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

**Appeal No: EA/2015/0082**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FS50542829**  
**Dated: 12 March 2015**

**Appellant: Imran Chaudhrey**  
**Respondent: The Information Commissioner**

**Heard on the papers: Fox Court, Grays Inn Road, London**  
**Date of Hearing: 25 August 2015**

**Before**  
**Chris Hughes**  
**Judge**  
**and**  
**Dave Sivers and David Wilkinson**  
**Tribunal Members**

**Date of Decision: 21 September 2015**

**Subject matter:**  
**Freedom of Information Act 2000**

## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal upholds the decision notice dated 12 March 2015 and dismisses the appeal.

### **REASONS FOR DECISION**

#### **Introduction**

1. The Appellant in these proceedings, Mr Chaudhrey, owns a leasehold flat in a terraced property. The property belongs to the LB Waltham Forest (“the borough”) and it has been managed on behalf of the borough by an Arm’s Length Management Organisation, Ascham Homes, which was set up in 2003 to discharge the landlord function for the borough’s housing stock. The borough itself continues to be responsible for planning and building control functions relating to such property. Mr Chaudhrey has been concerned for some years about works which have carried out on the rest of the building by the leaseholder of the rest of the house and the impact on his flat. He has complained to Ascham homes about the issue. On 24 February 2014 his complaint was considered in a report prepared for the borough’s chief executive. The report noted service failures in 2012 between Ascham Homes and the borough (bundle page 50-57) it also noted that Mr Chaudhrey had been notified by the Council in 2002 that the other leaseholder had been given until June 2002 to demolish an extension, vacate the basement and reinstate the property. Mr Chaudhrey had raised a complaint about the issues in November 2011 to Ascham Homes. The report stated (bundle page 52):-

*“..She explained that Ascham Homes manages rental properties and that as both properties are leasehold the issue of building works was being dealt with by the Council’s Legal Team”*

(bundle page 55)

*“Much of Housing Services was transferred to the new Arms Length Management Organisation, Ascham Homes, that commenced in Waltham Forest in May 2003. Due*

*to the passage of time neither the Council nor Ascham Homes have retained the records held at that time. I am unaware if you made any formal complaints to the Council about the building works carried out by your neighbour or what the outcomes of any possible complaints were. I have therefore not been able to investigate matters from this period.”*

The covering letter addressed the issue of the handling of the recent complaint:-

*“..Although there are clear references that Ascham Homes’ Legal Services were dealing with this issue in February 2012 they failed to transfer the case to the Council in April 2012. Although Ascham Homes’ archives have been checked the previous legal file has not been traced. Ascham Homes made a fresh referral to the Council’s Legal Services in June 2013.*

*... You had raised expectations in 2002 that the originally unauthorised extensions would be demolished. When you raised the issues in 2011/12 legal opinion would most probably have been the same as their opinion is at the present time, which is that enforcement action could not have been taken against your neighbour in order to reinstate the property to its previous state. Ascham Homes are now in the process of ensuring that the property meets all Building Regulations*

*In recognition of your raised expectations and the delays, Ascham Homes have agreed to pay you £1,000 compensation.”*

2. Mr Chaudhrey was dissatisfied with the outcome of his complaint and on 10 March 2014 he wrote to Ascham Homes seeking information:-

*“The information I am seeking is reference to my stage 2 complaint with the Chief Executive Department, the response included reference to permission being given by Ascham Homes for the unauthorised building alterations ([REDACTED ADDRESS]) which I reported over 2 years ago to Ascham Homes. The unauthorised works was in and outside of a shared building. The officer dealing with my complaint was [REDACTED NAME]. [REDACTED NAME] kindly informed me that the decision not to have the authorised alterations removed was based on individual facts and on its merits. I requested details of when decision(s) was made, the facts and merits of the case. I stated that I had a right to know the full details of the decision and its facts, as the decision had adversely effected the shared building I live in and my own enjoyment of my property ([REDACTED ADDRESS]).[REDACTED NAME] declined*

*to offer full details of the decision. Under FOIA Act I would like to request full and transparent details of the decision and its supporting facts. I await your confirmation of receipt of this request.”*

3. The request was made to Ascham Homes and sought information as to a decision by Ascham Homes not to require the removal of unauthorised works on the building.

4. On 22 April 2014 Ascham Homes replied:-

*“I can confirm that at present, we are in the process of confirming exactly what permissions are in place for the works that have been undertaken at [address redacted]. We will be working with your neighbour and the council’s building control team to address this matter.”*

5. Mr Chaudhrey was unhappy with this and pursued his concerns with the borough and with the Respondent in this appeal, the Information Commissioner (“the ICO”). He requested an internal review of the response on 20 May commenting:-

*“.. The final response of my stage 2 complaint clearly stated that landlord permission (Council/Ascham Homes) had been given with regards to the building works... I wish to request an internal review why I have not been given full details of the landlords permission with its facts and merits, as requested by my FOI request.”*

6. It is important to note at this stage that the response to his stage 2 complaint does not provide a foundation for this statement. The report states (bundle page 55):-

*“You stated in your complaint that [name redacted] was instructed to remove the unauthorised structures. As the legal files have gone missing I am unable to comment on the previous action taken. Currently it is considered that if the case were taken to court for a breach of covenant the Judge would consider that the freeholder should not unreasonably withhold permission so the council would in all likelihood lose the case. As such, officers have been working towards ensuring the building works have all the appropriate permissions.”*

7. What he was told by the report therefore was that there was no evidence on the files that a landlord’s permission had been granted for the works; nor however does it indicate that any decision had been made with respect to a landlord’s permission, instead officers were focussing on building control issues. Ascham Homes wrote to the ICO on 12 June setting out its position (bundle page 72):-

*“We do not have what he is asking for at present and we are in the process of getting the appropriate documentation from his neighbour in relation to building works undertaken to their home. Once received...we will however confirm that all necessary building/planning consent is in place or advise that retrospective permission is obtained for the works that have been undertaken.”*

8. The ICO commenced his investigation and set out its scope and objective in a letter dated 28 October 2014 (bundle pages 90-94) which stated that Ascham Homes had confirmed that it did not hold relevant information, but that Mr Chaudhrey believed that information about the building permission was held when he made his request. The focus of his investigation was whether Ascham Homes had held such information at the relevant time.
9. Following his investigation the ICO issued his decision. He noted that Mr Chaudhrey considered that correspondence from Ascham Homes including the outcome of his complaint referred to a decision not to undertake enforcement action about the building alterations. Ascham Homes had conducted searches against the relevant names and had satisfied itself that it did not hold the information. The ICO concluded that no information was held.
10. Mr Chaudhrey appealed this decision. He emphasised that he was not seeking information about building control or planning control but about the landlord's consent to make building alterations. He stated:-

*“by not taking enforcement action to remove the alterations, the ALMO is, by default, granting consent to the alterations. I have been seeking information on the facts and merits of this decision to allow alterations to our shared building.”*
11. In resisting the appeal the ICO acknowledged errors in his decision notice which (he claimed) was too narrowly focussed on planning consents and should have been addressed to the LB Waltham Forest rather than to Ascham Homes, which was only a subsidiary body in this matter. He invited the tribunal to join the borough to enable a broader consideration of the request.
12. While the borough was not joined to the proceedings it has provided information in a letter dated 10 July 2015 and provided to Mr Chaudhrey. The letter states:-

*“Please note that Legal Services act on behalf of the Council only and therefore do not comment on any consent required from Ascham Homes as landlord.”*

13. The letter gives details such details as the Council itself holds of planning and building control issues with respect to a rear extension, use of a basement, demolition of a shed and a side extension. With respect to the rear extension, planning consent was given in 2001 and a building control completion certificate with respect to certain works was given in 2013. The side extension had been in place since at least 2007 and was therefore outside the scope of both planning and building control, such controls did not apply to the basement use or the demolition of the shed.
14. In his submissions Mr Chaudhrey reaffirmed:- “I was informed by the local authority that the decision not to remove the alterations was based on the facts and merits of the case, that being so it does not mean there has been permission granted by the landlord (the local authority), per se.”

#### Consideration

15. The handling of this case by both Ascham Homes/the borough and the ICO has led to some confusion and it is appropriate to step back and consider the request in its context.
16. The first works were carried out on the building in or about 2001, planning permission was granted in that year, however building control was not finalised until 2013. At that stage the borough was responsible for all aspects – planning, building control and landlord’s consent to the works. Despite searches there is no evidence of a landlord’s consent being sought or granted, however as the investigation into the complaint (paragraph 1 above) noted there are no records from that period.
17. The works with respect to the side extension were carried out some time prior to the end of 2007. No planning permission or building consent were sought by the occupier and the view of the borough as confirmed in its letter of 10 July 2015 is clear and simple “As the requisite time periods for taking action had long since expired when Building Control became aware of the side extension no formal or written decision was made not to take action. The Council has no written record of this decision.”
18. Although Mr Chaudhrey’s request for information was addressed to Ascham Homes, for FOIA purposes it is part of the borough, furthermore as Mr Chaudhrey was informed (paragraph 1 above) issues of building works were dealt with by the borough’s Legal Department.

19. From all the material before the tribunal, which consists of searches by Ascham Homes and the borough as well as the report into Mr Chaudhrey's complaint concerning the handling of his complaint to Ascham Homes about his neighbour's alterations to the property, there is no evidence to indicate that any decision was ever made "as a landlord" with respect to the building works, as distinct from decisions made as the authority responsible for planning and building control. There is no information held either within Ascham Homes or the wider borough indicating that the issue of landlord's consent to works was addressed. His request, addressed to Ascham Homes, was for details of the decision it had made with respect to the building works. It had made none. The borough has provided details of planning and building control decisions, the complaint report submitted to the borough's chief executive (paragraph 6) indicated the view of the borough that a landlord action would fail and clearly demonstrates what steps were taken in response to Mr Chaudhrey's complaint. It does not indicate that any decision was taken – rather it demonstrates an acceptance of the legal position.
20. The tribunal is therefore satisfied, on the balance of probabilities, that the ICO's original decision, that the information requested was not held and dismisses the appeal.
21. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 21 September 2015