

# Ordinary Watercourse Regulation

**Consenting and enforcement of ordinary  
watercourses in Lancashire**



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# 1. Introduction

The Flood and Water Management Act (FWMA) 2010<sup>1</sup> designates all county and unitary authorities as Lead Local Flood Authorities (LLFA) and sets out a number of powers and duties for flood 'risk management authorities'.

Flood risk management authorities in Lancashire County Council's area include:

- Lancashire County Council\* as the Lead Local Flood Authority and local Highway Authority
- District Councils which include Burnley, Chorley, Fylde, Hyndburn, Lancaster City, Pendle, Preston City, Ribble Valley, Rossendale, South Ribble, West Lancashire and Wyre Councils.
- Environment Agency
- Water and Sewerage Companies, including United Utilities and Yorkshire Water
- Internal Drainage Boards (IDB), such as in Earby and Salterforth

*\*Blackpool Council and Blackburn with Darwen Council are Lead Local Flood Authorities and Highway Authorities for their administrative areas.*

You can read more about the roles and responsibilities of flood risk management authorities in our Local Flood Risk Management Strategy<sup>2</sup>.

The Land Drainage Act 1991<sup>3</sup> was amended by the Flood and Water Management Act 2010 and gave Lead Local Flood Authorities powers to regulate ordinary watercourses in its area, except in those areas covered by an Internal Drainage Board<sup>4</sup>.

Ordinary watercourse regulation involves the issuing of consent for changes to an ordinary watercourse that might obstruct or alter the flow, and use of enforcement powers to rectify unlawful and potentially damaging works.

The regulation of ordinary watercourses is pivotal in the management of local flood risk, to ensure that they are not posing an unnecessary flood risk to people, property, and infrastructure if they are poorly maintained, neglected, or subject to unconsented works<sup>5</sup>.

This document sets out policies for how Lancashire County Council will apply this legislation and undertake its responsibilities in regulating ordinary watercourses. Policies are clearly stated in blue policy boxes.

This document is intended to be read alongside other guidance and information on our website.

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<sup>1</sup> [Flood and Water Management Act 2010](#)

<sup>2</sup> [Lancashire Local Flood Risk Management Strategy](#)

<sup>3</sup> [Land Drainage Act 1991](#)

<sup>4</sup> [Internal Drainage Boards](#)

<sup>5</sup> [EA Guidance: Owning a watercourse](#)



## 1.1. An introduction to watercourse classifications

There are many types of watercourses in Lancashire, from large rivers to smaller streams and ditches. Watercourses may run dry during the summer months and do not need a permanent flow of water to be classified as a watercourse.

Watercourses are defined in Section 72 of the Land Drainage Act 1991, as *"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"*<sup>6</sup>.

Lancashire County Council does not usually consider its powers under Section 21, 23, 24 and 25 of the Land Drainage Act 1991 (as amended) to apply to any components of a sustainable drainage system. These components and systems are designed for controlling surface water discharge rate and volume from a defined area.

Watercourses in England can be split into those classified as 'main rivers' and those classified as 'ordinary'. It is important to understand the classification of a watercourse so the responsible body for their regulation can be identified.

### 1.1.1. Ordinary Watercourses

Unless in an area covered by an Internal Drainage Board, ordinary watercourses are regulated by the Lead Local Flood Authority.

Ordinary watercourses are defined in Section 72 of the Land Drainage Act 1991 as *"a watercourse that does not form part of a main river"*.

Ordinary watercourse consent applies to watercourses which have not been designated as a 'main river' on the Environment Agency's maps.

### 1.1.2. Main Rivers

Main rivers are regulated by the Environment Agency and are defined in Part IV, Section 113 of the Water Resources Act 1991 as:

*'a watercourse shown as such on the main river map for England and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel which—*

- a) is a structure or appliance situated in the channel or in any part of the banks of the channel; and*
- b) is not a structure or appliance vested in or controlled by an internal drainage board;*

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<sup>6</sup> [Land Drainage Act 1991 Section 72](#)



*“watercourse” shall be construed as if for the words from “except” onwards in the definition in section 221(1) below there were substituted the words “except a public sewer”.<sup>7</sup>*

To identify whether a watercourse is classified as a ‘main river’ or ‘ordinary’, visit the Environment Agency’s website<sup>8</sup>.

## 1.2. Riparian owners and their responsibilities

A riparian owner is somebody who has a watercourse which runs through, beneath or adjacent to the boundary of their property. Each riparian owner is responsible for the stretch of watercourse they own and for its ongoing maintenance.

Most land and property deeds will state what is within your ownership, such as a watercourse. Where this is not the case or when faced with an unclaimed ordinary watercourse, Lancashire County Council will apply the provisions of Section 62 of the Law of Property Act 1925<sup>9</sup>:

*“a conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever appertaining or reputed to appertain to the land or any part thereof”.*

In addition, Lancashire County Council will consider the application of the legal presumption of ownership to the mid-point of a watercourse (ad medium filum ripam<sup>10</sup>).

Riparian owners have certain rights and responsibilities which apply to both ordinary watercourses and main rivers<sup>11</sup> and you can read about these on The Flood Hub<sup>12</sup>.

## 1.3. Why regulating ordinary watercourses is important

Unregulated works to ordinary watercourses can lead to adverse effects on flooding and the water environment. To manage this risk, the county council has policies on how we will regulate ordinary watercourses in Lancashire in ways that are proportionate and effective.

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<sup>7</sup> [Water Resources Act 1991](#)

<sup>8</sup> [Main river map for England: proposed changes and decisions - GOV.UK \(www.gov.uk\)](#)

<sup>9</sup> [Law of Property Act 1925 – Section 62, paragraph 1](#)

<sup>10</sup> [The Law Society](#)

<sup>11</sup> [Land Drainage Act 1991 – Section 25, Paragraph 3](#)

<sup>12</sup> [Riparian Ownership | The Flood Hub](#)



The county council is committed to protecting the environment and wants to engage riparian owners and raise awareness of when watercourse consent is needed. Where possible we endeavor to work with riparian owners to encourage works which seek to minimise negative impacts whilst enhancing the watercourse, the water environment and managing the risk of flooding for the benefits of people and wildlife. We will also prioritise when the county council undertakes enforcement action on ordinary watercourses as set out in this document.

In delivering our policy commitments, we will work with riparian owners throughout Lancashire in regulating ordinary watercourses to work towards leaving them in a better state than they are in today, an ambition we share with the vision set out in the 25 Year Environment Plan<sup>13</sup>.

### **1.4. Bylaws for ordinary watercourse regulation**

Lancashire County Council currently does not have byelaws for ordinary watercourse regulation. However, we reserve the right to introduce byelaws for ordinary watercourse regulation if found appropriate.

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<sup>13</sup> [25 Year Environment Plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/25-year-environment-plan)



## 2. Ordinary Watercourse Consent

### 2.1. An introduction to ordinary watercourse consent

Under Section 23 of the Land Drainage Act 1991, as amended by the Flood and Water Management Act 2010, there is a legal requirement to obtain consent from the county council prior to undertaking certain works.

This includes permanent or temporary works and may also include repairs to certain existing structures and maintenance works.

Even if you have planning permission or other permits you must obtain consent from Lancashire County Council for consentable work to an ordinary watercourse.

#### 2.1.1. What requires consent

Prior written consent from Lancashire County Council under Section 23 of the Land Drainage Act 1991 must be obtained for certain works..

This includes any permanent and/or temporary works, regardless of whether the watercourse is open or culverted (piped or otherwise enclosed) and notwithstanding of any planning permission.

Ordinary watercourse consent is required for:

1. The erection of or alteration to, any mill, dam, weir or similar obstruction to the flow of any ordinary watercourse or;
2. The construction of a culvert in any ordinary watercourse or;
3. The alteration of a culvert in a way that would be likely to affect the flow of an ordinary watercourse or;
4. Temporary works in an ordinary watercourse such as scaffolding, a dam, pumping off excessive water, or any major drainage work.

If the county council fails to notify an applicant of a valid application its determination with respect to the application for ordinary watercourse consent within the legislative timescales set out in Section 23 of the Land Drainage Act 1991 (as amended), the county council will be deemed to have consented the works.

#### 2.1.2. Exemptions to Ordinary Watercourse Consent

Exemptions to the requirement for ordinary watercourse consent from Lancashire County Council include:

- those listed in Section 23(6) of the Land Drainage Act 1991 (as amended)
- Nationally Significant Infrastructure Projects under the Planning Act 2008 do not require ordinary watercourse consent from the county council. This is managed through the Development Consent Order (DCO) process.



### 2.1.3. Consenting of works by the County Council

Lancashire County Council has powers and duties as two flood risk management authorities<sup>14</sup>; the Lead Local Flood Authority and the Highway Authority.

Under Section 23(1b) of the Land Drainage Act 1991<sup>15</sup> (as amended) the Lead Local Flood Authority must consult the Environment Agency before carrying out consentable works if those works are to be undertaken by the Lead Local Flood Authority.

### 2.1.4. What happens if you fail to obtain consent

Failure to obtain consent before carrying out works may be a criminal offence.

Any person acting in contravention of Section 23 of the Land Drainage Act 1991 (as amended) could face a fine not exceeding Level 5 on the [standard scale](#) and a further fine of up to £40 for every day contravention is continued after conviction as stated under Section 24(3) of the Land Drainage Act 1991 (as amended).

Under Section 24 of the Land Drainage Act 1991 (as amended), the county council has the power to take any action deemed necessary to remedy the effect of contravention of failure to gain consent and recover the expense of doing so from the offender.

If other offences or breaches have occurred, for example in relation to environmental or planning laws, this will be reported to the relevant authority.

### 2.1.5. Retrospective Consent

There is no legal means for the county council to issue retrospective consent. This includes emergency and non-emergency works. If your works include adoption of a new asset, such as a road or sewer, your application for adoption may be refused by the adopting body without consent for the works to the ordinary watercourse(s).

Therefore, it is important to obtain consent prior to commencement of any consentable works.

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<sup>14</sup> As defined in the [Flood and Water Management Act 2010](#)

<sup>15</sup> [Land Drainage Act 1991 \(legislation.gov.uk\)](#)



## 2.2. Consent Policies

### 2.2.1. Application Validation

Lancashire County Council requires a minimum level of information to process and properly consider an application for ordinary watercourse consent as well as the correct fee.

This policy puts in place validation checks that require consent applications to be confirmed valid prior to statutory timescales for consent commencing.

#### **OWC1: Application Validation Policy**

An application for Ordinary Watercourse Consent will be valid once the correct fee and the minimum information stated in the validation checklist (applicable at the time of application) for ordinary watercourse consent has been submitted in writing and considered valid by the Lead Local Flood Authority.

### 2.2.2. Modifying an Ordinary Watercourse

The type of modification which may be appropriate will depend on the proposed works, proportions of the ordinary watercourse and its location, as well as any other requirements or constraints that apply locally.

The hierarchy intends to minimise the impact of structural modifications to ordinary watercourses to preserve their natural course and to minimise the impact on the environment.

#### **OWC2: Modification Hierarchy Policy**

Applicants should avoid crossing, diverting and/or culverting an ordinary watercourse.

Where, in the opinion of the Lead Local Flood Authority, this cannot be avoided consent applications must include evidence, as specified by the Lead Local Flood Authority, as to why any specific level of the hierarchy below cannot be met and why the level(s) higher up the hierarchy cannot be utilised. Without this your application may be refused.

1. Where an existing culverted ordinary watercourse exists, it is reopened (daylighted);
2. Installation of a clear span bridge over an open ordinary watercourse;

3. Installation of another type of bridge, or diversion of an open ordinary watercourse and habitat amenity approved, or installation of or alteration to an existing crossing<sup>16</sup>;
4. Installation of a gravity culvert<sup>17</sup>;
5. Installation of a siphon/sag culvert<sup>18</sup>.

### 2.2.3. Culverts and Screens

The Lead Local Flood Authority will generally refuse a consent application to culvert an existing open ordinary watercourse unless it can be clearly demonstrated through evidence that the effects of culverting can be reasonably mitigated.

#### **OWC3: Culvert and Screen Policy**

The Lead Local Flood Authority may refuse a consent application to culvert an open section of an ordinary watercourse if evidence fails to demonstrate that:

1. The modification hierarchy in policy OWC2 has been applied and a culvert is justified; and,
2. the size of the culvert is based on a hydraulic assessment of the contributing catchment and the culvert should be no smaller than 450mm diameter or 500mm wide x 450mm high box; and,
3. the necessity of any screen(s) as evidenced by an accepted Screen Risk Assessment; and,
4. mitigation measures are incorporated as necessary and conditioned by the Lead Local Flood Authority.

### 2.2.4. Water and Environmental Management

It is important that due consideration is given to the impact that any consentable work to an ordinary watercourse may have on flood risk and to the water environment, such as the quality and ecological status of the ordinary watercourse and protected habitats and species.

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<sup>16</sup> A crossing includes, but is not limited to, a ford, service crossing, access road.

<sup>17</sup> A 'gravity culvert' is where the invert level at the outlet is set lower than an inlet to give the culvert barrel a slope in the direction of flow.

<sup>18</sup> A 'siphon/sag culvert' is a conduit that allows water to flow beneath an obstruction, such as a road, and uphill again without the need for mechanical pumping.

#### **OWC4: Water and Environmental Management Policy**

The Lead Local Flood Authority will usually refuse a consent application if evidence fails to demonstrate that:

1. the proposed works will not increase the risk of flooding in the design standard<sup>19</sup>, taking into account the effects of climate change, through the introduction of a new structure or modification of an existing structure; and,
2. any residual risk can be safely managed through overland flow routes and floodplain storage which minimises the risk of flooding in the event of a blockage or exceedance event<sup>20</sup>; and,
3. the proposals will not increase the risk of scour to the bed and banks of the ordinary watercourse demonstrated through an accepted Scour Risk Assessment; and,
4. where necessary, proposals have been designed to include appropriate mitigation to avoid barriers to fish and/or mammal passage; and,
5. the proposals will preserve and where possible improve the water quality and ecological status of the ordinary watercourse, demonstrated through an accepted Water Framework Directive Assessment.

Where applicable, ordinary watercourse consent applications must also be accompanied by an accepted Habitat Regulations Assessment to demonstrate compliance with the Conservation of Habitats and Species Regulations<sup>21</sup>.

Mitigation measures to satisfy this policy may be conditioned by the Lead Local Flood Authority.

#### **2.2.5. Inspection, Operation and Maintenance**

It is a fundamental part of the conceptual and detailed design process that the inspection, operational and maintenance requirements are fully assessed and accepted by the owner(s), potential owner(s) and/or operator(s) of the structure(s).

#### **OWC5: Inspection, Operation and Maintenance Policy**

The Lead Local Flood Authority will usually refuse a consent application if the applicant fails to demonstrate that appropriate inspection, operational and maintenance arrangements are in place for the lifetime of each structure.

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<sup>19</sup> The 'design standard' is a flood event of 1% annual exceedance probability unless there is specific justification for considering a different annual exceedance probability.

<sup>20</sup> An 'exceedance event' is flooding resulting from the 'design standard' being exceeded.

<sup>21</sup> [Conservation of Habitats and Species Regulations 2017](#)



## 3. Ordinary Watercourse Enforcement

Lancashire County Council has powers under Sections 21, 24 and 25 of the Land Drainage Act 1991 (as amended) to take enforcement action in connection with ordinary watercourses.

The purpose of enforcement is to ensure there is proper flow of water in an ordinary watercourse unless the impediment, such as a nature-based solution, is consented and designed to impede the flow.

### 3.1. Enforcement Approach

Lancashire County Council endeavours to work with and educate riparian owners to raise awareness and aid compliance of ordinary watercourse regulation. The county council will take a risk-based approach to enforcement on ordinary watercourses in Lancashire.

Action can range from providing advice and guidance, serving notice, through to prosecution for failure to comply, or carrying out the remedial works and recovering the expenses incurred from the riparian owner(s) as provided for under statutory powers.

Upon receiving a report of an issue to an ordinary watercourse, the county council will first explore the issue to establish whether an impediment to the proper flow of an ordinary watercourse has occurred. If it has, we will then need to establish if our power(s) applies to the issue reported and decide what course of action to take.

We want to work with riparian owners to seek their prompt cooperation on an enforceable matter to avoid escalation and achieve quick resolution. Where it is not possible to make progress due to lack of willingness to work with the county council, the matter may be escalated and further enforcement action commenced in accordance with our powers and policies.

### 3.2. Access to Land and Powers of Entry

Under Section 64 of the Land Drainage Act 1991 (as amended), authorised officers of Lancashire County Council have the legal power to enter any land for the purposes of carrying out their functions under the Land Drainage Act 1991 and to survey any land and inspect the condition of drainage work on it or to inspect designated features.

Officers will only enter land at reasonable times and will first produce, if so required, a document showing their authority. Except in the case of emergency, admission to land will not be demanded as of right unless notice of the intended entry has been given to the occupier. In non-emergency situations where the land is used for residential purposes or the demand is for admission with heavy equipment, the notice period will be a minimum of seven days as required in legislation.



In an emergency, officers of the county council may enter land without notice. We may also take onto the land such other persons or equipment as may be necessary.

Any person who intentionally obstructs or impedes an authorised officer is guilty of an offence and could be liable to a fine.

### 3.3. Enforcement Policy

Lancashire County Council will apply the enforcement prioritisation policy to determine when powers under the Land Drainage Act 1991 (as amended) are exercised.

#### OWC6: Enforcement Prioritisation Policy

Lancashire County Council, upon notification of an issue in connection with an ordinary watercourse, may use its powers under Sections 21, 24 and 25 of the Land Drainage Act 1991 (as amended) to take enforcement action on ordinary watercourses where:

1. flood risk is increased

**AND**

2. that failure to comply with an obligation\*, prohibition\* or impediment\* may cause harm\* to a receptor\*.

*\*as defined in Section 3.3.1 of this document*

#### 3.3.1. Definitions

**Obligation:** Means to do works to a watercourse as set out in Section 21 of the Land Drainage Act 1991 (as amended).

**Prohibition:** Means an unconsented obstruction(s) as defined in Section 23 of the Land Drainage Act 1991 (as amended).

**Impediment:** Means an obstruction to the proper flow of water as set out in Section 25 of the Land Drainage Act 1991. It does not matter whether the impediment has been caused by a wilful act leading to a blockage or whether it is due to lack of maintenance or neglect of the ordinary watercourse.

**Harm:** Means where there is damage or flooding, or a risk of such, to a receptor which affects or impairs the use or enjoyment of the receptor.

**Receptor:** Means something that may be harmed by the obligation, prohibition or impediment to the ordinary watercourse. This includes:



- “Property” is defined as any building, structure or land that is in a condition where it is capable of being used for human habitation or business or agricultural purposes.<sup>22</sup>
- An “ancillary property” is defined as any building or structure that is used for any purpose ancillary to a habitable property.
- A “highway” as defined by the Highways Act 1980. This includes public footpaths and bridleways.
- 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 infrastructure that, in the opinion of the county council, is considered to be critical and vulnerable to the risk of flooding from an ordinary watercourse.

### 3.3.2. Exemptions to Enforcement Action

The county council will not usually exercise its powers of enforcement on ordinary watercourses under the following circumstances:

1. An impediment\* which has ordinary watercourse consent, such as a natural flood management measure<sup>23</sup>, as this would not be subject to enforcement under the Land Drainage Act 1991 (as amended). This includes works which have deemed consent.
2. Natural geomorphological processes, such as bank erosion or accretion of a beach within an ordinary watercourse.
3. In situations where the harm\* only affects the riparian owner responsible for resolving the issue. In these situations, the riparian owner is responsible for addressing the issue.
4. An issue affecting two adjoining riparian owners. In these situations, the county council normally advises the affected individual to seek recourse through private remedies, such as the [Agricultural Land and Drainage Tribunal](#)<sup>24</sup>.

\*as defined in Section 3.3.1 of this document.

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<sup>22</sup> Agricultural purposes on the Best and Most Versatile (BMV) agricultural land classified as Grade 1 and/or Grade 2 and/or Grade 3a.

<sup>23</sup> Natural flood management involves working with natural processes to reduce flood risk. This involves implementing measures, such as a leaky dam, that help to protect, restore and emulate the natural functions of catchments, floodplains and watercourses.

<sup>24</sup> [Agricultural Land and Drainage Tribunal](#)