

Riparian Ownership

A workshop to look at who owns what when it comes to rivers and watercourses and what rights and responsibility an owner has

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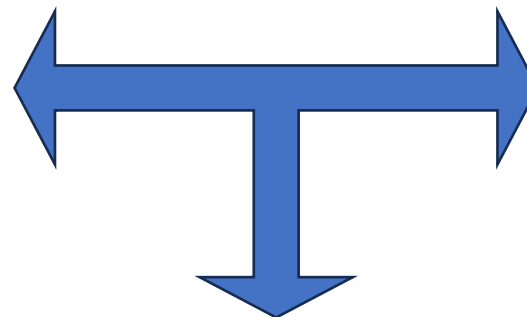


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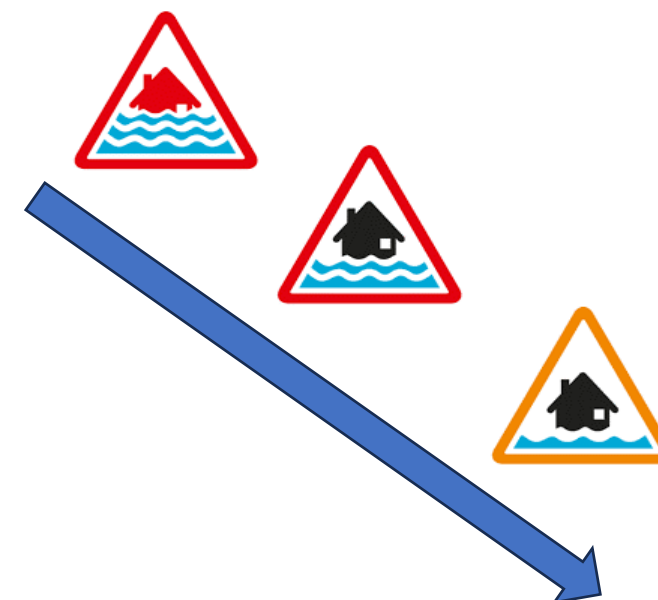
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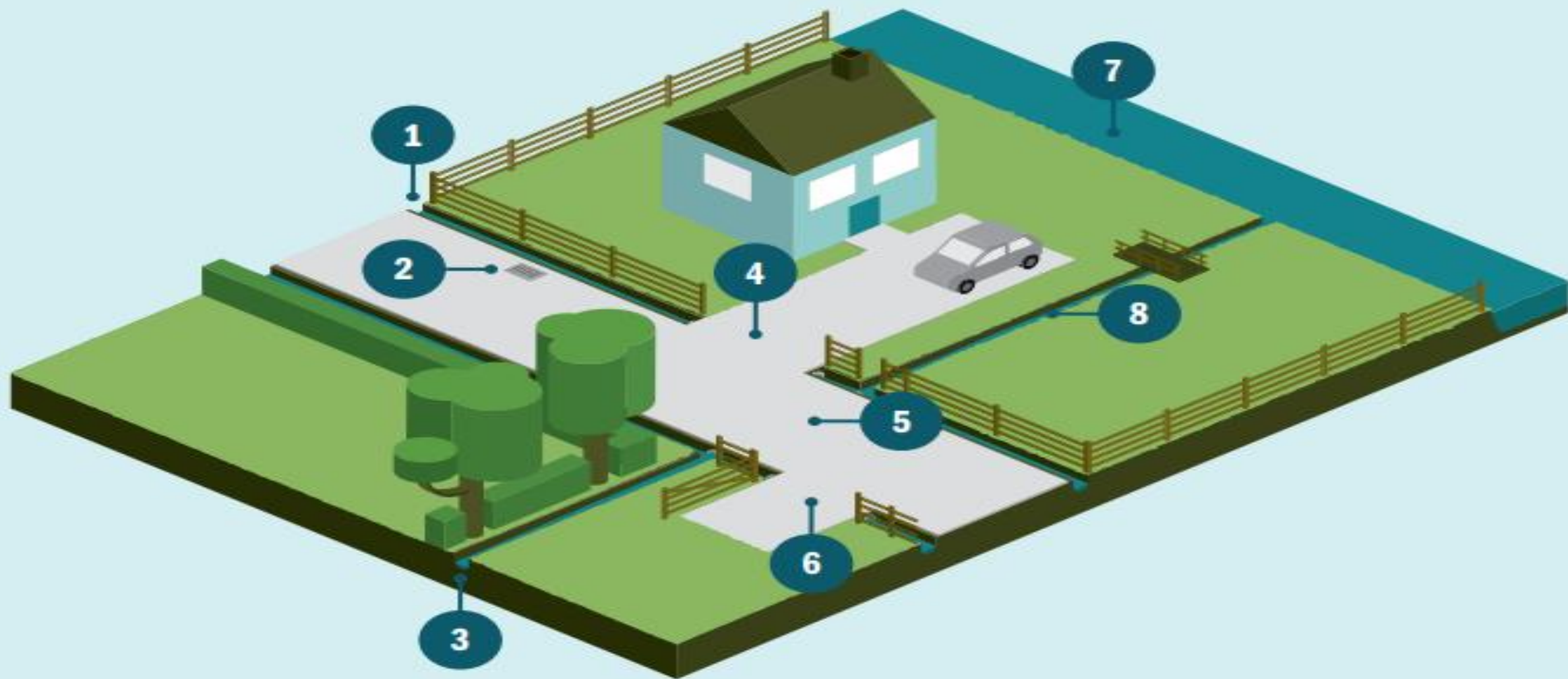


EXTRA



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Who is responsible for maintaining watercourses?



What is a watercourse?

The government's definition of a watercourse is any stream of water flowing in a defined channel or through an underground pipe or culvert.

It can be small or wide, natural, or artificial and it also includes channels which are only seasonally wet.

They are known by various names depending on size, use and where you are in the country.

- | | |
|----------|----------|
| •River | •Ditch |
| •Stream | •Leat |
| •Brook | •Goyle |
| •Beck | •Rhyne |
| •Drain | •Culvert |
| •Rivulet | •Gully |
| •Rill | •Runnel |

Are all watercourses treated equally?

Not all watercourses are the same. There is an important distinction between those which are classified as “Main Rivers” and those which are known as “Ordinary Watercourses”

This map shows all watercourses. The red lines show the Main Rivers and the blue lines show the Ordinary Watercourses.

There is a third colour, Purple, but that just shows catchment areas and add to the rather confusing and psychedelic picture.



Bodies responsible for watercourses and managing flood risk in Somerset



Main River

- In England, the Environment Agency has the strategic overview for flood risk and managing the risk from main rivers, reservoirs, and the sea.
- The Environment Agency has **permissive powers** to construct and maintain defences against flooding.
- They also issue flood warnings and manage water levels.



Ordinary Watercourse

- Lead local flood authorities (LLFA) are responsible for local flood risk management (and for surface water, groundwater too).
- LLFA have **permissive powers** under the Land Drainage Act 1991 (as amended by the Flood and Water Management Act 2010) to regulate ordinary watercourses (outside of internal drainage districts).
- LLFA also investigate local flood incidents and publish the results of such investigations.
- LLFA is also a statutory consultee on planning applications for major developments

More bodies responsible for watercourses and managing flood risk in Somerset



Internal Drainage Boards

- Internal drainage boards are independent public bodies responsible for water level management in low lying areas (around 20% of the UK). Internal drainage boards have local byelaws to ensure that a drainage system works efficiently, regulate the environmental effects of a drainage system and ensure that flood risk management work is effective.
- They also have enforcement powers

Water companies



- They manage the risk of flooding to water supply and sewerage facilities, and flood risk from the failure of their infrastructure.

Highways Authorities



- Highways authorities (National Highways Agency and Somerset's Highway's Authority) have the lead responsibility for providing and managing highway drainage under the Highways Act 1980.

So, what is a riparian owner?

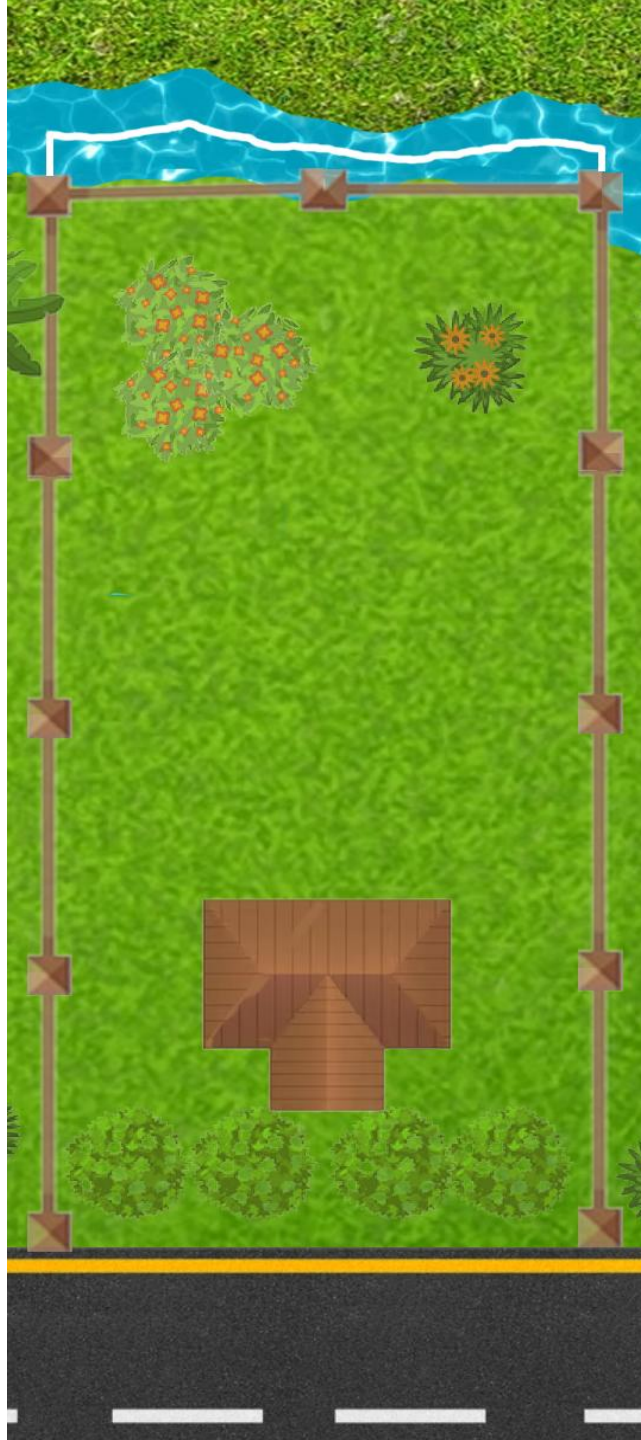
You are likely to be a riparian owner if you have a watercourse, of any size or shape flowing through, alongside or, in some cases, under your land or property.



Apple Cottage

Rather than enjoy the countryside around them, the owners appear to wish they were back in the city and have fenced all sides of their property, except where it faces the road.

Nevertheless, on a peaceful summer's day, they can still hear the stream that borders the farmer's field trickling past their back fence. The deeds make no reference to the stream.



Apple Cottage

There's a common law presumption of responsibility "*ad medium filum aquae*". So, unless house deeds tell otherwise, it is presumed that your responsibility lies up to the mid-point of the stream.

This is the case even if fenced off and the stream is no longer visible. Fences come and go, but the stream generally stays put and is treated as more permanent in law.



Blackberry House

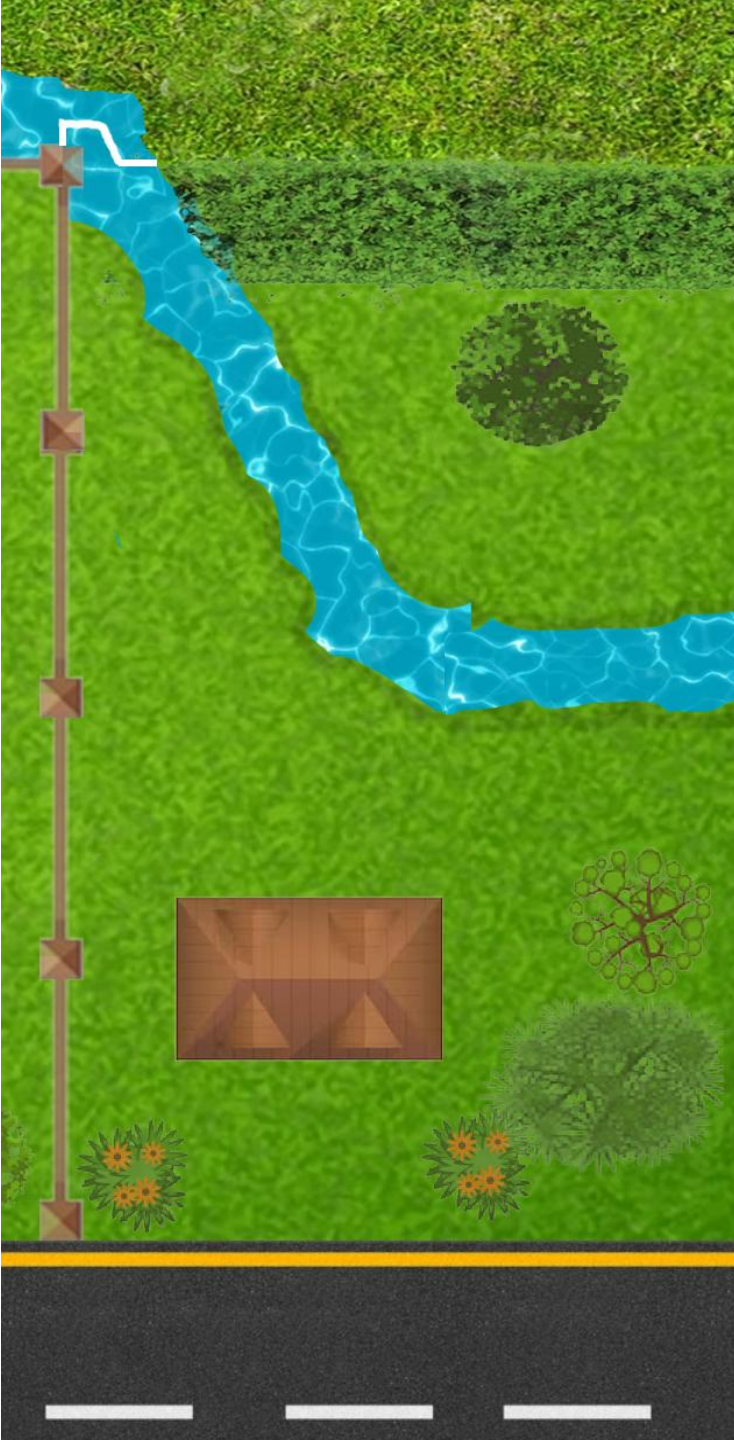
This rural idyll is the oldest house in the village.

A brook gently bubbles through the garden, flowing from right to left as the owners gaze out from their rear windows. It disappears through a gap in the mature hedge at the bottom of the garden into an open field belonging to a local farmer.

Blackberry House

The common law principle of “*ad medium filum aquae*” still applies.

So, unless house deeds tell otherwise, it is presumed that your responsibility lies up to the mid-point of the stream, even if this appears to extend beyond the fence line of your property

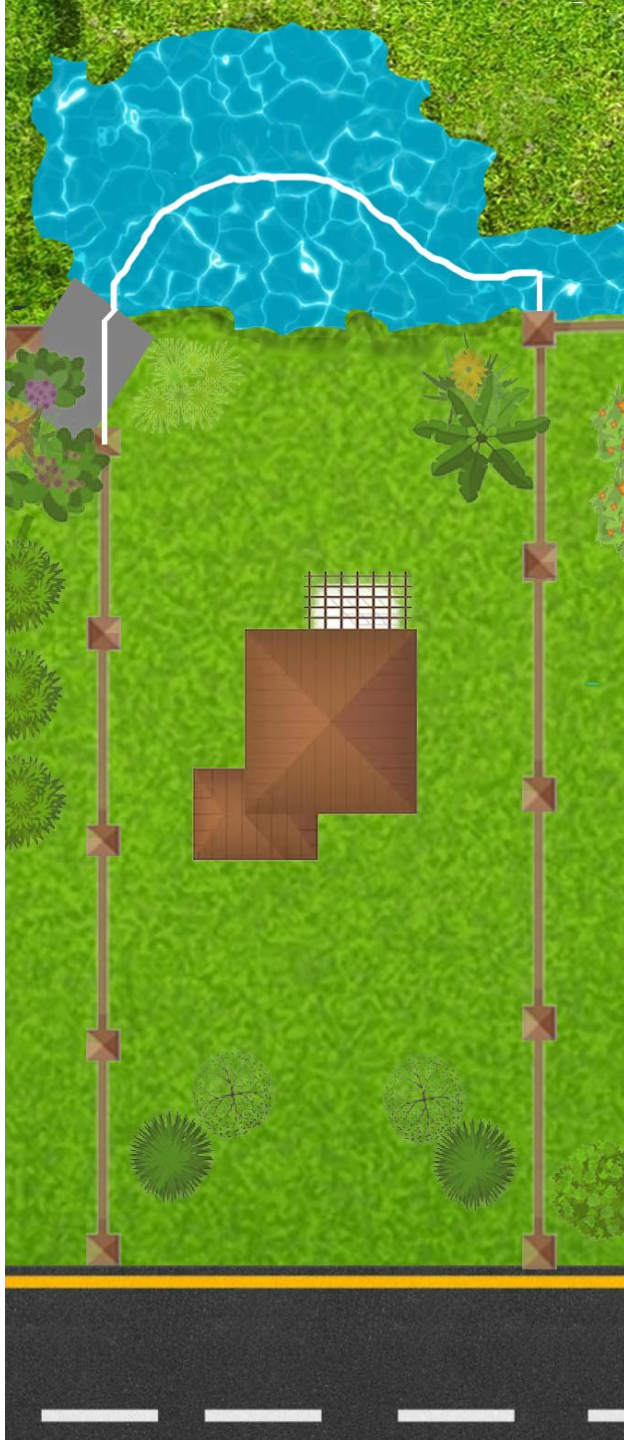




Crab Apple Cabin

The new owners bought this property for the views and the wildlife. They love nothing better than to sip tea in their conservatory, whilst watching all the birdlife visiting the pond in the corner of the farmer's field at the bottom of their garden.

The beautiful vista is somewhat spoilt by seeing the end of the concrete culvert of the pond's outflow, but they have plans to disguise this with clever planting.

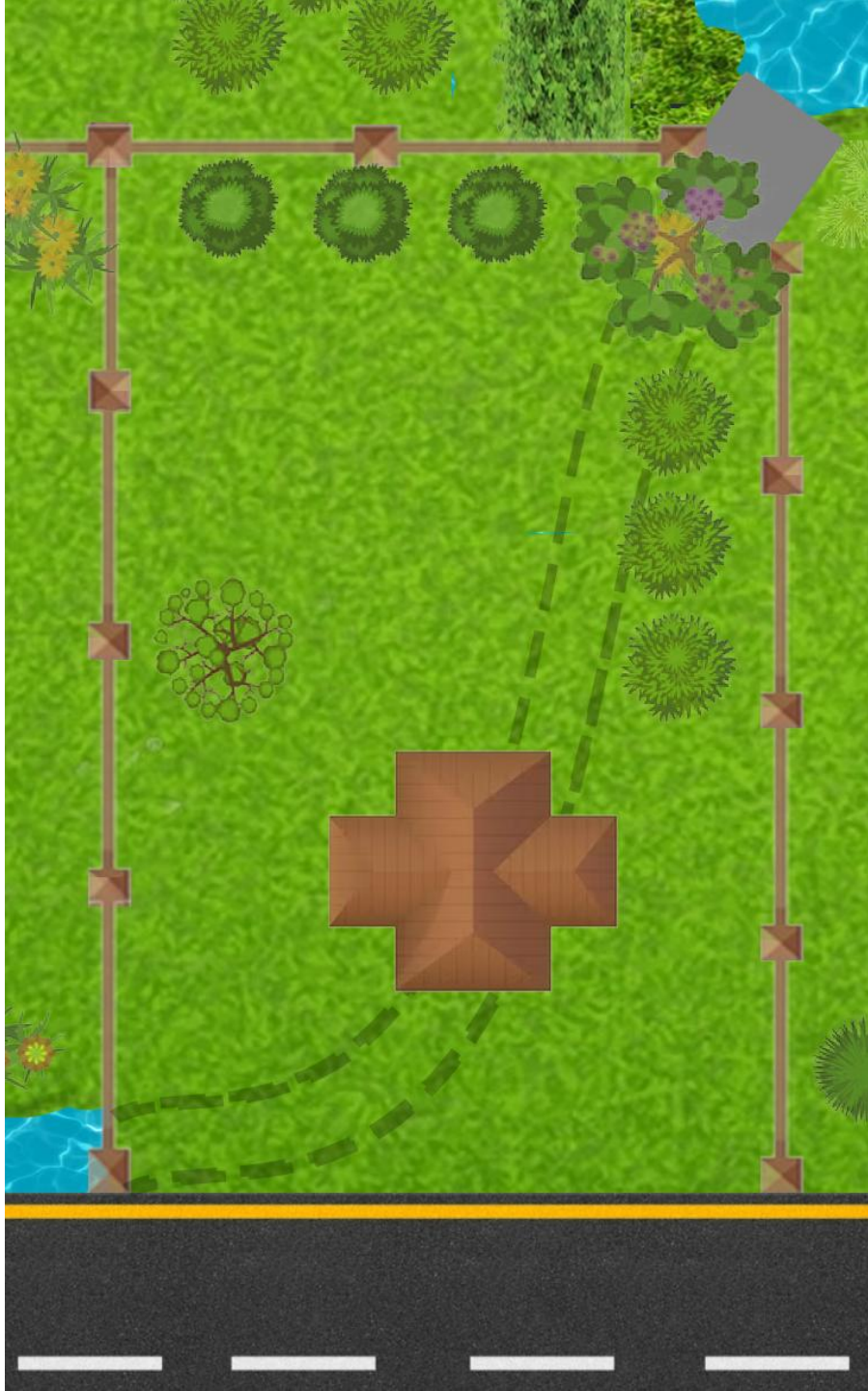


Crab Apple Cabin

Working from the right, “*ad medium filum aquae*” applies to the stream over the back fence.

“*Ad medium filum aquae*” also applies to the pond, even though this appears to be predominantly in the farmer’s field. They own approximately a third of the pond.

On the left, the line of the fence between this house and the one next door extends until the mid-point of the outflow stream



Damson Lodge

The newest house in the village.

A housing developer managed to squeeze it in over the site of an historic stream.

They piped the watercourse from the pond beyond the rear right-hand corner of the garden, under the garden and house itself and out to the roadside at the front.

Now, no water visibly flows on the property.



Damson Lodge

There are no visible responsibilities, but plenty of hidden ones. Almost all the culverted watercourse is under their land and, therefore their responsibility.

As before, the '*ad medium filum aquae*' principle means that their responsibility extends along the shared fence line with both the property on the right and the property at the rear until it reaches the mid points of the stream.

Elderberry Retreat

A higher-end, executive style house with off-road parking courtesy of a driveway that crosses over the historic stream that flows alongside the public road at the front of the house.



Elderberry Retreat



The property owners are responsible for all the open stream in front of their house, including the section that runs under their access bridge.

“Ad medium filum aquae” does not apply in this case. Common law dictates that they would usually own up to the side of the road.

The Highways Authority are only responsible for getting water off the road and into a watercourse. They are not responsible for the watercourse itself (unless they constructed it when building the road)



Figgy Villa

The biggest dwelling in the village, surrounded by a landscaped garden with a lovely thick evergreen hedge at the bottom of the garden. From upstairs, the residents can look out over the farmer's field beyond, in the corner of which is a pond with a culverted outflow.

They can't really see it behind their hedge, but after heavy rain, they can hear water flowing in a ditch at the edge of the field connected to this pond.

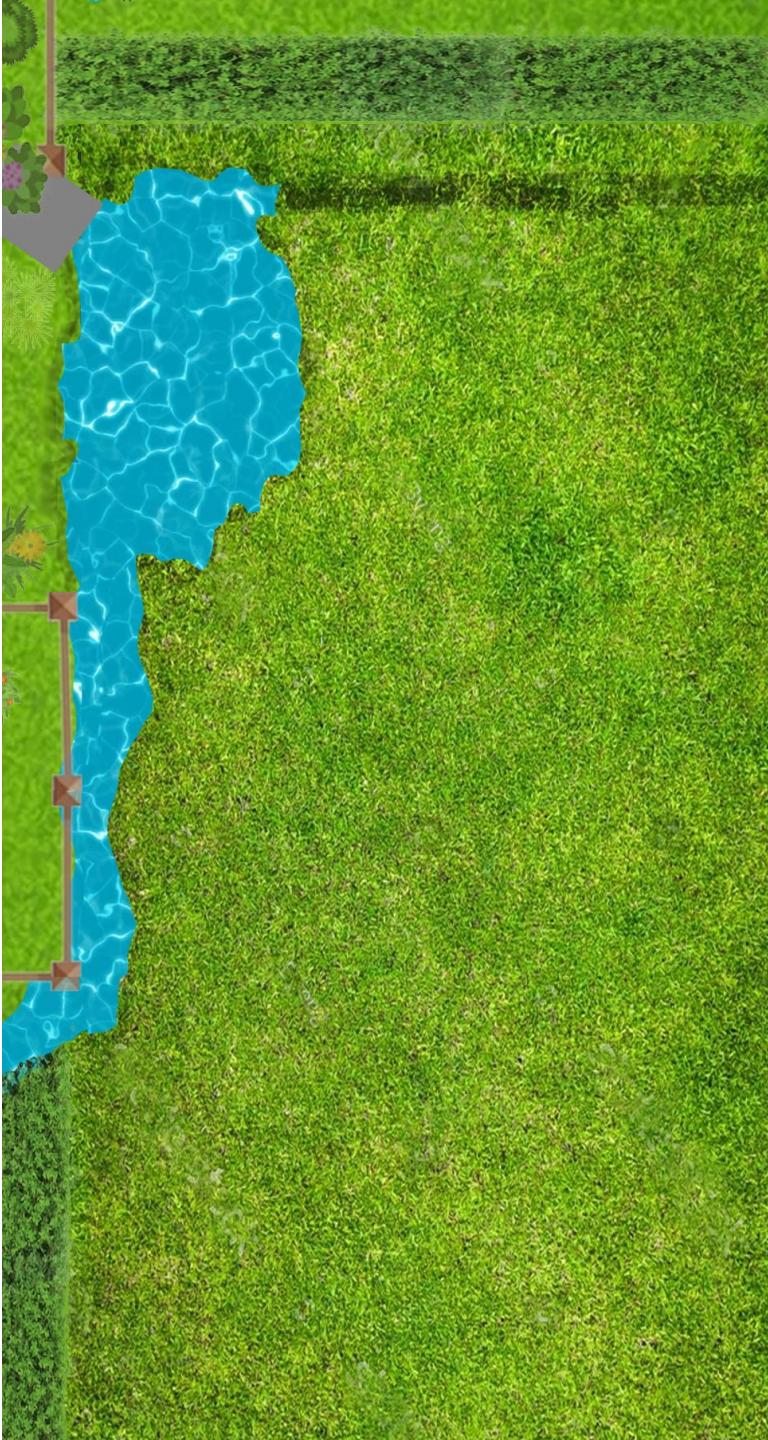


Figgy Villa

We return to “*ad medium filum aquae*”.

The owners are responsible up to the mid-point of the ditch between them and the farmer, even though it only has water in it some of the time.

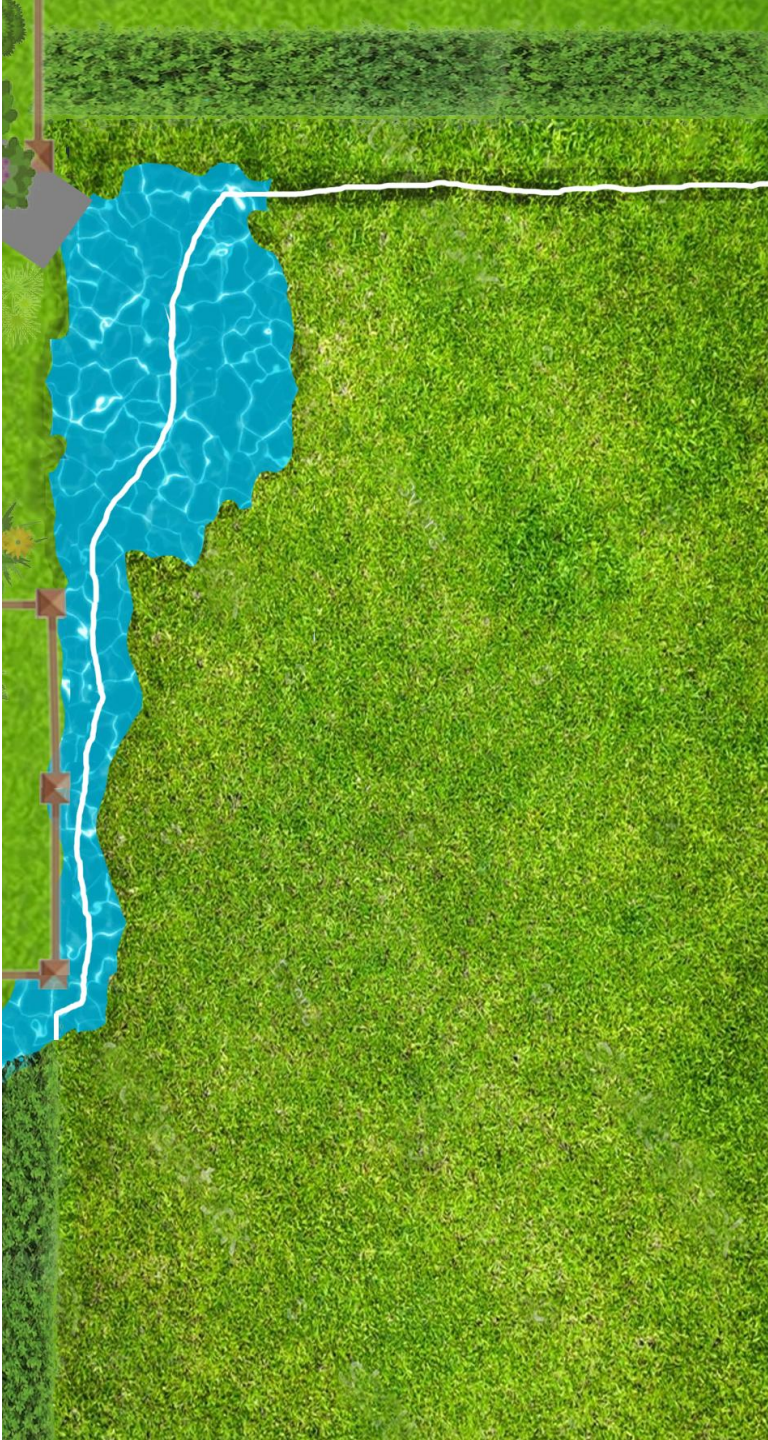
On their right-hand boundary, their ownership would follow the fence line to the mid-point of the culverted stream and then follow the mid-line to the pond’s outflow and to the middle of the pond. They would be responsible for around 20% of the pond.



Gooseberry Farm

The local farmer owns many fields. This one is purely used for cultivation, with no buildings or structures present.

On one side it is partially bordered by a stream. On another by a ditch that's usually dry. Where the stream and ditch meet in the corner of the field, there's a small pond. The outflow from the pond is culverted. Beyond the stream and ditch lie the fences and hedges of residential properties.



Gooseberry Farm

“Ad medium filum aquae” applies to both the ditch, the stream and the pond, meaning that he is responsible for half the width of the stream and ditch, the banks that form the stream and ditch on his side as well as approximately half the pond, even those it appears to mostly lie in his field.



Flood Risk Management Assets

Even with these scenarios, we haven't touched on flood risk management assets such as sluices, bunds, pumping stations, flood walls, weirs, flood storage areas and natural flood management schemes.

For the most critical assets, the relevant risk management authority may maintain and operate them, but ownership and responsibility to maintain them usually lies with the landowner or shared between landowners.

Your Rights as a Riparian Owner

As a riparian owner, you have various rights in terms of access to and use of that water:

- Receive the water in its natural state, undiminished in flow, quantity, and quality.
- Protect your property from flooding and your land from erosion.
- Fish in your watercourse (check your deeds for confirmation).
- Abstract a maximum of 20 cubic metres (20,000 litres) of water per day from a watercourse at a point that directly adjoins your land.
- Use the water in a watercourse for normal purposes, such as watering livestock and domestic purposes
- Use the water in a watercourse for other purposes e.g., milling, manufacturing or irrigation
- Use a boat on your watercourse

Exercising your Rights

HOWEVER, all these rights are subject to legal requirements:

- To fully exercise them you must contact the relevant authority before carrying out any work to see if you need permits, licences or consent from the Environment Agency for main rivers www.gov.uk/permission-work-on-river-flood-sea-defence, IDB or LLFA [[Apply for consent to work on an ordinary watercourse \(somerset.gov.uk\)](http://www.somerset.gov.uk/apply-for-consent-to-work-on-an-ordinary-watercourse)]. The Riparian Owner is solely responsible for ensuring that your works meet all applicable standards and are fully compliant with current legislative requirements. All authorities also have powers to enforce unpermitted work or require remedial action if all relevant consents and conditions are not followed.
- Comply with any byelaws relating to the watercourses in your area. Byelaws totally prohibit certain activities on rivers and their banks. These can be made by risk management authorities (eg; [Byelaws | Somerset Drainage Boards Consortium](#)).
- You must not increase flood risk or erosion to other people's property or land, either directly or by impacting other sources of flooding.
- You must not cause pollution or damage to protected habitats and species, such as water voles nor disturb birds and their nests (so not March-July) nor spawning fish or fish eggs (so not October-May).
- You cannot obstruct the flow or divert a watercourse to the detriment of other riparian owners – water must flow naturally with undiminished quantity or quality and without consent from the relevant Authority (Environment Agency or Lead Local Flood Authority).

Maintenance and Other Responsibilities

Keeping structures you own, such as weirs, mill gates, trash screens, moorings, culverts, and access bridges, free from obstruction and in safe condition, but **DO NOT ENTER CULVERTS** as you could become trapped or overwhelmed by gases.

You should remove blockages, fallen trees or overhanging branches from your watercourse, or cut back trees and shrubs on the bank, if they are affecting the flow or a public right of navigation (but otherwise keep trees, branches and shrubs in place as they help prevent flooding if they are varying the shape of the channel and minimising erosion), but **DO NOT ENTER THE WATER TO REMOVE DEBRIS AND BLOCKAGES IN TIMES OF FLOOD OR HIGH FLOW. ALWAYS CHECK THE DEPTH.**

You must not allow the watercourse to become polluted by, for example, throwing in waste water, chemicals or rubbish. For this reason, you must seek permission from the Environment Agency before using any herbicides to control weeds in the water or within 1m of a watercourse or body of water.

For the same reason, any litter should be removed as well as any animal carcass, nor should you throw in any garden waste or place it on the banks where it could enter the water at a later date. As well as decomposing matter reducing water quality, this also prevents a flood risk as material can gather downstream and block bridges and culverts

You must prevent livestock animals from entering the watercourse

You must prevent non-native Invasive Species (eg; Japanese Knotweed) from spreading

Where a public right to navigation exists, you can't stop others from using their boats

Why Do Anything?

- As a riparian owner, it's your responsibility to maintain the watercourse. Failure to do so can result in enforcement action.
- Not doing anything will enhance the risk of flooding in your local area, both for you and your neighbours
- Cases are very infrequent, but theoretically you do leave yourself open to legal action if a flooded neighbour can show that your negligence or misuse of riparian rights has caused it.
- If an insurance company can show the same thing, then your cover will be considered invalid
- In the bigger picture, two of the primary types of flooding – fluvial (river) and pluvial (surface water) – are watercourse related, so it's essential that the system is well maintained to boost resilience and reduce flooding events.
- With climate change seemingly bringing more intense rainfall, it is ever more critical that all those with responsibilities are playing their part, both risk management authorities and riparian owners.

If A Riparian Owner Isn't Taking Responsibility

Riparian works not being carried out might be increasing the flood risk for you and your community. In this case, we'd recommend the following steps in this order:

1. If able, have a quiet word with your neighbour
2. Ask the Parish Council to have a quiet word
3. Inform the relevant Risk Management Authority (with photos and an account of what's been done so far) to investigate and, if appropriate, start the enforcement process

In an emergency situation, call 0800 80 70 60 for Main River (Environment Agency) or 0300 123 2224 for Ordinary Watercourses (Somerset Council)

Maintaining Your Watercourse

Often it's best to simply allow natural river processes to take place, but sometimes intervention is needed.

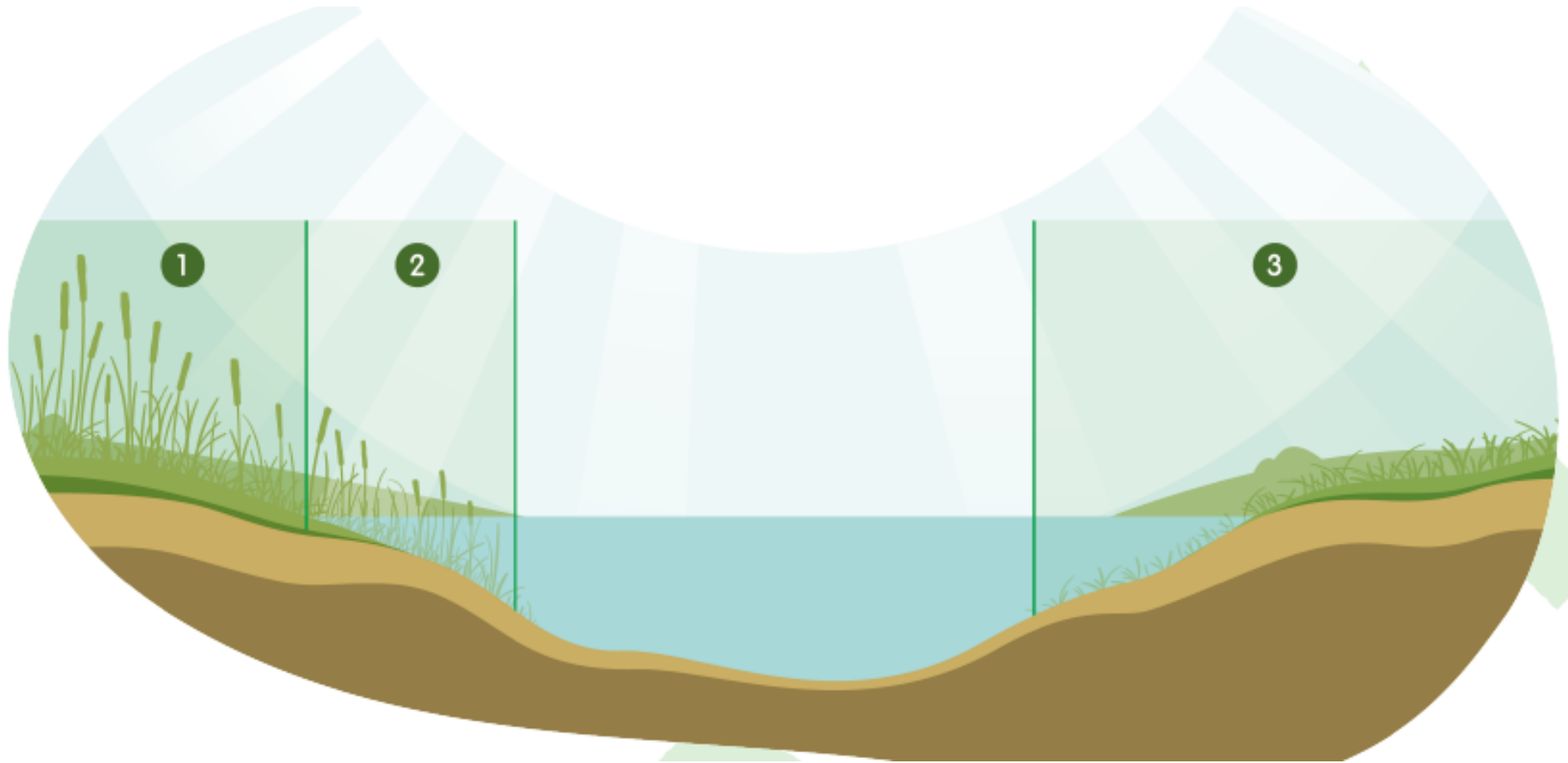
What this looks like depends on a number of factors, such as:

- Type of watercourse (eg; natural or engineered)
- Potential impact of work (or not working) on nearby properties and land
- Biodiversity present

When you work on a watercourse, you need to bear in mind:

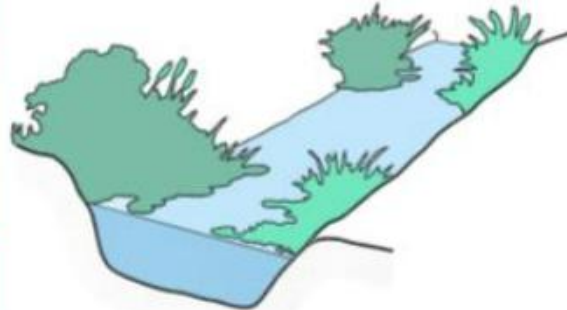
- Potential danger around water – never put yourself at risk
- Not blocking access for risk management authorities for routine or emergency works
- Try and be nature-friendly in your approach

Best Practice – General Vegetation



Best Practice – General Vegetation

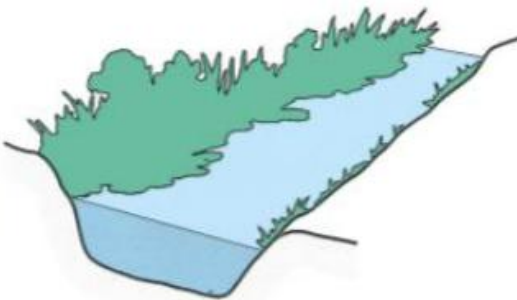
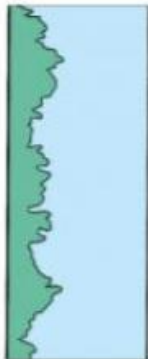
- ➡ Leave 10m blocks of vegetation every 30 – 50m



Use a sinuous route or scallop the vegetation to create meanders



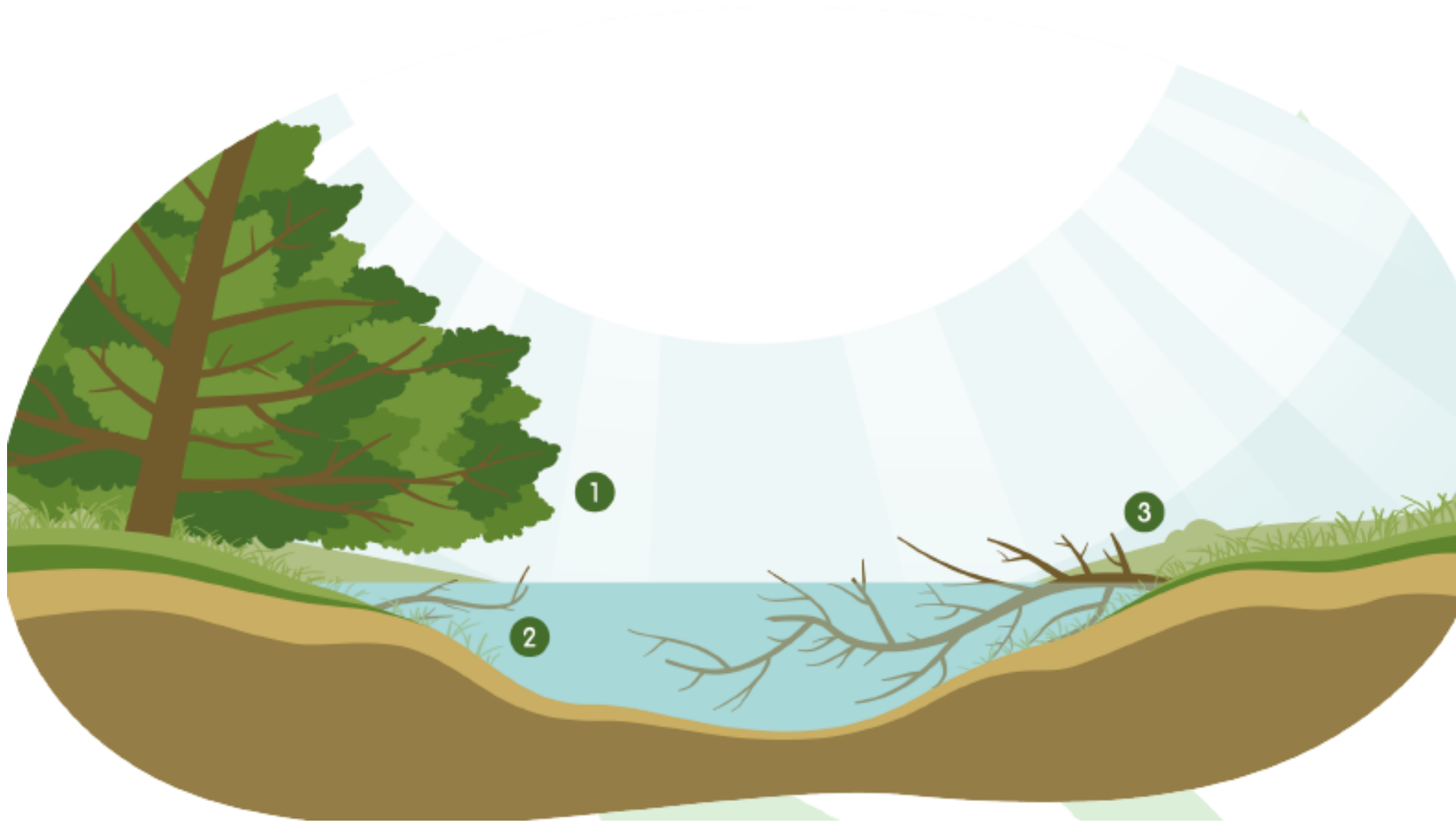
- ➡ If it is a wide channel clear the channel from one side only, or half its length in any particular year



Good Riverbank Management.



Best Practice – Trees, Branches & Shrubs



Silt Removal



Place it on the bank for a few days to allow organisms to migrate back

Do not place it there permanently as it can easily wash back in.

Permits

Because of their importance to flooding and wildlife habitats, permits are often required for work on and near watercourses. This is a complicated area and more guidance is available at www.gov.uk/permission-work-on-river-flood-sea-defence (Main Rivers), at <https://somerse排水boards.gov.uk/development-control-byelaws/land-drainage-consents/> (IDB areas) and at <https://www.somerset.gov.uk/beaches-ports-and-flooding/apply-for-consent-to-work-on-an-ordinary-watercourse/> (Ordinary Watercourses) but please note the following general points to begin with:

- You can't trespass on someone else's land without their consent
- You alone are responsible for ensuring that the work meets the conditions of the permit/consent and fully compliant with current legislation
- If your work was unpermitted or substandard then risk management authorities can require remedial works to be undertaken
- Even Main River works exempt from needing a permit, should still be registered: <https://register-flood-risk-exemption.service.gov.uk/>

Types of Flood Risk Activity Permits

MAIN RIVER (EA)

“Standard Rules” Permit for the common activities listed on <https://www.gov.uk/government/collections/standard-rules-environmental-permitting#flood-risk-activities>

“Bespoke” Permit for everything else, which are tailored to your activities

ORDINARY WATERCOURSE (LLFA & IDB)

“Land Drainage Consent”

More Useful Links and Resources

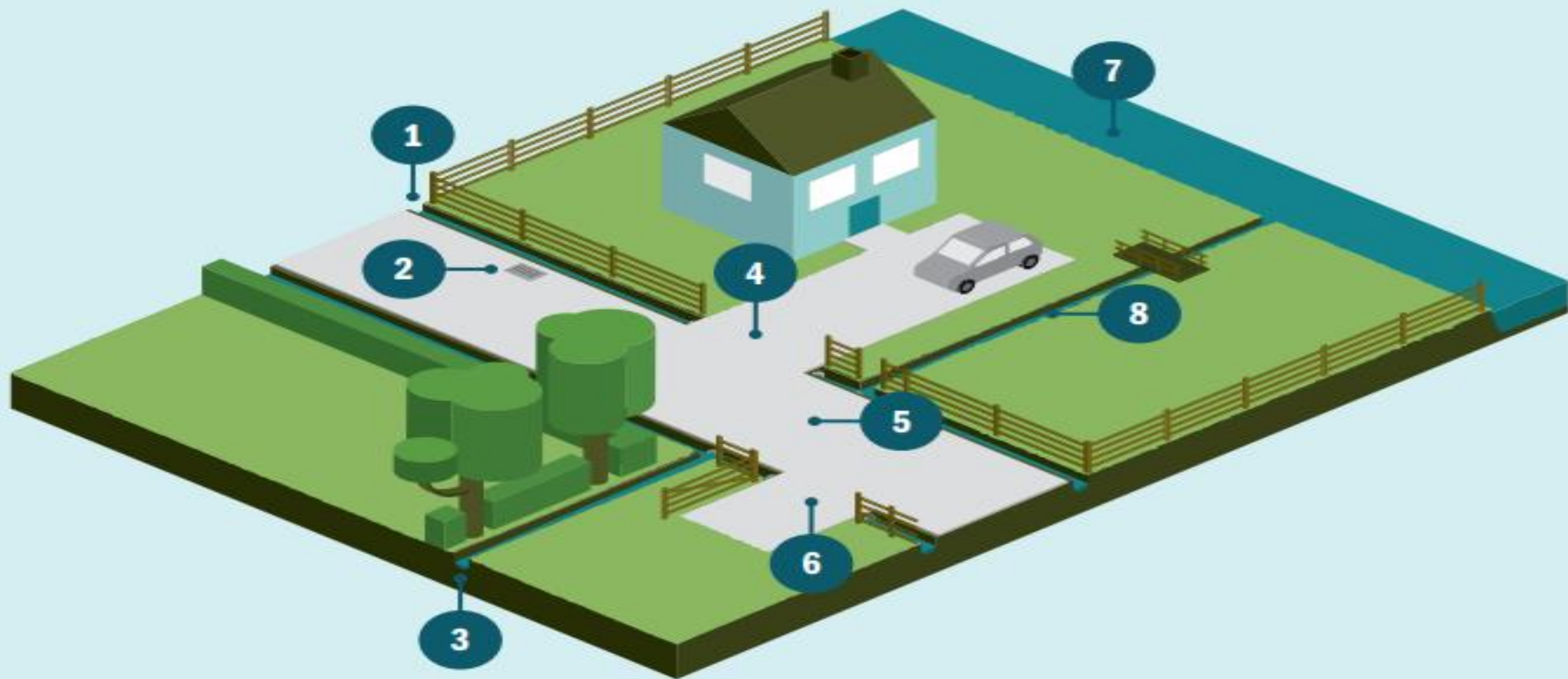
[Owning a watercourse - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

[Riparian Owner Toolkit | The Flood Hub](#)

[Your watercourse: rights and roles | Engage Environment Agency \(engagementhq.com\)](#)

[Surface water and drainage: review of responsibilities - GOV.UK](#)

Who is responsible for maintaining watercourses?



Any Questions or Comments?