



Ofwat's final decision in respect of an appeal made by Mr Adrian Sayers against Wessex 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 28 September 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal from Mr. Adrian Sayers (referred to as “**the Appellant**”) of [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by Wessex Water (“**Wessex Water**”) to adopt the lateral drains on the Property.
- 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 decision. This document adopts the following structure:
- iii. the factual background (at part 2);
 - iv. Ofwat's procedure (at part 3);
 - v. the issues to be decided (at part 4), and
 - vi. Ofwat's final decision (at part 5).

2. Factual background

The parties

- 2.1. The Appellant owns the Property.
- 2.2. Wessex Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers in Westbury on Trym.

The Site

- 2.3. The plan attached at Annex A ("the Plan") shows the ground floor of the Property.
- 2.4. The pipework shown on the Plan comprises, within the curtilage of the Property:
- i. In red, a private drain which is not a lateral drain and which is therefore not the subject of this appeal (see paragraphs 5.1 and 5.2 below).
 - ii. A brown square, which is a manhole ("**the Manhole**") situated in the Appellant's garage, located in the Property.
 - iii. In green, and adjacent to it in blue, foul and rainwater drains from No [REDACTED] which drain into the manhole in the Appellant's garage and which are the subject of this appeal.

- iv. In brown, and adjacent to it in blue, foul and rainwater drains from the Property which run to [REDACTED] and which are also the subject of this appeal.
- 2.5. In this final decision, we refer to the drains described at (iii) and (iv) above as **“the Lateral Drains”**. These Lateral Drains (which are the subject of the appeal) and such private drains (which are not the Lateral Drains) are collectively called **“the Pipework”**.

Chronology of key events

- 2.6. On 28 September 2011, the Appellant submitted an appeal under section 105B of the Act against Wessex Water’s proposal to adopt the Lateral Drains compulsorily.
- 2.7. The Appellant is building a two storey extension to the house on the Property (**“the Extension”**). He is concerned that if the Lateral Drains were to transfer to Wessex Water, it would have an adverse impact on his building work.

The Appellant’s submissions

- 2.8. The Appellant considers that the compulsory transfer of the Lateral Drains would cause serious detriment to him because of:

Financial costs

The Appellant considers he would suffer financially due to costs imposed by Wessex Water in security deposits, application fees, legal preparation, and inspection fees to build over a lateral drain. The Appellant estimates that these costs could be between £7,000 and £12,000.

Loss of property value

The Appellant is concerned that, if permission to build, over the Lateral Drain, once it transfers, is not granted by Wessex Water, he will incur a loss of £35,000 to £50,000, that is, the increase in the sale value of Property minus the cost of the build.

Unrestricted access

The Appellant is concerned that the transfer would allow for unrestricted

access by third parties to the Property, which would affect its saleability (the Access issue).

Possible relocation of the Lateral Drains

The Appellant is concerned that the Lateral Drains could be relocated outside the Property, which would result in repositioning of all inlets through tight corners and result in blockages.

3. Ofwat's Procedure

- 3.1. Since receiving the appeal, Ofwat has considered the information necessary to make a decision. In particular:
 - on 22 November 2011, Ofwat received documentation of approved building works and plans for the Extension; and
 - on 01 May 2013, Ofwat received clarification from Wessex Water that they would not look to move lateral drains following transfer under the Scheme, and that the completion of partially built properties would be allowed to continue.
- 3.2. On 5 September 2013, Ofwat issued a draft decision to the Appellant and Wessex Water for their consideration ("**the Draft Decision**") which sets out the reasons why Ofwat did not consider that a transfer would cause serious detriment to the Appellant.
- 3.3. Wessex Water emailed Ofwat on 26 September 2013 and stated that they did not have any comments on the Draft Decision. The Appellant provided his representations on the Draft Decision on 26 September 2013, which were largely related to the site, the location of the pipe work and a request of certain assurances from Wessex Water.
- 3.4. We have considered the Appellant's comments about the site and the pipework, and have made the relevant changes at paragraph 2.4 in this Final Decision. We set out the written assurances that the Appellant sought from Wessex Water below:
 - Wessex Water will not move the Lateral Drain following the transfer of ownership from the Appellant to Wessex Water.

- Wessex Water will not restrict or prohibit the development of the Extension to the Property.
 - Wessex Water will not seek any financial contributions from the Appellant in relation to the drawing of plans, security deposits, application fees, legal fees, inspection fees and any other costs associated with the built over Lateral Drain described in this appeal from the owners of the Property.
- 3.5. Ofwat forwarded the Appellant's representation to Wessex Water on 26 September 2013, for their comments. Wessex Water responded to the Appellant's representation on 7 October 2013, providing the written assurances that the Appellant had asked for.
- 3.6. 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, where Ofwat has needed clarification or additional information from the Appellant, 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. Ofwat is satisfied that the Lateral Drains are not exempt from the Scheme and that Wessex Water therefore has a duty to adopt it.
- 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 Pipework

- 5.1. Section 219 of the Act sets out the statutory definitions of the terms 'drain', 'lateral drain' and 'sewer' which are applicable to the Regulations and the Scheme.
- 5.2. The Regulations and the Scheme apply to private sewers and lateral drains (see paragraph 1 above) but they do not apply to any private drain which is not a lateral drain. Accordingly, Wessex Water's proposal specified in paragraph 1.4 above does not relate to any drain which forms part of the Pipework which is not a lateral drain, and no drain which is not a lateral drain

transfers to Wessex Water by virtue of the Regulations and the Scheme.

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

- 5.3. The Appellant considered that, without the assurances provided by Wessex Water as described at paragraph 3.5 above, the transfer of the Lateral Drains would be seriously detrimental for the reasons set out at paragraph 2.8 above.

Financial costs

The Extension has already started and the Appellant has told us¹ that he was expecting the project to be completed by December 2013. In view of this, we do not consider that the Appellant is likely to suffer financially as these costs are by nature incurred before the construction phase and because of the assurances provided by Wessex Water as detailed at paragraph 3.4 above.

Loss of property value

The Appellant received the necessary planning consents before starting the Extension and has received assurances from Wessex Water that it “will not restrict or prohibit the development”. We do not, therefore, consider that the Appellant is likely to incur any loss in the value of the Property as a result of the transfer of the Lateral Drains to Wessex Water.

Unrestricted access (the Access issue)

We consider that in order for there to be serious detriment there has to be an actual effect, rather than a possible future effect. Ofwat does not consider that unrestricted access gives rise to an actual effect because there is no evidence that the following would necessarily arise:

- i. that Wessex Water would be required to carry out extensive works at the Property as a result of the adoption of the Lateral Drains;
- ii. that any rights of privacy (or similar) of the Appellant at the Property would be infringed by such works carried out by or on behalf of Wessex

¹ In an email on 13 June 2013.

Water.

Under section 159 of the Act, Wessex Water has the power to enter onto private land to lay a pipe, to inspect, maintain, adjust, repair or alter any pipe, and to carry out incidental works. However, before Wessex Water can exercise those powers it must give the owner or occupier of the private land reasonable notice and act in accordance with its code of practice for working in private land, required under section 182 of the Act.

The extent to which, and how, Wessex Water might be required to exercise its powers under section 159 of the Act in connection with the Lateral Drain is uncertain, and would depend on the nature of any issues which arise regarding the Lateral Drains at any particular time. As noted above, the Appellant has the protection that Wessex Water must exercise its powers under section 159 of the Act in accordance with its statutory code of practice. If the Appellant is unhappy about the way in which Wessex Water has exercised its section 159 powers it can complain to Ofwat under section 181 of the Act to investigate that complaint. Ofwat may, in certain circumstances, direct the company to pay up to £5,000 compensation for failure, loss, damage or inconvenience.

Accordingly, we do not consider that the Appellant would suffer serious detriment as a result of the transfer of the Lateral Drains to Wessex Water in connection with the Access Issue, as there is sufficient protection that would take effect on transfer of the Lateral Drains.

Possible relocation of the Lateral Drain

Wessex Water has confirmed that it will not move the Lateral Drains following transfer and the appellant has accepted Wessex Water's assurances. Therefore we consider that there is no serious detriment as Wessex Water will not relocate the Lateral Drains.

European Convention on Human Rights

- 5.4. 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 Lateral Drains to Wessex 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 the Appellant on a transfer of the Lateral Drains to Wessex Water.

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

Conclusion

- 5.6. Ofwat concludes that Wessex Water's proposal to adopt the Lateral Drains should be allowed and that the Lateral Drains should transfer to Wessex Water by 31 October 2013.