

DRAINAGE LIABILITIES

Whose drain is it anyway! – or – ‘When a blockage occurs’



“The problem started with sewage bubbling out of a manhole in the garden of an 86-year old lady”, reports ISA member, John Maguire.

“The drain served a row of ten houses and the manhole was the last one before the drain changed direction towards the road – no-one wanted to take responsibility”

The Public Health Act 1936 (The 1936 Act)

John Maguire’s experience is commonly encountered when drain leakage occurs and costs of repair are involved. The issues are particularly relevant to advice that a surveyor gives following a survey.

The Public Health Act 1936 (The 1936 Act) is a useful starting point in definitions which are in current use, but introduces some ambiguity.

The 1936 Act defines “drains” as meaning “a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage”

Public sewer

‘Public sewer’ is given the meaning ascribed to it by S20 of The 1936 Act, which in turn refers to the Public Health Act 1885, and whilst more difficult to interpret, is essentially infrastructure which has been adopted formally as a public sewer or one which was built before 1st October 1937 and where responsibility for future maintenance was taken over by the statutory undertaker in accordance with The 1936 Act.

Private sewer

‘Private sewer’ covers the remainder and includes all other drains constructed after 1st October 1937, which have not been ‘adopted’ by a statutory undertaker. Such infrastructure remains a ‘private sewer’, maintainable at the expense of the owner of the premises it serves until its point of junction into a ‘public sewer’ wherever that might be.

Water Industry Act 1991: Adoption of new estate systems

Section 104 of the *Water Industry Act 1991* currently makes provision for estate drainage infrastructure to be adopted by the statutory undertaker, subject to certain standards being met. But nothing should be taken for granted.

Uncertainty of sewerage infrastructure plans in HIPs

Water and sewerage undertakers publish infrastructure maps showing the location of drains for which they are responsible. Such plans are required to be included in the Home Information Pack (HIP) but very often the document shows only the main branches of the managed systems. Lack of precise information leads to uncertainty over the extent of a home-owner’s liability to maintain or contribute towards maintenance of the system which connects the premises with the ‘adopted’ drains admitted by the infrastructure plan.

Reluctance to admit responsibility

Local Authorities and statutory undertakers which are now privatised, are particularly coy about their responsibilities towards maintenance: For example, Dudley Metropolitan Borough Council offers challenging advice that ...”*if a sewer is not shown on the Public Sewer Map it will be assumed private unless you can prove otherwise ...*” Other councils and statutory undertakers take a similar approach.

<p>Summary</p>	<p>The established concepts are:</p> <ol style="list-style-type: none"> 1. that all drains serving single premises are maintainable at the expense of the owner of that premises up to the point of connection with the sewer shown on the public map; 2. houses built prior to 1.10.1937 connect into a public sewer where the drains from two or more houses merge; 3. houses built after 1.10.1937 connect into private sewers where two or more drains merge and are jointly or severally responsible for maintenance of the common drain until it joins with the public sewer. <p>http://www.dudley.gov.uk/transport-and-streets/street-care-and-maintenance/drainage</p>
<p>Dispute potential</p>	<p>The present arrangement is clearly unsatisfactory from the point of view of owners of homes erected after 1.10.1937 and has led to disputes with neighbours, difficulties in proving easements and high costs when repairs are required.</p>
<p>Insurance for reinstatement</p>	<p>Adding to the problem is the reluctance of domestic insurance companies to pay out in instances where a drain suffers damage which can be attributable to ‘wear-and-tear’ (pitch-fibre systems etc). Any home-owner needs to be careful and should be advised to check that the domestic insurance policy is not subject to exclusion clauses on subsidence, tree root damage and heave. Useful advice on insurance cover and insurers to avoid can be found at</p> <p>http://forum.moneysavingexpert.com/showthread.html?t=875599</p>
<p>DEFRA estimates</p>	<p>The department for the Environment, Farming and Rural Affairs (DEFRA) estimates that up to 50% of properties in England and Wales are connected to a private sewer which is the maintenance obligation of the property owner – potentially involving around 200,000km of drains. The liability often extends beyond the boundary into the highway and has been a major cause of dispute between property owners, their local authorities and the utility companies.</p>
<p>Press release of proposals for automatic adoption</p>	<p>In an effort to ease the difficulties and share liability and expense of ownership, a press release from DEFRA on 15 December 2008 stated that, from 2011 private sewers and lateral drains are to be transferred to the water and sewerage companies who will thereafter be responsible for their maintenance. The cost of transfer will be met by an increase in the sewerage element of bills across the nine sewerage companies.</p> <p>Legislation will require all new sewers/drains connecting to the public sewerage network to be built to a specified standard to allow automatic adoption as part of the public network.</p>
<p>Timing for legislation</p>	<p>Despite good intentions on the part of HM Government, details on the exact timings, phasing and extent of transfer have yet to be decided.</p>
<p><u>ISA recommends</u></p>	<p>Until responsibilities for private drains and sewers have been transferred to the statutory undertakers, ISA recommends its members to alert clients purchasing premises connected to mains drainage to:</p> <ol style="list-style-type: none"> 1. Pay attention to the sewerage plan within the Home Information Pack, particularly the location of the ‘maintained’ sewer in relation to the dwelling. 2. Advise the conveyancer to ascertain easements if the maintained sewer is not within, or contiguous to the boundary of the plot, 3. Assume that the system is a private drain or sewer so far as those parts of the system which lie outside the plot. 4. Ensure that when advising on reinstatement costs for insurance purposes the extent of private drainage is taken into account in the value advised 5. Establish, so far as possible, where the private system connects into the maintained sewer. 6. Recommend scans of private drains and communal private sewers by closed circuit television camera (CCTV) to confirm condition and to identify any defects likely to involve excavations and early replacement. This is of particular importance where drains are elderly, pass under walls, habitable accommodation or trees, or are difficult to access with mechanical plant, and costs of repair or replacement might be abnormally high.

<p>A happy outcome</p>	<p>John Maguire reports how it took over a week to fix the problem he was dealing with: <i>“We resolved it by contacting Environmental Health who, after a false start, decided it was not their problem. Eventually Anglia Water came out and pumped out the drains to discover damage where the private sewer under the road, three metres down with a water main in the way. The road, a busy edge of town route was closed for a week”</i>.</p> <p>On this occasion the work related to a public sewer and, to everyone’s relief, was met by the statutory undertaker. If it had related to a private drain or sewer, the users of that system could have been charged for the work: <i>“How on earth do you get the owners, particularly buy-to-let owners or elderly persons on fixed incomes to pay for the cost of work?”</i> asks John Maguire.</p>
<p>Survey reporting</p>	<p>Many water companies do offer an insurance policy to cover work on drains and water systems. <i>“I have not, until now, stressed in my reports the importance of drainage or water services insurance protection”,</i> says John, <i>but this is now proving to be good advice, particularly for drains constructed after 1 October 1937 and where ownership is in doubt. Other surveyors might wish to consider incorporating the recommendation in their own reports, following my experience.”</i></p>
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