

Wiltshire Council

LAND DRAINAGE BYELAW

Preamble

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WILTSHIRE COUNCIL LAND DRAINAGE BYELAWS

The Council under and by virtue of the powers and authority vested in them by Section 66 of the Land Drainage Act 1991, do hereby make the following Byelaws which are considered necessary for [one or more of] the following purposes:-

- (a) securing the efficient working of a drainage system in the Council's area,
- (b) regulating the effects on the environment in the Council's area of a drainage system,
- (c) securing the effectiveness of flood risk management work within the meaning of section 14A of that Act, or
- (d) securing the effectiveness of works done in reliance on Section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion),

together, "the Purposes":-

1. Commencement of Byelaws

These Byelaws shall come into operation at the expiration of one month beginning with the day on which they are confirmed by the Secretary of State.

2. Application of Byelaws

- (a) These Byelaws shall have effect within the Area;
- (b) The watercourses referred to in these Byelaws are watercourses which are for the time being vested in or under the control of the Council.

3. Control of Introduction of Water and Increase in Flow or Volume of Water

No person shall as a result of development (within the meaning of Section 55 of the Town and Country Planning Act 1990 as amended ("the 1990 Act")) (whether or not such development is authorised by the 1990 Act or any regulation or order whatsoever or none of them) for any purpose by means of any channel, siphon, pipeline or sluice or by any other means whatsoever introduce any water into any watercourse in the Area so

as to directly or indirectly increase the flow or volume of water in any watercourse in the Area (without the previous consent of the Council).

4. Control of Sluices etc

Any person having control of any sluice, water control structure or appliance for introducing water into any watercourse in the Area or for controlling or regulating or affecting the flow of water in, into or out of any watercourse shall use and maintain such sluice, water control structure or appliance in accordance with such reasonable directions as may from time to time be given by the Council with a view to securing or furthering one or more of the Purposes.

5. Fishing Nets and Angling

No person shall angle or set any nets or engines for the catching or keeping of fish in any watercourse in such a manner as to cause damage to or endanger the stability of the bank of the watercourse or to affect or impede the flow of water.

In this Byelaw "nets" includes; -

- (a) a stake, net, bagnet or keepnet
- (b) any net secured by anchors and any net, or other implement for taking fish, fixed to the soil or made stationary in any other way;
- (c) any net placed or suspended in any inland or tidal waters unattended by the owner or a person duly authorised by the owner to use it for fish, and any engine, device, machine or contrivance, whether floating or otherwise, for placing or suspending such a net or maintaining it in working order or making it stationary.

6. Diversion or Stopping up of Watercourses

No person shall, without the previous consent of the Council, take any action, or knowingly permit or aid or abet any person to take any action to stop up any watercourse or divert or impede or alter the level of or direction of the flow of water in, into or out of any watercourse.

7. Detrimental Substances not to be put into Watercourses

No person shall, so as directly or indirectly to obstruct, impede or interfere with the flow of water in, into or out of any watercourse or so as to damage the bank -

- (a) discharge or put or cause or permit to be discharged or put or negligently or wilfully cause or permit to fall into any watercourse any object or matter of any kind whatsoever whether solid or liquid;
- (b) allow any such object or matter as is referred to in sub-paragraph (a) of this Byelaw to remain in proximity to any watercourse in such manner as to render the same liable to drift or fall or be carried into any watercourse.

Provided that nothing in this Byelaw shall be deemed to render unlawful the growing or harvesting of crops in accordance with normal agricultural practice.

8. Lighting of Fires

No person shall light or cause or permit to be lighted or commit any action liable to cause to be lighted any fire on any land adjoining the watercourse where such action is liable to set on fire the peat land forming the banks of the watercourse or any vegetation including trees growing on land forming the banks of the watercourse.

9. Notice to Cut Vegetation

Any person having control of any watercourse shall, upon the receipt of a notice served on him by the Council requiring him so to do, cut down and keep cut down all vegetation, including trees, growing in or on the bank of a watercourse, within such reasonable time as may be specified in the notice, and shall remove such vegetation, including trees, from the watercourse immediately after the cutting thereof.

Provided that, where a hedge is growing on the bank of a watercourse, nothing in this Byelaw shall require more than the pruning of the hedge so as to prevent it from growing over or into the watercourse, and the removal of the resultant cuttings.

10. No Obstructions within 8 metres of the Edge of the Watercourse

No person without the previous consent of the Council shall erect any building or structure, whether temporary or permanent, or plant any tree, shrub, willow or other similar

growth within 8 metres of the landward toe of the bank where there is an embankment or wall or within 8 metres of the top of the batter where there is no embankment or wall, or where the watercourse is enclosed within 8 metres of the enclosing structure.

11. Repairs to Buildings

The owner of any building or structure in or over a watercourse or on the banks thereof shall, upon receipt of a notice from the Council that because of its state of disrepair -

- (a) the building or structure is causing or is in imminent danger of causing an obstruction to the flow of the watercourse;
- (b) the building or structure is causing or is in imminent danger of causing damage to the bank of the watercourse,

carry out such reasonable and practicable works as are specified in the notice for the purpose of remedying or preventing the obstruction or damage as the case may be within such reasonable time as is specified in the notice.

12. Control of Vermin

The occupier of any bank of a watercourse or any part thereof shall, upon being required by the Council by notice, within such reasonable time as may therein be specified, take such steps as are specified in the notice, being such steps as the Council consider necessary and practicable for preventing the bank from becoming infested by rabbits, rats, coypu, foxes and moles or any other wild mammal not being an animal listed in Schedule 5 or Schedule 6 to the Wildlife and Countryside Act 1981, but excluding the water vole from such control.

13. Damage by Animals to Banks

All persons using or causing or permitting to be used any bank of any watercourse for the purpose of grazing or keeping any animal thereon shall take such steps including fencing as are necessary and reasonably practicable and shall comply with such reasonable directions as may from time to time be given by the Council to prevent the bank or the channel of the watercourse from being damaged by such use.

Provided that nothing in this Byelaw shall be deemed to affect or prevent the use of, for the purpose of enabling animals to drink at it, any place made or to be made or constructed as approved by the Council.

14. Vehicles not to be Driven on Banks

No person shall use or drive or permit or cause to be used or driven any cart, vehicle or implement of any kind whatsoever on, over or along any bank of a watercourse in such manner as to cause damage to such bank.

15. Banks not to be Used for Storage

No person shall use or cause or permit to be used any bank of any watercourse for the purpose of depositing or stacking or storing or keeping any rubbish or goods or any material or things thereon in such a manner as by reason of the weight, volume or nature of such rubbish, goods, material or things causes or is likely to cause damage to or endanger the stability of the bank or channel of the watercourse or interfere with the operations or access of the Council or the right of the Council to deposit spoil on the bank of the watercourse.

16. Not to Dredge or Raise Gravel, Sand etc

No person shall without the previous consent of the Council dredge or raise or take or cause or permit to be dredged or raised or taken any gravel, sand, ballast, clay or other material from the bed or bank of any watercourse.

17. Fences, Excavations, Pipes etc

No person shall without the previous consent of the Council;

(a) place or affix or cause or permit to be placed or affixed any gas or water main or any pipe or appliance whatsoever or any electrical main or cable or wire in or over any watercourse or in, over or through any bank of any watercourse;

(b) cut, pare, damage or remove or cause or permit to be cut, pared, damaged or removed any turf forming part of any bank of any watercourse, or dig for or remove or cause or permit to be dug for or removed any stone,

gravel, clay, earth, timber or other material whatsoever forming part of any bank of any watercourse or do or cause or permit to be done anything in, to or upon such bank or any land adjoining such bank of such a nature as to cause damage to or endanger the stability of the bank;

- (c) make or cut or cause or permit to be made 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;
- (d) erect or construct or cause or permit to be erected or constructed any fence, post, pylon, wall, wharf, jetty, pier, quay, bridge, loading stage, piling, groyne, revetment or any other building or structure whatsoever in, over or across any watercourse or in or on any bank thereof;
- (e) place or fix or cause or permit to be placed or fixed any engine or mechanical contrivance whatsoever in, under or over any watercourse or in, over or on any bank of any watercourse in such a manner or for such length of time as to cause damage to the watercourse or banks thereof or obstruct the flow of water in, into or out of such watercourse.

Provided that this Byelaw shall not apply to any temporary work executed in an emergency but a person executing any work so excepted shall, as soon as practicable, inform the Council in writing of the execution and of the circumstances in which it was executed and comply with any reasonable directions the Council may give with regard thereto.

18. Interference with Sluices

No person shall without lawful authority interfere with any sluice, or other water control structure or appliance for controlling or regulating the flow of water in, into or out of a watercourse.

19. Mooring of Vessels

No person shall moor or place any vessel in any watercourse or to or upon the bank of any watercourse in such manner or by such method as to cause or be likely to cause injury to

such bank or in such manner as materially to obstruct or impede the free flow of water in, into or out of any watercourse.

20. Unattended Vessels

No person shall leave any vessel unattended without taking due care to prevent such vessel from materially obstructing or impeding the free flow of water in, into or out of any watercourse or any sluice in any bank.

21. Removal of Sunken Vessels

No person who is the owner of a vessel sunk, stranded, damaged or adrift in a watercourse or, in the case of a sunken vessel which is abandoned, who was the owner immediately before the abandonment shall, after ten days from the day on which the Council serves on him notice in writing that the vessel is causing obstruction, permit the vessel to remain in the watercourse in such a manner as to impede or harmfully divert the flow of water in, into or out of the watercourse.

22. Navigation of Vessels

No person shall navigate any vessels in such a manner or at such a speed as to injure the bank of any watercourse and where the Council has by notice erected at any place limited the speed of vessels passing such place no person shall navigate a vessel at a speed over the bed of the watercourse greater than the speed so limited provided that the Council shall not exercise its powers under this Byelaw so as to limit the speed of vessels navigating waterways of the British Waterways Board for which speed limits are prescribed by the Byelaws of such Board.

23. Damage to Property of the Council

No person shall interfere with or damage any bank, bridge, building, structure, appliance or other property of or under the control of the Council.

24. Defacement of Notice Boards

No person shall deface or remove any notice Board, notice or placard put up by the Council.

25. Obstruction of the Council and Officers

No person shall obstruct or interfere with any member, officer, agent or servant of the Council exercising any of his functions under the Act or these Byelaws.

26. Savings for Other Bodies

Nothing in these Byelaws shall -

- (a) Conflict with or interfere with the operation of any Byelaw made by the Environment Agency or an internal drainage board or of any navigation, harbour or conservancy authority but no person shall be liable to more than one penalty or in the case of a continuing offence more than one daily penalty in respect of the same offence;
- (b) Restrict, prevent, interfere with or prejudice the exercise of any statutory rights or powers which are now or hereafter may be vested in or exercised by; -
 - (i) any public utility undertaking carried on by a local authority under any Act or under any Order having the force of an Act;
 - (ii) the undertakings of the Environment Agency and of any water undertaker or sewerage undertaker;
 - (iii) any public gas transporter within the meaning of part I of the Gas Act 1986;
 - (iv) any navigation, harbour or conservancy authority;
 - (v) any person who acts as the operator of a relevant railway asset, with respect to the construction, use or maintenance and repair of any such asset, or the free, uninterrupted and safe use of any such asset and the traffic (including passengers) thereof;
 - (vi) any local authority;

- (vii) any highway authority for the purposes of the Highways Act 1980 (as amended by any subsequent enactment) in relation to any highway whether or not maintainable at public expense;
 - (viii) any undertaking engaged in the operation of a telecommunications system
 - (ix) a relevant airport operator within the meaning of Part V of the Airports Act 1986
 - (x) the Civil Aviation Authority and any subsidiary thereof;
 - (xi) the British Waterways Board;
 - (xii) the Coal Authority;
- (c) restrict, prevent, interfere with or prejudice any right of a highway authority to introduce into any watercourse surface water from a highway, for which it is the highway authority;
- (d) restrict, prevent, interfere with or prejudice any right of a licence holder within the meaning of Part I of the Electricity Act 1989 to do anything authorised by that licence or anything reasonably necessary for that purpose;
- (e) affect any liability arising otherwise than under or by reason of these byelaws.

27. Saving for Crown Lands

Nothing in these Byelaws shall operate to prevent the removal of any substance on, in or under (or the erection of any structure, building or machinery or any cable, wire or pipe on, over or under) lands belonging to Her Majesty in right of the Crown by any person thereunto authorised by the Crown Estate Commissioners.

28. Arbitration

- (a) Where by or under any of these Byelaws any person is required by a notice in writing given by the Council to do any work to the satisfaction of the Council or to comply with any directions of the Council, he may within 21 days after the service of such notice on him give to the Council a counter-notice in writing objecting to either the reasonableness of or the necessity for such requirement or directions, and in default of agreement between such person and the Council the dispute shall, when the person upon whom such notice was served is a drainage or local authority be referred to the Secretary of State whose decision shall be final, and in any other case shall be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party. Where such a counter-notice has been given to the Council the operation of the notice shall be suspended until either agreement has been reached or the dispute has been determined by arbitration in accordance with the provisions of this Byelaw;
- (b) Where by or under these Byelaws any person is required by a notice in writing given by the Council to do any work to the satisfaction of the Council or to comply with any directions of the Council and any dispute subsequently arises as to whether such work has been executed or such directions have been complied with, such dispute if it arises between a drainage authority or local authority and the Council shall be referred to the Secretary of State whose decision shall be final, and in any other case shall be referred to the arbitration of a single arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party;
- (c) Where by or under Byelaws 3, 6, 10, 16 or 17 any person is required to refrain from doing any act without the consent of the Council such consent shall not be unreasonably withheld and may be either unconditional or subject to such reasonable conditions as the Council may consider appropriate and where any dispute arises as to whether in such a case the consent of the Council is being unreasonably withheld, or as to whether any conditions subject to which consent is granted are unreasonable, such dispute shall if it arises between a drainage authority or local authority and the Council be referred to the Secretary of State whose decision shall be final, and in any other case such dispute shall be referred to the arbitration of a single

arbitrator to be appointed in default of agreement by the President of the Institution of Civil Engineers on the application of either party.

29. Notices

Notices and any other documents required or authorised to be served or given under or by virtue of these byelaws shall be served or given in the manner prescribed by section 71 of the Act.

30. Limitation

(a) Nothing in these Byelaws shall authorise the Council to require any person to do any act, the doing of which is not necessary for securing or furthering one or more of the Purposes, or to refrain from doing any act, the doing of which does not affect the environment, or adversely affect either;

(i) the efficient working of the drainage system of the area

(ii) the effectiveness of flood risk management work within the meaning of section 14A of the Land Drainage Act 1991, or

(iii) the effectiveness of works done in reliance on Section 38 or 39 of the Flood and Water Management Act 2010.

(b) If any conflict arises between these Byelaws and;

(i) Sections 61A to E of the Land Drainage Act 1991 (which relates to the Council's duties with respect to the environment), or

(ii) the Conservation of Habitats and Species Regulations 2010

the said Act and the said Regulations shall prevail.

31. Interpretation

In these Byelaws, unless the context otherwise requires, the following expressions shall have the meaning hereby respectively assigned to them, that is to say:-

“the Act” means the Land Drainage Act 1991;

“Animal” includes any horse, cattle, sheep, deer, goat, swine, goose or poultry;

“Area” means the area under the jurisdiction of the Council;

“Bank” includes any bank, cross bank, wall or embankment adjoining or confining or constructed for the purpose of or in connection with any watercourse and includes all land between the bank and the low water mark or level of the water in the watercourse as the case may be and where there is no such bank, cross bank, wall or embankment includes the top edge of the batter enclosing the watercourse;

“Consent of the Council” means the consent of the Council in writing signed by a proper officer of the Council;

“Council” means Wiltshire Council;

“Occupier” means in the case of land not occupied by any tenant or other person the person entitled to the occupation thereof;

“Owner” includes the person defined as such in the Public Health Act 1936;

“Relevant railway asset” means

- (a) a network which was transferred, by virtue of a transfer scheme made under Section 85 of the Railways Act 1993, from the British Railways Board and vested in the company formed and registered under the Companies Act 1985 and known, at the date of vesting, as Railtrack PLC,
- (b) a station which is operated in connection with the provision of railway services on such a network, or
- (c) a light maintenance depot

Expressions used in this definition and in the Railways Act 1993 have the same meaning in this definition as they have in that Act, and a network such as is

described in (a) above shall not cease to be such a network where it is modified by virtue of having any network added to it or removed from it.

“The Secretary of State” means the Secretary of State for the Department for Environment, Food and Rural Affairs;

“Vegetation” means trees, willows, shrubs, weeds, grasses, reeds, rushes, or other vegetable growths;

“Vessel” includes any ship, hovercraft (as defined by the Hovercraft Act 1968), lighter, keel, barge, tug, launch, houseboat, pleasure or other boat, aircraft, randan, wherry, skiff, dinghy, shallop, punt, yacht, canoe, raft, float of timber or any other craft whatsoever, and howsoever worked, navigated or propelled;

“Water control structure” means a structure or appliance for introducing water into any watercourse and for controlling or regulating or affecting flow, and includes any sluice, slacker, floodgate, lock, weir, dam, pump, or pumping machinery; and other expressions shall have the same meanings as in the Act.

THE COMMON SEAL OF THE COUNCIL was hereunto affixed on in the presence of;


Principal Solicitor

S.W. GLATEM

11 FEB 2014



78968

The Solicitor of the Council
(or other authorised officer)

PENALTY NOTE

By Section 66(6) of the Act 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 from time to time for level 5 on the standard scale referred to in Section 37 of the Criminal Justice Act 1982 and a further fine not exceeding Forty pounds 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 Council 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.

WILTSHIRE COUNCIL LAND DRAINAGE BYELAWS

The Secretary of State for Environment, Food and Rural Affairs, in pursuance of the powers conferred by section 66 of, and paragraph 2 of Schedule 5 to, the Land Drainage Act 1991, HEREBY CONFIRMS these Byelaws.



C A Tidmarsh
for and on behalf of
the Secretary of State
Dated: 14 August 2014

Department for Environment, Food and Rural Affairs