

FOUL UP

General Information

Background

Eau2 is a French owned water company that has recently acquired a large company that provides water and sewage services throughout the Midlands and North of England. Prior to their acquisition, the UK water company sold off several redundant water treatment works and pumping stations as brown-field sites for housing development. One such site was a ten acre area on the outskirts of Leeds which was purchased by Brownfield Developments Ltd (BDL). The contract of sale included several conditions, the main ones being;

- BDL had total responsibility for the remediation works, which were significant. A depth of contaminated soil of between two and four metres had to be removed from two thirds of the site.
- BDL had to reserve a sewer corridor ten metres wide across the site in favour of Eau2. The sewer was a 1.5 metre diameter tunnelled sewer that served a significant area of Leeds and was approximately six metres under the surface level. The line of the sewer was shown on the contract documents which was in turn drawn from the Water Authority record drawing.

The remaining conditions were not significant to this mediation.

BDL obtained planning approval for 100 houses, some of which were social housing, and sold on most of the site to a large housing contractor for £6million with a further share in the eventual sale profits. The balance of the site was sold to a Housing Association for a much lower figure.

BDL carried out the remedial works, removing and replacing thousands of cubic metres of contaminated soil, and constructed the site infrastructure (access roads, services and sewers) within eight months of obtaining planning approval. The housing contractor moved in and houses started appearing at a rapid rate. Until a year ago.

Because the site had been filled, albeit in consolidated layers, the housing contractor elected to construct the house foundations on short bored piles. The alternative was a reinforced concrete raft foundation but piles were found to be more economical. BDL had clearly marked the route of the tunnel sewer and the housing contractor steered well clear of the corridor. Unfortunately, the tunnel sewer was not in the position marked and the piling contractor managed to bore straight through the sewer, causing havoc to the sewer drainage of a considerable area of Leeds.

The Water Authority and BDL worked closely to minimise the damage, installing three powerful pumps to divert the flow from the damaged sewer overground to the next collecting manhole, some 90 metres overall. In the end it was agreed that a new sewer

would be constructed in the correct position and this was done and completed at BDL's expense four months ago, around the time of Eau2's acquisition of the Water Authority.

The dispute

On completion of the sewer works, BDL made a claim against the Water Authority, now Eau2, in the sum of £829,569 plus interest and costs, on the grounds that the Authority had provided incorrect information on the position of the sewer. Briefly, the claim was built up as follows:

Net cost of new sewer	587,984
BDL direct costs	98,000
BDL indirect costs	103,197
Sundry costs	<u>40,388</u>
Total	£829,569

For the purposes of this mediation the net cost of the new sewer is not contested. The BDL direct costs of supervision, security, safety and on site support staff is also not seriously contested. The BDL indirect costs (which are calculated at 15%) cover head office overheads and profit and Eau2 would challenge the level of this charge and the sundry costs on the basis that they duplicate some of the other charges.

However, Eau2 are not contesting the charges because they deny responsibility. The record drawing, from which the sale contract drawing was prepared, had a disclaimer note stating that the Authority would not warrant the position of the sewer and that the actual position should be checked. BDL had been provided with a copy of this drawing prior to contracts being signed.

BDL have never been involved in litigation or arbitration and so have not commenced proceedings (yet). Instead they offered mediation to Eau2 who have, whilst still denying liability, consented on the advice of their lawyers.

Attending the mediation

BDL Managing Director
BDL Contracts Director
External lawyer

Eau2 UK Director
Ex-Water Authority Regional Manager (now a Consultant)
Eau2 UK head of legal services

Mediator(s)

David Richbell
March 2007