

# ROADSIDE DITCHES

## General Principles

1. Where a Highway Authority (HA) has acquired a road by agreement or by compulsory purchase, ownership of that land will be theirs.
2. Where a highway is created by dedication (which is usually the case) ownership of the soil beneath the highway remains with the owner of the land or his successors. HA owns only the surface of the road and as much of the soil below as is necessary to protect and maintain it ("top two spits").
3. The lateral extent of the highway is a question of fact applying the presumption that the highway extends between the hedges or fences.
4. Where a ditch lies between the fence/hedge and the carriageway, there is the presumption that the ditch does not form part of the highway. (Hanscombe v Bedfordshire CC (1938)) presumably because one cannot walk or drive over or through a ditch. This presumption may be rebutted but the onus of doing so would lie on the HA.

### To sum up:-

Roadside ditches are usually the responsibility of adjoining landowners except where the ditch was constructed to drain a highway, where it falls on land owned by the HA or the HA has taken over maintenance of the ditch with the agreement of the owner to ensure the efficient drainage of a highway.

## Particular Legal Provisions under the Highways Act 1980

### 1. S100 HA 1980

Gives HA powers to drain highways on land in or adjoining the highway and powers to prevent interference with drainage works.

- a) HA must compensate owner/occupier of land who suffers damage as a result of the use of this power.
- b) HA must not interfere with a watercourse or other works vested in a drainage authority (Environment Agency, Local Authorities etc) without its consent.
- c) This section does not give a HA a right to discharge water from the highway onto an adjoining owner's land.

\*See Provender Millers (Winchester) Ltd v Southampton County Council (1940).

**BUT** **Of.Kings County Council v Kennedy (1910)** where it was shown that a right may exist where a HA could show it had been discharging onto land for a sufficiently long time - in this case 29 years.

### **S101 HA 1980**

Where a ditch appears to a HA to constitute a danger to users of the highway, the HA may:-

- i) fill in the ditch if the owner/occupier agrees
  - ii) culvert it if owner/occupier agrees.
- a) Must compensate owner/occupier if he suffers damage.
  - b) A landowner may also take this action of filling in or culverting but he must allow for the established right of a HA to discharge into such a ditch and the landowner will retain responsibility for maintenance. He will need Environment Agency consent (or IDB) under ss 23/24 Land Drainage Act 1991.

### **S110 HA 1980**

HA may divert a non-navigable river or carry out other work on part of a watercourse including a navigable watercourse for the following purposes - highway works, provision of new access, maintenance compounds, picnic areas, service areas etc.

HA must consult every Council in whose area the works are to be carried out and serve notice on the owners/occupiers of lands affected.

For diversion of a navigable river see S108 HA 1980.

### **S163 HA 1980**

It has been suggested that this section may assist HA to deal with the problem of run-off onto the highway though the position is far from clear.

### **Culverts under Highways**

Normally these are the responsibility of the HA if they were built to facilitate the passage of traffic. These must be of a sufficient size to take normal flows from the catchment but there is no obligation on a HA to enlarge culverts to accommodate increased run-off from new developments in the area.