



**Ofwat final decision on appeal made by Mr and Mrs Henry 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 all 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 give effect to Government policy by placing a duty on sewerage companies to adopt all private sewers, lateral drains and pumping stations (other than those that are expressly exempt). Regulation 3(8) specified 1 October 2011 as the date for the compulsory transfer of all private sewers and lateral drains. Pumping stations must be transferred by 1 October 2016.
- 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 1 September 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal by Mr and Mrs P A Henry (“**the Appellants**”) of [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 and under [REDACTED] to a public sewer located under the road at the western end of [REDACTED] (the “**Lateral Drain**”).
- 1.5. This appeal is on both of the two grounds set out at paragraph 1.3 above. These are for the Appellants to demonstrate.
- 1.6. This document sets out Ofwat's final appeal decision (following a draft decision dated 29 October 2012). 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 decision (at part 5).

2. Factual background

The parties

2.1 The Appellants own the Property.

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, the approximate location of the Lateral Drain, that is the subject of the appeal in [REDACTED] and alongside [REDACTED] an area of land owned by the Appellants labelled ‘Land owned by Mr & Mrs Henry’ (“**the Development Plot**”).

2.4 The ‘Pipework’ as shown on the Plan includes:

1. within the curtilage of the Property, a section of private drain which is not the subject of this appeal) which is owned by the Appellants – marked by a red dashed line highlighted blue, and
2. in [REDACTED] the Lateral Drain – marked by a red dashed line highlighted yellow which is the subject of this appeal

2.5 In this decision, we refer to the Lateral Drain and such private drain (which is not a lateral drain) collectively as “**the Pipework**”.

Chronology of key events

2.6 The Appellants built the Property in around 1995. At around the same time, the Appellants paid between £10,000 and £15,000 for the installation of the Pipework. The Pipework serves only the Property.

2.7 In the future, the Appellants intend to build homes for their children on the Development Plot and to connect those properties’ drains into the Lateral Drain.

2.8 On 1 September 2011, the Appellants submitted an appeal under section 105B of the Act against Severn Trent Water’s proposal to adopt the Lateral Drain

compulsorily.

The Appellants' submissions

- 2.9 The Appellants do 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 Appellants consider that the compulsory transfer of the Lateral Drain would cause serious detriment because:
- i. The transfer would constitute the loss to the Appellants of an asset, which they acquired in around 1995 for between £10,000 and £15,000; and
 - ii. The transfer would adversely affect the Appellants' ability to develop the Development Plot, in particular if the Appellants were to have to pay to connect properties constructed on the Development Plot to the Lateral Drain.

3. Ofwat's procedure

- 3.1 Ofwat issued a draft decision on 29 October 2012 for comments from the appellant and Severn Trent Water. Ofwat received a letter dated 27 November 2012 from Severn Trent Water which stated that it had no comments on the draft decision. Ofwat also received a letter dated 12 November 2012 from the Appellants' solicitor which stated that the Appellants consider the transfer of the Lateral Drain to Severn Trent Water would cause serious detriment due to the previous investment and impact on future development, as set out at 2.10. However the Appellants have provided no further evidence of the serious detriment that they consider would arise as a result of the transfer.
- 3.2 Ofwat has not sought to respond to every point made by the Appellants in their submissions and correspondence in advance of making this decision. However, where Ofwat has needed clarification or additional information from the parties, 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 Appellants.

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:

- i. a lateral drain from the curtilage of the Property to the public sewer located under [REDACTED] and
- ii. a private drain which is not a lateral drain within the curtilage of the Property.

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, 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. To confirm, that drain (i.e. the part of the Pipework that is situated within the curtilage of the Property) does not transfer to Severn Trent Water by virtue of the Regulations and the Scheme. See also paragraph 5.11 below.

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 therefore:

- 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 Appellants consider that the transfer of the Lateral Drain would be seriously detrimental for reasons set at paragraph 2.10 above.
- 5.6 The Appellants cite costs of between £10,000 and £15,000 to install the Pipework in around 1995, and considers that a transfer of the Lateral Drain to Severn Trent Water would constitute a loss to the Appellants of an asset, which would represent serious detriment. The Lateral Drain was installed to provide an important drainage service to the Property. Without it the Appellants could not have connected the Property to the public sewer. We note that the Appellants paid its own contractor to install the Lateral Drain. Had the Appellants not paid its own contractor to install the Lateral Drain it would have to have paid Severn Trent Water to install it instead. Either way the Appellants had to pay the cost of installing the Lateral Drain. The Appellants have not provided any evidence to show that there were alternatives to laying the Lateral Drain to connect the Property to the public sewer. Nor has the Appellants submitted evidence to show that the Lateral Drain was built for any other purpose than to drain the Property and that the cost of construction could be re-couped through future connections to it.
- 5.7 The Appellants also consider that the transfer of the Lateral Drain would be seriously detrimental as it would adversely affect the Appellants' ability to develop the Development Plot, in particular if the Appellants were to have to pay Severn Trent Water to connect properties constructed on the Development Plot to the Lateral Drain. However, the Appellants confirmed in his telephone conversation with Ofwat on 16 November 2011 that they do not plan to commence building on the Development Plot for around 10 years and that the Appellants do not currently have planning permission to build on the Development Plot.
- 5.8 We consider that in order for there to be serious detriment there has to be actual effect. We consider that there is no actual effect if a development is merely proposed or envisaged and no firm proposals are in place regarding a possible connection to a private sewer or lateral drain. In this case, there are no firm proposals or any planning permission to develop the Development Plot, and accordingly there are no firm proposals with regard to any connection to be made to the Lateral Drain in connection with any development of the Development Plot. A connection to the Lateral Drain might not be needed at all

if alternative routes are used to connect new dwellings on the Development Plot to the public sewer.

- 5.9 If the Lateral Drain was not to transfer and the Appellants developed the Building Plot by building new dwellings on it, the Appellants would have to pay their own contractor to connect a new dwelling to the Lateral Drain. Equally if the Lateral Drain did transfer to Severn Trent Water, and the Appellants built new dwellings on the Development Plot the Appellants could ask Severn Trent Water under section 106 of the Act to allow drains or sewers to connect with the Lateral Drain. Severn Trent Water could charge its reasonable costs for carrying out such a connection under section 107 of the Act. Ofwat has powers to decide disputes about a sewerage company's connection costs.
- 5.10 If the Lateral Drain were to transfer we do not consider that a right of Severn Trent Water to charge for the connection of new premises to the Lateral Drain or to charge to divert or relocate the Lateral Drain would cause serious detriment when weighed against the fact that the Appellants would have to pay their own contractor to do the same work if the Lateral Drain were not to transfer.
- 5.11 We also note that the Appellants have been responsible for maintenance of the Lateral Drain for around 17 years. The liability for these costs would come to an end upon the transfer of the Lateral Drain. We do not consider that the Appellants' loss of ownership of the Lateral Drain, when weighed against the benefit of no longer being liable for the costs of maintaining it, constitutes serious detriment.
- 5.12 We do not consider that the Appellants would suffer serious detriment in connection, for the reasons set out above.
- 5.13 We also note that we have considered separately the Appellants' appeal by reference to the Appellants' 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 Appellants would not be needed on the transfer of the Lateral Drain to Severn Trent Water in order to ensure a fair balance between the Appellants' interests and the public interest in a more integrated sewerage system. Furthermore, we do not consider that the Appellants would suffer serious detriment if compensation were not paid to the Appellants on a transfer of the Lateral Drain to Severn Trent Water.
- 5.14 Therefore, we consider that the Appellants would not suffer serious detriment as a result of the adoption of the Lateral Drain.

Conclusion

- 5.15 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 3 July 2013.
- 5.16 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.