



## Ofwat's final decision in respect of an appeal made by Mr and Mrs J A Fell against United Utilities 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 27 September 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal from Livingstons Solicitors Limited on behalf of Mr. John Abraham Fell and Mrs. Joan Margaret Fell (jointly referred to as “**the Appellant**”) of [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by United Utilities Limited (“**United Utilities**”) to adopt two separate private sewers on

the Property (“**the Sewers**”).

1.5. This appeal is on the ground that the adoption 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 final decision (at part 5).

## 2. Factual background

### The parties

2.1. We understand that the Appellant owns the Property.

2.2. United Utilities is a water and sewerage undertaker appointed under the Act. It owns the public sewers in the area of the Sewers.

### The Site

2.3. The plan attached at Annex A (“**the Plan**”) shows the approximate locations of the Property at [REDACTED] the neighbouring property at [REDACTED], (“**[REDACTED]**”) owned by [REDACTED] (**the Neighbours**), and the [REDACTED] [REDACTED] (“**the Caravan Park**”) owned by [REDACTED].

2.4. The pipework shown on the Plan comprises:

- i. in black dotted line, a private sewer which runs from underneath the land of the Appellant at [REDACTED] and continues along the coast (“**[REDACTED]** **Sewer A**”)
- ii. in blue, a second private sewer which runs parallel to the Sewer A (“**[REDACTED]** **Sewer B**”).

## Chronology of key events

- 2.5. At the time of the Appeal, the Appellant and the Neighbours were in negotiation over the terms of a proposed easement to connect 90 additional lodges to Sewer A in land at the Property. Sewer A, which is the subject of this appeal, was installed around 2008.
- 2.6. The Neighbours have planning permission to build 41 lodges at [REDACTED] which when completed, will be served by Sewer A. The Appellant has already received a payment of £4,000 in respect of these 41 lodges, through the easement under negotiation, and no further payment is expected.
- 2.7. The Appellant believes that the Neighbours have plans to construct a further 90 lodges, in addition to the 41 already approved. The Appellant has agreed with the Neighbours further payments of £125 for every additional lodge that is connected to Sewer A over and above the 41 original units.
- 2.8. The Appellant states that the transfer of ownership of Sewer A to United Utilities would represent serious detriment as they would no longer be entitled to receive the agreed payments of £125 per lodge under the terms of the deal that is being negotiated between the parties, which would amount to a future loss of £11,250, if all of the additional 90 lodges were built.
- 2.9. In addition to this, a second sewer (Sewer B) that is owned by [REDACTED] and serves [REDACTED] is located next to Sewer A in the land at the Property. Sewer B is the subject of a separate deed of easement (**the Deed**) which provided for a one off payment of £6,000, which has already been received by the Appellant. The Appellant is also appealing against the proposed transfer of Sewer B because they think a transfer would allow the Neighbours to escape payments for connecting the proposed additional lodges to Sewer A by connecting to Sewer B instead, if it were transferred to United Utilities.
- 2.10. On 27 September 2011, the Appellant submitted an appeal under section 105B of the Act against United Utilities' proposal to adopt the Sewers compulsorily.

## The Appellant' submissions

- 2.11. The Appellant considers that the compulsory transfer of Sewer A would cause serious detriment to them because it would result in a loss of £11,250, as the adoption would mean that the Neighbours would no longer be liable to pay for the connection of additional lodges to Sewer A.

2.12. The Appellant also considers that the transfer of Sewer B to United Utilities would allow the Neighbours to apply for connections to that Sewer and avoid having to make payment.

### 3. Ofwat's Procedure

3.1. Since receiving the appeal on 27 September 2011, Ofwat requested further information from the Appellant. In particular, we asked:

- whether planning permission had been granted with respect to the 90 additional lodges, and if so, on what basis, as we understood that the site in question was only permitted to accommodate 41 lodges;
- what drainage arrangements are currently in place;
- whether any additional lodges had been built since January 2012 (since at that time, the Appellant had told us that around 10-12 lodges had already been built); and
- for one clear plan which shows the location of Sewers (proposed and existing) located in the Appellant's land, including those from [REDACTED] and the [REDACTED].

3.2. On 20 June 2013, Ofwat issued a draft decision to the Appellant and United Utilities for their consideration, setting out the reasons why Ofwat do not consider that a transfer would cause serious detriment. United Utilities emailed Ofwat on 26 June 2013 to say that they will not be responding to the decision. The Appellant's solicitor responded on the 10 July 2013 and provided a correction<sup>1</sup> to paragraph 2.6.

3.3. Ofwat has not sought to respond on every point made by the Appellant in its submissions and correspondence in advance of making this final decision. Ofwat is satisfied that it now has sufficient information to issue a final decision.

---

<sup>1</sup> The Appellant's solicitor states that the Appellant and the Neighbours were in negotiations over the terms of a proposed easement but the easement itself has not been signed and as such holds no legal ground.

## 4. The issues to be decided

- 4.1. Ofwat is satisfied that the Sewers are not exempt from the Scheme and that United Utilities therefore has a duty to adopt them.
- 4.2. The issue to be decided is whether the proposed transfer would result in serious detriment to the Appellant.

## 5. Ofwat's Final Decision

### The Sewer

- 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 Sewer currently comprises of Sewer A and Sewer B (see paragraph 2.4 above).

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

- 5.2. The Appellant considers that the transfer of the Sewers would be seriously detrimental for the reasons set out in paragraph 2.12 and 2.13 above.
- 5.3. We note that the Appellant has already received payments (in total of £10,000) for easements already granted for the connection of the 41 lodges and the Caravan Park.
- 5.4. The planning permission that is in place for the 41 lodges is subject to fourteen conditions, of which one of the conditions<sup>2</sup> requires that not more than 41 timber cabins shall be stationed at the holiday lodge at any one time. In view of this, we clarified with the Appellant's solicitors as to whether planning permission exists for the 90 additional lodges. The Appellant's solicitors confirmed that there is no planning permission in place for the construction of the said lodges, as the planning application was withdrawn.
- 5.5. We consider that in order to establish serious detriment there has to be an effect present at the time of the transfer. In the light of the fact that not more than 41 lodges are allowed at the holiday lodge at any one time, and that there is no planning permission for the erection for further lodges, we consider that there is no actual effect, as there is no prospect for further

---

<sup>2</sup> Condition 11

development that would require connection to the Sewers. Therefore, we do not consider that there is a case for serious detriment.

## European Convention on Human Rights

5.6. 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, which provides:

**(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.**

**(2) The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.**

We have concluded that a payment of compensation to the Appellant would not be needed on the transfer of the Sewers to United Utilities 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 the Appellant on a transfer of the Sewers to United Utilities.

## Conclusion

5.7. Ofwat concludes that United Utilities' proposal to adopt the Sewers should be allowed, and that the Sewers should transfer to United Utilities.

5.8. In making its decision under section 105B(9)(a) of the Act, Ofwat is able to specify conditions including payment of compensation by United Utilities. Ofwat has concluded that in this case it would not be appropriate to specify any conditions, including any condition directing the payment of compensation.