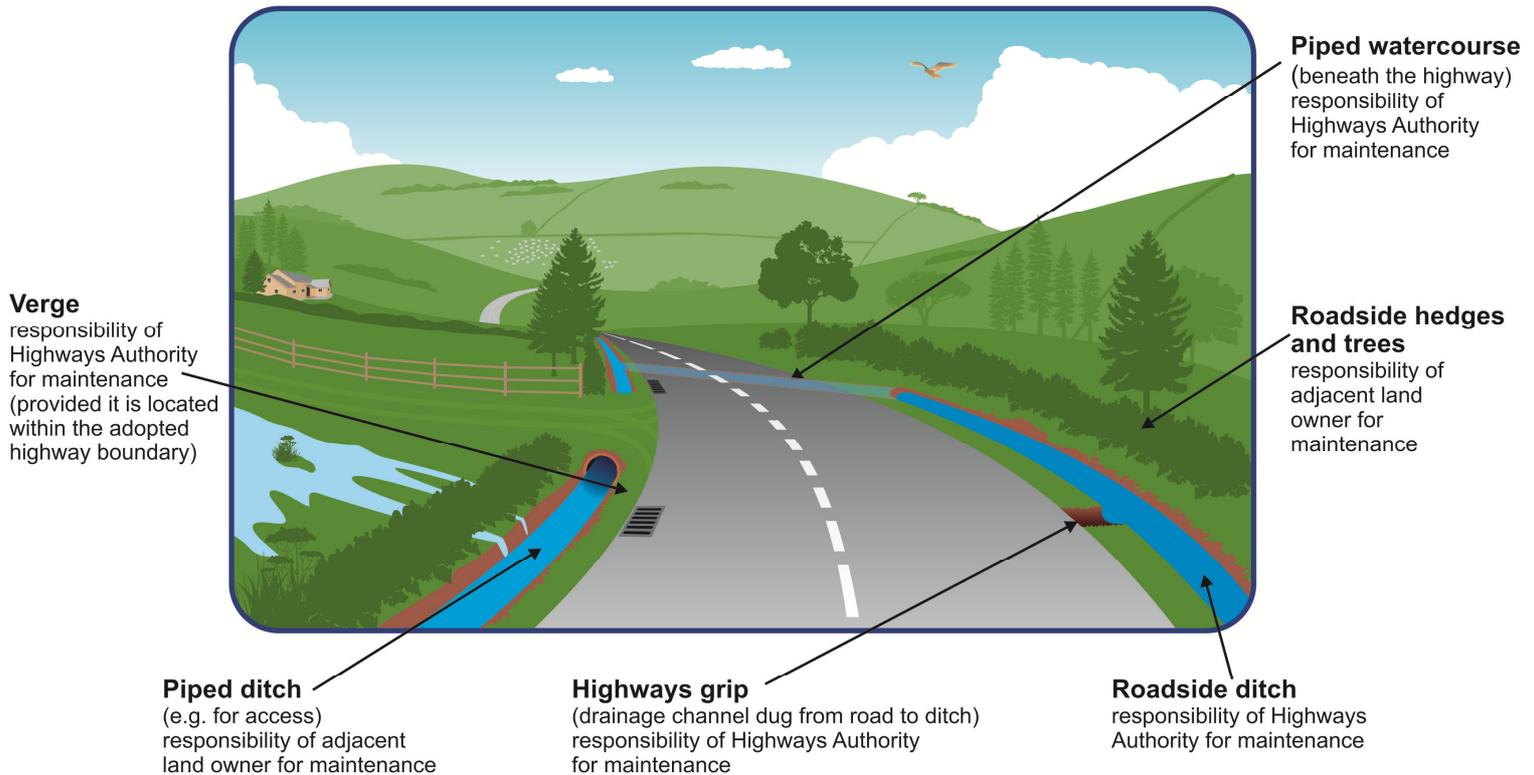


**Guidance Notes:  
HIGHWAYS  
STATUTORY DUTIES AND  
VESTED POWERS**

*If you are unsure about anything within these notes then please contact the Derbyshire County Council Highways division on the details at the end of this document.*

The County Council is responsible for maintaining Highways across Derbyshire at public expense. Therefore the County Council is termed a Highway Authority. Highways England are also termed a Highway Authority and are responsible for maintaining the Major Trunk Roads across Derbyshire. A reference to a Highway in these guidance notes includes all public rights of way that are maintainable at public expense.

The County Council are responsible for the installation, operation and maintenance of Highway drainage infrastructure, which falls within the adopted Highway curtilage in Derbyshire (refer to Figure 1).



**Figure 1 – Maintenance responsibilities for Highway and ditches/watercourse**

Ditches that run alongside a Highway generally do not form part of the Highway (since they do not assist the free passage along it) and remain the

responsibility of the landowner or occupier (please refer to Figure 1). Common law places a duty of the owner of land adjacent to a Highway to maintain any ditches which function as natural drainage for the land and also as part of the Highway drainage (please refer to Figure 1). However, where the ditches have been dedicated as forming part of the Highway, or where the ditch was constructed for the purpose of draining the Highway, then the ditch will form part of the Highway and may be the responsibility of the Highway Authority.

Highway drains are designed to accept surface water runoff from roads and footpaths within the Highway curtilage. The County Council have a right to drain the Highway to remove a nuisance (i.e. water on the surface) and can connect into a nearby watercourse. In this instance the County Council would however only be responsible for the lateral connection into the watercourse, which would be in place to drain the Highway.

Where flooding on a Highway is caused by another person (e.g. an adjoining landowner), the County Council can take action against the person responsible. However, where the flooding is caused by inadequate Highway drainage, the County Council may be liable for causing a nuisance. Please refer to the [Riparian Landownership Guidance Notes](#) for further information.

### Duties and Vested Powers under the Highways Act

The following duties and vested powers, under which the authority may act, are described in reference to the Highways Act 1980 (unless described otherwise).

(The information contained below is by no means an exhaustive list of all the duties placed upon the County Council as a Highway Authority but aims to provide a high level overview of some of the key sections contained within the relevant legislation.)

#### Duties for Provision and Care

Highways Act 1980	Section Title	Section Description
<b>Section 41</b>	Duty to maintain Highways maintainable at public expense. Special defence in action against a Highway authority for damages for non-repair of	This duty has been transposed into statute by virtue of Section 41 of the Highways Act 1980. The duty extends to all Highways maintainable at the public expense, with the exception of trunk roads. The Section 41 duty is not absolute. The Highways Authority must take such care in all the circumstances as is reasonably required to ensure the Highway is not dangerous for traffic. What is reasonable will depend on a number of factors, including those set out in Section 58 (defence against action for non-repair of

	Highway	<p>Highway):</p> <ul style="list-style-type: none"> <li>• the character of the Highway and traffic;</li> <li>• the standard of maintenance appropriate for a Highway of that character and used by that traffic;</li> <li>• the state of repair a reasonable person would expect to find the Highway;</li> <li>• whether the Highway Authority knew that the condition of the Highway was likely to cause danger; and</li> <li>• where; the Highway Authority could not have reasonably have been expected to repair that part of the Highway before the incident occurred, what warning notices of its condition had been displayed.</li> </ul> <p>The Section 41 duty includes a duty to provide an adequate drainage system and keep the Highway free from flooding.</p>
<p><b>Section 41</b> - The way in which the County Council manage our legal duty is via the area highways teams providing and maintain appropriate/adequate drainage within the Highway curtilage.</p>		
<b>Section 103</b>	Provision of posts to indicate depth of flood water	On Highways liable to flooding to a considerable depth, the Highway Authority has a duty to provide graduated posts or stones indicating the depth of water covering the Highway where it is considered necessary or desirable.
<b>Section 130</b>	Protection of public rights	Section 130 imposes a general duty for the Highway Authority to assert and protect the rights of the public to use and enjoy the Highway. In order to fulfil this duty, the Highways Authority has a responsibility to remove encroachments and obstructions of the Highway. Flooding is classified as an obstruction.
<p><b>Section 103</b> – At times of adverse weather the Highway Division is confronted with a demand on service for which well exceeds its capability and resources. Due to this the Highway Division prioritise their response based on risk matrix, covering things such as risk to road users and impact upon critical infrastructure.</p>		
<b>Section 150</b>	Duty to remove snow, soil etc. from Highway	This section imposes a duty of the Highway Authority to remove an obstruction arisen from the accumulation of snow or from the falling down of banks on the side of the Highway, or from any other cause.
<b>Section 264</b>	Vesting of drains etc. of certain roads	By virtue of Section 264, drains which belong to a road for which the County Council is the Highway Authority, have a vested right to use any other drains or sewers where they are and have been used for purposes connected to the drainage of the road. Note, however,

		that “private” drains do not lose their status by being used also for draining a Highway. Public sewers are vested in the water companies within Derbyshire for whom are as follows; Severn Trent Water, United Utilities and Yorkshire Water.
<b>Section 339</b>	Saving for works etc. of drainage authorities etc	This section requires a Highway Authority to obtain the consent of the authority’s Flood Risk Management Team before any watercourse is used, interfered with, or before works are carried out on any watercourse or drainage works. The Highway Authority must obtain consent from the Environment Agency if the waterbody is designated as a Main River.

### Powers available as Highway Authority

If a person causes a nuisance (i.e. anything that obstructs the Highway or makes it dangerous) the Highway Authority have a permissive power to prosecute that person (causing a nuisance in the Highway is a common law offence) or take action in the civil courts for an injunction and/or damages. Generally, a prosecution for nuisance will only be considered if there is no suitable statutory provision under which to take action.

Highways Act 1980	Section Title	Section Description
<b>Section 137</b>	Penalty for willful obstruction	If a person, without lawful authority or excuse, wilfully obstructs the free passage along a Highway he/she is guilty of an offence and liable to a fine.
<b>Section 137</b> – This section can relate to a third party wilfully allowing the transfer of water from their land ownership on to the public Highway, thus causing an obstruction to the free passage of the Highway. This permissive power is exercised at the discretion of the Highways Division.		
<b>Section 149</b>	Removal of things so deposited on Highways as to be a nuisance etc	If anything is so deposited on a Highway as to constitute a nuisance, the Highway Authority may by notice require the person who deposited it there to remove it forthwith and in default, the Highway Authority can remove the nuisance and recover the costs. It is a possibility that flood water from third party land could be classified as a deposit and therefore a nuisance.
<b>Section 333</b>	Saving for rights and liabilities as to interference with Highways	This section preserves the common law right of the Highway Authority to remove an obstruction from the Highway or abate a nuisance or other interference with the Highway.
<b>Section 333</b> – Like Section 137 this permissive power can be exercised by the Highway Division to enforce upon a third party landowner that they refrain from allowing water to transfer from their land on to the public Highway.		

## Specific Powers in relation to flooding and drainage

The Highways Act 1980 gives the County Council certain powers and rights in relation to flooding and drainage. Statutory provisions under the Highway Act 1980 are described in the table below.

Highways Act 1980	Section Title	Section Description
<b>Section 100</b>	<b>Drainage of Highways</b>	<p>Gives the Highway Authority, for the purpose of draining or preventing surface water from flowing onto the Highway the power to:</p> <ul style="list-style-type: none"> <li>a) construct or lay, in the Highway or land adjoining or lying near to the Highway, such drains as they consider necessary;</li> <li>b) erect barriers, in the Highway or in land adjoining or lying near to the Highway, to divert surface water into or through any existing drain;</li> <li>c) scour, cleanse and keep open all drains situated in the Highway or land adjoining or lying near to the Highway.</li> </ul> <p>N.B. "Drain" includes a ditch, gutter, watercourse, soak-away, bridge, culvert, tunnel and pipe.</p>
<p><b>Section 100</b> – This power can be utilised by the Highway Division on third party land in an attempt to mitigate impact upon the public Highway. This also allows the Highway Division to lay/construct grips within the highway curtilage. Consideration however must be given to possible compensation payments if the discharge of water impacts upon private land.</p>		
<b>Section 101</b>	<b>Power to fill in roadside ditches etc</b>	<p>This section gives the Highway Authority power to fill in, or place pipes in and fill in, dangerous roadside ditches, where the ditch is not required for drainage purposes and where the adjoining occupier consents.</p>
<b>Section 102</b>	<b>Provision of works for protecting Highways against hazards of nature</b>	<p>A Highway Authority for a Highway maintainable at the public expense has the power to provide and maintain such barriers or other works as they consider necessary for the purposes of protecting the Highway against snow, flood, landslide or other hazards of nature.</p>
<p><b>Section 102</b> – This section allows barriers to be created within the adopted Highway or land which the County Council have rights over, or has been acquired by the Highway Authority. This power is exercised at the discretion of the Highways Division.</p>		
<b>Section 108</b>	<b>Power to divert navigable watercourses</b>	<p>This section authorises a Highway Authority to seek an order to divert a navigable watercourse for Highway purposes.</p>
<b>Section</b>	<b>Power to divert non-</b>	<p>This section gives the Highway Authority power</p>

110	navigable watercourses and to carry out other works on any watercourse	to divert a watercourse (other than a navigable watercourse) or carry out works on any watercourse (including a navigable watercourse) for Highway purposes after consultation with every council in the area. The Highway Authority must also give notice to owners or occupiers of affected land to allow for objections and may be liable for compensation.
Section 163	Prevention of water falling on or flowing on to Highway	A Highway Authority can require the occupier of premises adjoining a Highway to construct or erect and maintain such channels, gutters or down pipes as may be necessary to prevent water from the roof or any other part of the premises falling on persons using the Highway or prevent surface water from the premises flowing onto the footway.
Section 299	Right to discharge water	This section gives the right for surface water drains to discharge into inland or tidal waters, subject to compensation payable to owners or occupiers who suffer damage.

### Understanding the role of Water Companies (Private Sewers)

Often there is confusion over the responsibilities of all parties in relation to the management of piped infrastructure within an individual's landownership and the highway.

On the 1<sup>st</sup> October 2011 there was a legal transfer of private sewers from some private homeowner to the relevant sewerage undertaker for their area. Private sewers and lateral drains have been transferred to form part of the public sewer network. A private sewer is a pipe that carries rainwater and/or waste water away from more than one property to the public sewer. A lateral drain is a pipe that carries waste water away from a single property. The transferred asset will be the length located outside the property boundary. Sewers that connect to a private treatment works, connect to a septic tank or carry water directly to a watercourse have not been transferred. There are many different scenarios for the layout of pipes around different properties. All relevant water companies have diagrams shown on their websites for which serve as a guide to the typical pipe layouts. Please visit **Water UK's website**<sup>1</sup> for further guidance on a range of scenarios.

This transfer of private sewers made no changes to independent roof water drainage systems i.e. downpipes. If a downpipe discharges on to an adopted

<sup>1</sup> [www.water.org.uk](http://www.water.org.uk)

Highway and or connects directly into the main sewer within the road then this remains the responsibility of the property owner.

The private sewer transfer makes reference to wastewater not just purely surface water. The definition of wastewater is any water that has been adversely affected in quality by human activity.

Sewage is the subset of wastewater that is contaminated with faeces or urine, but is often used to mean any wastewater.

- "domestic sewage" in relation to any area or premises means sewage which is not surface water or trade effluent;
- "foul water" means any water contaminated by domestic sewage or trade effluent;
- "sewage" includes domestic sewage, surface water and trade effluent

Finally, it should be borne in mind that it is an offence; pursuant to Section 111 of the Water Industry Act 1991 to empty into a sewer any matter likely to interfere with the free flow of the contents of a sewer or the treatment and disposal of its contents.

For further clarification on drainage asset ownership the relevant water company should be contacted directly.

Severn Trent Water – 08457 500 500 [www.stwater.co.uk](http://www.stwater.co.uk)

Yorkshire Water – 0345 124 24 24 [www.yorkshirewater.com](http://www.yorkshirewater.com)

United Utilities – 0345 672 3723 [www.unitedutilities.com](http://www.unitedutilities.com)

**For all enquiries relating to flooding or flood risk from the Highway:**

*Derbyshire County Council - Highways Division*

Economy, Transport and Environment

County Hall, Matlock, Derbyshire, DE4 3AG

Call Derbyshire: (01629) 533190

Online: Report a blocked drain - [www.derbyshire.gov.uk/do\\_it\\_now/](http://www.derbyshire.gov.uk/do_it_now/)



**For all enquiries relating to local sources of flood risk:**

*Derbyshire County Council - Flood Risk Management team*

Economy, Transport and Environment

County Hall, Matlock, Derbyshire, DE4 3AG

Call Derbyshire: (01629) 533190

Email: [flood.team@derbyshire.gov.uk](mailto:flood.team@derbyshire.gov.uk)

