



PRIVATE WATER SUPPLIES – CASE STUDY 2012/4

Appeal against a Section 80 Notice

This case study relates to a private water supply located in a rural area, which comprised a borehole supply serving two networks. An unmetered network served the owner's property and an adjacent cottage, while a separate metered network supplied a third property which, in turn, supplied a number of other properties, some of which were holiday lets. The metered supply was billed at an amount equivalent to the local water company's rates and the non-metered bill was calculated using the local water company's standing charges based on the rateable value of the property. All of the property deeds or Land Registry records set out the rights to a supply of water based on local water company charges, however, since then the demands on the supply had increased significantly due to the addition of holiday cottages and a swimming pool. Most of the properties had point of use treatment for iron removal, due to the source water being rich in iron, and these devices were maintained by each of the property owners. However, when the supply owner had to replace the borehole pump and he invoiced each user for a proportion of the costs, not everyone agreed to contribute.

A sample taken by the local authority in 2011 identified high levels of manganese and the local authority recommended that manganese removal treatment be installed at the source. The owner doubted whether he would be able to recoup the cost of this improvement work from the users, so instead he wrote to them advising that he planned to terminate the supply at the end of the year. On being made aware of this written notice of termination of supply the local authority put in place a Notice under Section 80 of the Water Industry Act on the grounds of insufficiency, there being no alternate water supply available to some of the users. The owner lodged an appeal against this Notice, which was heard by the Chief Inspector of Drinking Water (acting on behalf of the Secretary of State) who agreed after reviewing the papers that the appeal would be by means of a meeting between the parties (owner and local authority). The other users were kept informed of what was happening by the local authority.

During the appeal meeting, the Chief Inspector identified a few factual issues with the Notice. For example, while the supply had correctly been identified as a Regulation 9 supply due to the presence of holiday lets, the Notice should only have required the owner of the private supply to provide water for domestic purposes, it should not have included non-domestic use such as the swimming pool. The Notice did not contain a date by when the works should be completed, and it also required the owner to provide a sufficient supply of water at all times and failed to acknowledge that this may not always be possible, for example in emergency situations such as



burst pipes, pump failure etc. This situation needed to be recognised by a requirement on the owner to have contingency arrangements in place in line with the Inspectorate's guidance *Provision of alternative supplies in emergency and non-emergency situations*, see <http://dwi.defra.gov.uk/stakeholders/guidance-and-codes-of-practice/pws-alt-supplies.pdf> for details.

The outcome of the appeal was that the Notice was confirmed with amendments. The local authority had provided satisfactory evidence of a threatened insufficiency situation that needed to be addressed by requiring the owner to enter into new binding agreements with each user setting out the specific responsibilities of each party for both domestic and non-domestic supplies, including the basis of charges for operation and capital maintenance or supply improvements. Following the appeal the local authority carried out a risk assessment to ensure that any other risks in need of mitigation were included in the amended Section 80 Notice. Subsequent to the appeal, some users arranged to be connected to the local public mains supply and others chose to drill new boreholes on their own land. The remaining users entered into new agreements with the supply owner.

The appeal process was beneficial to all the parties: local authority, supply owner and users. The owner felt that he had been given the opportunity to explain his supply situation to someone who was impartial and knowledgeable on water supply matters. The local authority gained a greater understanding of how the Section 80 powers available within the Act can be applied to resolve private supply disputes in a cost effective way. Users of the supply realised that it was necessary for them to either engage constructively with the supply owner or otherwise take steps to furnish themselves with a new or alternate supply.

