

Gwynedd Council

Land Drainage Bylaw Consenting Policy

Introduction

Under the Flood and Water Management Act 2010, councils in Wales received additional powers and responsibilities to manage flooding from surface water, groundwater and ordinary watercourses. As part of these new powers, responsibility for granting ordinary watercourse consent under section 23 of the Land Drainage Act 1991 were transferred from Natural Resources Wales to the Lead Local Flood Authorities in April 2012.

Since taking on this consenting duty and wider flood risk management function, practitioners have noted that powers under current legislation are limited and certain activities which are not currently consented could potentially increase the risk of flooding especially in more built up areas. It was therefore decided in 2013 to set-up a Task & Finish Group to oversee a review of current byelaws with the aim of creating a new set to help LLFAs in Wales manage more effectively and consistently activities along ordinary watercourse.

In 2019 Gwynedd Council adopted a set of model Land Drainage Bylaws, which were drafted on behalf of Welsh Government to help LLFAs in Wales manage more effectively and consistently activities along ordinary watercourse. The new byelaws consist of 16 individual byelaws designed to support and work alongside the current regulation framework provided under the Land Drainage Act 1991 and the Flood and Water Management Act 2010.

The complete set comprises of 7 sections but byelaws themselves are only grouped under 4 distinct chapters:

- Control the introduction of water and increase in flow or volume, or water
- Control any potential to cause impediment or obstruction to flow
- To ensure the condition of the banks of a watercourse are maintained
- To cover incidental provisions

This policy document has been prepared as a guide to any person or party that is intending to undertake works which could be interpreted as activities described in **sections 5, 6, 9 and 10** of the Land Drainage Bylaws; describes specific activities that the Council intend to control through a consenting procedure, and the determination criteria for each application on a case by case basis.

Sections 8, 13, 14 and 16 describe activities on or surrounding ordinary watercourses which are prohibited under the bylaws; Sections 7, 11, 12 and 15 describe obligations for riparian landowners according to the bylaws. No further clarification regarding the purpose or meaning of these clauses are considered necessary within this document.

Implementation of Bylaws

Under the powers offered by the Land Drainage Bylaws Gwynedd Council can consent the undertaking of the following types of activities in, over, under or near ordinary watercourses:

5. Control of the introduction of water, altering flow and volume

(1) Without prejudice to sections 23 and 25 of the Land Drainage Act 1991 no person shall without the consent of the authority take any action to:

- (a) stop up any watercourse*; or
- (b) divert*; or
- (c) impede; or
- (d) alter

the level of or direction of the flow of water in, into or out of any watercourse.

(2) In this byelaw 'alter' includes creating or extending a watercourse and introducing water which directly or indirectly increases the flow or volume of water in any watercourse within the local authority's area.

(3) In this byelaw impede includes blocking off or infilling of any watercourse channel, and obstruction of any arch of any bridge or causeway designed of, or which permits the passage of water in any watercourse or land liable to flooding.

What do I need consent for?

- Creation of a new surface water drain
- Discharge of surface/ground water into an existing watercourse
- Temporary or permanent obstruction of any bridge arch or causeway which permits the passage of water

*Gwynedd Council will seek a formal Ordinary Watercourse Consent application for any stopping up or diversion of existing watercourses under Section 23 of the Land Drainage Act

Determination Criteria:

Works described under clause 5 will only be consented when the applicant can demonstrate that the flood and environmental risks associated with the works are negligible. In determining the application Gwynedd Council shall consider the location, timing and duration of the works as well as the proposed methodology. Works which could present a flood risk to properties or in ecologically sensitive areas will only be acceptable if Gwynedd Council are satisfied that no reasonable alternative methods are available, and adequate and practicable mitigation measures have been presented. Any such consented works would be subject to strict conditions in order to satisfy the authority that risks are adequately managed.

6. Interference with sluices, flood and tidal defences

(1) No person shall without consent of the authority operate or interfere with any sluice, flood gate, flood or tidal defence or other water control structure or appliance or flood warning or monitoring system used for controlling, regulating or monitoring the flow of water in, into or out of an ordinary watercourse.

(2) In this byelaw "interfere" includes removing, damaging or disturbing materials forming part of a flood or tidal defence.

Determination Criteria:

Pre-planned works described under clause 6 will only be consented in exceptional circumstances, when flood and environmental risks are negligible, the applicant can demonstrate that the proposed works are absolutely necessary, no reasonable alternative methods are available, and strict assurances have been provided to Gwynedd Council that the sluices, flood or tidal defences can be returned to their original condition on completion of the works.

9. Maintenance of land liable to flooding and watercourse banks

(1) No person shall without the consent of the authority plant any tree, deposit or store objects or matters, light a fire or interfere with a watercourse bed or bank within the byelaw distance in such a manner as is likely to:

- (a) cause flooding,*
- (b) impede the flow, or*
- (c) cause or be likely to cause damage to, or*
- (d) endanger the stability of, or*
- (e) affect the efficiency of*

a culvert, watercourse bank, watercourse control work, flood defence, tidal control work or sea defence.

(2) In this byelaw:

“interfere” includes to dredge, remove, damage or disturb materials forming part of a flood or tidal defence or of a watercourse bank or bed; and to make any excavation or do anything in, to or upon any land like to damage a watercourse bank or bed.

“light a fire” includes committing any action liable to cause any fire to be lit on any land adjoining any watercourse where such action is liable to set on fire any peat land forming the banks of the watercourse or any vegetation growing on land forming the banks of the watercourse.

“store objects or matters” includes depositing or stacking or keeping objects and solid or liquid matters including vegetation and vegetation cuttings.

“objects” include vessels.

What do I need consent for?

- Any works to remove material from the bed of a watercourse or to change the profile of the bank/s
- Temporary storage of material on a construction site over a known culvert or within 8m of a watercourse bank
- Temporary or permanent storage of straw bales or excavated spoil over a known culvert or within 8m of a watercourse bank on agricultural land
- Temporary or permanent storage of dredged river material or and material removed from the bed or banks of a watercourse within 8m of a watercourse bank

Determination Criteria:

Works described under clause 9 will only be consented when the applicant can demonstrate that the flood and environmental risks associated with the works are negligible. Engineering works to the bed or to the banks of an existing watercourse should be timed and undertaken appropriately to avoid risk of ecological damage, and should not compromise the integrity so to increase the risk of future failure. Storage of material adjacent to a watercourse shall be allowed only in low risk situations where there is no history of fluvial flooding, and with contingencies in place during periods of heavy rain. Storage must be controlled to reduce risk of damage to adjacent watercourse banks or underlying culverts. A reasonable buffer will also be requested between any storage areas and the top of bank to maintain access and reduce risk of loss of material into the watercourse.

10. Building of structures, pipes, etc. on land liable to flooding

(1) No person shall without the consent of the authority:

- (a) erect or construct any building or structure*

- (i) in, on, under or over any watercourse or in or on any bank of a watercourse;*
- (ii) within the byelaws distance;*
- (iii) on any watercourse control work, flood defence, tidal control work or sea defence;*
- or*
- (iv) over any part of a culvert, or within the byelaws distance on either side of it; or*

*(b) make or cut any excavation or any tunnel or any drain, culvert or other passage for water in, into or out of any watercourse or in or through any bank of any watercourse; in such a manner or for such length of time as to cause damage to the watercourse bed or banks; or obstruct the flow of water in, into or out of such watercourse.***

(2) This byelaw does not apply to any temporary work executed in an emergency.

(3) In this byelaw:

“Emergency” means causing immediate danger to life or property.

What do I need consent for?

- Permanent or temporary crossings over an existing watercourse***
- Permanent buildings or structures (including walls) within 8m of an existing watercourse, culvert or flood defence***

**Gwynedd Council will seek a formal Ordinary Watercourse Consent application for construction of any inlet or outfall within the bed or banks of an existing watercourse under Section 23 of the Land Drainage Act.

*** Any permanent structures or buildings for which the developer has obtained planning permission will not be subject to consent under the bylaws.

Determination Criteria:

Works described under clause 10 will only be consented when the applicant can demonstrate that the flood and environmental risks associated with the works are negligible. Construction of a building or structure adjacent to a watercourse shall be allowed only in low risk situations where there is no history of fluvial flooding, and with contingencies in place during periods of heavy rain. A reasonable buffer will also be requested to the top of bank to maintain access to the watercourse. A new crossing over an existing open watercourse will be consented in low risk scenarios, where the cross-sectional area of the existing channel is not compromised. Construction of a permanent building or structure above an existing culvert is unlikely to be consented.

Enforcement and penalty

Non-compliance with the byelaws can lead to two proceedings: first the offender will be fined and the land drainage authority can remedy the breach and recover the costs incurred.

Under section 66(6) of the LDA every person who acts in contravention of or fails to comply with any of the foregoing Byelaws is liable on summary conviction in respect of each offence to a fine not exceeding the amount prescribed for level 5 (£5,000) on the standard scale referred to in section 37 of the Criminal Justice Act 1982 and a further fine not exceeding £40 for every day on which the contravention or failure is continued after conviction.

By section 66(7) of the Act if any person acts in contravention of or fails to comply with any of these Byelaws the LLFA or IDD may without prejudice to any proceedings under section 66(6) of the Act take such action as may be necessary to remedy the effect, of the contravention or failure and may recover the expenses reasonably incurred by it in doing so from the person in default.

Exercising of permissive enforcement powers will only take place when necessary and as a last resort when all other opportunities to resolve the issue have been explored. In coming to a decision on whether to exercise its powers, Gwynedd Council will take into account:

- The consequences of non-compliance;
- The past compliance performance of the offender;
- The likely effectiveness and risk of the enforcement options; and
- The public interest.

A decision to take enforcement action will only be fully considered where all other avenues of communication have been exhausted and/or there is robust evidence to support that residential properties or critical infrastructure have been affected or at direct risk of flooding.