

Riparian enforcement – powers granted to SCC in its capacity as Lead Local Flood Authority

Legislation

The powers SCC has are detailed in sections 21 to 25 of the Land Drainage Act 1991.

- Section 21 – Enforcement of Obligations to repair watercourses, bridges etc.
This section details that if a person is liable (riparian owner) of a watercourse or structure and is required to do work, the relevant drainage board (in this case SCC as the LLFA) can serve a notice requiring them to complete this work.
- Section 22 – Powers of Ministers to authorise landowners to carry out drainage works
A person is able to apply to a minister to be able to carry out drainage improvement works on a piece of land.
- Section 23 – Prohibition of obstructions etc. in watercourses
This section explains that consent is required for any work that affects the flow of a watercourse. This also details the cost of consent and 2 month time restriction for the relevant drainage board to respond to the application.
- Section 24 – Contraventions of prohibition of obstructions etc.
This section details that if a structure is erected without consent under section 23, the relevant drainage board may serve notice to specified persons for the obstruction to be removed and the watercourse reinstated to its previous condition.
- Section 25 – Powers to require works for maintaining flow of watercourse
This section details that a notice can be served on a person to undertake maintenance work to a watercourse to restore flow which had been restricted due to lack of maintenance.

As the Highway Authority, Surrey County Council also has enforcement powers through the Highways Act 1980 with regard to draining the highway. Under section 100, the highway authority has the power to create, maintain and reinstate surface water drainage for the road. If a person undertakes work to block or damage highway drainage, this section also allows the highway authority to reinstate the drain and recover the costs from the responsible party.

Enforcement process

The process used for enforcement at Surrey County Council to require removal of blockages within a watercourse is as follows:

1. The report is made to SCC that a blockage is present within a watercourse
2. This is allocated to an officer who will check the flood risk in the area, as well as what previous issues have been recorded in the area
3. The officer will undertake a site visit, either with or without the complainant, to gather evidence of blockage and other associated issues, while detailing notes of the issue and what impacts are being caused as a result
4. The officer will then contact the riparian owner (landowner or adjacent landowner of the watercourse) to require works be done to restore flow to the watercourse
5. If the avenue of communication does not work, the case will be passed to the legal team to contact the landowner and then serve a notice under the relevant section of the relevant act for the works to be done
6. If the works are in immediate need of being carried out, for safety issue etc., SCC can carry out the works and then recharge the riparian owners for the cost. This is only considered however after contact with the landowner has failed.

The enforcement process is generally made easier when the issue is reported by an affected party. Quite often issues are reported via a third party, e.g. a parish council or a councillor. This can be useful at times to raise an issue however it is always more useful to have direct contact with the people actually being affected, as generally we are able to gather more detailed information, for both causes and impacts, and the case can progress much more quickly.