



PRIVATE WATER SUPPLIES – CASE STUDY 2018/03

Private water supply dispute and disconnection threat

This case study concerns a private water supply which originates from a well and supplies a house, and a downstream rented property constituting a Regulation 9 supply. Occupants of the downstream property believe that their supply of water is granted by a “Deed of Easement” dated 1973 which entitles them to a free supply of water through a pipe from the land owner’s premises to their property, which also allows them access onto this land to maintain a pump and carry out any other necessary maintenance and repairs. They also claim that the historical nature of the arrangement has conferred additional rights over this water supply by prescription.

Following unrelated disagreements and disputes between the relevant persons involved, the land owner decided he wished to terminate this private water supply. In order to secure the supply while the matter was being explored, the local authority served a Section 80 Notice, using their discretionary power under the Water Industry Act 1991, in March 2018, on the grounds that the supply was “likely to become insufficient”. The Notice required the land owner to continue with the private water supply, giving the downstream property “reasonable” time to find an alternative supply.

In April 2018, an appeal to the Notice was received from the downstream consumers. Their objections to the Notice were based on the belief that their deeds entitled them to a continued supply and therefore an alternative was not required. They asserted that intentionally terminating a wholesome supply (that was otherwise not a failing or unwholesome water source) was outwith the scope of Section 80. They indicated their intent to seek an injunction to prevent the disconnection.

Objection or representations in respect of a Section 80 Notice are heard by the Chief Inspector of DWI (on behalf of the Secretary of State). Under Section 81 of the Act, he/she must consider whether the Section 80 Notice served by the council should be confirmed (with or without modifications) or not. If the Notice is confirmed, he may modify the relevant person(s) on which the Notice was served or any other aspect of the Notice (e.g. timeframes, remedial steps etc.). The Chief Inspector concluded that the most appropriate way to deal with this matter was by written representation.

The occupier of the downstream property believed that the obligations or entitlements arguably afforded to them by a deed of easement on the premises prevented the land owner from taking the proposed actions to terminate the supply. In consideration of the appeal, the Chief Inspector concluded that determining a civil dispute and land rights are outwith the scope of the DWI. In this instance the Local Authority required the supplier to continue supply for a reasonable period of time until the occupier could source an alternative. The Notice was therefore upheld but advised all parties to seek legal advice. At this point in the process there is no right of further appeal. The Chief Inspector's overriding priority must be to ensure that a wholesome and sufficient supply is maintained.

The occupier of the downstream property, sought legal advice and initiated a Judicial Review of that decision. Judicial Review (JR) is the process where a judge reviews the lawfulness of a regulation, or action of a person or body exercising a public duty; in this case the decision to uphold the Notice by the Chief Inspector. In considering if the matter be subject to JR the presiding judge deemed that there was sufficient grounds to consider any easement or deed when considering a supply of water. As a result the supplying property must continue to supply water under the terms of the easement. To cease supply therefore would require a civil application to remove the easement.

The case highlights the impact of disputes between relevant persons involved with private water supplies where the origin of the dispute may have little to do with the supply itself and also the importance of establishing roles and responsibilities for any future maintenance or improvements to these assets. Establishing roles may well need to apportion responsibility for maintenance, provision of a supply and costs incurred by the local authority before any appeal can be fully considered.