

Adoption of Existing (unapproved) Drainage : Guidance Notes

Article 159 - Water and Sewerage Services (Northern Ireland) Order 2006 and Water and Sewerage Services Act (Northern Ireland) 2016

The adoption of an existing private sewer(s) may be possible under Article 159 of the Water and Sewerage Services (Northern Ireland) Order 2006 (the 2006 Order) and Water and Sewerage Services Act (Northern Ireland) 2016. Article 161 of the 2006 Order deals with development agreements for the adoption of sewers which have not yet been constructed. This has been a legal requirement, from 23rd May 2016, that all sewers be offered to Northern Ireland Water for adoption under Article 161 procedures.

As a general rule an Article 159 application should not be submitted if an Article 161 was previously issued to the developer. There may be exceptions if, for example, the original developer has gone into liquidation or sold the property. If the site drainage was previously assessed under an Article 161 application and the Agreement was not returned for signature by NI Water, the Developer is responsible for completing the Article 161 process by submitting a fresh application if the deadline for accepting the current Article 161 offer has expired.

Please Note: the Article 159 application involves the following fees as set out in NI Water's Scheme of Charges:-

- Application fee (non-refundable)
- Assessment / Inspection / Adoption Fee
 - based on the estimated Cost of Construction at current rates as determined by the NI Water Scheme of Charges.
 - requested once the drainage has been assessed and payable prior to adoption)

Prior to the introduction of the Water and Sewerage Services Act (Northern Ireland) 2016, the developer had the opportunity, but not the obligation, to enter into an Agreement under Article 161 of the 2006 Order. In practical terms, this meant constructing the sewer(s) using approved materials and in accordance with 'Sewers for Adoption (NI) Current Edition' for adoption by NI Water when construction was complete. This was the most desirable arrangement. However, there are some private sewer(s) that were built without an adoption agreement in place. If the Developer did not start the Article 161 process, Article 159 provides for the adoption of such private existing sewer(s) to be considered by NI Water.

Adoption under Article 159 may be considered if the sewers were constructed and fully operational post 1st October 1973 and one of the following applies;

- if a developer is in liquidation and the property owners or management company, on their behalf, wish to have 'existing' sewers adopted; or
- by NI Water as a tool to aid 'compulsory' vesting, for example to adopt a downstream sewer(s) to aid the adoption of upstream development sewers."

If one of the above applies all sewers and associated works should meet our standards in accordance with 'Sewers for Adoption (NI) Current Edition'

A sewerage network system consists of drains, lateral drains and sewers and may also include storm attenuation storage, flow controls, Pumping Station or Wastewater Treatment Works. These have their individual functions.

- 1) **Drains** are pipes carrying sewage from a single property to the boundary of the public property (this is usually the curtilage of the building or property).
- 2) **Lateral drains** are those pipes under the public property which extend from the curtilage or boundary of a single building or property to the point of connection with an existing public or private sewer(s). The public property is the roadway, footpath and grass verge, and is that which has been or will be adopted by Department for Infrastructure Roads.
- 3) **Sewers** are pipes carrying waste water from more than one property.
- 4) **Public sewers** are pipes that carry waste water from 2 or more properties and have been designated as a public sewer(s) by the water company.

- 5) **Attenuation storage** is storage which provides drainage network capacity for the purpose of reducing flow rates.
- 6) **Flow control** is a device installed in a surface water sewer to control the discharge of water at a reduced flow rate to an approved discharge point to a public storm water sewer or a water course.

Reasons why the sewers may not be adopted

The owner of the existing sewer(s) has not requested NI Water to adopt the sewer(s). NI Water can still propose adoption of the sewer(s) under Article 159. If the owner objects to this, they can appeal to the Utility Regulator.

If the owner of the sewer(s) has offered the sewer(s) for adoption, there are a number of reasons why they may remain unadopted:

- (a) generally they may not be constructed in accordance with the required standard specifications for sewer(s) and declined to carry out any remedial works to effect the necessary improvements; or,
- (b) they have been constructed of sub-standard materials; or,
- (c) they may be inadequately sized or in a state of disrepair; or,
- (d) Prior to the change of Legislation on 23rd May 2016, the developer may have deliberately chosen to let the sewer(s) and associated apparatus remain in private ownership and constructed them to different standards to those required by our 'Sewers for Adoption (NI) Current Edition' specification;
- (e) the developer may have chosen to ignore the specified standards, instead opting to provide an unadoptable system.

Unfortunately prospective purchasers are not always aware of this fact only learning the truth after occupation when they have little or no redress.

Criteria for adoption of an existing sewer

When deciding whether NI Water should adopt a private sewer(s) we must have regard to all the circumstances, in particular, the following points are taken into consideration as set out in Article 159 of the Water & Sewerage Services (NI) Order 2006.

- Whether the sewer is adapted to, or required for, any general system of sewerage which the undertaker has provided, or proposes to provide, for the whole or any part of Northern Ireland.
- Whether the sewer is constructed under a roadway, or under a street designated for adoption, or in lands with planning approval for future development including a street.
- The number of buildings which the sewer is intended to serve, and whether it is likely to be required to serve additional buildings or future development.
- The method of construction and state of repair of the sewer.
- In a case when an owner objects, whether the making of the proposed declaration under Article 159 of the 2006 Order would be seriously detrimental to him/her.
- The person or people seeking adoption of the sewer (with the permission of the owner), who are usually those whose properties are served by it or a management company acting on their behalf, would be required to meet the cost of the necessary repairs to bring the sewer(s) to an adoptable standard.
- For example, sewer(s) constructed of sub-standard materials, pipes that are too small or with unsuitable gradients can seldom be brought up to the required standard and the only solution may be to re-lay the sewer(s) which can be an expensive option.
- If the drainage infrastructure was installed on land that was not owned by the developer at the time of installation, the developer should have entered into a formal agreement with the third-party landowner permitting such use. A copy of this agreement should be provided, if available. Alternatively, evidence demonstrating that the third-party landowner raised no objection to the installation may be submitted. This may be evidenced within the Land Registry Folio and the corresponding Land Registry Map.

Steps Towards Adoption

If having considered the options listed above you want to apply for the Adoption of the existing drainage, please follow these steps below.

Step 1

The owner(s) of the sewer(s) should apply for the adoption of an existing sewer by completing the application form (ESA-A159), and emailing the completed application form and the associated information in the check list below to developerservices@niwater.com

Article 159 Check List

Site Location Plan to a scale of 1:1250 / 1:2500 (LPS ACE map will suffice) with the site boundary clearly indicated in red and which can be related to an existing feature. Any other land owned by the applicant should be shown with a blue line around its boundaries, and if a public right of way exists within or adjoining the site, it should be outlined in green.

Detailed 'As Constructed' drawings (drainage layout and longitudinal sections inclusive of drainage schedule), in accordance with 'Sewers for Adoption (NI) Current Edition', should be included with this application. Scale 1:500.

Drainage Schedule - Excel Spreadsheet template to be completed and submitted along with Application. Spreadsheet template available from the NI Water Website under Services For Developers / Article 161 Agreement.

Storm and Foul Long Sections Vertical Scale 1:100, Horizontal Scale 1:500 Invert levels to Ordnance Datum (Belfast).

Hydraulic calculations In Causeway Flow (.pfd) or Microdrainage (.mdx) format and in accordance with NI Water Sewers for Adoption (NI) current edition. No other format will be accepted. Applicants may need/wish to employ a suitably qualified engineer to provide the hydraulic calculations in the required format.

CCTV completed within the last 3 months and associated CCTV report to be referenced in accordance with the As Constructed Drawing. The CCTV survey must be completed by an independent company with no links to the developer / contractor. NI Water are unable to access general file sharing links or memory sticks, however they can be uploaded to the separate Northern Ireland Water Sharepoint / Extranet site and the associated link to the Sharepoint / Extranet folder must be included within the application. If you do not have access to this please contact developerservices@niwater.com to request the documentation to apply for the associated licence / permission.

Material and Workmanship specification used in construction, if available.

Transfer of land, easement, wayleaves or other consents information relevant to the adoption if the sewer(s) runs through third party lands.

Land Registry Map - to be dated within 3 months prior to date of application for the Article 159.

Land Registry Folio - to be dated within 3 months prior to date of application for the Article 159.

Proof / identification that all owners of the sewer(s) are in support of the application for adoption.

Where Applicable

Geocellular Tank Design. Guidance on Geocellular Tank requirements are available from the NI Water Website under Services For Developers / Article 161 Agreement.

Pumping Station Design. Including Layout, Sections, Panel Drawing and Pump Selection. It must adhere to the current Pumping Station Specification.

Wastewater Treatment Works Design. It must adhere to the current Wastewater Treatment Works Specification.

Transfer of land, easement, wayleaves or other consents information relevant to the adoption if the Article 159 application includes a Pumping Station or Wastewater Treatment Works.

NIEA Water Order Consent for Wastewater Pumping Stations or Wastewater Treatment Works.

Consent to Discharge if the storm drainage discharges to the sea or a lough. Consent is required from the Crown Estate in the case of waters which they control, or the person or organisation which controls the body of water in question.

Schedule 6 Discharge Consent if the storm drainage discharges to a watercourse. Consent is required from DfI Rivers.

Building Control Approval if the storm runoff from individual properties discharge to individual / private soakaways.

NI Water may require additional supporting information, which will be requested during the assessment process if required.

Please submit your ESA-A159 application digitally to developerservices@niwater.com indicating your means of payment. You will then be advised via email on the process for making the payment. Following receipt of the payment your application will be passed to a Technical Adviser for assessment. If any further information is required you will be notified via email.

Step 2

NI Water will determine the condition of the sewer(s), lateral drain, associated manholes, pumping station (if applicable) and waste water treatment works (if applicable) offered for adoption.

Step 3

NI Water will prepare a schedule of required repairs to bring the sewer(s) etc. up to an adoption standard, if applicable.

If any element of the drainage being offered is defective, you will be required to bring it up to the specified standard, following which you should submit a CCTV survey of the relevant sewer(s) and request a further inspection. The current standards required are those set out in 'Sewers for Adoption (NI) Current Edition'.

In some instances the cost of the necessary repairs to bring the sewer(s) up to a satisfactory standard may be more than the owners may be prepared, or able, to meet. Additionally there will be sewer(s) which were constructed in such a way that remedial works to bring them up to the required standard are not possible and re-laying, either in the existing location or in close proximity, may be the only solution. In these circumstances the sewer(s) are likely to remain unadopted, unless the sewer(s) are relaid. In this case a 12 month maintenance period will apply. Further inspection shall be required prior to adoption. The maintenance period shall commence when the applicant notifies NI Water, via email to developerservices@niwater.com, that the relaid drainage is ready for an initial inspection, and NI Water confirms that it has been laid to a satisfactory standard. It is the applicant's responsibility to request a further inspection approximately 11 months after the date on which NI Water confirmed that the relaid sewers had been laid to a satisfactory standard.

This does not mean that serious defects will be left unattended. The local Council Environmental Health Officer can be contacted in respect of these issues. Urgent repairs such as, for example, repairing or renewing sections of sewer(s) in danger of imminent collapse are unlikely by themselves to improve the condition of the sewer(s) to a standard where adoption is possible.

Adoption procedures

The sewer(s) are owned by the owner(s) of the land through which they run if they have not already been adopted by NI Water. It is sometimes difficult to establish the owner of the land if it is not registered in Land Registry. The land may still be in the developer's ownership. A difficulty may arise if the developer is no longer in business. The sewer(s) may also be in land owned by a management company, or they may be within land owned by a third party, in which case their consent would be required.

The owners of a private sewer(s) may make an application under Article 159 to NI Water requesting a declaration of adoption. The receipt of such a request would be the start of the assessment / inspection arrangements previously described. Adoption will be dependent on the sewer(s) being constructed to the satisfactory standard stipulated by NI Water. You will receive a request to pay the Assessment / Inspection / Adoption Fee, based on the estimated Cost of Construction at current rates as determined by NI Water. This must be paid prior to the Adoption process progressing.

Before adopting the sewer(s), NI Water must first give notice to the owner(s) of the sewer(s), i.e. the owner(s) of the land through which the sewer(s) runs. Only after two months have elapsed and no objections have been raised, may we adopt the sewer(s). Subject to this and to any legal formalities (eg transfer of land for a pumping station / waste water treatment works and rights to discharge surface water to a watercourse) we will make a declaration of vesting, which completes the adoption.

Summary

When you want to apply to have a sewer or lateral drain adopted under Article 159, you must

- Request the application form ESA-A159 by emailing developerservices@niwater.com (you may be contacted to discuss the circumstances prior to making the application)
- Email the application along with the information noted on the checklist above to developerservices@niwater.com
- On receipt of the application it will be triaged and if complete you will receive an email in relation to making the payment, dependant on the option selected on the application form.
- You will then be advised via an email on the process for making the payment.
- Following receipt of the payment your application will be passed to a Technical Adviser for assessment.
- If any further information is required you will be notified via email.

Should you require any further information or assistance please contact Developer Services Servicing Team:

Developer Services Servicing Team

Northern Ireland Water

Tel: 03458 770003

Email: developerservices@niwater.com