



**Ofwat's final decision in respect of an appeal made by Mid
Essex Hospital Services against Anglian 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 Welsh Minister'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 Wales" ("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 private 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 27 September 2011, the Water Services Regulation Authority ("Ofwat") received an appeal by Mid Essex Hospital Services ("the **Appellant**") under section 105B of the Act against a proposal by Anglian Water Ltd ("Anglian Water") to adopt the private sewers under [REDACTED] [REDACTED] as specified in paragraph 2.1 below.
- 1.5 This appeal is on the ground that the adoption by Anglian Water, of the length of private sewer under [REDACTED] ("the **Sewer**") would result in serious detriment to the Appellant. This is for the Appellant 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 issues to be decided (at part 4), and
 - iv. Ofwat's draft decision (at part 5).

2. Factual background

The site

2.1 The plan attached at Annex A (“**the Plan**”) is the Appellants’ plan showing the Property and the Sewer which is shown by the red line and is within the hospital boundary. The plan also shows private properties [REDACTED] [REDACTED]. These are circled in blue and are connected to the Sewer. The plan does not show the other drains and sewers within the hospital site which are not the subject of this appeal.

The parties

- 2.2 The Appellant is appealing on behalf of Mid Essex Hospital Services (NHS Trust) who own the property.
- 2.3 Anglian Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers in the vicinity [REDACTED].

Chronology of key events

2.4 On 27 September 2011 the Appellant submitted an appeal to Ofwat under section 105B of the Act against Anglian Water’s proposal to adopt the Sewers in accordance with the Scheme.

The Appellant’s submissions

- 2.5 The Appellant considers that the compulsory transfer of the Sewer would cause serious detriment because:
- i. The hospital site is continuously evolving and undergoing upgrade and extension works which will affect the local and on-site network drainage. This will be detrimental to the Trust if future modifications to the network require frequent approvals from the sewerage undertaker.
 - ii. It also increases the timescale for development, thereby increasing risks which in turn would add considerable cost.

3. Ofwat's procedure

3.1 Since receiving the appeal, Ofwat has gathered and considered the information necessary to make a final decision. In particular, Ofwat:

- i. wrote to the Appellant on 14 December 2011 to ask for additional information, including clarification of key facts set out in the appeal and the nature of the site and future developments. We received further information from the Appellant in emails dated 27 September 2012 and 1 October 2012, and;
- ii. wrote to Anglian Water on 10 May 2012 to obtain clarification on whether they considered the hospital site as a single curtilage, and whether they consider drains within this site are subject to the transfer regulations.

3.2 On the 24 May 2013, Ofwat issued a final decision to the Appellant and to Anglian Water for their consideration. Anglian Water replied by email sent 30 May 2013 which stated that it had no further written representations to make. We received no response from the Appellant.

3.3 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, this 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 land concerned is not exempt, as it is neither owned by a railway undertaker, nor is it Crown Land that the Appellant sought exemption for by notification under Regulation 5(2)(b) of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011.

4.2 The issue is therefore for Ofwat to decide whether the proposed transfer of the sewers, which are the subject of the appeal, would result in serious detriment to the Appellant.

5. Ofwat's final decision

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

- 5.1 The Appellants consider that the transfer of the Sewer would be seriously detrimental as the hospital site is continuously evolving and undergoing upgrade and extension works which will affect the local and on-site network drainage.
- 5.2 We consider that in order to establish serious detriment there has to be an actual effect resulting from the transfer. In an email on the 12 November 2012, Ofwat asked the Appellant to provide information on any forthcoming development plans of the site. In an email dated 10 December 2012 the Appellant stated that the Hospital Trust Board has now given approval "to commence with the procurement of developing the area to the north of the site". The Appellant did not state what the nature of the proposed development was, when the development would take place or whether it would use the Sewer to provide drainage to the proposed development. We consider that there is no actual effect if a development is merely proposed and there are no final sewerage arrangements in place. In this case, while the Hospital Trust Board has given approval to develop the north of the site those plans appear not be far enough advanced to have proposed drainage arrangements. Furthermore, alternative arrangements might be found to drain the new development that do-not use the Sewer. We therefore consider any potential case of detriment to be speculative at this stage.
- 5.3 The Appellant also considers that it will be detrimental if future modifications to the network require frequent approvals from the sewerage undertaker. Although the Appellant did not give any quantification, it considers that this increases the timescale for development and increases risks which in turn would add considerable cost. As mentioned in paragraph 2.1 above the drains within the hospital site are not part of the transfer and will remain private. Only works on the Sewer will be impacted by the transfer. In the absence of firm proposals from the Appellant about future development of the hospital site there is no evidence to suggest that Anglian Water's ownership of the Sewer would unduly delay or significantly add to the costs of any proposed development that required work on the Sewer. The Act sets out provisions regarding the connection of drains and private sewers to public sewers, including timescales. Furthermore, we have been provided with no evidence that any potential costs that Anglian Water might charge for connections or alterations to the Sewer are likely to be significantly more than the costs the Appellant would have to pay its own contractors for the same work.

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

5.5 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 Anglian 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 Appellant would suffer serious detriment if compensation were not paid to the Appellant on a transfer of the Sewer to Anglian Water.

Conclusion

5.6 Ofwat concludes that Anglian Water's proposal to adopt the Sewers should be allowed and that the Sewers should transfer to Anglian Water with effect from 19 September 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 Anglian 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.