



IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No. EA/2011/0110

BETWEEN:-

NICHOLAS HARDING

Appellant

and

THE INFORMATION COMMISSIONER

First Respondent

and

THE LONDON BOROUGH OF CAMDEN

Second Respondent

DECISION ON APPLICATION FOR PERMISSION TO APPEAL

1. The Appellant in this matter by an e-mail dated 13/11/11 and a subsequent form of application for Permission to Appeal to the Upper-tier Tribunal has appealed against the decision of the First-tier Tribunal dated 17/10/11. In his appeal he is seeking the disclosure by the Second Respondent of the material requested.
2. In his appeal he makes two substantive points. The first is that:-

“a reason for my appeal failing was that FOI requests at this stage were adjudged pointless as the development in question was already being built and therefore that requests are futile.

I do not believe that that is a correct legal reason”

3. The second is that: -

“However, my main reason for appealing is due to the fact that, although a start has been made on site, that did not mean that fundamental conflicts had been reconciled and that questions were no longer relevant.”

4. The Tribunal found that the Second Respondent had spent a very considerable amount of officer time in responding in various ways to the appellant’s requests for information in respect of a proposed development, he had also raised questions about the development with various statutory bodies including the Local Government Ombudsman. He continued to remain dissatisfied. The Tribunal was satisfied that in the context of the history of the Appellant’s dealings with the Second Respondent these latest requests were manifestly unreasonable. The Tribunal found:-

“From Mr Harding’s own account (see paragraph 5 above) over the years the Council has provided him with a considerable amount of information and devoted considerable resources to his concerns. The simple truth of the matter is that he disagrees with the decision to permit the development and is challenging the Council by every means at his disposal on the issue. The rights and wrongs of the planning decision do not concern this tribunal being outside its remit. It appears that the development is going ahead and Mr Harding is not reconciled to this. There comes a time when it is appropriate to acknowledge that further action is unavailing. No serious purpose is now being furthered by his actions in seeking information from Camden Council. He has caused considerable expense and disruption to the Council and the tribunal is entirely satisfied that these requests are an unjustified interference-they are manifestly unreasonable or vexatious.”

5. In his application for permission to appeal the appeal the Appellant has correctly identified his main reason for appealing as his dissatisfaction with the development. This is not a matter for the Tribunal to consider in determining whether leave to appeal should be granted. He has argued that the decision of the Tribunal was that the fact that the development was being built meant that further requests for information were futile and that this was not a correct legal reason. This conflates findings of fact which the Tribunal made. These were a series of findings of fact with respect to the history of the Appellant and Council on this issue, the impact on the Council of the Appellant’s requests for information and the progress which had been made in the development. These findings of fact and the conclusion drawn from them that the request was manifestly unreasonable were findings and conclusions of fact and not law and are not susceptible to appeal.

6. The Appellant has not identified an error of law and is seeking to argue various aspects of the merits of the development. His appeal therefore has no realistic prospects of success and accordingly the Tribunal does not grant permission to appeal to the Upper-tier Tribunal. The Tribunal has reviewed its decision and concluded that no revisions are appropriate.

C Hughes

Tribunal Judge

18 November 2011