



**Final decision in respect of an appeal made by Mr M J Blakemore
against Severn Trent Water under section 105b of the Water
Industry Act 1991**

1. Introduction

- 1.1. On 1 July 2011, the Water Industry (Scheme for Adoption of Private Sewers) Regulations 2011 (“**the Regulations**”) came into force, as did the Secretary of State’s scheme for the compulsory adoption of private sewers, lateral drains and pumping stations in “the area of every sewerage undertaker whose area is wholly or mainly in England” (“**the Scheme**”).
- 1.2. The Regulations and the Scheme gave effect to Government policy by placing a duty on sewerage companies to adopt most private sewers, lateral drains and pumping stations. Private sewers and lateral drains to which the duty did not apply included those that were expressly exempt and those that did not communicate with a public sewer immediately before 1 July 2011.
- 1.3. The Water Industry Act 1991 (“**the Act**”) provides for an appeal against a company’s compulsory transfer of private sewers and lateral drains. Such an appeal must be lodged under section 105B of the Act which allows an appeal on two grounds, namely:
 - i. that the sewerage company is not under a duty to transfer (for example, because a private sewer is on Crown land and is therefore exempt); or
 - ii. that the adoption would result in serious detriment to the appellant.
- 1.4. On 26 August 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal by Mr. Malcolm John Blakemore (“**the Appellant**”) in relation to [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by Severn Trent Water Limited (“**Severn Trent Water**”) to adopt the private lateral drain which serves the Property and which runs from the curtilage of the Property to the public sewer which is located under [REDACTED] (**the “Lateral Drain”**).
- 1.5. This appeal is on both of the grounds set out at paragraph 1.3 above. These are for the Appellant to demonstrate.
- 1.6. This document sets out Ofwat’s final appeal decision (following a draft decision dated 6 December). This document adopts the following structure:
 - i. The factual background (at part 2),
 - ii. Ofwat’s procedure (at part 3),
 - iii. The issues to be decided (at part 4), and

- iv. Ofwat's draft decision (at part 5).

2. Factual Background

The parties

2.1 We understand that the Property and the Lateral Drain are owned by Mrs Y.U. Blakemore ("**Mrs Blakemore**"), who was previously married to the Appellant.

2.2 Severn Trent Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers in the area of the Lateral Drain.

The site

2.3 The plan attached at Annex A ("**the Plan**") shows the Property and the approximate locations of the Lateral Drain and the public sewer under [REDACTED].

2.4 The pipework shown on the Plan in red includes, within the curtilage of the Property, a section of private drain (which is not a lateral drain) which is apparently also owned by Mrs Blakemore. Such private drain is not the subject of this appeal (see paragraphs 5.1 and 5.2 below). In this final decision, we refer to the Lateral Drain (which is the subject of this appeal) and such private drain (which is not a lateral drain) collectively as "**the Pipework**".

Chronology of key events

2.5 In or around 1935, the Property and the adjoining property at [REDACTED] ("**[REDACTED]**") were constructed. Drains serving the Property were installed so that they ran from the rear of the Property and on to [REDACTED] where they connected with drain(s) from [REDACTED] to form a sewer which ran down the drive at [REDACTED] and connected to the public sewer located under [REDACTED].

2.6 In 1971, the Appellant purchased the Property, which is currently owned by Mrs Blakemore.

2.7 In or around 1979, the then owner of [REDACTED] extended his property over the drainage pipework which served the Property, causing the pipework to stop working. In or around 1984, the Appellant therefore disconnected the Property from such pipework and paid for the installation of the Pipework and its connection to the public sewer located under [REDACTED].

2.8 On 26 August 2011, the Appellant submitted an appeal under section 105B of the Act against Severn Trent Water's proposal to adopt the Lateral Drain compulsorily.

The Appellant's submissions

2.9 The Appellant does not accept that there is a duty on Severn Trent Water under the Regulations and the Scheme to adopt the Lateral Drain; and

2.10 The Appellant appears to consider that the compulsory transfer of the Lateral Drain would cause serious detriment because the Pipework was installed and connected to the public sewerage system at cost to the Appellant and that the transfer would therefore deprive Mrs Blakemore of a valuable asset.

3. Ofwat's procedure

3.1 On 6 December 2012 Ofwat issued a draft decision to the Appellant and Severn Trent Water for their consideration. We received a response to the draft decision from Severn Trent Water on 18 December 2012 stating that it had no comments on the draft decision. We have not received any comments from the Appellant.

3.2 Ofwat has not sought to respond to every point made by the Appellant in his submissions and correspondence in advance of making this draft decision. However, where Ofwat has needed clarification or additional information from the Appellant, it has been obtained. Ofwat is satisfied that it now has sufficient information to issue a final decision.

4. The issues to be decided

4.1 The issues to be decided are whether:

- i. Severn Trent Water has a duty under the Regulations and the Scheme to adopt the Lateral Drain; and
- ii. Whether the proposed transfer would result in serious detriment to the Appellant.

5. Ofwat's decision

The Pipework

5.1 Section 219 of the Act sets out statutory definitions of the terms 'drain', 'lateral

drain' and 'sewer' which are applicable to the Regulations and the Scheme. In terms of those definitions, the Pipework currently comprises a private drain which is not a lateral drain, and a lateral drain (i.e. the Lateral Drain) which runs from the curtilage of the Property to the public sewer located under [REDACTED]
[REDACTED]

Duty to adopt (section 105(B)(3)(a) of the Act)

5.2 As set out at paragraph 1 above, the Regulations and the Scheme apply to private sewers and lateral drains. However, the Regulations and the Scheme do **not** apply to any private drain which is not a lateral drain. Accordingly, and to confirm, Severn Trent Water's proposal specified in paragraph 1.4 above does not relate to the drain which forms part of the Pipework which is not a lateral drain, and that drain does not transfer to Severn Trent Water by virtue of the Regulations and the Scheme, i.e. the part of the Pipework that is situated within the curtilage of the Property.

5.3 With regard to the Lateral Drain: Regulations 5(1) and 5(2) (Exempt private sewers and exempt private lateral drains) set out that a private sewer or private lateral drain is exempt for the purposes of the Scheme if the sewer or lateral drain:

- i. is owned by a railway undertaker; or
- ii. is situated on or under "Crown land" (as defined in Regulation 5(4)) (and Regulation 5(2)(b) also applies).

5.4 Ofwat is satisfied that neither paragraph 5.3.i nor paragraph 5.3.ii above applies in relation to the Lateral Drain and that:

- i. the Lateral Drain is not exempt from the Scheme; and
- ii. Severn Trent Water has a duty under the Regulations and the Scheme to adopt the Lateral Drain.

Serious detriment (section 105B(3)(a) of the Act)

5.5 The Appellant considers that the transfer of the Lateral Drain would be seriously detrimental for the reasons set at paragraph 2.10 above.

5.6 The Appellant incurred costs to install the Pipework and connect it to the public sewerage system and appears to consider that a transfer of the Lateral Drain to Severn Trent Water would therefore constitute a loss to Mrs. Blakemore of a valuable asset, and represent serious detriment to the Appellant. However, we

note that this appeal only relates to a short length of the Pipework (i.e. the Lateral Drain), and not to the drain within the curtilage of the Property.

- 5.7 We note that the Appellant and Mrs Blakemore have been responsible for the costs of maintaining the Pipework since its construction in 1984. If the Lateral Drain were to transfer to Severn Trent Water, the current position regarding the use of the Lateral Drain and associated costs would change. Mrs. Blakemore and subsequent owners of the Property would remain entitled to use the Lateral Drain, but liabilities for costs of repairing and maintaining the Lateral Drain which would currently be borne by Mrs. Blakemore (and subsequent owners of the Property) would come to an end upon its transfer.
- 5.8 We do not consider that Mrs. Blakemore's loss of ownership of the Lateral Drain, when weighed against the substantial benefit to her of her no longer being liable for costs of maintaining or replacing it, constitutes serious detriment to Mrs. Blakemore or the Appellant.

European Convention on Human Rights

- 5.9 We also note that we have considered separately the Appellant's appeal by reference to the Appellant's and Mrs Blakemore's rights under the European Convention on Human Rights, notably Article 1 of the First Protocol to the Convention. We have concluded that a payment of compensation to the Appellant or Mrs Blakemore would not be needed on the transfer of the Lateral Drain to Severn Trent Water in order to ensure a fair balance between the interests of the Appellant and Mrs Blakemore, and the public interest in a more integrated sewerage system. Furthermore, we do not consider that the Appellant or Mrs Blakemore would suffer serious detriment if compensation were not paid to the Appellant or Mrs Blakemore on a transfer of the Lateral Drain to Severn Trent Water.
- 5.9 Therefore, we consider that the Appellant would not suffer serious detriment as a result of the adoption of the Lateral Drain.

Conclusion

- 5.10 Ofwat concludes that Severn Trent Water's proposal to adopt the Lateral Drain should be allowed and that the Lateral Drain should transfer to Severn Trent Water with effect from 1 March 2013.
- 5.11 In making its decision under section 105B(9)(a) of the Act, Ofwat is able to specify conditions including payment of compensation by Severn Trent Water. Ofwat has concluded that in this case it would not be appropriate to specify any

conditions, including any condition directing the payment of compensation.