

Black Sluice Internal Drainage Board

Policy No: 8

Policy on Relaxation of Board Byelaw No.10 (The 9 Metre Byelaw)

Review	Audit & Risk Committee 28 th September 2016
Board Approved	Board on 2 nd November 2016

1. PURPOSE

This document sets out the policy of the Black Sluice Internal Drainage Board concerning relaxation of its Byelaw No. 10, which states:

'No person without the previous consent of the Board shall erect any building or structure, whether temporary or permanent, or plant any tree, shrub, willow or other similar growth within 9 metres of the landward toe of the bank where there is an embankment or wall or within 9 metres of the top of the batter where there is no embankment or wall, or where the watercourse is enclosed, within 9 metres of the enclosing structure.

This Byelaw only applies to Board-maintained watercourses, both open and piped, and includes all culverts and bridges.

2. BLACK SLUICE IDB POLICY

The Board recognises that land and property owners wish to maximise the enjoyment of their land. However, at the same time the Board needs to retain its ability to maintain its watercourses in an efficient and economic manner. The Board will normally only consider relaxing the Byelaw when the following baseline conditions occur:

- Guaranteed access to carry out maintenance is available from at least one side of the drain. This may be achieved by a written agreement with the landowner concerned, or by the Board lodging a Deed of Indemnity with the Land Registry (a charge will be payable to the Board for these additional works).
- The owner of the opposite bank is not unduly inconvenienced.
- That should improvements or exceptional maintenance be required then, given reasonable notice, the obstruction is removed at the applicant's expense.
- Similar obstructions already exist nearby on the same bank.

3. REASONS FOR THE POLICY

The policy formalises the baseline conditions above, and gives written guidelines for more specific instances. The benefits of the policy are:

- Fairness and uniformity in determining applications
- Applicants can study the guidelines before application

- Powers are delegated, giving a more efficient and timely service

However, this policy is not intended to cover every eventuality, and the Board may waive the policy and make a determination on the basis of reasonable fairness to all parties.

4. DELEGATED POWERS

Delegated powers are given to the Chief Executive and the relevant Works Committee Chairmen to determine any Byelaw relaxations that fall within the guidelines given below (except where stated otherwise).

In all other cases, the power to determine applications has been delegated to the Executive Committee or the appropriate Works Committee, unless a Board meeting is imminent.

5. GUIDELINES

Guidelines are given below on the following types of applications:

- 1) Buildings and permanent structures
- 2) Urban or development land
- 3) Fences
- 4) Hedges and Bushes
- 5) Trees
- 6) Electricity poles, lighting columns etc.

5.1 BUILDINGS AND PERMANENT STRUCTURES

The power to determine consent under this guideline has only been delegated to the committees.

It remains the policy of the Board that no buildings or permanent structures should be permitted within the 9.0 metre byelaw distance on any Board-maintained watercourse.

However, where an existing adjacent building is located closer than the permitted distance (either by virtue of a previously issued consent, or where the structure historically pre-dates the Board), then consent may be given to allow any new structure or extension to be placed up to a similar distance from the drain as the existing building on that property, provided that the integrity of the watercourse is assured.

5.2 URBAN AREAS AND DEVELOPMENT LAND

In urban areas, or where new development is proposed adjacent to a Board-maintained watercourse, the Byelaw may be relaxed from 9.0 to 6.0 metres, upon written application, for fences, hedges, bushes, timber sheds and other temporary structures, provided that the whole of the remaining 6.0 metre width is left for the sole use of the Board for future maintenance of the drain.

All buildings and permanent structures shall still be a minimum of 9.0 metres from the brink of the drain.

5.3 FENCES

The Board's Byelaw 17 (d) states:

No person shall without the previous consent of the Board:

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;

a) Stock fences up to 1.2m high (post and rail / wire)

Machine drivers can work over and see through these types of fences, and therefore the Byelaw will be relaxed, on application, on condition that they are located a minimum of 1.0 metre from the brink of the watercourse, and access gates (minimum 3.6m or 12ft wide) are provided at each end (where necessary).

b) Solid fences above 1.4m high and fences in general above 1.2m high

Machine drivers cannot see through or cannot work over such fences, and therefore the Byelaw will **not** be relaxed, except where there is guaranteed suitable and safe access on the opposite bank, and where the opposite bank owner is not unduly inconvenienced.

Any consented fence shall be located a minimum of 1.0 metres from the brink of the drain. Access gates (minimum 3.6m or 12ft wide) and continued access behind the fence may still be required. The applicant will be expected to obtain written consent from the opposite land owner (if different to the applicant).

Where possible, all fences should be fully de-mountable so that should the Board require access to its maintained watercourses, at any time, then the structure can be easily removed.

However, the Board recognises that certain fences are required for the increased security of land or property, and therefore demountable fences will not always be appropriate. In these instances, the Board will place a condition on any consent for these fences to be constructed such that should that there be a requirement for these fences to be removed in times of emergency, or if the Board requires access to carry out any major improvement schemes, then the Board shall do so under its powers under the Land Drainage Act 1991.

5.4 HEDGES & BUSHES

Machines drivers cannot see through, nor work over hedges or bushes, and therefore the Byelaw will **not** be relaxed, except where there is always suitable and safe access for all operations on the opposite bank and where the opposite bank owner is not unduly inconvenienced. The applicant will be expected to obtain written consent from the opposite land owner (if different to the applicant).

Any consented hedges or bushes shall be located with the centre a minimum of 1.0 metre away from the brink of the watercourse, and shall be maintained by the applicant so as not to encroach over the drain. Access gates (minimum 3.6m or 12ft wide) and continued access behind the hedge may still be required.

5.5 TREES

No trees shall be planted within 9.0 metres of Board-maintained watercourse.

Any existing trees, regardless of whether planted or self-seeded, are the responsibility of the adjacent landowner, and shall be maintained so as not to cause an obstruction to the Board whilst carrying out its statutory duties under the Land Drainage Act 1991.

Any trees planted outside the 9.0 metre distance from a Board-maintained watercourse shall be maintained by the adjacent landowners such that any lateral growth does not cause an obstruction to the Board whilst carrying out its statutory duties under the Land Drainage Act 1991.

In either of the above cases, the Board reserves the right to carry out maintenance on any trees it deems as an obstruction, and to recover the costs from the relevant landowner. Where it is more cost-effective for trees to be removed in toto, then the Board will seek agreement from the relevant landowner and a proportion of the costs may be recovered.

5.6 ELECTRICITY POLES LIGHTING COLUMNS ETC.

Poles and columns adjacent to drains are inherently unstable and are not recommended. Wherever possible, an alternative route should be found away from the watercourse. Where a suitable alternative cannot be found, then the Byelaw may be relaxed on condition they are placed no closer than 1.0 metre to the brink of the drain and the minimum clearance between the wires and the surrounding ground level is no less than **10.0 metres** (NB: to ensure the correct safe working distance, the minimum clearance distance from ground level may increase depending on the voltage of the wire).

6. PROCEDURE

- a) The applicant shall apply in writing to the Board, using the relevant application form, along with a plan or diagram, any relevant details, and the application fee (flat fee of £50).
- b) The Board's officers will consider the effect of the application on its current and future maintenance regimes, any foreseen future works to the watercourse and any environmental benefit.
- c) Most applications will be determined using delegated powers. Any deferred applications, and those falling outside the guidelines, will be determined by the relevant Committee or Board meeting.
- d) The applicant is either notified in writing of a refusal or issued with a consent signed by the Chief Executive.
- e) The Chief Executive will report to the next Board meeting any delegated consents issued.

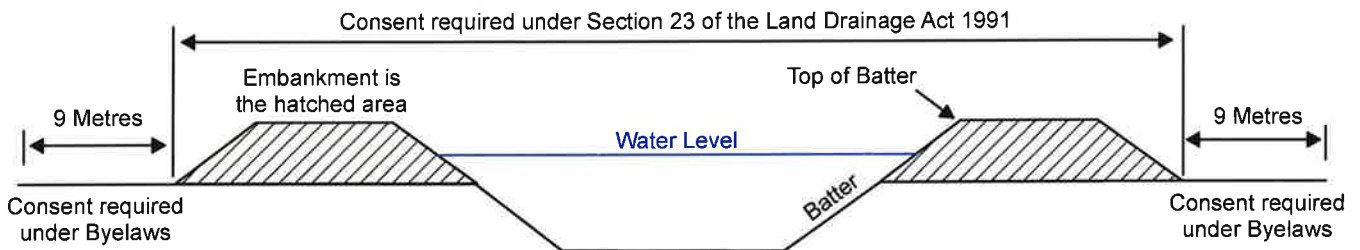
7. FURTHER GUIDANCE

This document should be read in conjunction with the Board's "Standard Conditions for Relaxing the 9 Metre Byelaw", along with the Board's "Policy on Culverting".

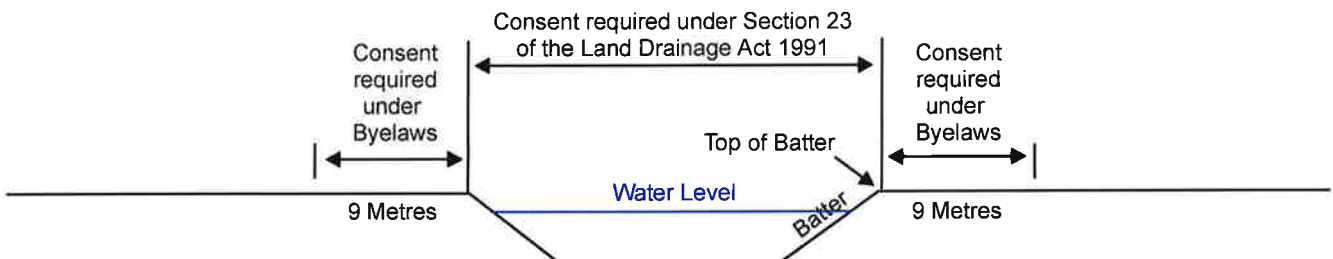
Further information and application forms are available on request from the Board's offices, or can be downloaded from the Board's website at www.blacksluiceidb.gov.uk.

CONSENT WIDTH CRITERIA FOR BOARD-MAINTAINED WATERCOURSES

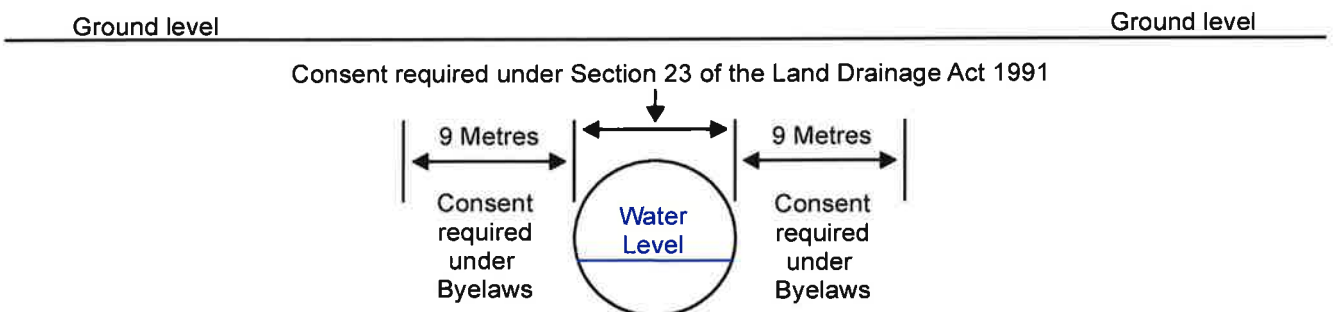
Open Watercourse with Embankments



Open Watercourse without Embankments



Culverted* Watercourse



* A culvert may be various forms of enclosed watercourse, but is usually a pipe.



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STANDARD CONDITIONS FOR RELAXING BYELAW NO.10 **(THE 9 METRE BYELAW)**

1. Consent is given by the Board under Section 66 of the Land Drainage Act 1991 and the Boards Byelaws. The applicant is also required to seek the consent of any other relevant and interested authorities; for instance, planning permission from the local Planning Authority, any adjacent land or property owner, the Highway Authority.
2. The Applicant is not entitled by virtue of the consent to interfere with any other persons' property, or impede the flow in the watercourse, or damage or interfere with any cable, wires, pipes etc. which may be affected by the consented works.
3. The Board accepts no liability for any damage that may be caused by instability in the drain bank or ground settlement over pipes.
4. The Board reserve all right of entry, disposal of removed matter, statutory functions etc. as provided under Section 64 of the Land Drainage Act 1991.
5. The Board accepts no liability for any damage which may be caused while exercising its statutory functions, provided such damage shall not have been caused by negligence.
6. The Applicant shall maintain the consented works in a satisfactory condition; hedges shall be kept trimmed so that no part protrudes beyond a vertical line from the brink of the drain. If maintenance is unsatisfactory, the Board may serve notice on the Applicant to carry out works within a reasonable time period. If the Applicant fails to carry out the notified works, then the Board shall do so and recover the costs from the Applicant. On a repeated failure to maintain the consented works, the Applicant may be served notice to remove the works and the consent withdrawn.
7. The Applicant shall modify or remove the works at their expense within a reasonable time period on notice from the Board when circumstances necessitate. Unless notified otherwise, the Applicant may re-erect in due course, at their expense. If the Applicant fails to carry out the notified works, then the Board shall do so and recover the cost from the Applicant.
8. A copy of the consent shall be attached to the deeds of the land or property.

[Board approved on 2nd November 2016]