

Well connected?

The right to connect to the public sewer

March 2010

In a recent case which will be of interest to developers, sewerage undertakers and local planning authorities, the Supreme Court looked at the nature and extent of the rights conferred by section 106 Water Industry Act 1991 to make connections to public sewers.

Background

Under section 106 of the Act, a landowner has the right to connect into a public sewer, but must, before making the connection, give notice of the proposal to the relevant sewerage undertaker. The undertaker then has 21 days from receiving the landowner's notice to refuse permission to make the connection.

“Under the Act a sewerage undertaker can refuse permission for a connection in limited circumstances...”

Barratt Homes v Welsh Water

The facts of the case were that Barratt Homes had a planning permission for the construction of 98 houses and a school and wished to connect the drains serving the development to the public sewer at one point in the road immediately adjoining a boundary of the development. The relevant sewerage undertaker, Welsh Water, objected to the connection at that point because of the risk of overloading the sewer immediately downstream, but were prepared to permit a connection at

another point about 300 metres away from Barratt's land.

Under the Act a sewerage undertaker can refuse permission for a connection in limited circumstances relating to the mode of construction or condition of the connecting drain.

Barratt 1, Welsh Water 0

The Supreme Court reaffirmed existing case law in confirming that a sewerage undertaker is not permitted to object to a connection on the grounds of overloading the public sewer. Nor were the Supreme Court swayed by Welsh Water's argument that the undertaker could reject Barratt's proposed connection point in favour of another location which would not have the same negative impact on the sewer's capacity.

The Supreme Court's view was that if it had been the intention to give an undertaker control over the location of the connection, in contrast to its condition and construction, Parliament could easily have done so in the legislation.

There was a world of difference between (a) choosing a connection point in one of two sewers at the same crossroads or choosing between a point X and an adjacent point Y on the same sewer and (b) what Welsh Water were offering which was a connection to a sewer at some

distance from the development through an extra length of private sewer to be provided at the developer's cost.

“...developers would not have free rein to require undertakers to satisfy the drainage needs of their developments.”

Related issues

The Supreme Court considered the fact that Welsh Water had not objected to the proposed connection to Barratt within the statutory 21 day limit. Although the Court did not formally decide on this point, clearly the more flexible approach to time limits taken in recent case law found favour. It seems that, had the Supreme Court ruled on the point, public interest could have been a factor in allowing some flexibility in the time limit where Barratt would not have been prejudiced.

The Supreme Court also looked at the impact of its decision on sewerage undertakers and sought to emphasise that developers would not have free rein to require undertakers to satisfy the drainage needs of their developments. Developers would still require planning permission and the Court was of the view this would not normally be given until the planning authority was satisfied that drainage issues could be resolved to the satisfaction of the relevant authorities.

Barratt's planning permission did contain a standard condition that no development should take place until a scheme of foul drainage and surface water drainage had been submitted to and approved by the local planning authority and the approved scheme completed before the buildings were first occupied.

The Court found it hard to see how the approved drainage scheme could have

been said to have been completed until the drains were effectively connected to the public system. However, the County Council had, before this was done and apparently without consulting Welsh Water, issued a notice confirming that the condition had been discharged.

The Court expressed regret that the County Council had neither done more to ensure the drainage works were carried out nor consulted with Welsh Water. Although the Court did not think these issues cast doubt on the efficiency of the whole system or even any light on the correct interpretation of the legislation, the view was expressed that more thought needed to be given to the way planning and water regulation systems operate together to ensure that the various different interests are sufficiently protected.

Barratt Homes Limited v Dwr Cymru Cyfyngedig (Welsh Water) [2009] UKSC13

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