



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

Appeal No: EA/2014/0062

ON APPEAL FROM:

**The Information Commissioner's Decision Notice No: FER0515025
Dated: 26 February 2014**

Appellant: Carolyn Hall

Respondent: The Information Commissioner

2nd Respondent: Derbyshire County Council

Heard at: Buxton Magistrates Court

Date of Hearing: 8 July 2014

Before

Chris Hughes

Judge

and

Jean Nelson and Paul Taylor

Tribunal Members

Date of Decision: 9 August 2014

Attendances:

For the Appellant: in person
For the Respondent: did not attend
For the 2nd Respondent: Christopher Knight

Subject matter:

Freedom of Information Act 2000
Environmental Information Regulations 2004

REASONS FOR DECISION

Introduction

1. The background to this request for information relates to disputes about the status of land at Longden Court. In the 19th century the Urban District Council of Buxton adopted Longden Court as a street or public highway. The Appellant in these proceedings, Ms Hall, bought a property in Longden Court in 2006. When she was entering into the transaction there was some uncertainty as to the precise boundaries of the property *“I was told by my solicitor that part of the freehold land I was buying was in fact owned by a local developer yet the extent of the land on the council’s map corresponds to my original purchase...at no time during my purchase was I informed by my solicitor of a highway running at the back of my property”*. Subsequent to her purchase she was concerned about anti-social use of the Court and was in contact with the Council in 2006/7 about the steps which could be taken to prevent undesirable visitors. She met a councillor and an officer from the County Council Environmental Services Department to discuss the matter and on 28 February 2007 the officer wrote to her:-

As discussed the County Council’s evidence that Longden Court is adopted highway rests mainly upon a book passed to us by High Peak Borough Council which lists all roads adopted by it and its predecessors. Here Longden Court is specifically named as having been adopted in 1896 [the actual date in the copy of the register submitted to the tribunal appears to be 1889]. I therefore believe that there to be little doubt this is so.

However the extent of the adoption is less clear; the entrance from Spring Gardens and the frontage to your property must I think be included to justify the original adoption. The area to the side and behind your property may not be and was previously occupied by several buildings. It serves no purpose for the general public and I understand appears on deeds as land owned by others. Therefore, in my opinion, the adopted highway of Longden Court is as shown green on the attached plan [on the plan only an area of land in front of the building known as Longden Court is marked] ...

2. On 28 August 2011 the Council wrote to Ms Hall in connection with the status of Longden Court (bundle pages 42/3):-

I refer to your enquiries regarding Longden Court, relating to limits of adoption. I have been asked to provide you with a plan indicating the limits of publicly maintainable highway.

For your information, Longden Court is on a register as having been adopted by the Highway Authority on 30 August 1899[this date also appears to be a misreading of the register], the limits of which have been outlined in red on the attached plan extract.

I appreciate that the plan is old and not necessarily indicative of the surrounding buildings today, but the highway has not changed and therefore the old building outlines will help to explain the highway limits as they should be today.

3. The markings on the plan indicate the highway as extending in front, along the side and behind the building known as Longden Court. There was further correspondence between Ms Hall and the Council as a conflict arose between Ms Hall and an individual developing property adjacent to the rear of Longden Court in early spring 2012. The developer was using the Court as an access route for vehicles to carry out the works. Ms Hall was dissatisfied with her contact with the Council and made a complaint. A meeting to discuss her stage 2 complaint was held in June 2013.

The request for information

4. During the course of these contacts Ms Hall was supplied with a copy of a large scale (1/375) map of Longden Court printed from the Ordnance Survey site by the Council on 4 May 2006. Handwritten on the title line of the map appear the words: *Area in green is adopted/ area in blue builders land.* The Tribunal was informed that on the b/w copies supplied the hatched area was originally blue and the solid shaded area green. This green area surrounded the building known as Longden Court.
5. Ms Hall wrote to the Council on 9 July 2013 enclosing a copy of the map and asking:-

I would like information on the attachment above. This has come from the Highways Department to myself. It shows an ordnance survey map in 2006 sent to me to show the extent of the supposed highway at Longden Court.

Please can you tell me what was the Highways Department's interest in this land in 2006?

The map shows the extent of the builder's land at the back of Longden Court-

Where did the information come from regarding the extent of the builder's land?

What was the reason for the Highways Department having a copy of this map in 2006?

Did at any time the Highways Department request a revision of the ordnance survey map shown?

6. On 6 August 2013 the Council replied confirming that:-

We confirm that we do not hold the requested information.

[the response quoted the terms of the request]

Please see the below Freedom of Information Act 2000/Environmental Information Regulations 2004 response:

The information requested has never been logged or recorded by Derbyshire County Council (DCC). This means therefore that we are unable to provide the specific information that you are seeking has[sic] it is not held by DCC.

7. This position was upheld on the review the Council conducted at Ms Hall's request:-

I can confirm that as part of the investigation I have considered whether information falling within the remit of your request is held by Derbyshire County Council.

Different departments have been consulted but do not hold any relevant information.

The complaint to the Information Commissioner

8. Ms Hall complained to the First Respondent, the ICO who conducted an investigation. In his decision he went into some detail concerning the nature of highways and some of the documentary evidence, explaining why, as a leaseholder, there might be a difference in the rights recorded on her lease from rights with respect to a highway (DN paragraph 17). He noted that it was not his function to consider whether Longden Court was a highway and examined the steps DCC had taken to answer the questions. He recorded that DCC had explained to Ms Hall "if Longden Court had been stopped up, the Council would either have been party to the stopping

up, had it been under the Highways Act (or preceding legislation) or would have been notified by the Secretary of State and this would have been shown on our records.”

He considered that the searches made were those likely to locate information relevant to the request and had also searched electronic records using appropriate search terms. He concluded on the balance of probabilities that the Council held no information relevant to the request other than information it had provided her with before the request was made.

The appeal to the Tribunal

9. In her appeal Ms Hall indicated that she had seen emails showing that DCC and the builder were in correspondence, that this was likely to be the official with whom she had dealt in 2012, she queried whether that person's emails had been deleted on her leaving the Council and an email would constitute a record, and she argued that there must be a reason why the map was produced and why it differed from land registry and other maps.

The questions for the Tribunal

10. Although in the decision notice, correspondence and evidence on a range of issues emerge the question for the Tribunal is whether the ICO's notice is in accordance with the law – ie whether he was correct to conclude that, on the balance of probabilities, DCC held no information it should have disclosed in response to the four specific questions asked in the information request of 9 July 2013.

Evidence and submissions

11. Deborah Spencer an officer in the Highways Records and Searches division of DCC provided a witness statement and gave oral evidence on behalf of DCC. In her statement she set out some of the background of Ms Hall's contacts with the Council concerning her dispute and the Council's records concerning the adoption of Longden Court as a highway. She clarified that the map had been sent to Ms Hall by a DCC employee who was responding to Ms Hall's inquiries in 2012, who had a similar role to herself and had left the Council in March 2013. She confirmed that the map had been provided to that officer by a DCC engineer who had visited Longden Court in 2012 and had taken the map from an existing file. The engineer's understanding was

that it had been printed by a Highways Inspector in 2006 to assist him in dealing with his area of responsibility.

12. She then addressed the process adopted by DCC to respond to the request. The request was passed to managers in Environmental Services and then to Ms Spencer who conducted a range of searches of the Council's maps, legal documentation, Development Control files and the Council's "confirm" database which would cover Highways data from 2010, prior to that information would have been sent to the paper development control files. She confirmed that she had not searched emails as "*it did not seem to me that emails would be likely to assist in what happened in 2006, and it was entirely unclear to me whose emails it would be necessary to search.*" She confirmed that Ms Hall had suggested that the emails of the DCC employee with whom she had dealt in 2012 should be searched, but these had been deleted following her departure as was the standard practice. She had been unable to find any of the information requested. In her statement she explained that much information she included in her statement or which had been given to Ms Hall was information gleaned from colleagues' memories or explanations they had given her from their own knowledge and experience, not information recorded in any DCC system. DCC also submitted the records retention schedule for the department, this indicated that the standard operating procedure for routine emails would be to delete them.

13. In her statement Ms Spencer commented (witness statement paragraphs 27,28):-

..it might have been more helpful to Ms Hall if the Council had explained in its response a little more fully why no recorded information was held. Hopefully my explanation helps her now. However I understand that FOIA does not oblige the Council to do anything more than confirm that no recorded information is held which answers the Request, and having searched for it, I can confirm that the Council's response was accurate.

In preparing this statement, I have also conducted a further search of the paper files and the "Confirm" database to double-check that there is nothing within the scope of the Request. There is not. I accept that it is always possible that there may be information somewhere within the Council which is relevant, but I do not know where it would be. As I have tried to explain, the questions Ms Hall asks in her Request were not, in truth, ever likely to be the subject of recorded information.

The Tribunal agrees that it would have been more helpful if the Council had explained at an early stage why it did not consider likely that it would have a record of the information requested.

14. In oral evidence Ms Spencer confirmed that she had no further information as to why a map had been printed in 2006. She also stated (in response to a question about vehicular access to Longden Court) that *our records do not record what rights only that it is a highway*.
15. Ms Hall stated that street directories of Buxton from 1908 and the 1920s did not list Longden Court as a street. She was at a loss to understand how one piece of paper going back to 1880 had led to the destruction of a building and a loss to her of £60,000. She accepted that she had learned new information from the witness statement and the hearing. She queried whether the email account of the staff member she had been dealing with should have been deleted in the middle of a complaint procedure. She felt that DCC had been evasive with her. She felt that information should be given to her and was sure that there was a lot more information to be given. She argued that there was a significant public interest at stake concerning the protection of grade 2 listed buildings in the Buxton town centre.
16. In his submissions Counsel for DCC submitted that the question was whether the information was held, the tribunal was a statutory body looking at a specific narrow issue. Although he acknowledged DCC could have been more helpful in its response to the request its duty was to provide information which was recorded, it could not be expected, nor was it required, to divulge information in the heads of its employees. Ms Hall had been in constant correspondence with DCC in 2012 and the former employee had provided information. It was not the tribunal's role to address any lack of clarity there might be about Longden Court itself. The request was about specific information, it had been correctly answered and detailed information (going beyond the request) had been provided in the witness statement.

Conclusion and remedy

17. Ms Hall is deeply aggrieved by events at Longden Court. She feels that she has lost £60,000 as a result. She is pursuing various means to obtain redress. Over a period of time she had considerable contact with the DCC which provided her with some information. In her formal request she asked three specific questions about the map

itself – the Department’s interest in the land in 2006, the reason for printing the map and the source of additional information and also one about whether the Department had ever requested a revision of the ordnance survey map. The council has searched for answers and found no recorded information. From the clarity of the evidence provided the tribunal is satisfied that the searches were appropriate and focussed in the correct places. There was no realistic possibility that any emails could be found which would illuminate the specific questions. She has been given considerable amounts of interpretation of the situation through the process of the complaint to the ICO and the hearing before the Tribunal. This may have been helpful to her. It may be that if DCC had provided this interpretation and contextual explanations at an earlier stage these formal steps could have been avoided; although given that she was pursuing a complaint against the Council at the time it may be that she would not have accepted any explanation which did not give her the answers which would help her in her search for redress.

18. The Tribunal is satisfied on the basis of the evidence that the ICO has come to the correct conclusion that on the balance of probabilities no information was held. The tribunal therefore upholds his decision notice and dismisses the appeal.

19. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 9 August 2014