

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1529

Date of Decision: 28 August 2019

Complaint

The customer complains that the company supplied her architect with incorrect information as to the course of a sewer. This was subsequently found to underlie a proposed development on that land. Although planning permission was granted, the construction could not proceed and further costs were incurred in re-submitting plans elsewhere in the plot. The customer also complains that the company did not agree to permit building over the sewer. She complains of loss of value of the land, wasted architect's fees and distress and inconvenience.

Defence

The company says that it provided the plan on the basis of the best available evidence and that the plan itself contained a warning that before excavation or other works the precise location of the sewer would be necessary. In a letter to the local authority, the company said that the pipe underlay the land in question and advised that the customer should locate the precise position of the sewer. The company says that it did not refuse permission to build over the sewer, but this was prohibited by the deeds of the property. It denies that it has failed to provide its services to the standard that would reasonably be expected of it.

Findings

I find that the company has supplied its services to the standard that would reasonably be expected of it. The company gave a warning to the customer that the plan provided to her architect might not be accurate and said that it did not warrant the precise accuracy of this. There is no evidence that the company had other information that the plan was incorrect. Additionally, I find that the customer has not shown that the company refused permission to build over the sewer.

Outcome

The company does not need to take any further action.

The customer must reply by 28 September 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1529

Date of Decision: 28 August 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- In 2014 she applied for planning permission to build a four-bedroom eco-bungalow on a paddock gifted to her by her parents in 2012 in order to raise money for her three sons' private education.
- Her architect contacted the company and requested maps of the undeveloped land to enable him to locate the public sewer. The customer says that the incorrect plan shown in Appendix 1 and Appendix 2a to the company's defence was similar to that given to her architect in 2013. The plan showed a sewer running from a manhole cover in a westerly direction along the adjacent footpath that is very close to but not on the paddock. Accordingly, the architect was unaware that a small section of the drain lay under the paddock.
- In 2014, the company had carried out a detailed drainage survey of [] This property lies in a large cul-de-sac of houses adjacent to Green Lane. The customer says that she was aware of the location of the drains from these properties as she and her family witnessed work on both manholes in Green Lane for many years when they lived in the adjacent property "Red House" from 1979 until 2011. This suggests that the company had knowledge of the correct line of the sewer on and before the grant of planning permission for her eco - bungalow (5 March 2014), and therefore should have immediately notified the customer and her architect.
- Only later did the customer discover that there was a sewer pipe running across the paddock. She applied for consent to build over the sewer, but that was refused by the company. The private developer who had sought to purchase the land with planning permission withdrew from the transaction.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The property was eventually built on the same stretch of land but just south of the original plan in order to accommodate the public sewer. The customer points out that she was only able to obtain permission after another full consultation with the council and it wasn't approved until November 2015 which was eighteen months later. This had also cost further professional fees totalling £3,097.00 that this devalued her plot because she was only able to sell for £140,000.00 and, while awaiting the outcome of the application, had to take her youngest son out of the private prep-school where he was settled.
- The customer expresses unhappiness that the maps supplied were not up-to-date and contends that she should be compensated for the inconvenience caused throughout the development and wasted architect's fees of approximately £12,250.00 from a total expenditure of £18,000.00.
- The customer seeks an apology, reimbursement of her out of pocket expenses including those of the architect and compensation for distress and inconvenience.
- The customer also seeks the payment of interest.

The company's response is that:

- The company says it cannot be sure of the exact route of any sewer laid prior to 1989 because these were maintained by the local authority, and as such, when a map is provided, the company includes an advisory notice that states:

[] gives this information as to the position of its underground apparatus by way of general guidance only on the strict understanding that it is based on the best information available and no warranty as to its correctness is relied upon in the event of excavations or other works made in the vicinity of the Company's apparatus and any onus of locating the apparatus before carrying out any excavations rests entirely on you..." "Exact locations of all apparatus to be determined on site."
- The company received a planning application for the customer's land from [] Council, which it responded to on 4 November 2013. As part of the response, the company advised that a 225mm diameter sewer was approximately marked as crossing the Land (as identified from the Map) and, as such, no part of the proposed development would be permitted within three meters either side of the sewer. This was to protect both the integrity of the sewer, and any new building.
- On 4 April 2014, the customer requested a Sewer Location Survey to locate the exact position of the sewer. The company completed the survey on 10 April 2014, and established that the public sewer did cross the land at a point beneath the proposed development. The company advised the customer of this the following day, and it submits that it updated the map to show the correct

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

location of the sewer on 7 May 2014. The company says that a copy of the Sewer Location report is provided as Appendix 3.

- In an effort to continue with the development, the customer's representative made enquiries regarding a Build-Over (Sewer) Agreement. After carrying out further investigations, the company learned that the deeds associated with the land prohibited this and the Build-Over (Sewer) Agreement was not progressed.
- The company understands that the customer was later granted planning permission to develop on the Land, further away from the sewer, on 3 November 2015.
- The company also apologises for failing to respond sooner to a request about works previously undertaken in the vicinity. It says that it had previously received a request from a resident of Green Road to locate sewers relative to their property. The records do not show the extent of the work undertaken, but from looking at the enquiry the company thinks it likely that this would have been in relation to sewers within and immediately adjacent to their property.
- Normally, the company says, the location of the sewer is determined by the landowner and/or developer prior to applying for planning permission, especially in cases when the covenant is specified in the Deeds to the Land.

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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

How was this decision reached?

1. The customer confirms that Appendix 1 to the company's defence is consistent with the plan that was given to the customer's architect in 2013. Appendix 1 states in the bottom right-hand corner, the following words, with emphasis added:

*[] gives this information as to the position of its underground apparatus **by way of general guidance only** on the strict understanding that it is **based on the best information available** and **no warranty as to its correctness is relied upon in the event of excavations or other works made in the vicinity of the Company's apparatus and any onus of locating the apparatus before carrying out any excavations rests entirely on you**. It must be understood that the furnishing of the information is entirely without prejudice to the provision of the New Roads and Streetworks Act 1991 and of the Company's right to be compensated for any damage to its apparatus.*

In capitals, the plan also stated: *Exact locations of all apparatus to be determined on site*. The above words also appear in the plans at Appendix 2 and Appendix 2A. The company has explained that this uncertainty related to a lack of information as to the location of sewer pipes prior to their acquisition of responsibility for these. In correspondence with the Consumer Council for Water (CCWater) the customer says that it had come to her attention that in 1983 the sewer had been plotted correctly on submission to [] planning department for a third party (and she provided a copy of the plan to CCWater), at sometime between 1983 and her application in 2012 this sewer was incorrectly recorded on the company's records. There is, however, no clear information that the company had been informed by the local authority of the precise location of the sewer in 1989.

2. I find that an average customer would reasonably be expected to realise from these warning words that:
 - a. There was potential uncertainty about the accuracy of the plan;
 - b. The company had acted on the best information available to it;
 - c. That any actions taken by the customer in relation to the land would necessitate determining the precise location of the sewer; and that
 - d. The company provided the information to the customer on the basis that it would be for the customer to satisfy herself as to the situation on and under the ground.

I find, specifically, that because this plan contains the words "no warranty as to its correctness is relied upon in the event of excavations or other works", an average customer would not expect

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

that the company was accepting liability for the accuracy of the plan if, on further investigations, this turned out to be incorrect.

3. It follows that I find that the company's actions put the customer's architect on notice that it might be necessary to locate the precise position of the sewer before submitting an application for planning permission. This was additionally reinforced by the company's response to the planning consultation triggered by the application made for planning permission on behalf of the customer. Although the plan attached (Appendix 2 – which is consistent with Appendix 1) suggests that the location of the sewer fell just outside the property boundary, the accompanying letter dated 4 November 2013 stated that the sewer crossed under the land and explained that there could be no development within three metres of this. The plan suggests that the designated area of three metres would cross under the land, even if the pipe itself was not under it. There was thus a possible contradiction between the correspondence and the attached evidence. I find, however, that this is likely to have reflected the uncertainty about the precise course of the sewer as described in the plan at Appendix 1, Appendix 2 and Appendix 2a and the location of the three metre strip that must be kept clear. The company's letter invited the council to inform the applicant of the company's Operations Contact Centre to determine the location and status of the sewer. Whether this was communicated also to the customer by the council is unknown, but I find that it was no failing by the company to point out to the council that this would be necessary. I find that it had already been communicated to the customer's agent by implication from the warning attached to the plan that was supplied to the customer earlier in 2013. In terms, therefore of the inaccuracy of the plan, I find that the customer has not proved that the company fell short of the standard of service that would reasonably be expected of it.
4. It is fair to state that I find that an average customer might expect the company to accept liability for the inaccuracy of the plan *if* the information provided to the customer was not based on the best information available to it at the time that the plan was communicated. The customer has raised this issue in relation to the 1983 plan referred to above and to works that she says were previously carried out in Green Lane. I find, however, that this information does not enable me to conclude that the company, when it supplied its plan in 2013, was not acting on the best evidence that it then had. I bear in mind that adjudication is an evidence-based process and that it is for the customer to prove the contentions that are made. Although the customer suggests that the company has not been candid about supplying information about any work that had previously been undertaken by the company (and it is in one sense unsurprising that the customer did not have access to such information unless the company had provided this) the

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

company's submissions indicate that the only available information related to actions taken, not over the customer's land but in relation to the location of the sewers under the land of at least one third party and there is no evidence to the contrary. While I note that the customer appears to be correct that the revised pre-survey plan is dated in February 2014 and therefore was updated prior to the detailed survey carried out in April 2014 (contrary to the suggestion by the company) I find that it does not indicate that the company was aware in 2013 that the precise location of the sewer was under the customer's paddock.

5. I have also considered the customer's submission that the company should have taken action to alert the customer or her architect that the plan was incorrect at a point before the local authority granted planning permission for her proposal on 5 March 2014. In this context, it is notable that Appendix 3 appears to be, not the survey for the property in question but a survey relating to [] Drive that was undertaken on 4 March 2014 and that the attached plan – described as a pre-survey plan – was drawn in February 2014. This discrepancy is not easy to understand, but it does not prove that there has been a shortfall in standards relating to the correction of information previously given. As to this, I find that an average customer would not expect that a company would reasonably keep in mind and act on a change in its own understanding in a context where the onus had previously been expressed by the company to be on the customer to verify precisely the information about proximity of the sewer to her development proposal. As I find that this is what occurred, I further find that the customer has not shown that the company failed to meet the expected standard. Moreover, I am mindful that the company cannot reasonably have been expected to know of the decisions and actions taken by the customer in the light of the plan provided and its own response to the local authority in respect of the application for planning permission and therefore would not reasonably be expected to have endeavoured to ensure that the planning application was accurate.
6. There is no supporting documentation for the company's assertion that the application for a Build-Over Agreement was not pursued once the deeds for the property had been inspected, but there is equally no supporting evidence that the company refused to permit construction over the sewer. I accept, however, that the company has submitted a copy of a deed sealed in 1952 between the landowner and council in which permission to construct a sewer under the land was given, accompanied by a promise to keep a strip of six feet on either side of the sewer clear of obstruction. I accept the company's submission, therefore, that once it was discovered that a sewer had been built under the land, there is at least a possibility that construction over the

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

sewer was prohibited by the deeds. I find that the customer has not shown that the company fell short of the requisite standard in relation to this aspect of her claim.

7. It follows that, although I have sympathy for the customer's experience and the wasted costs of her planning application that could not proceed, I find that the customer has not proved that the company failed to provide its services to her in accordance with the standards that would reasonably be expected of it, and she does not succeed in her claim against the company. It follows, therefore that I find that the customer is unable to succeed in her claim for redress.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 28 September 2019 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.



Claire Andrews, Barrister, FCI Arb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.