

# Gaining permission for works that might be affected by coastal or river flooding

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# 1 Introduction

- 1.1 To undertake works, such as constructing bridges or building paths, alongside or over rivers, or in areas where there might be sea defences, one must often first obtain formal permission.
- 1.2 To obtain such permission, one must demonstrate that the proposed works will not have an unacceptable affect either on the environment or on flood risk. To do this it is essential to discuss any proposals with the relevant permitting 'agencies' (see 2.1) at the earliest opportunity. This TIN discusses the process of gaining permission.

## 2 Permitting agencies

- 2.1 The main two players in this business are; the Local Planning Authority (LPA) and then; the Environment Agency in England and Wales; the Rivers Agency in Northern Ireland and; the Scottish Environment Protection Agency in Scotland. The agreement of both is necessary before any work adjacent to or in watercourses, or on or adjacent to sea defences may proceed. Both bodies will consult each other on any given proposal, but gaining the permission of one does not mean the permission of the other will necessarily follow.
- 2.2 Certain minor works and temporary works are unlikely to need planning authority permission.
- 2.3 This note is written from the perspective of the Environment Agency (EA) being the second 'permitting agency', but the Rivers Agency in Northern Ireland and the Scottish Environment Protection Agency in Scotland fulfil a similar role.
- 2.4 Both the LPA and the EA will consult other Statutory Authorities, such as Natural England, before determining any application for works adjacent to or in a watercourse.
- 2.5 If a proposal is going to need both planning permission and the EA's permission, then it can be useful to go through the process of getting the EA's permission first for a couple of reasons:
  - The public are not consulted on an application for EA consent, so the technical and environmental issues can all be sorted before 'going public' with a planning application.
  - In some cases the EA can go through a 'pre-application' consultation process, allowing you to iron out any problems before making any formal application.

Of course, all of this takes time, so there will be occasions when it is better to apply for permission from both authorities right from the outset, and there will be times when 'going public' is better done right from the outset too.

- 2.6 Some areas of England and Wales also have Internal Drainage Boards and these too should be consulted when works are being considered; their approval might be needed.

## 3 Environment Agency

- 3.1 Works above and beyond basic maintenance proposed on or near to rivers might need the permission, known as Flood Defence Consent, of the Environment Agency. The type of permission required will depend upon the designation of the watercourse in question:

- If it is a “**Main River**”, permission will be needed under the Water Resources Act for work within the channel (e.g. a bridge pier). Permission under the Bylaws that are appended to this Act is required if the works are within the floodplain (e.g. a path adjacent to the river) or within a certain distance of the river bank. (This distance varies across the regions of the UK.)
- The only type of work that should require the EA’s permission in, on or near an “**Ordinary Watercourse**” is the “erection or alteration of any mill dam, weir or other like obstruction”. So a path alongside, or even a new bridge spanning such a watercourse should not need the EA’s formal approval.

- 3.2 It is impossible to tell from looking at it whether a watercourse is “Main River” or “Ordinary Watercourse”; in all cases it is the EA that will advise, as they will also on whether ones proposed works might be within the functional floodplain (triggering the need for a Bylaws consent) or within the ‘Bylaw distance’ (again triggering the need for consent).
- 3.3 Works that are proposed on or near to a sea defence will need permission under the Bylaws referred to above.
- 3.4 It is important to note that temporary works (such as a scaffold platform in a river to give access for bridge repairs) will often need formal permission in their own right. If a proposed project includes temporary and permanent works that will each need permission, discussing both with the EA from the outset will ‘ease’ the process.
- 3.5 There is a fee for applications made under either of the Acts but Bylaw applications are free. The EA must determine any application within two months - if not, permission is deemed granted.
- 3.6 The EA uses Planning Policy Statement 25 (PPS25) “Development and Flood Risk” as its guide on controlling flood risk, however it should be noted that this document is primarily intended for determining planning permissions for new development (i.e. not the Water Resources Act or Bylaw applications), and might thus not be applicable. See next section.
- 3.7 The Rivers Agency in Northern Ireland and the Scottish Environment Protection Agency in Scotland fulfil a similar role as described above.

## 4 Planning Authority

- 4.1 The Planning Authority will refer any applications for planning permission for developments that might be affected by flooding to the EA for comment since the EA is a “Statutory Consultee”.
- 4.2 PPS25 will set out how a proposal is considered. Simply put, this guidance endeavours to ensure that developments don’t make flooding worse and aren’t prone to unnecessary flooding themselves.

Looking at these two flooding concerns in turn:

- Our paths are always designed to shed rainwater run-off along their length; they do not concentrate run-off into a formal drainage system as is the case with road schemes. In this way our paths do not contribute to a worsening of flood risk. A new or altered bridge

might affect flood flows and it is most likely that a “Flood Risk Assessment” will be required in order to prove that any such affects are acceptable (see 4.3).

- Traffic free paths easily fit into PPS25’s definition of “Water Compatible Development” and so should not be curtailed by this planning policy.

4.3 PPS25 sets out that a Flood Risk Assessment (FRA) is needed in support of any application for planning permission for works in functioning flood plains. An FRA can be a relatively simple document (for example, an FRA in support of a proposed path which is to be built flush with existing ground) or it can be quite technically complex (for example, one in support of a new bridge proposal); all but the most simple FRAs must be produced by a competent consultant.

## 5 Pollution

- 5.1 It is essential that works carried out in or near to a watercourse do not cause pollution of that watercourse (N.B. pollution can mean muddy run-off from a site entering the watercourse; the definition isn’t just limited to oil spillages and the like.)
- 5.2 There is no formal approval process, but the Environment Agency (or their equivalents in Northern Ireland or Scotland) can advise on suitable prevention measures.
- 5.3 Method statements drawn up for proposed works must also contain pollution prevention measures.
- 5.4 Failure to take reasonable steps to prevent pollution can lead to prosecution.

## 6 Flood and Water Management Act 2010

- 6.1 At the time of writing this note, the Act is still relatively new and it will be a while before it is fully enabled. The Act calls for a National Flood Risk Strategy, and this is now in place (but is unlikely to affect ‘local’ schemes such as paths and new bridges), but the Act’s call for Local Flood Risk Strategies (which might have some bearing on such proposals) are yet to be formulated.
- 6.2 One measure in the Act to be mindful of is the requirement for all “developments” to provide “Sustainable Drainage Systems” (SuDS). SuDS are a means by which rainwater run-off from developments is collected and then held, only slowly then released into a watercourse or sewer. As noted in section 4.2, properly designed traffic free paths do not ‘concentrate’ rainwater run-off, so this requirement ought not to affect proposals for such new paths.