



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

Appeal No: EA/2016/0242

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS5622051
Dated: 12 September 2016

Appellant: John Kuschnir

Respondent: The Information Commissioner

Heard on the papers: Alfred Place, London

Date of Hearing: 22 March 2017

Before

Chris Hughes

Judge

and

Steve Shaw and Dave Sivers

Tribunal Members

Date of Decision: 13 April 2017

Subject matter:

Freedom of Information Act 2000

Environmental Information Regulations 2004

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 12 September 2017 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings made an application for planning permission to Telford and Wrekin Council (the Council) in relation to the construction of seven houses on the site of a former public house, the Park Inn at Ironbridge. On 24 May 2013 he received permission subject to a number of conditions, one relating to drainage. He has been dispute about this condition since 2015. He claims that he has complied with the condition, the Council state that it requires specific modelling evidence with respect to flood risk.
2. 16 days after the Council failed to discharge the condition as having been complied with, the Appellant, on 6 November 2015 submitted his first request for information. It sought information about drainage/planning issues in respect of small-scale housing developments where planning applications had been made in 2013/2014 and 2015. The Council's response referred him to their website.
3. On 10 November he responded to this reply with a question and council and the letter went on to make the same 12-part request as had been made previously, this time in respect of 2007,2008 and 2009.
4. On 13 November 2015 he made a request for information held relating to the Park Inn from October 2012 to the date of the request.
5. On 20 November 2015 he asked:-

“... Please let me know how many new domestic properties were added in 2013, 2014 and to date 2015 for each council tax banding for each Telford and Wrekin parish.

Please let me know which council departments are informed. If you can please also let me have the names of the builders/developers and addresses for each addition”.

6. An identical request for 2007, 2008 and 2009 was lodged the same day.

7. On 23 November he requested:-

“Please let me know which developers applied, which developers succeeded, the sums of money in each case, the planning reference number and address of each development, and the criteria for selection in relation to the items below from the Telford and Wrekin newsfeed.”

8. On 6 January 2016 he requested information:-

“The council has 36 enforcement notices for alleged breach/non compliance of planning conditions on its website from 01.01.11-31.12.15:

.....

Please can you let me know precisely what happened in each instance at each stage? Out of the 36 enforcement notices, which ones were referred to magistrates’ (or other) court and what was the outcome? What others sanctions, if any, were taken by the council?

Please let me know what if any information is being withheld and the reason. In the unlikely event that this request exceeds your estimate of 18 hours work, please start at 2011 and work forwards.”

9. The Council supplied a spreadsheet with the information on 28 January and on 29 January the Appellant responded by a further request:-

“Your spreadsheet refers to appeals made against the breach of conditions notice. Please may I have the appeals policy and procedures in full?”

10. On 9 February 2016 the Council wrote to the Appellant attempting to draw a line under his various requests for information by supplying a spreadsheet detailing all his information requests and the dates the Council responded (bundle pages 296-299). The letter stated that due to the number and content of his planning related requests

the Council had assessed them and concluded they were vexatious and intend to treat future requests as vexatious:-

“Given the results of the assessment we will not be responding to future FOI requests made in respect to these planning matters. If you have any outstanding planning complaints you should contact the Local Government Ombudsman...”

11. The Council confirmed its position on 1 March and the Appellant complained to the Respondent Information Commissioner (the “ICO”).
12. The ICO investigated. In his decision notice he acknowledged the Council’s view that the timing and nature of the requests was directly consequential upon the Council deciding not to discharge the planning condition, that responding to the requests generated further requests, that the requests placed a unjustifiable and significant burden on the planning department at the same time as its officers were trying to advise him on his application (decision notice paragraphs 21-26) . The ICO noted the Appellant’s persistent and sometimes aggressive approach and that the parties had reached an impasse. The ICO considered that the high volume of multi-limbed requests created a significant strain on the Council’s resources (dn para. 37) and the Appellant could have addressed the substantive merits of the planning issue through the Council’s complaints procedure or the Local Government Ombudsman. She noted the tone of the correspondence and that the first application which related to planning and drainage, made 16 days after being notified that the drainage condition remained in force on his own planning application:- *“undermines any serious purpose or value that either the first request, or the subsequent series of requests, may have.”* (para. 38). She noted that in 12 working days the Appellant submitted 6 complex requests seeking a substantial amount of information; the requests and associated correspondence represented a significant burden. There was no prospect of the behaviour abating and that the Appellant:- *“disappointed by the decision reached in his planning application, was using the FOIA to attempt to pursue his planning issues and also cause disruption and annoyance to the Council.”*(dn para 41).
13. The ICO did not consider that any wider public interest was served by the requests which were personal to the Appellant (para 42) and the burden on the authority significantly outweighed the limited transparency gained by disclosure. She concluded that the requests were an improper use of formal procedure and were

manifestly unreasonable. The Council was entitled to rely on the relevant provisions of the Environmental Information Regulations (Regulation 12) and FOIA section 14 in refusing the requests.

14. The Appellant provided in a lengthy statement supporting his appeal a detailed chronology of his requests for information and the responses. He addressed in detail questions relating to the form of modelling of drainage which the Council sought.
15. He argued that some of his requests related not to planning but to drainage; however the tribunal viewed this as a distinction without a difference since the two were, in this context closely entwined since the underlying issue was the refusal of the Council to discharge a planning condition relating to drainage.
16. He argued that a subject access request had not been properly handled. Whether it was or was not is not a matter within the jurisdiction of the tribunal.
17. He criticised aspects of the Council's handling of his requests (largely mirroring criticisms made the ICO in the decision notice).
18. The key issue is whether or not the ICO properly reviewed the available evidence and applied the law correctly in concluding that the pattern of requests was vexatious. The tribunal has not doubt that the ICO properly analysed the issue and came to the only reasonable conclusion. The spate of requests related to planning/drainage issues was triggered by the Council's decision on his planning application. He was attempting to pursue this dispute by the wrong means – an appeal through the formal town planning processes, the Council's complaints procedures or the Local Government Ombudsman were the potentially available routes for dispute resolution – not repeated FOIA requests.
19. In his appeal statement (bundle page 45) the Appellant at paragraph 169 explicitly stated that:- *“There lies the rub. [name redacted] tried to re-write the planning condition....I was not vexed with the council. However the council was vexed with me”* The ICO was correct to conclude that this motivation to pursue the planning dispute undermined any serious purpose (DN para 36). The requests were consuming an inordinate amount of Council resources, for example responding to the 20/11/2015 requests (relating to council tax) took five hours (bundle page 487).
20. The tribunal noted that the Council had applied the vexatious/manifestly unreasonable determination only with respect to his requests relating to planning, enforcement and

drainage, they had pointed him towards the Council website where the information was available, they had attempted to resolve his planning condition issues and suggested dispute resolution procedures. The Council rightly considered that scarce resources could be more effectively utilised.

21. The requests were a clear attempt to use FOIA/EIR as a weapon rather than as a light. The Appellant was using the disruption and effort in complying with his repeated, detailed requests (with very high volumes of correspondence, pressure for answers and criticisms of the Council) to put pressure on the Council. The requests were disproportionate, there was effectively no public interest in the disclosures sought and substantial harm to the Council.
22. The ICO in her decision notice correctly analysed the issues and her decision was correct in law. The appeal is dismissed.
23. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 13 April 2017