

Flood and Water Management Team – Land Drainage Enforcement Policy.



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Consultation Draft

Contents

Page 3	Aims of the Policy
Page 3	Legal context
Page 6	Riparian rights and responsibilities
Page 7	Enforcement procedures

Aims of the Policy

Milton Keynes City Council is a Lead Local Flood Authority under the Flood and Water Management Act 2010. This document is provided in the context of specific requirements arising from the Flood and Water Management Act 2010 the Land Drainage Act 1991.

This protocol and guidance note has been adapted from best practice identified within local authorities in England and is in line with the local government concordat on Good Enforcement.

The aim of the Policy is to review reported cases and take necessary action where lack of action would result in a high likelihood of flooding with large impact. Enforcement action may be taken by the regulating authority to rectify any unlawful and/or damaging works on an ordinary watercourse. The Lead Local Flood Authority will take a risk-based and proportionate approach to enforcement action, taking into account a number of factors.

The enforcement action will be considered in relation to:

- Ensuring that the proper flow of water in a watercourse is enabled and over the floodplain
- To rectify any unlawful, damaging or potentially damaging works to an ordinary watercourse and
- To enforce where needed repair of watercourses, bridges, etc.

The LLFA may use its powers where:

- A watercourse requires maintenance
- Un-consented works have been carried out on a watercourse
- Obstructions to the proper flow of water are identified and need rectifying.

Legal context

Milton Keynes City Council as the Lead Local Flood Authority has powers under Section 21, 24 and 25 of the Land Drainage Act 1991 (“the Act”) as amended by the Flood and Water Management Act 2010 derived from sections 14A, 21, 23, 24 and 25 of the Land Drainage Act 1991, and powers of entry onto land for enforcement purposes derived from section 64 of the Land Drainage Act 1991.

Milton Keynes City Council as the lead Local Flood Authority has powers under Section 21, 24 and 25 of the Act as amended by the Flood and Water Management Act 2010 to serve notice on individuals who have caused contraventions in relation to ordinary watercourse (which are watercourses that do not form part of a main river), surface runoff flooding and groundwater flooding outside of the Internal Drainage Boards (IDBs) area. These powers are permissive, meaning that it remains the decision of the authority as to whether it carries out enforcement action or not.

Table 1. LLFA’s permissive powers under Land Drainage Act 1991.

Section of the Land Drainage Act 1991	Permissive powers
Section 14A	Permissive power for a local authority to perform works for the prevention or mitigation of flood risk.
Section 21	Permissive power to serve notice on persons to repair or maintain Ordinary Watercourses, bridges, or drainage work.
Section 23	Permissive power to consent works which affect the flow of Ordinary Watercourses.
Section 24	Permissive power to serve notice requesting the removal of structures or rectification of alterations to a watercourse which have not received consent under Section 23 of the same act.
Section 25	Permissive powers to serve notice on persons requiring them to carry out necessary works to maintain the flow of any watercourse, and the power to carry out works in default and recover its reasonable expenses should the riparian owner fail to carry out their responsibility.
Section 64	Permissive power to enter any land for the purposes of carrying out their functions under the Act and to survey any land and inspect the condition of drainage works on it

Section 14 General Powers

Lead Local Authority has powers under Section 14A(1) of the Act to carry out flood risk management works if conditions 1 and 2 are satisfied:

- a) Section 14 (4) of the Land Drainage Act 1991 states “Condition 1 is that the authority considers the work desirable having regard to the local flood risk management strategy for its area under section 9 or 10 of the Flood and Water Management Act 2010
- b) Section 14 (5) of the Land Drainage Act 1991 states “Condition 2 is that the purpose of the work is to manage a flood risk in the authority's area from
 - a. surface runoff, or
 - b. groundwater. “

Section 21 Enforcement of obligations to repair watercourses, bridges, etc.

This section requires the riparian owners to ensure appropriate maintenance of ordinary watercourses, bridges and drainage works.

If the required works requested are not carried out in the specified time of an informal letter, the Council may serve a notice under Section 21(2) of the Land Drainage Act 1991 requiring the nuisance to be abated.

Section 23 Prohibition of Obstructions

The maintenance of watercourses plays a key role in managing water levels and reducing the risk of flooding. If you are planning to undertake works within a watercourse, you need permission to do so by law. It is essential that anyone who intends to carry out works in, over, under or near a watercourse, contacts the relevant flood risk management authority to obtain the necessary permissions before starting the work.

In relation to works on an ordinary watercourse Section 23(1) of the Land Drainage Act 1991 states:

"No person shall: erect any mill dam, weir or other like obstruction to the flow of any ordinary watercourse or raise or otherwise alter any such obstruction; or erect a culvert in an ordinary watercourse, or alter a culvert in a manner that would be likely to affect the flow of an ordinary watercourse, without the consent in writing of the drainage board concerned."

Consent under this section may be given subject to reasonable conditions and the Lead Local Flood Authority will consult with the appropriate agency before works are carried out.

Ordinary watercourses include every river, drain, stream, ditch, dyke, cuts, sluices, culverts, sewer (other than public sewer) and passages through which water flows that do not form part of main rivers. It is not required for water to flow at all times for it to be considered as a watercourse. The Environment Agency remains responsible for regulating activities affecting the coast and main rivers through environmental permitting.

Section 24 on Contraventions of prohibition on obstructions, and so on

Section 24 of the Act prohibits the erection of obstructions or the making of alterations to existing structures which impedes the flow of ordinary watercourses. If any obstruction is erected or raised otherwise erected, it shall constitute a nuisance. Milton Keynes City Council as Lead local flood authority may serve a notice requiring the person who installed or has the power to remove the obstruction, to abate the nuisance within a period specified in the notice.

If any person acts in contravention of, or fails to comply with, any notice served that person shall be guilty of an offence and liable, on summary conviction—

(a) to a fine

(b) if the contravention or failure is continued after conviction, to a further fine not exceeding £40 for every day on which the contravention or failure is so continued.

Section 25 Powers to require works for maintaining flow of watercourses

Where any ordinary watercourse is in such a condition that the proper flow of water is impeded, Lead local Flood Authority has permissive powers to serve notice on a person having control, owning, occupying and/or to whose act or default the condition of the watercourse is due, require that person to remedy that condition. The wording on the Notice will include the nature of the work that is to be carried out, the period within which it is to be carried out, and any relevant right of appeal to the Magistrates' Court within 21 days from the date of service of the Notice.

Sections 24 and Section 25 can result in enforcement action being taken by Milton Keynes City Council as Lead Local Flood Authority if it is considered that a lack of maintenance or alteration to a water course poses a flood risk. The Council can also undertake the required works under Section 26 and recover the costs reasonably incurred from the responsible party if they do not comply with a formal enforcement notice.

Section 64 Powers of entry for internal drainage boards and local authorities.

Under Section 64 of the Act, any person authorised by the Milton Keynes City Council can in accordance with the Act:

"(...)after producing (if so required) a duly authenticated document showing his authority, may at all reasonable times—

(a)enter any land for the purpose of exercising any functions of the board or, as the case may be, any functions under this Act of that authority;

(b)without prejudice to paragraph (a) above, enter and survey any land (including the interior of any mill through which water passes or in connection with which water is impounded) and take levels of the land and inspect the condition of any drainage work on it; and

*(c)inspect and take copies of any Acts of Parliament, awards or other documents which—
(i)are in the possession of any internal drainage board, local authority or navigation authority;*

(ii)relate to the drainage of land; and

(iii)confer any powers or impose any duties on that board or authority.

Riparian rights and responsibilities

Landowners with a watercourse running through or adjacent to their land have certain rights and responsibilities as a 'Riparian Owner' to manage and maintain these watercourses.

It is highly recommended that initial advice is sought from the Lead Local Flood Authority before undertaking works on ordinary watercourses, to ensure that landowners do not contravene ordinary watercourse regulation requirements.

More information on 'Riparian Ownership' and the rights and responsibilities can be found on our website [Watercourse Management and Consenting](#) and further details on the [Watercourse Management Factsheet for Riparian Owners](#).

Enforcement procedures

Milton Keynes City Council takes a risk-based approach to managing flooding. This approach ensures that our response to any contravention of the legislation will be proportionate to the flood risk issues faced at the location.

Any enforcement action taken will be proportional to the risk and the public interest. This risk assessment may exclude those cases of nuisance caused by water, which should be dealt with under civil nuisance legislation directly between landowners. Officers may also take into consideration the welfare of vulnerable residents in their approach to enforcement and decisions on the method and level of intervention to pursue. While flooding may exist, its severity may not warrant the taking of action but that does not prejudice the Council from acting later should the flooding, or damage caused by this, become more severe.

The desired outcome of enforcement action is always to ensure compliance through discussions and informal negotiations.

Fig 1. Enforcement procedure under the Land Drainage Act 1991.



Nuisance /Impendent Reported



Desktop review (including land ownership review) and site visit undertaken within 2-20 working days, depending on the level of risk to highways users, properties and critical infrastructure



If nuisance/impendent confirmed following the site visit, formal letter to be issued within 3 working days requiring compliance within min of 22 days (time within the riparian owner is to comply will be depending on risk and severity of the issue). This step may be omitted if it is considered that immediate action is require due to level of risk and in such instance, Council will proceed with an Enforcement Notice within 3 working days of nuisance/impendent confirmation.



If matter is resolved by riparian owner to a satisfactory standard or planned of action agreed - no further action will be taken until works are completed or agreed time to complete the works has passed.



If landowner failed to respond to formal letter or fails to complete works scheduled Council will issue an Enforcement Notice on 23 day following the Formal letter if no response was received to it or day after deadline for agreed works has passed but not earlier than on 23 day from date of formal letter.



If the notice is upheld or varied, compliance will be pursued as appropriate. If a notice takes effect the Council can consider undertaking the required works and recover the costs reasonably incurred from the responsible party if they do not comply with a formal enforcement notice.

Initial Assessment

Where the Lead Local Flood Authority believes or is made aware of breaches to the legislation it will open up an enforcement case. Officers will carry out initial assessment to establish a level of priority based on level of risk and information provided. Priority is assigned based on criteria listed in Table 2.

Table 2. Priority case selection based on the level of risk

Priority	Level of risk
Very High	urgent attention needed, very high risk to highways users or affecting critical infrastructure or causing internal property flooding
High	some risk to highways users or high risk of possible impacts on critical infrastructure or high risk of property flooding
Medium	potential risk to highways users or possible impacts on critical infrastructure or possible property flooding
Low	low risk to highways users or low risk of flooding of critical infrastructure or low risk of property flooding
Very Low	no risk to highways users or no risk to critical infrastructure or no risk of property flooding

Where the Lead Local Flood Authority believes or is made aware of breaches to the legislation it will open up an enforcement case. Officers will carry out initial assessment to establish a level of priority based on level of risk and information provided. Priority is assigned based on criteria listed in Table 2.

If the report relates to matters that need to be considered by other Risk Management Authorities, information will be provided on whom to contact in such instance.

A desktop assessment will be undertaken alongside any other available information (e.g., photographs, reports from other teams, descriptive information). This will be followed by land registry search where required. If needed additional enquiries will be made to identify the landowner.

Where a site visit is required, this will be arranged:

- within 2 working days for very high and high priority cases
- within 10 working days for medium priority cases and
- within 20 working days for low and very low priority cases.

Depending on whether further action is required the following will occur officers will consider further action as defined in '**Further Action required**' section of this policy.

Further Action Required

If nuisance/impedent confirmed following the site visit further action will be required. Contact will be made with the responsible party explaining the nuisance/impedent and detailing the action required to remedy the issue. This will be in a formal letter that will be

issued within 3 working days requiring action compliance within min of 22 days (time within the riparian owner is to comply will be depending on risk and severity of the issue). This will be provided in writing by a formal letter from the Lead Local Flood Authority. The letter will state the time within which the Council will be expecting for the issues to be resolved by (min of 22 days but may be longer depending on severity of the issue).

There may be cases where it is necessary to extend the period of compliance for more complex matters and/or to accommodate exceptions circumstances (e.g., weather, flood conditions etc.). The most likely being where works might cause disruption to wildlife and accounting for nesting season, between 1st March and 31st August. Whether any works need to be deferred or amended will be considered on a case-by-case basis.

If the matter is resolved by the riparian owner to a satisfactory standard than no further action will be taken until works are completed or agreed time to complete the works has passed.

If the responsible party has been informed of the nature of remedial works required and the deadline for completion, and on inspection, no works have been satisfactorily undertaken, then a letter setting out the intent to serve notice under the relevant section of the Land Drainage Act 1991. Formal notices will normally be served where the informal action required has not been actioned and achieved compliance, where there is lack of confidence that the individual/company will respond to the informal approach, where there is a history of non-compliance with informal action, and/or the consequences of non-compliance could be potentially serious to the health and safety of the public.

The responsible person may appeal the Notice. If the notice is upheld or varied, compliance will be pursued as appropriate. If a notice takes effect the Council can consider undertaking the required works and recover the costs reasonably incurred from the responsible party if they do not comply with a formal enforcement notice.

No Action Is Required

If upon inspection, it is considered that the matter complained of is not the cause of the drainage problem or the proper flow of water is not impeded, and no action is to be taken or required, the complainant will be advised accordingly. In any event, a written communication will be sent to the complainant explaining the reason why no action is to be taken. Examples of matters not requiring action, may include – minimal silting of watercourse, slight vegetation overgrowth, small quantity of debris etc. We may choose to write to a landowner reminding them of their riparian responsibilities with no action needed.



Milton Keynes
City Council