

Anglian Water's Self-lay Agreement Land Rights Criteria

March 2020

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1.0 Introduction

- 1.1 Since 2003, developers have been able to construct water mains and make connections by using their own accredited contractors¹. To do this, the developer and that contractor, often known as a “self-lay organisation” or “self-lay provider” is required to enter into an agreement with the water company. In August 2018, following changes in the law, Ofwat issued a code in relation to these sorts of agreement². That code required companies to work with developers and self-lay providers to create common sector guidance and a model adoption agreement for use in the water self-lay process. Those documents were finalised in 2019 and approved by Ofwat.
- 1.2 The Model Adoption Agreement, which will be used by all water companies, permits them to issue what are known as “Land Rights Criteria”. These set out the water company’s reasonable requirements for land rights, which the developer and/or self-lay provider must provide in relation to the self-lay works. The land rights may be provided direct to the water company, or procured from a third party in the water company’s favour. Land Rights Criteria are not intended to include access to the works during the building phase, as this is covered elsewhere in the Model Adoption Agreement.
- 1.3 This document sets out what land rights are required by Anglian Water and when.

2.0 Land Transfers

2.1 When a land transfer is needed

- 2.1.1 Land transfers are required where the adoptable works includes any sort of permanent compound, such as a water booster station, or (in rarer cases) a defined multiple valve and/or wash-out compound.

2.2 Layout of the land

- 2.2.1 The boundaries of the land to be transferred must be fenced with 1.8 metre high wire mesh fencing on crank topped concrete posts with three strands of barbed wire above. However, we will accept different types of fencing if this is appropriate to match the surrounding area or to comply with planning conditions, provided it is no less secure.
- 2.2.2 Layout must be in full compliance with any planning conditions applicable to the transferring.
- 2.2.3 The size of the compound must be large enough and the layout designed to accommodate the entry and parking of a light goods.

¹ In accordance with section 51A of the Water Industry Act 1991

² In accordance with section 51CA of the Water Industry Act 1991

2.3 Access

2.3.1 The land must adjoin a public highway or expressly confer on Anglian Water a right of way between the transferring land and such a highway. The public highway or any right of way must be suitable for light commercial vehicles. Such a right of way may be devolved from the existing title or newly granted in the transfer, but in either case it must be a legal easement appurtenant to and expressed to be for the benefit of the transferring land. Anglian Water will accept a prescriptive easement (whether based on common law, lost modern grant or statute), provided adequate evidence is provided to support.

2.4 Title

2.4.1 Title to the land, including any access way, must be freehold title absolute or a term of years absolute satisfying all of the requirements of section 153 of the Law of Property Act 1925. Title to the land must be free of any financial charge and of any easement or covenant that inhibits in any way the use of the land or any access to it for its intended purpose. If there are such charges, easements or covenants, then these must be released with respect to the transferring land on or before transfer.

2.5 Format of the transfer document

2.5.1 The transfer must not impose any new covenant in favour of the transferor, nor except or reserve any easement or other right of any kind. If a right of way over land lying outside the boundary of the transferring land is to be granted in favour of Anglian Water, however, it is acceptable to declare that such rights are granted in common with the transferor and any other person so entitled.

2.5.2 The transfer must be made with full title guarantee, although we will accept transfers made with limited title guarantee where the transferor is a trustee, attorney, personal representative, mortgagee-in-possession, or receiver acting in that capacity. No amendments to title guarantee may be made, except by way of acknowledgement that the transfer is made subject to incumbrances on the title that have been shown to Anglian Water by the transferor.

2.5.3 The transfer must also contain the following declaration:
“It is hereby agreed and declared that this Transfer of the Property shall not vest in Anglian Water Services Limited any water main, service pipe or accessories thereto on, over or under the Property provided however that the same may vest in Anglian Water Services Limited as part of any vesting of water mains, service pipes, or accessories thereto in accordance with any agreement under section 51A of the Water Industry Act 1991 and until such time the obligations set out in any such agreement shall remain unimpaired and fully enforceable.”

2.6 Costs

2.6.1 The developer and self-lay operator are to bear their own costs in relation to the transfer, including the transferor's solicitor's costs and any costs incurred in ensuring the transfer complies with the Land Rights Criteria. The transfer is also required to be at no cost to Anglian Water and the developer and self-lay operator will be required to pay Anglian Water's reasonable legal fees for completion of the transfer and registration at HM Land Registry.

2.7 Identity of the transferor

2.7.1 Provided that the transferor is legally competent to confer absolute freehold title or a term of years absolute complying with paragraph 2.4, the transferor may be the developer, the self-lay operator or any other party whatsoever.

3.0 Easements

3.1 Generally

3.1.1 An easement is a right attaching to land, that right most commonly being one of access or passage of people, vehicles or materials. Generally speaking, Anglian Water does not require any easements to the extent that it can exercise statutory rights without limitations, such as the consent of persons affected.

3.2 Protected undertakings and the Crown

3.2.1 Broadly speaking, Anglian Water may not exercise a statutory power over a protected undertaker in a way that interferes injuriously with that party's works or undertaking, without its consent. That consent may not be withheld unreasonably, but it may be given subject to reasonable conditions. In these circumstances, an easement is required.

3.2.2 Undertakings that are protected under statute³ are, broadly speaking, those of:

- the Environment Agency;
- the Civil Aviation Authority;
- the Coal Authority or any licensed coal operator;
- Royal Mail;
- any other water or sewerage undertaker;
- any undertaking that provides an electronic communications network;
- any airport regulated by the Airports Act 1986 and air traffic control
- undertakings licensed under the Transport Act 2000;
- any gas supplier under the Gas Act 1986;

³ More particularly, section 183 and Schedule 13 of the Water Industry Act 1991

- an undertaking authorised to generate, supply or transmit electricity under the Electricity Act 1989;
- any navigation, harbour or conservancy authority;
- any Internal Drainage Board;
- any railway undertaker; and
- local authorities, but only in respect of *utilities* carried on by *statute*.

3.2.3 As for the Crown, Anglian Water cannot exercise statutory powers over the Crown's private land, due to Crown immunity, but that immunity does not extend to private or public streets owned by the Crown. The Crown may appear in a number of guises, for example a government department, the Duchy of Lancaster or Duchy of Cornwall, or the Crown Estate.

3.2.4 Where a protected undertaker is entitled to exercise its right to protection against Anglian Water's exercise of statutory powers, or the Crown entitled to exercise immunity, but is nevertheless willing to give conditional consent, this consent usually takes the form of an easement.

3.3 Requirement for an easement

3.3.1 Anglian Water requires an easement where the adoptable works include any assets that are water mains, service pipes or accessories to either, where its ability to exercise statutory powers are subject to protected undertaking provisions or Crown immunity. The statutory powers referred to are:

- keeping the asset in its installed position;
- inspecting, maintaining, adjusting, repairing or altering any asset; and
- carrying out any works requisite for, or incidental to, the purposes of the above works.

3.4 Terms of easement

3.4.1 Model provisions are set out in the appendix to this document.

3.4.2 The terms that the various protected undertakers offer vary moderately. We will not accept:

- any easement that is terminable; nor
- any easement at a fine or premium or any periodic payment in any case payable by Anglian Water.

3.4.3 "Lift and shift" provisions, meaning the right of the grantor to have Anglian Water alter the route or other attributes of the adoptable asset, will only be accepted if their conditions match the equivalent statutory provisions⁴. Broadly speaking, this

⁴ Being those set out in section 185 of the Water Industry Act 1991

means that the cost of the alteration is borne by the person requesting it, and that Anglian Water may not be required to make the alteration to the extent that the requirement is unreasonable.

- 3.4.4 If the terms do not match our model provisions in substance or meet these additional requirements they may not be sufficient for Anglian Water's requirements.

DARRELL CRITTENDEN
REGULATION SOLICITOR

JENNIFER HARRIS
PROPERTY SOLICITOR

March 2020

Appendix - Model easement provisions

DATE 20

ANGLIAN WATER SERVICES LIMITED

- and -

DEED OF GRANT

In relation to:

Title Number:

Anglian Water Services Limited
Legal Department (Property)
Lancaster House, Lancaster Way,
Ermine Business Park, Huntingdon,
Cambridgeshire PE29 6XU
Tel: 01480 323000
Fax: 01480 323288
Date:
File Number:

THIS DEED OF GRANT IS DATED

AND MADE BETWEEN:

The Grantor:

The Grantee: **ANGLIAN WATER SERVICES LIMITED** whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6XU (company registration number 2366656)

1. Definitions

Plan means the plan annexed to this Deed

Dominant Tenement means the land described in the First Schedule

Servient Tenement means the Land Described in the Second Schedule [and registered at HM Land Registry under title number []]

Pipe means a pipe having a diameter of [] millimetres for the transmission and storage of water and all apparatus necessarily and reasonably ancillary to it

Protected Strip means a strip of land [] metres wide with the Pipe at its centre

Rights means the easements and rights set out in the Third Schedule

2. Grant

In consideration of the Grantee's covenants contained in this Deed the Grantor with full title guarantee (and to the intent that the easements hereby granted shall be appurtenant to the Dominant Tenement) HEREBY GRANTS the Grantee the Rights to hold unto the Grantee in fee simple

3. Grantee's covenants

The Grantee (to the intent and so as to bind the easements and rights hereby granted to whoever has the benefit of the Rights from time to time and to benefit and protect the Servient Tenement and each and every part of it) hereby covenants with the Grantor as set out in the Fourth Schedule

4. Grantor's covenants

The Grantor (to the intent and so as to bind the Servient Tenement and every part of it to the owner from time to time and to benefit and protect the easements and rights contained in this Deed) in connection with the Servient Tenement hereby covenants with the Grantee as set out in the Fifth Schedule

5. Arbitration

In case of any dispute arising under Clauses 3 and 4 of this Deed that cannot be agreed between the Grantor and the Grantee, the parties may appoint a single arbitrator to be agreed upon between the parties or failing agreement to be appointed on the application of either party (after giving seven days notice in writing to the other party) by the President of the Royal Institution of Chartered Surveyors and the provisions of the Arbitration Act 1996 and of any statutory modification or re-enactment thereof for the time being in force shall apply to any such reference and determination

6. H M Land Registry

The parties hereto apply to the Chief Land Registrar to note the interests of the parties under this Deed on the above title]

7. Anglian Water Authority Act 1977

The covenants set out in this Deed are undertakings given to Anglian Water by the Grantor as the owner of a legal estate in the Green Land made in connection with that land in pursuance of Section 30 of the Anglian Water Authority Act 1977 and the parties hereto shall apply to the proper officer of the Council of the relevant District Borough or unitary Authority for those undertakings to be registered as a Local Land Charge in accordance with the Local Land Charges Act 1975

FIRST SCHEDULE
Dominant Tenement

the statutory water and sewage undertaking of the Grantee within its area as particularised in its “Instrument of Appointment” as water and sewerage undertaker and taking effect under the Water Act 1989

SECOND SCHEDULE
Servient Tenement

[insert description of property]

THIRD SCHEDULE
the Rights

1. To lay and thereafter to retain inspect maintain protect use replace remove or render unusable the Pipe under the Servient Tenement on the route shown by a [] line on the Plan
2. The free flow and passage of water and other material through the Pipe within the Servient Tenement
3. to pass and repass over the Servient Tenement by such reasonable route as the Grantor may from time stipulate with or without workmen vehicles machinery and apparatus at all reasonable times (and in an emergency at any time) for the purpose only of exercising the Rights

FOURTH SCHEDULE
Grantees’ covenants

1. in exercising the Rights to take all reasonable precautions to avoid obstructions to or interference with the use of the Servient Tenement and/or any damage and injury to it
2. so far as is reasonably practicable and as soon as is reasonably possible to make good any damage or injury to the Servient Tenement caused by the exercise of the Rights and to make full compensation to the Grantor in respect of any damage or injury that is not capable of being made good
3. so far as is reasonably practicable and so long as the Pipe is used in accordance with its function to keep the Pipe in proper repair and condition and if the Pipe is no longer required in whole or in part to notify the Grantor of this and to ensure that the Pipe is made permanently safe
4. to keep the Grantor indemnified against all actions claims or demands arising by reason of the exercise of the Rights or of any failure to keep the Pipe in proper repair and condition in accordance with the terms of this Deed (except in the case of actions claims or demands resulting from the default or wrongful act of the Grantor its servants or agents) provided that the Grantor shall not settle or compromise any actions claims or demands as referred to in this clause 3.4 without the prior written consent of the Grantee (such consent not to be unreasonably withheld)

FIFTH SCHEDULE
Grantor's covenants

- 1 Not to do or cause or permit to be done on the Servient Tenement anything that will or is likely to cause damage or injury to the Pipe or to interfere with the free flow of water or other material through it or render access to it more difficult or expensive
- 2 Without prejudice to the generality of paragraph 1 of the Fifth Schedule:
 - 2.1 not to erect or install or permit to be erected or installed any permanent building or structure or trees or shrubs on or in the Protected Strip
 - 2.2 not to withdraw support from the Pipe or the Protected Strip
 - 2.3 not to alter the ground levels within the Protected Strip
 - 2.4 not to undertake any piling or percussive works within the Protected Strip
 - 2.5 to advise any tenant for the time being of the Servient Tenement or any part of it which contains the land forming the Protected Strip of the existence of the Pipe and the contents of this Deed

IN WITNESS whereof the Grantor and the Grantee have executed this document as their Deed on the date above

EXECUTED AS A DEED by
the Grantor [acting by]
[in the presence of]

[Witness][Director]

[Witness Address] [Director][Secretary]

THE COMMON SEAL of the
Grantee was impressed in the
presence of:

Authorised Signatory