



**Ofwat's final decision in respect of an appeal made by Mr  
Bradbury against Yorkshire 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(s).
- 1.4. On 24 August 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal by Mr John Bradbury (“**the Appellant**”) of [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by Yorkshire Water Limited (“**Yorkshire Water**”) to adopt the private sewer which serves the Property (“**the Sewer**”) and which runs from the point of connection into the drain by [REDACTED] (a neighbouring property) to the public sewer.
- 1.5. This appeal is on the grounds that the adoption of the Sewer would cause serious detriment to the Appellant. This is for the Appellant to demonstrate.
- 1.6. This document sets out Ofwat's final appeal decision. It 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 Appellant owns the Property and the Sewer and the lane in which the Sewer is located.

2.2 Yorkshire Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers in the area of the Sewer.

### The site

2.3 The plan attached at Annex A (“**the Plan**”) shows the approximate locations of the Property, the neighbouring property - [REDACTED], and the Sewer.

2.4 The pipework shown on the Plan includes, within the curtilage of the Property, a section of private drain (which is not a lateral drain) which is also owned by the Appellant. Such private drain is not the subject of this appeal (see paragraphs 5.1 below). In this decision, we refer to the Sewer (which is the subject of this appeal and is highlighted pink on the plan) and such private drain (which is not a lateral drain) collectively as “**the Pipework**”.

### Chronology of key events

2.5 The Sewer serves the Property and the adjoining property, shown on the Plan as [REDACTED].

2.6 On 12 August 2011, the Appellant submitted an appeal under section 105B of the Act against Yorkshire Water’s proposal to adopt the Sewer compulsorily.

### The Appellant’s submissions

2.7 The Appellant considers that the compulsory transfer of the Sewer would cause serious detriment because the transfer would allow the development of an adjoining parcel of land (“**the Land**”) which the Appellant considers would be detrimental to the enjoyment of his home.

### **3. Ofwat's procedure**

- 3.1 Since receiving the appeal, we have gathered and considered the information necessary to make a final decision.
- 3.2 On 21 March 2013, Ofwat issued a draft decision to the Appellant and to Yorkshire Water. We received no comments from either party.
- 3.3 Ofwat has not sought to respond on every point made by the Appellant in his submissions and correspondence in advance of making this final decision. However, Ofwat is satisfied that it now has sufficient information to issue a final decision.

### **4. The issues to be decided**

- 4.1 The issue to be decided is 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 relevant Pipework currently comprises a private drain which is not a lateral drain, and a sewer (i.e. the Sewer) which runs from the point at which [REDACTED] connects into the drain running from [REDACTED] [REDACTED] under the lane owned by the Appellant to the public sewer. The Sewer, which is marked in pink on the Plan, is the only part of the Pipework that is subject to this appeal.

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

- 5.2 The Appellant considers that the transfer of the Sewer would be seriously detrimental for the reason set at paragraph 2.7 above.
- 5.3 We consider that in order to make out serious detriment there has to be actual effect. However, the Appellant confirmed in an email of 4 January 2012 that there are no firm proposals to develop the Land; planning permission has not been sought or granted; and there are no proposals in place for the Sewer to serve any development of the Land. A connection to the Sewer might not be needed at all if the Land is not developed, and even if the Land is developed, it

is possible that there will be alternative points of connection. We therefore consider any potential case of detriment with regard to the development of the Land to be entirely speculative and in any case not directly linked to the adoption of this Sewer. The Appellant's concerns about the potential development of the Land being detrimental to the enjoyment of his home are more appropriately addressed to the relevant planning authority if a planning application to develop the Land is made.

## **European Convention on Human Rights**

5.4 We also note that we have considered separately the Appellant's appeal by reference to the Appellant'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 would not be needed on the transfer of the Sewer to Yorkshire Water in order to ensure a fair balance between the Appellant's interests and the public interest in a more integrated sewerage system. Furthermore, we do not consider that the Appellant would suffer serious detriment if compensation were not paid to them on a transfer of the Sewer to Yorkshire Water.

5.5 Therefore, we consider that the Appellant would not suffer serious detriment as a result of the adoption of the Sewer.

## **Conclusion**

5.6 Ofwat's final decision is that Yorkshire Water's proposal to adopt the Sewer should be allowed and that the Sewer should transfer to Yorkshire Water with effect from 10 June 2013.

5.7 In making its decision under section 105B(9)(a) of the Act, Ofwat is able to specify conditions including payment of compensation by Yorkshire 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.