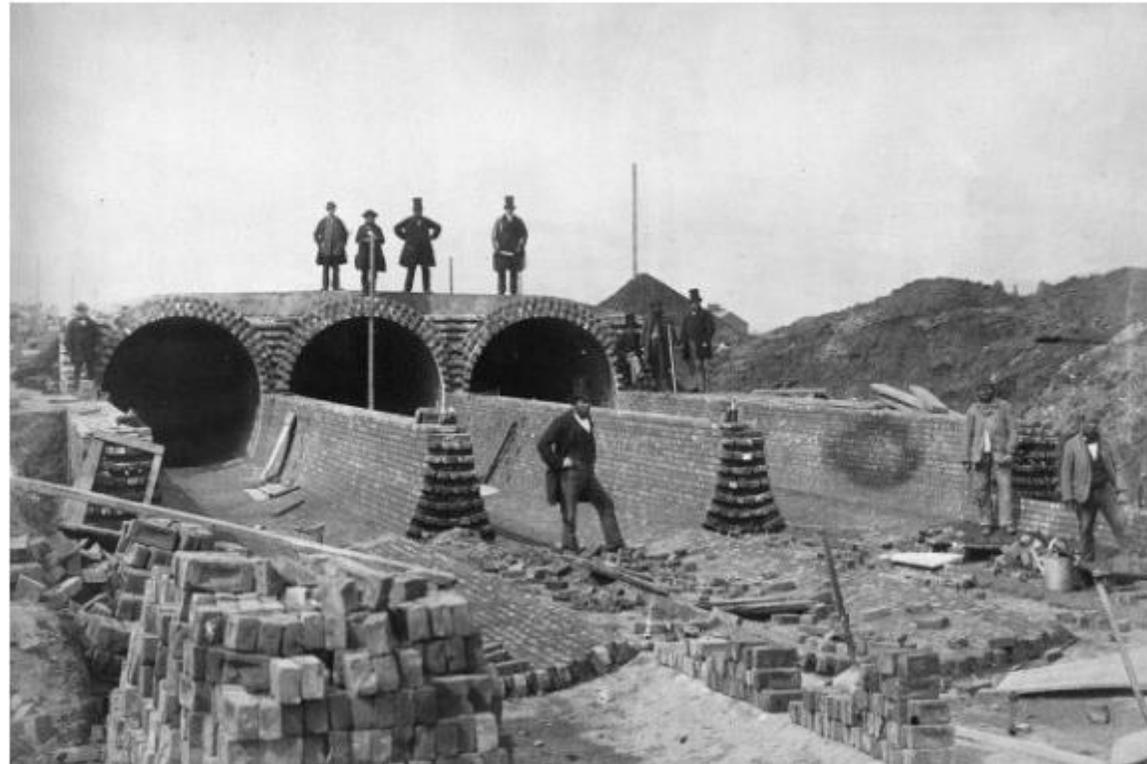


DRAINAGE OF LAND

Property Law Considerations

Introduction



Key definitions



- “Sewer” includes all sewers and drains which are used for the drainage of buildings and yards appurtenant to buildings.
- “Public Sewer” means a sewer for the time being vested in a sewerage undertaker.
- “Drain” means a drain used for the drainage of one building or any building or yards appurtenant to buildings within the same curtilage.
- “Lateral Drain” means that part of a drain which runs from the curtilage of a building or yards within the same curtilage to the sewer with which the drain communicates or is to communicate.

Sewers, laterals and drains



Right to communicate with public sewer

Section 106(1):

Subject to the provisions of this section –

(a) The owner or occupier of any premises, or

(b) The owner of any private sewer which drains premises

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.

An absolute right: *Barratt Homes Ltd v Dwr Cymru Cyfyngedig (Welsh Water)* [2009] UKSC 13, per Lord Phillips at [23].

Express Easements (1)



A right to “*the passage of gas, water and other pipes and electric wires through the demised premises*” has been held not authorise the laying of a new system of pipes.

-- *Taylor v British Legal Life Assurance Co Ltd* (1925) 94 L.J. Ch. 284.

Express Easements (2)

A grant “*to lay and maintain drains, sewers, pipes and cables over under and along*” a strip of land which was to be kept as a roadway and “*the free and uninterrupted passage and running of water, soil, gas and electricity there through and the right to enter upon and open up the said land for the purposes of laying, maintaining and repairing the said drains*” has been held to be sufficient to permit the grantee to remove the pipe and put in a bigger or better one or one following a different line under the servient land.

-- *Simmons v Midford* [1969] 2 Ch. 415, per Buckley J.



Express Easements (3)

A grant of “*a right to receive a supply of gas*” has been held on the facts and in light of the wording of the lease to entitle the dominant owner to install a bigger gas pipe in a different position from the one existing at the time of the grant, though the court recognised that a possible meaning might be a right to receive whatever gas could be obtained through the gas main existing at the time of the grant.

-- *Coopind (UK) Ltd v Walton Commercial Group Ltd* [1989] 1 E.G.L.R. 241.

Express Easements (4)



“A right to run water, electricity and other services through any pipes, cables, wires or other channels... and the right to enter onto... the Retained Land... for the purpose of installing, repairing, maintaining, cleansing and inspecting the conduits” was held not to extend to a right to install a conduit over a route different to those existing at the date of grant or a right to alter the position or size of existing water pipes – “installing” referred to the provision of other services where there was not at the date of the conveyance an existing conduit.

-- *Martin v Childs* [2002] EWCA Civ 283.



Express Easements (5)

A right to use and connect to service-conducting installations that were in, on or over the servient tenement was held to mean that the dominant owner could do whatever was necessary to connect the drains on the dominant land with drains on the servient land.

-- *Dixon v Hodgson* [2007] 1 E.G.L.R. 7.

Implied Easements



Where land intended to be used as a building plot for the erection of a house was conveyed, a right to lay and maintain utilities to serve the intended house was implied into the grant.

-- *Donovan v Rana* [2014] 2 EGLR 1.



McAdams Homes Ltd v Robinson: Principles

- If a public sewerage system is in a defective condition so that sewage backs up, that cannot render unlawful an otherwise lawful use of the drain by a third party – unless that third party's own excessive user of the easement was causing or substantially contributing to, the backing up.
- Where the dominant land is used for a particular purpose at the time an easement is created, an increase, even if substantial, in the intensity of that use, resulting in an increase in the use of the easement, cannot of itself be objected to by the servient owner.

McAdams Homes Ltd v Robinson: Principles



- Where after the acquisition of an easement the dominant owner has substantially intensified or altered the use of his property with the result that the liquid being discharged from the land is increased to such an extent that it causes the drain to overflow, the dominant owner will incur liability in nuisance.
- Where there is a change in the use of or the erection of new buildings upon the dominant land, without having any effect on the nature or extent of the use of the easement, the change will not affect the right of the dominant owner to use the easement.

McAdams Homes Ltd v Robinson: the Test



- (1) Whether the development of the dominant land represented a “radical change in the character” or “a change in the identity” of the site as opposed to a mere change or intensification in the use of the site.
- (2) Whether the use of the site as redeveloped would result in a substantial increase or alteration in the burden on the servient land.

Requisition Notice: the conditions



- (1) A notice requiring it to provide the sewer by one more persons entitled to make such a demand.
- (2) The premises must be premises on which there are buildings, or will be buildings.
- (3) The conditions specified in section 99 are satisfied: the server of the notice has given an undertaking to cover the undertaker's shortfall in the cost of providing the lateral drain or sewer.

Conclusions

