



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2013/0011

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50450987

Dated: 10th. January, 2013

Appellant: Jeffrey Perrins

Respondent: The Information Commissioner ("the ICO")

Hearing: 30th. May, 2013

Before
David Farrer Q.C.

Judge

and

Michael Hake

and

Melanie Howard

Tribunal Members

Date of Decision: 24th. June, 2013

Representation:

The Appellant appeared in person:

The Respondent did not appear:

Subject matter:

Environmental Information Regulations, 2004, Regulation 12(4)(b).

Cases:

Information Commissioner and Devon County Council v Alan Dransfield .
[2012] UKUT 440 AAC

Craven v Information Commissioner GIA/786/2012.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal.

Dated this 24th. day of June, 2013

David Farrer Q.C.

Judge

REASONS FOR DECISION

Introduction

- 1 The Appellant has for many years occupied as a tenant 11, Kirby Close, Bradley, Bilston, which is part of an estate built by Wolverhampton Metropolitan Borough Council, now Wolverhampton City Council, indiscriminately referred to in this Decision as “the Council”. Management of the properties which were still subject to tenancies with, presumably, any relevant documentation, was transferred to Wolverhampton Homes some years ago.

- 2 The Appellant has for many years been in apparent dispute with his neighbour at 15, Kirby Close and with the Council as to the configuration of the boundary between their properties, whether, as he asserts, a straight line or, as the Council says, a dog – leg. A plan to erect a porch was once dependent on the answer. The estate was developed to an open plan design and, until properties were sold to tenants under the right to buy scheme, all the relevant land was owned by the Council. We wish to emphasise that the rights and wrongs of this unhappy and protracted disagreement and the evidence for and against the Appellant’s claim are irrelevant to our decision on this appeal.

- 3 The Appellant became involved over many years in lengthy correspondence and personal contacts concerning this issue with council officers, some of which was exhibited to his evidence. In 1993 a disagreement arose about the boundary line and information given to him. There followed several taped telephone conversation between the Appellant and a housing officer

in which she initially agreed that the boundary was a straight line but later, evidently as a result of discussions with her manager, retracted that concession.

At a meeting soon afterwards a more senior officer corrected her first statement as to the boundary line. It seems that the first officer, who was not employed to express views on such issues on behalf of the Council, was unaware that the conversations were recorded.

4 In 1998 the tenant of no.15 exercised his right to buy and negotiated an agreement with a neighbour at 17, modifying the boundary between their properties but, obviously, not affecting in any way the existing boundary with 11. That sale resulted in the recording of the boundaries of 17 with the Land Registry, evidently indicating a dog – leg boundary with 11, the Appellant’s property.

5 This sale seems to have breathed fresh life into the Appellant’s dispute with the Council, producing an unending course of correspondence, unsuccessful appeals to internal council bodies, to its Chief Executive, the Local Authority Ombudsman and the Standard Board for England and complaints and, since 2004, correspondence to and with the Respondent and proceedings, we understand, before this Tribunal. In summary, the correspondence with the Council was conducted by the Appellant with a striking degree of venom and hostility, a feature which will be examined in a little more detail later in this ruling.

The request for information

6 In July, 2011, the Appellant engaged in correspondence with Wolverhampton Homes, in which he posed a number of detailed questions regarding the

disputed boundary, which largely correspond to those contained in the request for information. He eventually received a reply to that request but was advised it was possible some information might also be held by the City Council. Wolverhampton Homes referred him to the City Council as part of its response.

7 By letter of 3rd. April, 2012, the Appellant made the following request :

'Could I please find the answers to the following?

When the above property - [named property] was laid out/constructed circa 1971 - and therefore the estate it was constructed on, "front boundary lines" between the properties were laid out. Could Wolverhampton city council supply me with the "front boundary lines" between the properties - [two named properties] at (sic) 1971.

1.1 If no such paperwork exists IN WHATEVER FORM please say so!

*2. if the "front boundary lines" were incorporated within the original tenancy agreement (that of the original tenant and the council in force at the time) of [named property] could Wolverhampton city supply me with a copy of the original tenancy agreement - circa 1971 - and **ANY** and **ALL** ancillary paperwork attached to the said tenancy agreement.*

2.1 if no such paperwork exists IN WHATEVER FORM, please say so!

*3. Does Wolverhampton city council have a copy of the "front boundary lines" between [named property and named property] - circa 1971 - in **ANY FORM** whether that form be a map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc?*

3.1 If no such map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc exists IN WHATEVER FORM, please say so" (sic)

Thank you for your help

4. Does Wolverhampton city council have in its possession **ANY** map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc prior to the tenant of [named property] purchasing the property off the then council – circa 1998 – of the “front boundary lines” between [named property and named property]?

4.1 If no such map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc exists IN WHATEVER FORM, please say so! (sic)

5. If Wolverhampton city council does not have in its possession any of the above information but knows of an outside body that may have such information of the “front boundary lines” – circa 1971 and circa 1998 – between [named property and named property], could they please pass the outside body details on to me?

5.1 If no such body exists please tell me!

5.2 If no such information exists IN WHATEVER FORM, please say so!

6. Was there ANY paperwork that exists (that includes - but not an exhaustive list – a map, drawing, sketch, picture, diagram, illustration, plan, title deed, hardcopy, microfiche etc., etc.) relating to the “front boundary lines” transferred to Wolverhampton homes when they (Wolverhampton homes) became responsible for the council housing stock.

6.1 If no such information exists IN WHATEVER FORM, please say so!

7. If the “front boundary lines” were incorporated within my tenancy agreement (that of the council in force at the time) of [named property], could Wolverhampton city council supply me with a copy of the tenancy agreement – circa 1987 – and **ANY** and **ALL** ancillary paperwork attached to the said tenancy agreement?

7.1 If no such information exists IN WHATEVER FORM, please say so!

Basically, I am trying to find out ANY and ALL details relating to the “front boundary lines” – NO MATTER WHAT FORM THOSE DETAILS MAY TAKE – between [named property and named property] for the dates mentioned above.

If I could request you answer each question individually, so that your answers are **CLEAR AND PRECISE** and no **VAGUENESS OR AMBIGUITY OR MISINFORMATION** can be accredited to your answers, AND ignore what has transpired previously – because it has no bearing on this subject/request – I would be extremely grateful.'

- 8 By letter from the coordinator of FOI dated 4th. July, 2012, following a chasing letter from the Appellant, the Council responded, refusing the request on the ground that it was manifestly unreasonable within the exemption provided by EIR 2004. regulation 12(4).It referred to the wording of the stationery created by the Appellant, the asserted lack of serious purpose or value in the questions and the long acrimonious history of his dealings with the Council. That position was maintained when the Council was asked to review it.
- 9 The Appellant complained to the ICO, who, by his Decision Notice dated 10th. January, 2013, upheld the Council's refusal, citing the matters identified in the Council's letter and applying his own guidelines to the largely undisputed and indisputable facts, as set out in the correspondence and a chronology supplied by the Council.

The appeal to the Tribunal

- 10 The Appellant issues a Notice of Appeal and extensive grounds on 5th. February, 2013. Many of the grounds relate to alleged factual errors of the ICO, which, if they are errors, do not impinge on the issues in this appeal. He further submitted a detailed Reply to the ICO's Response, backed with a number of documents. Finally, he reinforced his case with oral submissions to the Tribunal. The ICO's submission was confined to the Response. He did not appear at the hearing. That was not entirely surprising in this case, since, for better or for worse, there was little, if anything that he could add orally to the submissions of law and fact set

out in the Response. Those submissions are reflected in our discussion of the issues in this ruling.

- 11 Much of the Appellant’s argument was not easy to follow but it was clear that he regarded the Council as corrupt and some of its officers as untruthful, determined to thwart his quest for evidence as to the boundaries to the property he continues to rent. He attached great importance to the telephone conversations in 1993 and the concession initially made. Likewise, he interpreted the 1998 boundary agreement between his neighbours as reflecting a corrupt family relationship with members of the Council. It has become the source of his continuing sense of grievance.

The questions for the Tribunal

- 12 They are -
- (i) Does EIR 2004 or FOIA apply to this request ?
 - (ii) Is the request “manifestly unreasonable” or, as the case may be “vexatious” ?

- 13 The answer to (i), an issue raised by the Appellant, is quite clear, as he accepted after some explanation from the Tribunal. Information as to boundaries between properties is information as to “land” within Regulation 2(a) of EIR, 2004. That being the case, it cannot be information within FOIA (see FOIA s.39(1)). The Upper Tribunal’s recent guidance provided in *Craven v Information Commissioner* GIA/786/2012 at paragraph 30, confirms that the different tests, though deriving from separate forensic sources, involve the same

considerations.

- 14 What is manifestly unreasonable or, where applicable, vexatious is to be assessed with a broad and flexible approach, in which the burden imposed, the motive, the purpose, the justification and any element of deliberate harassment of staff or disruption of the working of the public authority will generally play a part.(see *Information Commissioner and Devon County Council v Alan Dransfield [2012] UKUT 440 AAC* at paragraphs 24 – 39 and particularly 26 and 28.

Our Decision

- 15 The correspondence between the Appellant and the Council reveals extremes of animosity and invective on the part of the Appellant, which are rarely encountered, even in a jurisdiction where hostility towards public authorities is not uncommon.
- 16 For many years, reflecting accusations made around 1998, the Appellant has created and routinely used, in correspondence with the Council and others (e.g., Wolverhampton Homes) stationery headed “*Bradleygate, similar to Watergate but more mendacity and deception*”. It refers to the council as Wolverhampton Corrupt Council and gives his e mail address with a similar title. It alleges lying and improper favours. It is probably defamatory of named individuals most, if not all, of whom are, on available evidence, probably no longer employed by the Council.
- 17 His written submissions to the Tribunal were in broadly similar vein. He provided no evidence to justify such grave accusations, although clearly he believed them to be true.

- 18 During the ICO's investigation, the Council indicated, surprisingly perhaps, that its objection was simply to the use of this extraordinary stationery, as to which it had been warning the Appellant for some seven years and that it would be willing to answer his questions if a normal letterhead were used. In a most telling reply to a member of the Tribunal, who asked whether, given that lifeline, he would be prepared to repeat his request on conventional stationery, expressed as simply as possible, he replied initially that he supposed he would but then corrected himself, claiming that that would just be giving in to the Council. This was regrettable. Any reasonable person would regard the Council's offer as generous in the circumstances and would gladly accept it, if his true desire was to receive answers to his questions.
- 19 This boundary question has been running for nearly twenty years, during which the Appellant has continued a stream of correspondence and demands. This was not an issue of general public importance nor, we suspect, of any real practical significance. The purpose of these letters is questionable and the burden placed on the Council quite unreasonable, quite apart from the language employed. There is no justification for either the frequency of these attacks or the style of their delivery.
- 20 We should add that the Appellant's manner and demeanour before the Tribunal were the antithesis of the extreme behaviour briefly described above. He was courteous and restrained in almost all he said. It is very sad that this issue has so come to dominate his thinking that he resorts to such improper and malicious communications in his dealings with the Council and in the way he framed his information request.

21 In summary, it would be hard to conceive of a more manifestly unreasonable request than that giving rise to this appeal.

Conclusion

22 We therefore dismiss this appeal.

23 Our decision is unanimous.

David Farrer Q.C.

Tribunal Judge

24th. June, 2013