

5 February 2019

Trust in water

**Proposal to grant a variation of
appointment to Albion Water
Limited to enable it to provide
sewerage services to a site called
Knowle Water Meadows**

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1. About this document

Subject to certain issues being resolved and subject to responses to this consultation, we propose granting a variation of appointment to Albion Water Limited (“**ALB**”) as a sewerage company and varying the appointment of Southern Water Services Limited (“**SRN**”) as a sewerage company. This notice is a consultation on this proposal under section 8(3) of the Water Industry Act 1991 (“**WIA91**”).

The consultation period will last for 28 days from the date of publication of this notice. Having considered any representations submitted during the consultation period in response to this consultation notice, Ofwat will decide whether or not to grant the variation of appointment set out above.

2. The Site

ALB has applied for a variation to its appointment to be able to provide sewerage services to a site called Knowle Water Meadows (“**the Site**”).

The Site is adjacent to the existing Knowle Village site already served by ALB following its initial appointment in 2008. If granted, ALB will provide sewerage services to 200 household customers on the Site.

Site boundary maps can be viewed in section 8 of this document.

The Site is within the sewerage services area of SRN. ALB proposes to provide sewerage services to the Site by using its existing infrastructure, including its sewerage system and sewage treatment works, constructed to serve the adjacent development.

An application for planning permission has been submitted and it is currently under consideration.

ALB is in discussions with the Environment Agency on extending the existing permit for the treatment works serving the original development, to cover the Site that is the subject of the current application. We deal with issues arising from these discussions in paragraph 6.6 below.

ALB has advised that the Site is likely to be fully built out by 2023.

3. The applicant

In May 1999, ALB obtained its first appointment as a water undertaker, to supply water to Shotton Paper, in Dŵr Cymru's area of appointment.

ALB obtained its first appointment as a sewerage undertaker in February 2008, becoming the sewerage undertaker for a new development called Knowle Village, which was built on the site of a former hospital near Fareham, Hampshire. The development consisted of around 725 household and business premises. In order to serve customers on the site, ALB adopted the private sewerage system and on-site sewage treatment works constructed by the developer as part of the development.

Since then, ALB has obtained three further variations to its areas of appointment

- Rissington, Gloucester in August 2013
- Further variation at Rissington, December 2013
- Five Oaks Lane, Chigwell in January 2016

In July 2016, ALB's water supply area was varied to remove the Shotton site from its area of appointment. By consent, this site was transferred to Albion Eco.

The register of new appointments and variations can be viewed [here](#).

4. The proposal

Ofwat proposes to:

- grant a variation of appointment to ALB as a sewerage company; and
- vary the appointment of SRN as a sewerage company by excluding the Site from its sewerage services area.

By means of the above, ALB will become the sewerage services supplier for the Site.

5. Our approach to the assessment of this application

The new appointment and variation mechanism, set out in primary legislation¹, provides an opportunity for entry and expansion into the water and sewerage sectors by allowing one company to replace the existing appointee as the provider of water and / or sewerage services for a specific area. This mechanism can be used by new companies to enter the market and by existing appointees to expand their businesses.

When considering applications for new appointments and variations, Ofwat operates within the statutory framework set out by Parliament, including our statutory duty to protect consumers, wherever appropriate by promoting effective competition. In particular, in relation to unserved sites, we consider that we must ensure that the future customers on a site – who do not have a choice of supplier – are adequately protected. When assessing applications for new appointments and variations, the two key policy principles we apply are that:

- customers, or future customers, should be no worse off than if the site had been supplied by the existing appointee; and
- Ofwat must be satisfied that an applicant will be able to finance the proper carrying out of its functions as a water and/or sewerage company.

We clarified these two policy principles in February 2011 when we published our New appointments and variations – [policy](#) and [process](#) documents. In November 2012, we published our '[Statement on our approach for assessing financial viability of applications for new appointments and variations](#)'. This states that we will adopt a company-based assessment of financial viability, rather than a detailed site-based assessment, where it is appropriate to do so.

When we assess whether customers will be no worse off as a result of the appointment, we not only consider the customers on the site but also the generality of customers – ie customers of the existing provider and customers more generally across England and Wales, who in our view benefit from the effective operation of the new appointment and variation mechanism.

¹ The legal framework for new appointments is set out in the WIA91. Section 7 of the WIA91 sets out the criteria by which an appointment or variation may be made. Section 8 sets out the procedure for making that appointment or variation.

6. The application

ALB has applied to be the sewerage company for the Site under the unserved criterion, set out in section 7(4)(b) of the WIA91.

6.1 Unserved status of the Site

To qualify under the unserved criterion, an applicant must show that at the time the appointment is made, none of the premises in the proposed area of appointment is served by the existing appointee.

The Site is a greenfield, undeveloped area of land. There are no buildings on the Site and there is no history of development on the Site. Aerial photographs indicate that the Site currently consists of open fields.

The landowner instructed an independent consultant to undertake a “Preliminary Utilities Appraisal” on the Site. The appraisal concluded that the incumbent, SRN, does not have infrastructure in close proximity to the development, nor running under the development. Further, if SRN was to provide sewerage services to the Site, a new sewer over 2 kms in length would need to be constructed. SRN has confirmed that it does not have any assets within the proposed boundary of the Site, and that the Site is unserved.

Given the information provided by the application and by SRN, we consider the Site to be unserved.

6.2 Protecting customers

Ofwat acts to protect consumers, especially those who are unable to choose their supplier. In assessing applications to supply new development sites, Ofwat acts on behalf of both existing customers as well as potential new customers who are not yet on site, to protect their interests. The fact that future customers on a site have not directly chosen their supplier is not a position unique to new appointments and variations – only business, charity and public sector customers (“Business Customers”) in England and Wales are able to choose their supplier².

² The majority of Business Customers where the area of the relevant appointed company is not wholly or mainly in Wales (and whose premises are, or are likely to be, supplied with at least 50 MI where the relevant area is wholly or mainly in Wales) can effectively switch suppliers of water and/or sewerage from 1 April 2017.

Recognising this, our assessment of an applicant's proposals includes analysis of its plans to ensure customers will be at least no worse off in terms of their annual bills and levels of service than if they had been supplied by the existing appointee in whose geographical area the relevant site sits. We will continue to protect customers on a site by regulating the new appointee's prices and service levels.

6.3 Price

ALB proposes to match the charges of SRN to customers on the Site.

6.4 Levels of service

Every appointee is required under its conditions of appointment to publish and make available Core Customer Information for its household customers. We have assessed ALB's proposed Codes of Practice and Customer Code, and our view is that these are of an appropriate standard. Our view is that customers on the Site would be no worse off in relation to the points covered by the above Codes of Practice and the Customer Code than they would be if SRN were to be the customers' sewerage services supplier.

6.5 Site owner choice

ALB has the consent of the landowner of the Site, Homes England, to become the sewerage services provider.

6.6 Environment Agency (EA) and Drinking Water Inspectorate (DWI)

We take the views of these organisations into account before progressing to formal consultation on an application for a new appointment. Both the EA and DWI have been in contact with us regarding this application³. The DWI has informed us that they are content for us to consult on the application.

The EA confirmed that it is supportive of the application in principle, and that it is content for the application to be publicly consulted on, but that further information is

³ The Environment Agency and the Drinking Water Inspectorate will also be formally consulted on the proposals, as they are on the list of organisations which must be formally consulted as set out in section 8(4)(b) of WIA91.

required before it recommends approval. We set out the outstanding issues below. We have decided to consult notwithstanding that these issues remain unresolved but we will not grant the application unless we are satisfied that there is a valid discharge permit in place for the Site.

The EA has two concerns. The first is that the existing discharge permit for the treatment works is old, needs updating and does not represent the actual discharge location. The permit to discharge was issued in 1963, with a minor variation in 1979. The EA has said it requires an Agreement in Principle with ALB to resolve these issues with the permit before the permit can be used to supply the 200 additional properties on the Site.

The EA's second concern is an outstanding dispute between a third party and ALB on the discharge location. The current discharge is onto a field adjacent to the River Meon which then filters across the land and into the river. The third party is the owner of the land over which the discharge takes place and is objecting to the arrangements for discharge. In particular, the parties dispute that there was an agreement in perpetuity giving ALB the right to discharge.

The EA is seeking Agreement in Principle with ALB, which is aimed at resolving issues with the existing permit variation, including the discharge location.

6.7 Incumbent's existing customers

In considering whether customers will be no worse off, we also considered the potential effects of this variation on the prices that SRN's existing customer base may face.

The calculation necessarily depends on a range of assumptions, and there are clearly difficulties involved in quantifying the effect. It is therefore necessary to use a simplified set of figures. We have expressed the effect in 'per bill' terms to try to quantify the possible effect in an easily understandable way.

We have assessed the potential magnitude of this impact by comparing how much SRN might have expected to receive in revenue from serving the Site directly, were they to serve the Site, with the revenues they might expect from the proposed arrangement with ALB.

We estimate a potential £0.001 annual increase on the sewerage bills of existing SRN customers if we grant this variation to ALB. This is once the Site is fully built out.

This estimate does not take into account the potential spill-over benefits to customers arising from dynamic efficiencies achieved as a result of the competitive process to win sites.

Therefore we consider that granting this variation to ALB would have a very small financial impact on customers' bills and could have potential benefits for customers.

6.8 Ability to finance and properly carry out its functions

We have a statutory duty to ensure that efficient appointees can finance the proper carrying out of their functions. When a company applies for a new appointment or variation, it must satisfy us that it is able to carry out all of the duties and obligations associated with being an appointed water or sewerage company.

The Site is adjacent to a previously granted site and ALB proposes to serve the Site with its existing infrastructure. As the Site will be operated 'as one', we have considered the revenues and costs of the entire Site should this variation be granted. Our financial analysis is that, as the initial application to serve 725 premises (the original site) was previously considered to demonstrate sufficient financial viability, the additional 200 houses is likely to improve the financial viability of the site as a whole.

Following our review, which considered the standard analysis and the specific risks associated with the Site, we consider that the risk of this Site not being financially viable is small. As a result, we are currently satisfied that ALB would be able to finance its functions if the variation is granted.

7. Conclusion and next steps

In assessing ALB's application, we have considered the general benefits of new appointments. Our view is that our two key policy principles would be met in this case, as customers would be no worse off, and ALB would be able to finance, and carry out, its functions. We have also considered the effects on SRN's existing customers of granting this application

We are currently minded to grant the variation under the unserved criterion. We are consulting on our proposal to do so.

Where to send submissions

Any person who wishes to make representations or objections with respect to the application should do so in writing to Chris Daly at Centre City Tower, 7 Hill Street, Birmingham, B5 4UA or by email at chris.daly@ofwat.gsi.gov.uk

Representations must be received by Ofwat no later than 17.00 hours on 5 March 2019. Further information about how to make representations or objections, including information on the treatment of confidential information, can be obtained from Ofwat at the above address or at <http://www.ofwat.gov.uk/foi/>

Ofwat will only use the information you have provided for the purpose of this consultation. We will retain your information in accordance with Ofwat's retention schedule and will not share with third parties unless we have a legal obligation to do so. For further information please see Ofwat's Privacy Policy in our [Publication Scheme](#).

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7533
Website: www.ofwat.gov.uk
Email: mailbox@ofwat.gsi.gov.uk

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