

# WATRS

## Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1606

Date of Decision: 16 October 2019

### Complaint

The customer states that the company issued a build over agreement for an extension at his property but, during the preparatory works, a public sewer was discovered which required a further build over agreement and changes to the customer's plans, delay and a consequent increase in the cost of the works. The customer claims the additional costs of these works in the sum of £2,786.00, inclusive of VAT, and a further £214.00 for stress and inconvenience.

### Defence

The company states that the customer was provided with the necessary information prior to commencing work and that this explains that the customer has the responsibility for checking the location of public sewers on private property prior to the commencement of work.

### Findings

The customer has not shown that the company failed to inform him of his responsibility to locate the public sewer prior to carrying out the works. The company has provided its services to the standard to be reasonably expected and therefore the customer has not established any entitlement to any of the remedies claimed.

### Outcome

The company does not need to take any further action.

The customer must reply by 14 November 2019 to accept or reject this decision.

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## ADJUDICATOR'S DECISION

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Date of Decision: 16 October 2019

### Party Details

Customer: [ ]

Company: [ ]

### Case Outline

#### **The customer's complaint is that:**

- He applied for and received a build over agreement for an extension to his home in mid-2018.
- During excavation works for the extension, a public sewer was discovered and he had to apply for a second build over agreement.
- The presence of a public sewer required a variation to the works, costing £2,784.00 inclusive of VAT [per the variation order].
- The customer contends that the onus was on the company to keep records of and communicate the location of public sewers to him, or actively inform him that it did not have these records.
- The company refuses to compensate him for the additional costs incurred or for his inconvenience and stress.

#### **The company's response is that:**

- The company does not have records of all public sewers, as more than 50% of these were transferred into its ownership in 2011, having previously been privately owned.
- The company provided the customer with the relevant documents to assist him in applying for build over consent.
- This literature makes it clear that the onus is on the customer to locate any sewers prior to undertaking works.
- Accordingly, the company denies liability for the additional costs incurred by the customer.

### How is a WATRS decision reached?

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

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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.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

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 planned to extend his property to the rear and he contacted the company in May 2018 to inform them of this. The company's call notes show that he was advised to provide plans to determine whether a build over agreement was required or not. I note at this point that I have not seen these plans.
2. In June 2018, the customer contacted the company to request a build over application form by e-mail. The documentation provided to the customer included: a covering e-mail, the application form with guidance notes and a booklet entitled 'Building over or close to a public sewer' (the 'Booklet').

3. At page 4 of the Booklet it states:

*"You need to locate any sewers to find out how close you're building to them, and to work out who owns them. Sewers often run beneath back gardens. [...] Please note that nearly half of public sewers in our region don't appear on our records. This is because they were privately owned until 2011, when a legal change transferred them to our ownership. So we sometimes need you to tell us where the sewers on your property are."*

There are then some illustrated examples and guidance on locating a drain or public sewer and its direction of flow.

4. At page 11, the Booklet also makes it clear:

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*“It is your responsibility to check and verify the position and depth of the public sewer prior to works on site.”*

5. The application was completed and returned by the customer and is stamped as received on 18 June 2018. I note that the stamp also appears to record the receipt of a cheque and plans relevant to the application. I note again that I have not seen those plans.
6. The customer chased his application on 9 July 2018 and the company’s case file indicates that it was reviewed and approved on 17 July 2018. A letter dated 20 July 2018 was sent to the customer formally notifying the customer of the approval subject to compliance with the company’s specifications, which were enclosed. These are expressly stated to be:

*“general guidelines when building within three metres or over a public sewer that is up to 160mm in diameter”*

and, at point 5, it states:

*“It is your responsibility to check and verify the invert levels and position of the public sewer prior to works on site.”*

7. In June 2019, the customer and a third party acting on his behalf (‘Mr Brown’) contacted the company regarding building over a “lateral drain / sewer pipe”. This was in part by telephone and in part by e-mail. I note that the CAD drawings supplied on this occasion are dated June 2019.
8. An e-mail from Mr Brown refers to *“the public sewer being uncovered in a different place to the [company’s] plans”*. An e-mail from the customer of the same date states: *“[o]n starting the footing excavating of my extension, it revealed a 110mm public sewer pipe that the builders were not made aware of by [the company]”*.
9. This correspondence from Mr Brown and the customer clearly demonstrates their understanding of the situation, which was that the company was responsible for providing information about the location of public sewers. For the avoidance of doubt, the only company plan of sewers in the relevant area that I have seen is a ‘GIS Viewer’ plan dated 8 August 2019. This is after both of the relevant build over agreements. Having considered this plan, I find that the company’s assets, including public sewers, are not indicated anywhere on land in private ownership.
10. A further build over agreement was issued on or about 1 July 2019 based on the new CAD drawings. This consent was once again subject to the company’s specifications, including the requirement to verify the position of the public sewer prior to works on site, albeit worded slightly differently to that noted at para. 6 above and at point 4 of the specifications.

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11. The customer notes with his application that a neighbour extended their property “several years” previously and that the shape, dimensions and position are similar to the customer’s extension; that this “would have required a build-over application” and that the neighbour’s property “connects in-line” to the sewer, which should have put the company on notice of the presence of a public sewer without the customer having to excavate.
12. The customer also raises as an issue the fact that the company’s ‘Asset Location Search’ section was unable to find any record of a public sewer or drain on his property in August, even after the second build over agreement was issued in July 2019, and that this state of affairs was ongoing at the time he commented on the company’s defence. This submission is consistent with the ‘GIS Viewer’ plan I have seen (see para.9 above).
13. The customer also places reliance on an assurance from the company’s ‘Asset Location Search’ section that a “*Buildover Agreement approval should not be a problem*”. It is not clear from the context, however, whether this is because no public sewers are recorded or despite this fact.
14. I also note that the company has made a £50.00 goodwill payment because the customer had to chase the company for updates in respect of his application(s).
15. On the balance of probabilities, I find that the company only became responsible for the majority of shared, now public, sewers on private land in its area in 2011. I further find that for this reason, the company’s mapping of the public sewers for which it is responsible has significant gaps.
16. I find that these facts were communicated to the customer when the company sent out the build over application form and supporting documents, in particular the Booklet, in June 2018. I find that the Booklet and the specification accompanying each build over agreement placed the responsibility for locating public sewers on the customer (see paras.3, 4 and 6 above) and did so in clear language. I therefore find that at all material times the onus was on the customer to locate and confirm the position of any public sewer on his property which might be affected by his planned development. For the avoidance of doubt, I find that the company did not give any guarantees or assume responsibility for identifying the location of the public sewer, verbally or otherwise.
17. It is not clear from the customer’s correspondence whether the neighbour’s extension was built before or after 2011. On that basis, it is not clear whether a build over application would have been required and even had it been, the findings at para.16 above have the effect that customer remains responsible for verifying the location of a public sewer.

18. On that basis and on the balance of probabilities, I find that the company has provided its services to the standard reasonably to be expected. I therefore find that the company is not liable for the increased costs occasioned by the discovery of a public sewer under the customer's extension, and I make no award in this respect or for any inconvenience suffered by the customer. I note that it appears that the public sewer on the customer's property does not yet appear on the Asset Location Search records, but find that this is not relevant to the customer's specific complaint.
19. In the circumstances, I find that no remedies are due.

#### 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 14 November 2019 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



**Christopher Burrows** MA (Oxon)  
Adjudicator

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