

Information notice

IN 18/01 January 2018

ofwat

This is a formal document that alerts our stakeholders to a change in the way that we regulate the water sector in England and Wales.

Applications for New Appointments and Variations (NAVs) under the “unserved criterion”

In December 2016 Ofwat commissioned a review to investigate how the NAV market is working. This included to consider the extent any factors act to prevent, restrict or distort the market from achieving its full potential, and to set out options to address any issues identified - taking account of the extent to which current and planned initiatives and policy developments are capable of addressing these issues. On 10 October 2017 Ofwat published the findings of the [‘Study of the NAV Market’](#). The review identified a number of potential barriers faced by companies wishing to participate in the NAV market. These included a number of areas where the current regulatory framework and our policies and processes may inhibit the ability of NAVs to enter the market and compete with incumbent water and sewerage companies on a level playing field.

In addition to the review’s report we published a separate document [‘Study of the market for new appointments and variations – summary of findings and next steps’](#), setting out the actions that we are already taking, or are proposing to take, to address the issues highlighted by the study. The review found that NAV applicants consider that the criteria under which NAVs can be granted are uncertain. In section 2.1.1 of our next steps document we committed to considering what further information and clarification we could provide about current NAV policy and processes to help remove unnecessary uncertainty and associated risks for applicants. This information notice provides further clarity about our existing information requirements and assessment of NAV applications submitted to us under the unserved criterion. It does not introduce any new policy but rather offers further guidance to applicants.

1. Applications under the unserved criterion and policy considerations we will take into account¹

To date most NAV applications we have received under the unserved criterion have been for undeveloped (greenfield) sites, but some have been for sites that have previously been developed (brownfield sites). The decision as to whether to grant an application under the unserved criterion rests with us.

1.1 Legislative framework

We can grant a NAV under the unserved criterion where none of the premises in the proposed appointment area are:

1. supplied by water by means of a connection to a distribution main of the existing appointed water company (for applications relating to the supply of water); or
2. drained by means of a public sewer or lateral drain of the existing appointed sewerage company (for applications related to the discharge of sewerage).

In this context '**served**' means served by the existing appointee. A site will not be served if it receives water or sewerage services from someone other than an appointed water or sewerage company. In order for a site to be considered served there must be an actual supply. A site may be served for water but not sewerage services and vice versa.

Our assessment is based on whether the site contains premises that are served at the time that the appointment is granted.

If it can be demonstrated that there is a connection to an existing appointee's network somewhere within the applicant's proposed area of appointment, the whole site will be considered to be served unless the applicant chooses, and is able to, redraw the boundary of the proposed appointment area to exclude the premises served by that connection, so that the remainder of the site may be regarded as unserved - assuming no part of the remainder benefits from a relevant water or sewer connection.

¹ See [New appointments and variations – a statement of our policy](#), section 5.2 at pages 14 - 18

In considering the proposed site's boundary and any amendments to it, we will take into account the specifics of the application including, but not limited to, the following:

1. whether the site's boundary is capable of clear demarcation from the surrounding existing appointees.
2. whether the removal of any served premises makes operational sense. In considering this we will look at ensuring that customers are no worse off, including:
 - a. whether there will be duplication of assets and whether the applicant has sufficiently justified its approach to this. We would expect there to be minimal duplication where possible; and
 - b. In the event of there being an issue with the network assets (e.g. a leak), how the applicant will minimise any confusion about ownership of the network assets and what mitigation the applicant will put in place to deal with these risks.

If an applicant is considering redrawing the proposed site's boundary to remove served premises, we would suggest that the applicant and the existing appointee seek to agree a clear boundary demarcation, which will be acceptable to all parties and a plan to mitigate the operational service risks to the customers of both companies which will ensure that customers are no worse off.

1.2 Greenfield sites

It is usually relatively straightforward to establish whether a greenfield site is unserved. Nevertheless, we still need to ensure that the site is unserved even if it has no buildings on it.

A greenfield site may be served if:

1. surface water drains into a sewer owned by the existing appointee (a public sewer); or
2. it is farmland that the existing appointee supplies with water (for example, by irrigation or to supply a cattle trough).

For new developments it is usual for underground pipes to be installed before houses are built. Depending on the timing of the appointment, this may render a greenfield site served at the point at which the NAV would be granted. While many developers will lay a pipe network before we have

finished processing an application, it is important to ensure that any permanent connection to or from the existing appointee's infrastructure is not made 'live' before an appointment is made. This is because a 'live' connection will render the site served (for example a permanent connection to a show home or site office) and therefore may jeopardise the unserved status of the site.

A temporary supply of water from the existing appointee to facilitate the construction process will not, in itself, mean a site is served. This also applies to temporary drainage.

1.3 Brownfield sites

We take a common sense approach to establish if a brownfield site is served, considering all relevant factors to understand the state of affairs on the site. For example, we would take into account when the site stopped receiving services from the existing appointee and the reason (or reasons) for this. We would also consider if buildings on the site have been demolished and if pipes have been disconnected.

If buildings have been demolished and all existing connections have been removed, we would consider those premises to be unserved. In the case of extensive refurbishments (for example, if the shell of a building remains), we would consider the premises to be unserved if all pre-existing connections are removed.

However, even if buildings are demolished, a site may be served if a water connection is available for use on the remaining land. It may also be served for sewerage purposes if surface water drains either directly or indirectly (through an intermediate drain or sewer) to a public sewer or lateral drain of the existing appointee.

As with greenfield sites, we would not consider that a temporary supply of water from the existing appointee, installed to facilitate the construction process, would render the site served.

1.4 Surface water drainage at unserved sites

We consider that premises would be served for sewerage purposes if surface water drains into a drain or private sewer, which then discharges into the existing appointee's lateral drain or a public sewer. This is regardless of whether the lateral drain or public sewer is on or off site.

Similarly, we consider that premises would not be served for sewerage purposes if there is no on-site infrastructure to drain surface water and it goes directly into the ground or runs off the premises via a hard surface such as a road.

2. Assessing applications under the unserved criterion and the information we require

When submitting a NAV application to us under the unserved criterion, applicants should ensure that they have provided sufficient evidence to demonstrate that the proposed appointment area is currently unserved. The onus is on the applicant to demonstrate that the site meets the unserved criterion.

The information the applicant submits to us should include factual information about the site (see section 2.1 below) and, a letter from the existing appointee setting out its view (see section 2.2 below). It is possible that the applicant will also need to provide us with a reporter's report² (see section 2.3 below).

We assess all of the information presented and decide whether we are satisfied that it has been shown that the site is unserved.

2.1 Factual information to be provided

Depending upon the specific facts of the site, the information required to demonstrate that it is unserved will vary. However, the following list of factual information can be used as a guide³:

General information

1. The name and location of the proposed site.

² See [New Appointment and Variation Applications – a statement of our process](#), section 3.1 at pages 7 - 8

³ See [New appointment and variation applications – a statement of our process](#), sections 6.1.1 at page 19 and 6.1.2 at page 20

2. The name and address of the existing appointee(s) in whose area(s) of appointment the site is situated.
3. Maps which clearly and accurately show the whole site's boundary for which the application is being made. This should include an A3, colour Ordnance Survey map of the area surrounding the site, which clearly shows its location in relation to nearby towns and villages.
4. A letter of support endorsing the application from the owner of the site, which is typically the developer(s) (if applicable).
5. Confirmation of which stage in the statutory planning process the site is at. This should include details of any conditions attached to the site's planning consent.

Specific information that may demonstrate the site is unserved

The following list is for guidance as to what evidence may help to demonstrate that a site meets the unserved criterion. It is not a requirement that an applicant provides everything on the list. What is required will depend upon the facts of the case. We encourage applicants to engage with us as early as possible about their application and if in doubt, what evidence may be needed to demonstrate that a site meets the unserved criterion.

6. Whether the site is greenfield (an undeveloped site) or brownfield (a site undergoing redevelopment).
7. Details of whether any part of the site is occupied and if so how those premises are supplied, by whom and for how long it has been so supplied.
8. Details of when the site became unserved and the reasons for this, i.e. the history of the site and how it became unserved. This should include details of any temporary supply to the site.
9. Evidence from any investigation into existing water and sewerage infrastructure on the site carried out on behalf of the site owner by the applicant or a third party. Where possible, this should include a map which identifies the location and ownership (including contact details) of:
 - a. existing water infrastructure;
 - b. existing foul sewerage infrastructure; and
 - c. existing surface water drainage infrastructure.

This may be sufficient to cover point 3 above.

10. The historical site layout including the location of all buildings, including gutted or demolished buildings and details of planned demolition.
11. Details of any private drainage which has historically or still drains the site (e.g. an asset database).
12. Results of any dye tracing, connectivity surveys or CCTV surveys of the private drainage system.
13. Where the site is brownfield, a topographical survey (relating to the Ordinance Datum) of the site (to include colour photographs) which identifies on-site, above ground drainage or water supply infrastructure such as inspection chambers, manhole covers, road gulleys and building rain water pipes.
14. Any other information that the applicant believes is relevant to demonstrating that the site is unserved.

2.2 Letter from the existing appointee

Applicants could provide a letter from the existing appointee stating whether it agrees that the site is currently unserved.

Where a letter from the existing appointee states that it believes the site to be unserved, the letter will be considered to be additional supporting evidence as to the site's status.

In the event that the letter from the existing appointee and the information listed in section 2.1 above provides sufficient evidence to show that the site is unserved, it is likely that we will conclude that the site is unserved and no further evidence, such as a reporter's report, will be necessary. This will be a matter of fact for each individual application.

A letter from the existing appointee confirming that it considers the site to be unserved may not be sufficient on its own, and the applicant is likely to have to also provide sufficient relevant facts and as detailed in section 2.1.

2.3 Reporter's report

Applicants may choose to commission an independent report to detail the required information set out in sections 2.1 and 2.2. Please see our guidance on [site status reports](#).

In certain circumstances, such as the existing appointee disputing that the site is unserved or if there is insufficient evidence to support a conclusion that the site is unserved, we may require an applicant to provide a reporter's report in support of their application. Due to this, we would encourage applicants to engage with us early about any pipeline applications and the proposed evidence they have to support an application based on the unserved criteria.

More information

[Information about New Appointments and Variations – Ofwat website](#)

[New appointment and variation applications – the terms of reference for independent professional advisers providing site status reports \(2011\)](#)

[New appointments and variations – a statement of our policy \(2014\)](#)

[New appointment and variation applications – a statement of our process \(2011 updated August 2015\)](#)

[Study of the NAV Market - report from Frontier Economics](#)

[Study of the market for new appointments and variations – summary of finding and next steps](#)

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

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