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## PRESS SUMMARY

### **Barratt Homes Limited (Respondents) v Dwr Cymru Cyfyngedig (Welsh Water) (Appellant)** **[2009] UKSC 13**

*On appeal from the Court of Appeal (Civil Division) [2008] EWCA 1552*

**JUSTICES:** Lord Phillips (President), Lord Saville, Lord Walker, Lady Hale and Lord Clarke

### **BACKGROUND TO THE APPEAL**

The Respondents, Barratt Homes Limited, were engaged in building a substantial development of homes and a primary school in Llanfoist, near Abergavenny in Monmouthshire. They sought to exercise the right of a property owner under s 106 Water Industry Act 1991 to connect the drains to the public sewer at a point close to the development. The appellant sewerage undertakers, Welsh Water, argued that it was entitled to insist on a connection at point some 300m further downstream, as the sewer did not have the capacity to deal with the increased load until that point.

Welsh Water succeeded in the High Court but the decision was reversed on appeal and Barratt Homes made the connection at the place of its choice. Welsh Water pursued an appeal to the Supreme Court, seeking to establish that s 106 gave a sewerage undertaker the right to refuse to permit connection to the public sewer at an unsuitable point.

### **JUDGMENT**

*The Supreme Court dismissed the appeal (Lady Hale dissenting). The judgment of the majority was given by Lord Phillips.*

### **REASONS FOR THE JUDGMENT**

- The exercise of the right of a property owner to discharge into a public sewer pursuant to s 106 Water Industry Act 1991 ('the 1991 Act') was an absolute right which could not be prevented on the ground that the additional discharge would create a nuisance. That was for the sewerage undertaker to deal with [paras 23-26]. The right to object to the 'mode of construction' in s 106(4) did not extend to the point of connection [para 32]. It was significant that in nearly a century and a half since the first enactment conferring this right was passed, this was the first dispute between an owner and sewerage undertaker as to the point of connection to a public sewer to have reached the courts [para 38].
- The real problem behind the dispute in this case lay in the requirement to give only 21 days' notice to a sewerage undertaker before exercising the absolute right in s 106. This was manifestly unsatisfactory in relation to a development which in this case would add 25% or more to the load on the public sewer [para 41]. The only way to achieve a deferral of the

right was through the planning process, in which both the sewerage undertaker and OFWAT should be consulted. More thought might need to be given to the interaction of planning and water regulation systems under modern law to ensure that the different interests were adequately protected [paras 57-58].

- The 21 day limit for refusing applications to connect to the public sewer in s 106(4) was mandatory, in view of the fact that it was a criminal offence to connect a drain after such notice had been given [para 62].
- Lady Hale would have allowed the appeal on the construction of s 106(4). The legislative history led her to conclude that Parliament had not intended to cut down the scope of the local authority's power to control the place and manner of connection in the Public Health Act 1936 (the predecessor to the 1991 Act), while leaving the position in Scotland unchanged [para 73]. The words 'mode of construction or condition' in s 106(4) should be interpreted as including the place of connection to the public sewer [para 79].

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)**