

Summary of legal responsibilities with regard to Main Rivers

This appendix summarises relevant extracts from: -

- “Living on the Edge”, 2nd edition 2001, published by EA, and
- “Land drainage and flood defence responsibilities”, 1993, published by the Institution of Civil Engineers

“Living on the Edge”

p4 ‘You are responsible for maintaining the beds and banks of the watercourse (including trees and shrubs growing on the banks), and for clearing any debris, natural or otherwise, including Again see pages 7 and 8 regarding the need for consent for these works.’

p5 ‘Failure to carry out your responsibilities could result in possible civil action from others.’

p6 ‘Under the Water Resources Act 1991, These powers are permissive only, so there is no obligation on the Agency to carry out either maintenance or new works on main rivers.’

‘Maintenance of a watercourse is unlikely to be carried out by the Agency for amenity only, or to stop erosion where this does not threaten the interests of the Agency.’

“Land drainage and flood defence responsibilities”

6. Riparian owners

p30, 1 ‘The proprietor of land on the banks or under the bed of a natural watercourse is entitled to the enjoyment of what are commonly known as ‘riparian rights’, based on common law. Where a channel is not of natural origin, the same rights may not apply;’

p30, 4 ‘A riparian owner is not liable for damage, e.g. erosion, caused to adjoining land by virtue of the natural action of water on the land adjoining or downstream, provided that there is no negligence or wilfulness involved’

p32, 15 ‘..... It is now necessary to consider *Leakey v National Trust* (1980) Q.B. 485 which imposed a general duty on occupiers in relation to hazards that occur naturally on their lands; a riparian owner or occupier may now be liable for any nuisance caused if defects in the banks are not remedied in reasonable time and it is not the duty of any other person to do so.’

Taking all of the above into account, at Sites 1 and 2, the channel is not natural but a relatively new, diverted channel constructed by the then Redditch Development Corporation at the time that Old Forge Drive was also built. It’s not known whether the public foul sewer was constructed concurrently or subsequently. Either way, in the absence of any legal exclusions placing responsibility upon the utility companies;

WCC as Highway Authority or STW Ltd as Water and Sewerage Company, they are entitled to enjoy support for their assets from the adjacent land.

None of the failures can be defined as a natural process upon a natural channel as they are quite clearly relatively new features.

Item 15) above clearly comes into force, placing onus upon Redditch Borough Council as the riparian landowner, to maintain in a fit and proper state the artificially realigned channel.

Similarly by virtue of WRA 1991, there is no obligation on the EA to carry out any repairs as it is neither their responsibility nor are their interests served by so doing.

CAW/P2122

26 January 2011