highway Maintenance** is responsible for the provision and maintenance of highway drains – i.e. the pipes which connect highway gullies into a local sewer, watercourse, etc.

## Highway ditches:

- (a) **Highway Maintenance** is responsible for maintaining ditches adjoining the highway where the land upon which they are situated is dedicated as part of the highway, or where the prime purpose of the ditch is to drain the highway. It should be noted, however, that the issue of which ditches are truly 'highway' ditches, maintainable by the highway authority, is by no means straightforward. **Annex A** to this document outlines the policy followed by Leeds City Council, as highway authority, on this matter.

## Trash Screens:

- (a) The **Flood Risk Management Section** is responsible for keeping trash screens (i.e. grills or grids) at the entrance to highway culverts free from significant impediments to flow.
- (b) **Highway Maintenance** is responsible for the provision of trash screens, where appropriate, to prevent debris causing a blockage within or at the entrance of a highway culvert. It is also responsible for the physical integrity or repair of existing screens.

## INVESTIGATIONS

When a problem is first identified or reported, the responsibility for initiating and managing an investigation will be in accordance with the following criteria. It is expected, however, that all parties will collaborate as far as possible and will pro-actively share information. Where problems are found to overlap several areas of responsibility, appropriate mitigatory actions will be shared accordingly.

- (a) The Highway Authority is responsible, as far as is reasonably practicable, for ensuring that the highway is not dangerous for traffic. **Highway Maintenance** will therefore investigate complaints of highway flooding – in particular, in cases where the prime complaint is that the highway is unsafe due to flooding or that the highway is inadequately drained or is causing a nuisance by shedding water onto adjacent properties.
- (b) The **Flood Risk Management Section** is responsible for using the Council's powers to ensure that flooding is not caused by blockages in ordinary watercourses or watercourses owned by the Council. It will therefore be responsible for investigating complaints about flooding that arises from impediments to flow in ordinary watercourses (whether in open channel or culvert).
- (c) The **Flood Risk Management Section** will investigate complaints about flooding arising from impediments to flow in main rivers owned by the Council.
- (d) The **Flood Risk Management Section** will normally investigate complaints about surface water flooding affecting premises.

## DEFINITION OF WATERCOURSES AND DITCHES

For the purposes of division of responsibilities between Council Departments, the term 'watercourse' includes all naturally arising streams, gills, becks, rivers, etc – even where flows have been artificially enclosed in a culvert or constrained in an artificial channel. The term, however, excludes: roadside ditches, highway ditches, land drains, field drains, surface water sewers, etc.

It needs to be recognised that the definition of watercourse varies significantly in different contexts. For example, the definition in common law – which establishes riparian ownership

rights and responsibilities – is quite different from that in the Land Drainage statutes and byelaws. The Land Drainage Act 1991 defines ‘watercourse’ very broadly, and thereby gives the Council wide ranging powers to act in relation to defective water-carrying channels and conduits of many descriptions.

**NOTE:**

The width of the highway shown in solid colour on the Highway Registry maps has, in the majority of cases, no legal standing and is included for practical purposes only. It indicates the area of land maintainable by the highway authority at public expense, but is quite different from land which has been *dedicated* as highway. Delineation of the latter would have to be supported by legal documentation (e.g. a deed of dedication).

## ANNEX 1

# LEEDS CITY COUNCIL PROCEDURE ON THE MAINTENANCE OF ROADSIDE DITCHES

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## 1 INTRODUCTION

- 1.1 The legal responsibility for roadside ditches is not a straightforward matter. This paper sets out the criteria which are relevant in deciding who is responsible for maintenance and what approach the highway authority will take in arranging maintenance of those ditches for which it has some responsibility.

## 2 WHEN IS A DITCH A 'HIGHWAY DITCH'

- 2.1 Where a ditch adjoins a highway (even if it is between the fence - or hedge - and the carriageway) the presumption is that it does not form part of the highway but belongs to the neighbouring landowner<sup>1</sup>. This can be rebutted by evidence that the land on which it is situated was dedicated as part of the highway<sup>2</sup>, but it is for the person making this assertion to prove it.
- 2.2 The fact that highway gullies are connected to the ditch, or that surface water run-off from the highway enters the ditch, is not proof that the ditch belongs to, or is maintainable by, the highway authority. The highway authority has a right to discharge surface water to existing ditches<sup>3</sup>.
- 2.3 The owner of land adjoining the highway has a common law duty to scour and cleanse the ditches that adjoin the highway so as to prevent them from causing a nuisance to the highway<sup>4</sup>.
- 2.4 Where the ditch has been created specifically to drain the highway then there is a presumption that it is the responsibility of the highway authority.

## 3 PROCEDURE ON MAINTENANCE OF DITCHES

- 3.1 *Where a ditch is the responsibility of the highway authority, in accordance with the above criteria, then **Highway Maintenance** will keep it clear and, in doing so, will take account of flood risk.*
- 3.2 The highway authority has a duty<sup>5</sup> to take reasonable steps to ensure that the highway is not dangerous for traffic. Therefore, the avoidance of carriageway or footpath flooding (with the possible additional risk of ice in winter) will be taken into account in determining the maintenance standard and priority.
- 3.3 The avoidance of flooding of adjacent properties due to run-off from the highway will also be taken into account in determining the maintenance standard and priority.
- 3.4 Where open land adjoining the ditch is subject to flooding because it cannot drain into the ditch, due to silting or blockage in the ditch, this will be taken as evidence that the purpose of the ditch is not exclusively for the drainage of the highway. The adjoining land owner will be expected to carry out clearance work.

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<sup>1</sup> Hanscombe v Bedfordshire CC (1938) 3 All E.R.647

<sup>2</sup> Chorley Corporation v Nightingale (1906) K.B. 612

<sup>3</sup> Highways Act, 1980, s100

<sup>4</sup> Attorney General v Waring (1899) J.P. 789

<sup>5</sup> Highways Act, 1980, s58

3.5 Where a ditch is not the responsibility of the highway authority, the private owner is expected to carry out necessary clearance work. In certain circumstances, however, Highway Maintenance may opt to carry out clearance work in a roadside ditch on the basis that this is a responsible working arrangement for the common good, which is neither embodied in statute nor based on court decisions, as far as is known.

3.6 These circumstances are as follows:-

(a) where the highway authority has carried out work for the betterment of highway drainage, which has then placed a more onerous burden on the adjacent landowner.

(b) where the highway floods as a result of an obstruction in a roadside ditch.

#### 4 PROCEDURE ON MAINTENANCE OF HIGHWAY CULVERTS

4.1 Where any roadside ditch (or watercourse) is carried under a Leeds CC highway, the **Flood Risk Management Section** is responsible for keeping it free of impediments to flow. This role will be carried out on a risk-assessed basis. In other words, the level of service and the response time will be based on an appraisal of the degree of flood risk posed by any blockage.

4.2 **Highway Maintenance** is responsible for the adequacy, material condition and structural integrity of culverts under highway that are <900mm in diameter or width. This role will be carried out on a risk-assessed basis. In other words, maintenance and remedial work will be based on an appraisal of the degree of risk (including flood risk) posed by any defects or shortcomings.

4.3 The **Bridges Section** is responsible for the adequacy, material condition and structural integrity of culverts under highway that are  $\geq$ 900mm in diameter or width. This role will be carried out on a risk-assessed basis. In other words, maintenance and remedial work will be based on an appraisal of the degree of risk (including flood risk) posed by any defects or shortcomings.