

Ditches Explained

The maintenance of rivers, streams and ditches is usually the responsibility of the “Riparian Landowners” who own land on either bank. If you are such a landowner you will have both rights and responsibilities associated with the ditches, or other watercourses, flowing through or adjacent to your property. The EA has produced a guide to the rights and responsibilities of riverside ownership called ‘Living on the Edge’.

There are, however, some general rules which can be applied to ascertain responsibility for ditch or watercourse maintenance. If you are a landowner, to reduce the risk of flooding to neighboring properties, the law requires that you maintain your ditches and drains to prevent flooding. Failure to do so may result in a legal liability for the damage that any resultant flooding may cause.

Watercourses and Ditches

The normal position in connection with who is responsible for the maintenance of watercourses and ditches is shown in the illustrations below. A watercourse is a natural feature which drains the surrounding catchment and normally has some water flowing in it.

A ditch is a man-made feature which has been created in order to drain an area of land. Historically these were normally dug by a landowner at the edge of their field and the spoil deposited on their land, on which hedges grew over time. As a result, the common law ‘hedge and ditch’ rule says the landowner responsible for maintaining the ditch is normally the landowner on the hedge’s side of the ditch.

Highway Ditches

The common law ‘hedge and ditch’ rule has particular relevance in relation to ditches running alongside highway which are normally the responsibility of the adjacent landowner (see illustration on following page).

Ditches are not always shown on Ordnance Survey maps, however this does not affect the legal presumption described below.

The principle in law is that where there is a ditch the highway boundary is the roadside edge of the ditch, this applies if the ditch has been piped or infilled (by natural erosion or otherwise).

This is a rebuttable principle and there are some limited exceptions where a ditch may fall within the public highway;

1. The Land was purchased by the Highway Authority for a Scheme, highway was created, and the ditch falls within the area of land purchased
2. The ditch was excavated by the Highway Authority for highway drainage purposes
3. If the ditch has been piped by the Highway Authority and compensation was paid to the adjacent landowner

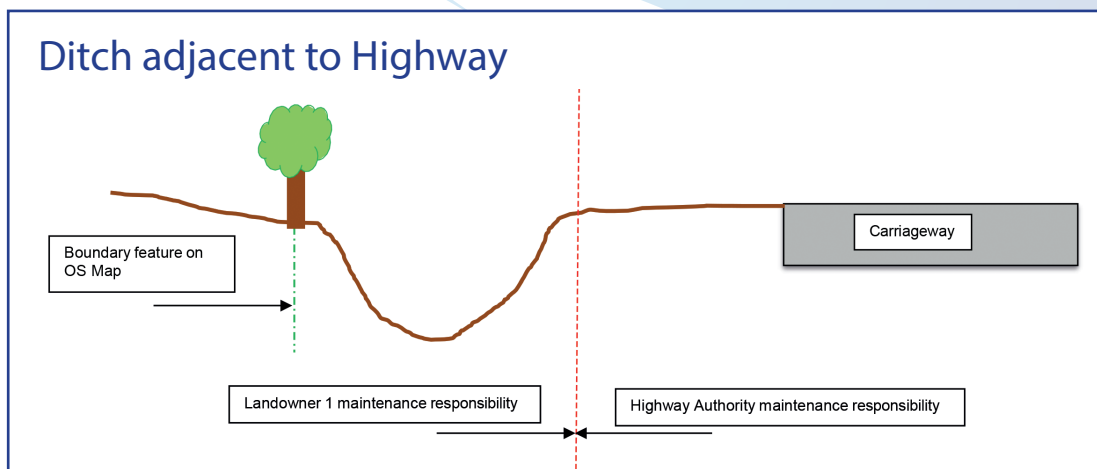
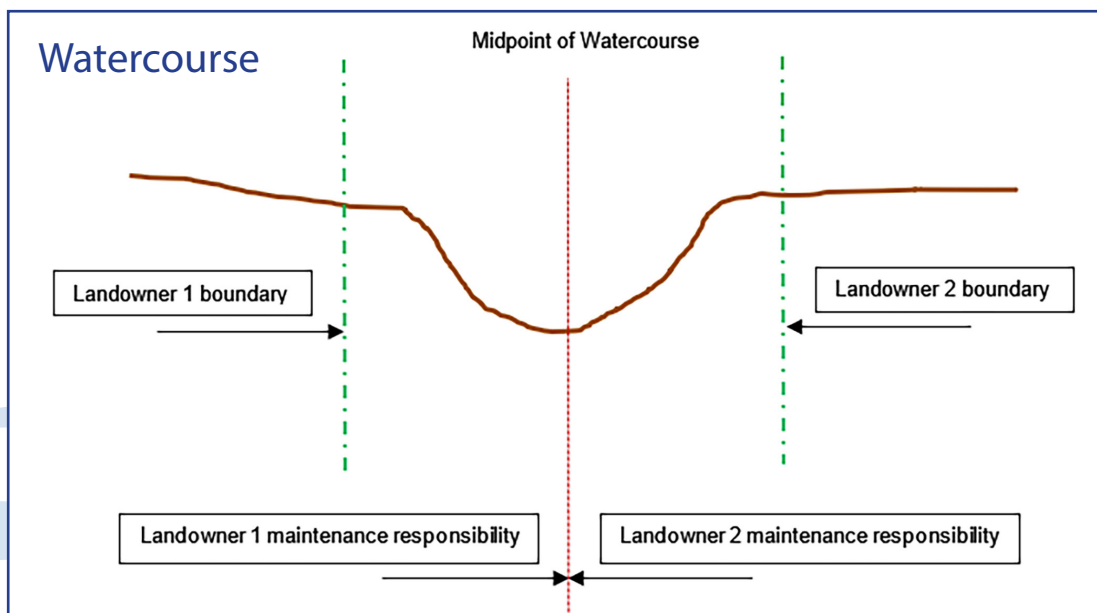


If any of the above exceptions apply to a particular ditch, West Berkshire District Council may have additional records pertaining to that ditch.

West Berkshire District Council is responsible for regular maintenance and cleansing of gullies and grips on the highway. Highway surface water draining into a ditch, does not determine the ditch is a highway-maintained ditch.

For new schemes designed in such a way that highway surface water discharges into a ditch, permission will need to be sought from the ditch owner.

If there is a gap between the title as shown or referred to in the Land Registry Title document and the confirmed highway boundary, West Berkshire District Council will not be able to complete a Section 278 or Section 38 Agreement if this land is required for dedication to West Berkshire District Council. WBC have created a Gap Protocol for instances where there is a perceived gap due to a hedge and ditch, this protocol is available on request from Highwaysassetmanagement@westberks.gov.uk.



Disclaimer

West Berkshire District Council hopes that this document is useful. However, it is not intended to be a definitive statement of the law on all instances and you should seek your own legal advice.