

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0640

Date of Decision: 19 January 2018

Complaint

The customer has sought to transfer the land on which a sewage pumping station is situated to the company, both before and after the pumping station was transferred into the company's ownership. Despite assurances that the land transfer would be discussed, it was not, and the company has unilaterally rejected the land transfer. The customer disputes that the company has the right to access the land and pumping station.

Defence

The company states that it has a legal right of access to the sewage pumping station and this is easily accessed from the road. As there are no issues in gaining access to the pumping station, the company will not be taking over ownership of the land in question.

Findings

The Water Industry Act 1991 provides the company with access to its assets on third party land. The consultation documents provided by the customer do not indicate that the company is obliged to accept transfer of the land. There is no legal obligation for the company to take over the land and it has explained the reasons why it would not do so. The claim was therefore unable to succeed.

Outcome

The company does not need to take any further action.

The customer must reply by 16 February 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 19 January 2018

Party Details

Customer: [REDACTED]

Company: [REDACTED]

Case Outline

The customer's complaint is that:

- The customer's property and those of his neighbours are served by a sewage pumping station (SPS). The SPS and the land it sits on was owned by a property management company [REDACTED] (RTS), set up for the purpose and of which the customer and his neighbours are shareholders. The SPS was transferred to the company on 1 October 2016. The company then took a unilateral decision to not take over the land for cost reasons. As a result, the customer and his neighbours must continue to incur costs to run RTS. The customer submits that the company's statement that it has the right to access the RTS land is contrary to the Water and Sewerage Companies' statement that advised that the legislation does not provide the required rights of access for them to operate and maintain the adopted equipment.
- The customer requests the company to accept the free transfer of 130 square metres of registered land on which the SPS sits and to agree that the property owners of [REDACTED] continue basic ground maintenance.

The company's response is that:

- On 1 October 2016 all privately owned SPSs transferred to the ownership of the company following a change in government legislation. Prior to the transfer, the customer and his neighbours were responsible for the SPS that serves their properties and were responsible for the land on which the SPS is located. They are shareholders in RTS, set up to maintain these assets. The company has no legal obligation to purchase the land on which the SPS is located.

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There are no issues in gaining access to the SPS and the Water Industry Act 1991 gives the company the right of entry to the land for works purposes. The company will not be purchasing or taking over ownership of the land in question.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. The customer's complaint relates to an area of land opposite his and his neighbours' houses, on which a SPS is situated. Prior to 1 October 2016, the SPS was privately owned by RTS, a company that the customer and his neighbours are shareholders in. As part of their property deeds, they must become shareholders of RTS and pay for its upkeep and that of the land and SPS.
2. The company became owner of the SPS on 1 October 2016 following government legislation. The land remains in the ownership of RTS.
3. The customer submits that, in correspondence prior to October 2016, he was given the impression that the company would discuss the transfer of the land to it. The company then stated that it would not be taking over the land. The customer submits that this is unreasonable as the land occupied by the SPS is now "redundant to the RTS operation purpose" and, if the

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company does not take over the land, the property owners will continue to be responsible for RTS.

4. The customer has referred me to various documents published during the consultation period prior to the legislation for adoption of the SPS by the company. He submits that the consultation documents indicate that water companies advised that legislative provision should be made for the acquisition of lands, and that the government held that the transfer of land must be a matter for individual negotiation.
5. The customer has requested that the land in question is transferred to the company, with the customer and his neighbours agreeing to continue basic ground maintenance. I am only able to deal with the company's legal obligations within the adjudication process; the claim will therefore only be able to succeed where the company has failed to comply with a legal obligation to take over the land.
6. In reviewing the correspondence, I find that the company did give the customer a reasonable expectation that the ownership of the land would be discussed with him prior to the takeover of the SPS. It is clear that this did not take place, despite the customer chasing this. However, whilst this amounts to service below the standard to be expected of a water and sewerage provider, I find that the requested remedies are not proportionate or relevant to this service standard issue. I am therefore unable to make any direction in recognition of this failure.
7. In reviewing the consultation documents provided by the customer, I note that the first document, Consultation on Private Sewers Transfer – Implementation Options, states that if “an owner applies for their pumping station to be adopted ... the WaSC would need to fund and set a timescale for remedial work, alterations, and transfer of land prior to adoption”. I acknowledge that this document clearly refers to the transfer of land to water and sewerage companies. However, it does so within a document setting out various proposed options for how sewerage assets should be transferred into the ownership and responsibility of the company. The document is not binding and this section does not necessarily reflect the method chosen for the transfer, or any individual requirements arising out of the eventual method. I find that this document does not assist me in determining if there is any legal obligation on the company to accept transfer of the land below the SPS.

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8. The second consultation document, Summary of Responses to the Consultation: Private Sewers Transfer – Implementation Options, provides a list of “different criteria [that] were suggested to reach a serviceable standard”. Included in this list is a suggestion that the freehold of a site be transferred to the water and sewerage company. I note that this was a suggestion in relation to reaching a ‘serviceable standard’ and what this standard should comprise of. This appears to be a service standard that is above and beyond a legal minimum; the suggestions for meeting such a standard are therefore to be viewed as possible methods by which a higher service standard may be met, not necessarily that such a method is necessary in fact or law for the company to carry out its legal obligations. I am therefore not persuaded from this document that the company is obliged to accept transfer of the land in question, albeit that doing so may enable it to reach a higher service standard than it would otherwise be able to.
9. The third consultation document referred to by the customer, Government Response and Summary of Responses to the Consultation on Draft Regulations and Proposals for Schemes for the Transfer of Private Sewers and Lateral Drains to Water and Sewerage Companies in England and Wales, refers to the issue of land acquisition. The water and sewerage companies had commented that the legislation, in respect of the transfer of sewerage assets, did not make any provision for the transfer and acquisition of any lands, easements, rights of outfall or consents to discharge, that may be needed to lawfully operate works such as SPSs. The Government response was that it believed that “existing statutory rights provide the companies with adequate powers of access to allow them to fulfil their duties” and that the “acquisition of land or rights over land must be a matter for negotiation in individual cases”.
10. I note that the circumstances referred to by water and sewerage companies were where a transfer of land, easements, and discharge consents were required in order to maintain or operate an SPS. These will be complex cases, such as where access to an SPS is extremely restricted, e.g. where it is in a private rear garden or behind a fence. In cases such as these, whilst the company may have a legal power of access, it may nevertheless be more straightforward and preferable for the company to have greater rights of access enshrined in the property deeds themselves, or for it to own the relevant land itself. The Government response is clear that it felt that no further statutory power was required to ensure water and sewerage companies could access SPSs, such as a form of compulsory transfer of land or rights, and that such a transfer should be individually negotiated. I find that this document does not state that the company is obliged to take over any land; on the contrary, the Government position was

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clear in that existing legislation provided sufficient powers of access to the water and sewerage companies and no further powers to enable the transfer of land were required.

11. It is therefore necessary to review the statutory powers of access and how these apply to the SPS serving the customer's property.
12. The company has referred me to sections 158 and 159 of the Water Industry Act 1991 (the Act). Section 158 provides a definition of the term "relevant pipe". This includes "any sewer or disposal main". I must find that the SPS forms a part of the sewer or disposal main and that it therefore falls within the definition of "relevant pipe".
13. Section 159 of the Act provides the company with a power to lay relevant pipe "in any land", and a power "to keep that pipe there". The company has the power to inspect, maintain and repair any relevant pipe, and to carry out any works required for this purpose.
14. I must find that section 159 of the Act provides the company with the power to access the SPS, maintain, repair and otherwise carry out work on it. I acknowledge that the company did not lay the pipework and the SPS; however I am not persuaded that this is a material factor where ownership has been transferred to it via statute. I find that the company's right of access to its pipework remains, irrespective of the land being owned by a third party, or the party that initially laid the pipework. For the avoidance of doubt, the Act will remain in force and applicable unless it is expressly repealed. It is therefore not necessary for any later regulation to include any express requirement for a private land owner to provide the company with access where this is already contained in existing legislation.
15. I acknowledge the customer's submission that the company's refusal to take over the land leaves them in an unfair position, having to effectively pay twice for their sewage to be removed: once for it to be removed, and a second time for the management and operation of RTS to look after the land that now exists solely to accommodate the company's SPS. However, I am unable to accept this argument. The customer is no longer directly responsible for any costs involved in the maintenance and repair of the SPS; he pays only for the sewage to be disposed of. The costs of maintaining the land are separate to the obligations of operating the SPS and are not the responsibility of the company.

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16. I therefore must find that the company is not obliged to take over the land on which the SPS sits. The consultation documents indicate that the takeover of such land is a matter for individual negotiation. The company cannot be obliged to accept the land. I note that the company has provided an explanation for why it is unwilling to takeover the land: access is freely available from the road to maintain the SPS, presenting no challenge in access that may be improved by the transfer of the land; and the land itself is subject to ongoing maintenance requirements that the company does not wish to take on. The company also notes that, if it did look to take over the land, it would only be that part on which the SPS was situated, leaving the remainder of the land with RTS.
17. In view of the above, I must find that the company cannot be obliged to accept transfer of the land. Whilst the existing situation is unsatisfactory for the customer, with the existence of RTS being largely negated by the transfer of ownership of the SPS, the costs involved do not amount to a duplication of sewerage costs. I find that there is no basis to require the company to accept the transfer of land that it does not want. The customer's claim is therefore unable to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 16 February 2018 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

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A handwritten signature in black ink, consisting of a stylized 'A' followed by a long horizontal stroke.

Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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