



**Final decision in respect of an appeal made by Mr and Mrs Nicholls
against South West 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 2 September 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal by Mr R S & Mrs G D Nicholls (“**the Appellants**”) of [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by South West Water Ltd (“**South West Water**”) to adopt the private sewer at the Property (“**the Sewer**”).
- 1.5. This appeal is on the ground that the adoption would result in serious detriment to the Appellants. This is for the Appellants to demonstrate.
- 1.6. This document sets out Ofwat’s final appeal decision. This document adopts the following structure.
 - i. The factual background (at part 2).
 - ii. Ofwat’s procedure (at part 3).
 - iii. The Appellants’ submissions (at part 4).

- iv. The issues to be decided (at part 5).
- v. Ofwat's decision (at part 6).

2. Factual background

The parties

- 1.7. The Appellants own the Property.
- 1.8. South West Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers in Truro.

The site

- 1.9. The plan attached at Annex A ("**the Plan**") is the Appellants' plan showing the Property, the Sewer, and how the Sewer serves two neighbouring properties as well as the Property. For clarity, Ofwat has labelled the Sewer on the Plan.

Chronology of key events

- 1.10. In October 2007, planning permission was granted for the construction of a two storey dwelling on land adjoining the Property as shown on the Plan ("**the Building Plot**"). The permission was extended for a further three years in October 2010 because building work had not started by then. The Appellants state that their neighbours are now selling the Building Plot.
- 1.11. On 2 September 2011, the Appellants submitted an appeal under section 105B of the Act against South West Water's proposal to adopt the Sewer compulsorily.

3. Ofwat's procedure

- 3.1 On 31 May 2012, Ofwat issued a draft decision to the Appellants and South West Water for their consideration. We received a response from the Appellants, in a letter dated 11 June 2012 which is outlined in section 4. South West Water replied by email sent 31 May 2012 which stated that it had no further written representations to make.
- 3.2 Ofwat has not sought to respond to every point made by the parties in their submissions and correspondence in advance of making this final 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 Appellants' submissions

- 4.1 In response to the draft determination, the Appellants disputes our initial conclusion that the development of the Building Site is speculative saying that the estate agent's board says "Building Plot – Sale Agreed" and that work has commenced on the vehicular access to the site.

5. The issues to be decided

- 5.1 Ofwat is satisfied that the Sewer is not exempt from the Scheme and that South West Water therefore has a duty to adopt it.
- 5.2 The issue to be decided is whether the proposed transfer would result in serious detriment to the Appellants.

6. Ofwat's decision

- 6.1. The Appellants consider that the transfer of the Sewer would be seriously detrimental as it would result in the loss of the potential for them to secure payment in exchange for them granting an easement which would allow a drain, from the dwelling to be constructed on the Building Plot, to access the Sewer via the Property.
- 6.2. We consider that in order to make out serious detriment there has to be actual effect. We have considered the representations made by the Appellants in the letter dated 11 June 2012, specifically in relation to the sale of the Building Plot and the commencement of vehicular access works in relation to the Building Plot. However, even if the sale has been finalised and is not 'subject to contract', there is no evidence that the Sewer that is the subject of the appeal will be used to drain the new property to the public sewer. Nor is there evidence of an agreement between the Appellants and the owners of the Building Plot.
- 6.4. Therefore, we remain of the view, set out in our draft determination, that the Appellants would not suffer serious detriment as a result of the adoption of the Sewer.
- 6.5. We also note that we have considered separately the Appellants' appeal by reference to Article 1 of the First Protocol of the European Convention on Human Rights and we have concluded that a payment of compensation to the Appellants would not be needed on the transfer of the Sewer to South West 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 Sewer to South West Water.

Conclusion

- 6.6. Ofwat concludes that South West Water's proposal to adopt the Sewer should be allowed and that the Sewer should transfer to South West Water with effect from 28 February 2013.
- 6.7. In making its decision under section 105B(9)(a) of the Act, Ofwat is able to specify conditions including payment of compensation by South West 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.