First-tier Tribunal
(General Regulatory Chamber)
Information Rights [alter as appropriate]

Appeal Reference: EA/2018/0134

Heard at Manchester
On 7 December 2019

Before

JUDGE DAVID THOMAS

TRIBUNAL MEMBERS JEAN NELSON AND MALCOM CLARKE

Between

JULIAN ROSEN

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

Decision

The appeal is dismissed. No further action is required of the Greater London Authority (GLA).

NB Numbers in [square brackets] refer to the bundle

1. This is the appeal by Mr Julian Rosen against the rejection by the Information Commissioner (the Commissioner) on 23 May 2018 of his complaint that the GLA

had wrongly failed to disclose certain information to him under regulation 5 of the Environmental Information Regulations 2004 (EIR). The Commissioner accepted that the GLA did not hold the information in question.

2. Mr Rosen opted for an oral hearing (held on 7 December 2018) and attended alone. The Commissioner did not attend. The GLA is not a party but has cooperated with the Tribunal following post-hearing case management directions (CMDs).

Factual background

3. The background relates to various property transactions made in anticipation of the London Olympics in 2012. The London Development Agency (LDA) needed to acquire certain properties so that the Olympic Park and surrounding facilities could be built. It was given acquisition powers by the London Development Agency (Lower Lea Valley, Olympic and Legacy) Compulsory Purchase Order 2005 (the 2005 Order) [1] but preferred to proceed by negotiation where possible. Businesses able to relocate were entitled to compensation; those which could not reasonably be expected to do so were entitled to compensation for 'extinguishment'. Mr Rosen submits that the law requires compensation to follow the principle of equivalence: a business should be in no better or worse position after acquisition.

4. He ran a food wholesale business called Bluefoot Foods Limited (Bluefoot) in the relevant part of East London. Bluefoot could not find reasonable alternative accommodation in time and was extinguished. This was in July 2007 and compensation was paid. In 2013, he challenged the amount in the Upper Tribunal, but not to his satisfaction (it is not clear why the process took so long). His argument is that other businesses, and in particular H Forman & Sons (Formans), were treated more favourably. Formans was a neighbour of Bluefoot's.

5. There were four linked transactions on or just prior to 26 May 2006 about which Mr Rosen is particularly concerned: (i) the purchase by the LDA of Formans' freehold property in Marshgate Lane E15; (ii) its purchase of the freehold property owned by the Community Housing Group (sometimes referred to as the Community Housing Association and now known as One Housing Group) (CHG) in Stour Wharf E3 (the property is known as Supreme House); (iii) its sale of that freehold to Formans (minus a small parcel of land to enable a bridge to be constructed over the River Lea); and (iv) its grant of a 200 year lease to CHG at Royal Albert Docks (Albert Docks). The four transactions were therefore designed to free up for the Olympics the Marshgate Lane property and land for the bridge.

6. According to Mr Rosen's Reply, CHG had acquired Stour Wharf for £4,500,000 in December 2015. The price seems to have reflected an expectation that CGH would obtain planning permission for affordable housing units but this proved misplaced. A report by Gareth Blacker, Director Olympic Land Team, for an LDA meeting on

[1] made under s. 20(1) of the Regional Development Agencies Act 1998

12 April 2006 **[17]** recommended that the LDA buy Marshgate Lane for £2m with a disturbance package for Formans' proposed move to Stour Wharf. Mr Blacker also recommended that the LDA sell Stour Wharf, once acquired from CHG, to Formans for £750,000 plus VAT. Mr Rosen says that the company thereby obtained a new, distinctive landmark building with state-of-the-art facilities and a restaurant, in prime Olympic location, at a knockdown price. He suggests that, in effect, the company was rewarded for being a thorn in the LDA's side and that the transactions saved Lord Coe, chair of the London Organising Committee, from embarrassing cross-examination at the forthcoming compulsory purchase order (CPO) public inquiry. Mr Blacker had explained that the sale price reflected the fact that the existing buildings would have to be demolished and the company would build its own premises.

7. CHG exchanged Stour Wharf for a 200-year lease at Albert Docks so that it could build affordable houses there rather than at Stour Wharf. The two interests – the freehold in Stour Wharf and the leasehold in Albert Docks – were said by Mr Blacker to be each worth £1,500,000 and, because they were the same value, CHG proposed a nominal consideration for each of £1.

8. In his Reply, Mr Rosen suggests that the LDA may have undervalued Stour Wharf and thereby avoided the VAT and stamp duty which was properly due. It should be said that his various allegations are unproven and it is not for the Tribunal to decide whether they have merit.

9. Paragraph 6.3 of Mr Blacker's report says: 'The LDA has been advised by consultant valuers in the negotiation and valuation process and values for all the elements of the scheme of acquisition and disposal has been undertaken in accord with the appropriate standards'. It is safe to assume that the valuers had committed their valuations to writing.

10. Ian Lister, Information Governance Officer at the GLA, explained the relationship between the LDA and the GLA in his letter to the Tribunal of 11 January 2019 (following post-hearing CMD issued by the Tribunal). The LDA was, he said, a functional body of the GLA from its creation as a regional development authority in July 2000 until its closure on 31 March 2012. The Greater London Authority and the London Development Agency Transfer Scheme 2012, made under the Localism Act 2011, transferred specified assets, rights and liabilities of the LDA to the GLA or the Greater London Authority Land and Property Limited (GLAP). [2] GLAP is a subsidiary of Greater London Authority Holding Limited, incorporated at the same time. It appears that the LDA transferred its interest in the Albert Docks lease to GLAP in 2012.

The requests for information

[2] GLAP is incorporated under section 34A Greater London Authority Act 1999 which provides that the GLA may carry on specified commercial activities through a subsidiary company

11. The history of the requests relating to property transactions in preparation for the Olympics is somewhat complicated.

12. Bluefoot made a request for information of the GLA on 22 December 2014 (it was made under the Freedom of Information Act 2000 (FOIA) but was later treated as an EIR request). The company asked for the CPO compensation paid to three named companies (including Formans) and how it was calculated and also for a list of the businesses extinguished under the CPO for the Olympics, the terms of any compensation agreed and the basis for it. The GLA released some information but not to Bluefoot's satisfaction, which made a complaint to the Commissioner.

13. She gave her decision on 1 March 2016. [3] She held that the GLA was not entitled to rely on regulation 12(5)(e) of the EIR [4] (confidential information) in relation to the Formans settlement and that that information should be disclosed. The requested information was not held in relation to another of the companies (because settlement had not yet been reached). The Commissioner decided that regulation 12(4)(b) (manifestly unreasonable requests) [5] applied to the information about the extinguished businesses because of the time the request would take to process.

14. Armed with the information relating to Formans, Mr Rosen himself made five requests of the GLA between 7 April and 2 June 2016. Each request was multi-part but in brief summary: request 1 asked for information relating to negotiations with Bluefoot and its extinguishment; request 2 for the leases and similar documents of, and compensation paid to, nine named companies; and request 4 for the report written by KMPG for the Mayor of London into allegations of corruption relating to the acquisition of property for the Olympics, the identity of two officers suspended by the LDA following KMPG's investigation and any severance package they later received.

15. Request 3 asked for valuations obtained by the LDA for the Marshgate Lane, Stour Wharf and Albert Docks transactions and request 5 for the consideration, VAT and stamp duty paid in respect of them.

16. The GLA initially relied on regulation 12(4)(b) of the EIR for each of the requests, although at the Commissioner's prompting later accepted that request 4 was governed by FOIA rather than the EIR because it was not for environmental

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[3] FS50588275

[4] '12(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

…

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest'

[5] '12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

…

the request for information is manifestly unreasonable'

information. During the Commissioner's investigation, Mr Rosen agreed to withdraw requests 1 and 2 to ease the burden on the GLA.

17. The Commissioner gave her decision on the remaining requests on 20 September 2017 **[63]**. She accepted that the GLA did not hold the information within request 4 and ruled that regulation 12(4)(b) did not apply to requests 3 and 5. In relation to those requests, she ordered the GLA to issue a fresh response. It did so on 25 October 2017. It disclosed some information either then or later. For example, it disclosed the valuations for Stour Wharf and Marshgate Lane. However, it said that it could not locate the remaining information.

18. In his Reply, Mr Rosen complains that he should not have needed to make a FOIA request (in reality, for the most part an EIR request). The information should, he says, have been disclosed by the GLA to Bluefoot in the Upper Tribunal proceedings. However, as (effectively) a litigant in person he had not been aware of this and suggests that advantage was taken of him by the LDA's solicitors. He says that, had he had access during those proceedings to the information which was later disclosed (for example, documents relating to the compensation package agreed with Formans), it would have made a material difference to the appeal and that he had as a result been denied a right to a fair hearing under Article 6 of the European Convention on Human Rights. Again, all this must remain speculation for the purposes of the present appeal.

Proceedings before the Commissioner

19. Requests 3 and 5 from the 2014 request therefore became the subject of the Commissioner's third investigation.

20. At her behest, the GLA approached the solicitors, Eversheds Sutherland (Eversheds), and the surveyors, Glenny & Co (Glenny), who acted for the LDA in at least some of the transactions to ascertain whether they held information on its behalf. She declined Mr Rosen's invitation that she ask the GLA to approach CHG and its solicitors because CHG was the other contracting party for two of the transactions and neither it nor its solicitors would therefore hold information on behalf of the GLA.

21. The GLA reported that Glenny held information about valuations but not about VAT or stamp duty. Eversheds had passed their files to Transport for London (TfL) Legal Services, who worked on behalf of the GLA under a shared service agreement and who had conducted a search of these files. This revealed one new document: the agreement between LDA and CHG for the exchange of Stour Wharf for Albert Docks. Eversheds' files did not contain any information about VAT or stamp duty relating to any of the transactions.

22. In her decision notice dated 23 May 2018 **[1]**, the Commissioner decided that, on the balance of probabilities, the GLA held no further information within the scope of

requests 3 and 5. She outlined the paper and electronic searches which the GLA had conducted and was satisfied with these. For example, the GLA had retrieved eight archive boxes containing information relating to Formans. Each document had been reviewed and disclosure of relevant documents made to Mr Rosen. The GLA had also searched the unstructured network drive (the LDA-drive) containing documents not part of formal case or archived files, [6] as well as GLA Muniments database for any historic information on GLA title deeds. No files had gone direct to GLAP. [7] The GLA was not in a position to explain why the files it had inherited contained some documents and not others (including documents of a similar nature). It had searched against terms suggested by Mr Rosen.

The pleadings

23. In his **Appeal [14]**, Mr Rosen noted that Mr Blacker's report said that the Albert Docks lease had been valued and suggested that surveyors must adhere to strict Royal Institute for Chartered Surveyors (RICS) guidelines about the retention of valuation reports. No explanation had been provided as to why the Albert Docks valuation had not been provided while that for the property being exchanged, Stour Wharf, had been.

24. With regard to VAT and stamp duty, if the amounts paid were nil, he should be given that information. In other words, a nil response fell within the scope of his request.

25. In her **Response [25, 36]**, the Commissioner said she had seen no evidence to support Mr Rosen's contention that the GLA had been concealing information. She added: 'Whilst it may be expected that more information regarding these transactions would be held by GLA, the Commissioner considers that the passage of time and changes in company structure, personnel etc over that time are likely and reasonably to account for any apparent gaps in the information provided'.

26. As noted, Mr Rosen explained more of the background in his **Reply**, which he brought to the hearing.

The hearing

27. At the start of the hearing, the following information was outstanding: (i) the valuation report for the grant of the Albert Docks lease (request 3.4); (ii) the stamp duty paid by the LDA on its purchase of Marshgate Lane (request 5.1c); (iii) the VAT paid by the LDA on its purchase of Stour Wharf Stour Wharf (request 5.2b);

[6] According to Mr Lister's letter of 3 November 2017 to Mr Rosen **[166, 168]**, the GLA used these word searches: 'Community Housing', 'Forman' and 'Formans', 'Marshgate Lane;, 'Stour Wharf' and 'Chalk Farm'. The searches identified 279 items, mostly of an administrative nature

[7] In his letter of 10 May 2018 to the Commissioner **[238, 239]**, Mr Lister said: '… all archives (sic) files transferred to the GLA would show on the archive logs which we have already searched, regardless of whether or not they have been used for GLAP purposes or remained untouched since 2012'

(iv) the stamp duty paid by the LDA on that purchase (request 5.2c); (v) the VAT paid by the CHG for the Albert Docks lease (request 5.3b); and (vi) the SDLT paid by the CHG for that lease (request 5.3c).

28. During the hearing, Mr Rosen said he was less concerned about the Marshgate Lane transaction and was content to withdraw that request.

29. He explained that he wanted the remaining information to build a case that Bluefoot had been treated unfairly, perhaps even to seek permission out of time to appeal the Upper Tribunal decision to the Court of Appeal.

Post-hearing events

30. Following the hearing, the Tribunal directed that the GLA disclose both the reply from Glenny to its email of 13 March 2018 **[216]** asking whether it held information within the scope of the requests and its correspondence with Eversheds to the same effect.

31. Mr Rosen was directed to provide the precise reference for the RICS guidance about how long surveyors should retain valuation reports.

32. To his response of 11 January 2019, Mr Lister attached the response from Robert McAllister, director of human resources at Glenny, of 22 March 2018. This explained that the firm had prepared valuation reports in relation to the purchase of 30 Marshgate Lane and the sale of Stour Wharf. However, Glenny had no involvement in the grant of the Albert Docks lease. Mr McAlister attached the main parts of the reports (the GLA had in fact already provided these to Mr Rosen).

33. Mr Lister also disclosed the email sent to Eversheds on 13 March 2018. The email quoted requests 3 and 5 and asked whether Eversheds still held information within their scope. Mr Lister explained that, at the same time, the GLA approached TfL Legal Services who conducted a search of the duplicate set of Eversheds files held on behalf of the GLA. The GLA, Mr Lister said, did not hold any other correspondence with Eversheds relating to the requests.

34. Mr Lister also explained that GLAP did not have any involvement in negotiating the Albert Docks lease. The lease was inherited following the transfer of LDA property interests to GLAP in 2012. GLAP was now the lessor. Given the lease's length, GLAP's role in managing it was very limited.

35. Mr Rosen has provided a substantial volume of additional documents following the hearing. These include part of the transcript of the evidence of Colin Cottage of Glenny at the Upper Tribunal appeal and information said to support his allegation of corruption within the LDA as well as correspondence relating to his requests for information. He has also provided guidance entitled *Whose files are they anyway?* issued by the RICS on 1 March 2013. This includes a section *Disposing of old files* –

How and when can you dispose of them?. This asks, for example, whether the files are over six years old, whether they relate to a current project and whether they are relevant to any disputes. The guidance advises that the shortest time surveyors should keep files is six years but that the Limitation Act 1980 provides for a period of up to 15 years for a professional negligence claim. If a surveyor wanted to dispose of files or documents less than six years old, he or she needed to be sure there was no good reason for keeping them. Ownership was a consideration in this connection and so were the terms of personal indemnity insurance. If space was at a premium, scanning the documents and storing them on an indexed file with information about what happened to any original documents was a solution.

36. Mr Rosen provided a formal Response to Mr Lister's letter of 11 January 2019 on 5 February 2019. He made a number of forensic points, some of greater weight than others. They include:

i. Mr Rosen drew attention to paragraph 3.8 in Mr Blacker's April 2006 report for the LDA: 'The land transaction between LDA and CHG has been agreed at £1 at the request of CHG. The two parcels of land have been valued by the LDA's consultant surveyors and have been shown to be of equal value. It is therefore considered to be acceptable to exchange the lands at a nominal £1'. It was highly unlikely, Mr Rosen suggested, that Mr Blacker would use two different surveyors when he was trying to demonstrate parity of value.

ii. He also suggested that it was not convincing why Eversheds had not been asked to search their files given that it was they, not TfL, who acted for the GLA [in fact, the LDA] on the transactions

iii. By clause 2.3.1 of the LDA-CHG exchange agreement of 5 May 2006, CHG warranted that neither it nor any company in its VAT group had made a VAT election in relation to Stour Wharf and would not do so in future. By clause 2.3. 2, the LDA confirmed that it *had* made a VAT election in respect of Albert Docks and had provided a copy to CHG. Clause 2.3.3 said that '[s]ums payable under this agreement are exclusive of VAT. An obligation to pay money includes an obligation to pay any VAT chargeable on that payment. When a taxable supply is made for the purposes of VAT under this agreement, a valid VAT invoice is issued in respect of that supply'. Mr Rosen suggested that Eversheds should be able to provide copy documentation relating to clauses 2.3.1 to 2.3.3.

iv. He pointed to the 'revelation' in clause 24, which is a signed handwritten addition to the agreement: '[CHG] hereby confirm that upon exchange of agreements with LDA that they will withdraw their objection to the compulsory purchase order in respect of the Exchange Site'. Mr Rosen says he was previously unaware that 'CHG were also objectors (like Formans) to the CPO and under the 5 May 2006 agreement. So CHG agreed to drop their CPO objection and exchange a property they had purchased six months earlier for £4.5 million, for a property that the GLA was stating (per the Gareth Blacker

report of 12 April 2006 and the TR1 released by the GLA on 23 May 2018) was valued at £1,500,000'

v. The GLA submissions did not add up, he suggested. The value of the 200-year lease at Albert Docks with facilitated planning must have been substantially in excess of £1,500,000. As with Formans, the subsidy to CHG which the undervalue represented would amount to state aid in return for withdrawing an objection to a CPO inquiry. There were similar issues regarding inaccurate declarations regarding VAT and stamp duty.

Discussion

Is the remaining requested information 'environmental information'?

37. If the remaining requested information constitutes 'environmental information', the EIR, as opposed to FOIA, applies. The Commissioner decided that it did and Mr Rosen has not disputed this.

38. The definition of 'environmental information' in regulation 2(1) of the EIR is very wide though not unlimited. In *BEIS v Information Commissioner and Henney*, [8] the Court of Appeal looked for a sufficient connection between the information requested and the environment. The Tribunal has adopted the same approach and has concluded that the outstanding information falls within the definition of regulation 2(1). The transactions in question would have had an obvious impact on the environment.

39. In fact, however, the outcome of the appeal would be the same if FOIA applied.

Regulation 5 of the EIR

40. Under regulation 5(1) of the EIR, the basic rule is that a public authority which holds environmental information must make it available on request. Under regulation 12(4)(a), whether information is held must be considered at the time of the request. Requests 3 and 5 were first made in mid-2016.

41. The crucial question is therefore whether at that time the GLA held the valuation report for Albert Docks and information about the VAT and stamp duty paid on that transaction and on Stour Wharf. The Tribunal has to determine the question on the balance of probabilities.

42. There are three important points to bear in mind. First, by analogy with section 3(2) FOIA, [9] information which is held by a third party on behalf of a public authority,

[8] [2017] EWCA Civ 844

[9] 'For the purposes of this Act, information is held by a public authority if— (a) it is held by the authority, otherwise than on behalf of another person, or (b) it is held by another person on behalf of the authority'. The definition means that mere possession by a public authority of information is not sufficient (if it is held on behalf of someone else) but also that

such that the authority has the right to call for it, is considered to be held by the authority. In the present context, it might well be that information held by GLAP, TfL Legal Services, Glenny or Eversheds relating to transactions involving the LDA is held on behalf of the GLA, although that would depend on precise contractual relationships. In his letter to the Tribunal of 11 January 2019, Mr Lister accepted that '[i]nformation held by third parties about those property, rights and liabilities [those transferred by the LDA to the GLA and GLAP] would therefore at that stage become "held" for the purposes of FOIA by GLA' (and therefore presumably also for the purposes of the EIR).

43. Second, the fact that a public authority could easily obtain information is irrelevant. Unless information is held on its behalf, it has no obligation to obtain it for the purpose of onward disclosure to the requester. Mr Rosen has made several suggestions about how the GLA could obtain the requested information. From his standpoint those are perfectly reasonable suggestions but not ones the GLA is required to adopt, save where information might be held on its behalf.

44. Third, the fact that a public authority might be expected to hold certain information does not mean that it does. Of course, if an authority would be expected to hold the information, it is more likely that it does, all the more so where it needs the information to carry out its functions. Ultimately, however, the Tribunal has to make a judgement whether, in all the circumstances, an authority does hold information. An expectation that an authority would hold information can certainly inform that judgement but it cannot be determinative. It is by no means rare for an authority not to hold information it would be expected to hold.

Two particular obstacles facing Mr Rosen

45. Before considering the individual items of outstanding information, it is worth remarking that Mr Rosen faces two particular obstacles in establishing, on the balance of probabilities, that the GLA does hold them (or that they are held on its behalf). The first is the passage of time. The transactions in question took place in 2006. A number of years had therefore elapsed before the series of requests began. Public authorities often do not retain even electronic copies for this length of time.

46. The second difficulty is that the LDA, the public authority, which was a party to the transactions, no longer exists. The GLA and GLAP have taken on some of its responsibilities and some of its assets but they were not involved in the transactions (in fact, GLAP did not even exist until 2012). They have inherited the LDA's information retention system, which might be different from their own. There may be some overlap of personnel but, inevitably, much corporate memory will have been lost in the intervening years. The Tribunal accepts that the only information which the GLA/GLAP physically hold is that passed onto them by the LDA, in

possession is not necessary (if the information is held on behalf of the authority by someone else

manual and electronic form. The GLA has no way of knowing what else the LDA may have held at some point. If and to the extent that the LDA's record-keeping was imperfect, the GLA/GLAP would have inherited that imperfection. If the LDA destroyed documents as no longer required (or for any other reason), the GLA's/GLAP's files would inevitably reflect those gaps.

47. It is clear that the GLA has conducted extensive searches and it has disclosed a significant amount of the information requested in the series of requests. Mr Rosen sees the piecemeal nature of disclosure as evidence of suppression, of a public authority dragged kicking and screaming to the disclosure table. That could in principle be true but the sporadic disclosure is at least as explicable by the fact that the files are old and belonged to a separate organisation. It is not obvious what motive the GLA and its employees would have to suppress information relating to old transactions in which they took no part.

48. It is in this overall context that the Tribunal assesses whether, on the balance of probabilities, the GLA holds any of the remaining information.

The valuation report for Albert Docks

49. In his report for the LDA, Mr Blacker said valuation reports had been obtained for all the properties in the proposed linked transactions, including, therefore, the Albert Docks 200 year lease. That is to be expected: the LDA could not enter into transactions for valuable assets without knowing their value. With Albert Docks and Stour Wharf, it needed to be confident that the assets were worth the same for an exchange to be appropriate.

50. Mr Rosen had assumed that Glenny was instructed to prepare a valuation of Albert Docks, as it had of Stour Wharf and Marshgate Lane. It is clear from the papers that the GLA had originally made the same assumption. However, in his email of 22 March 2018 in response to that of 13 March 2018 from the GLA, Mr McAllister said that the firm had no involvement with Albert Docks. The Tribunal has no reason to question this. It is consistent with what his colleague Mr Cottage told the Upper Tribunal. [10] The LDA may have thought that greater independence would be achieved if it instructed a different firm on Albert Docks. Whatever the reason, Glenny was not instructed.

51. That means that the LDA must have received the valuation report prepared by a different firm. The Tribunal accepts, on the balance of probabilities, that the report is not held by or on behalf of the GLA. From its misplaced assumption (prior to Mr McAllister's email) that Glenny had acted on Albert Docks, it is apparent that the GLA does not know who prepared the valuation. As noted above, the problem is that these are old transactions.

[10] See p271 of the transcript

52. Mr Rosen points to RICS guidance. In essence, the RICS advises (but does not mandate) that files should be kept for at least six years and longer if there is a current dispute (it points out that the limitation period for negligence actions can be up to 15 years). More than six years had passed by the time of Bluefoot's 2014 request. The company was in dispute with the LDA/GLA over CPO compensation, but it was not involved in the transactions for which the valuation reports in question were obtained and there was no reason for the Albert Docks valuers to keep their file on the off-chance that it might be said to be relevant to a CPO dispute relating to a separate property.

53. It is possible, of course, that the valuers did retain the valuation but without knowing who they were the GLA cannot check whether they did. Mr Rosen argues that GLAP must have a live file because there is an extant lease. However, Mr Lister explains that management of the lease is light touch, given its length. [11] The valuation report commissioned prior to the lease being entered into would not be needed to enable the LDA (or its successors) to manage the lease: the lessor would need the lease but not its valuation when granted.

54. It appears that Eversheds acted for the LDA on grant of the Albert Docks lease. It is quite likely, but not inevitable, that they would have been given the valuation report. What seems to have happened with regard to enquiries by the GLA of Eversheds is this. Paul Robinson, a colleague of Mr Lister's, sent David Jervis of Eversheds an email on 13 March 2018, setting out requests 3 and 5 and asking for the firm to forward relevant information it held (Mr Rosen argues that Mr Jervis, as head of tax, was not the appropriate recipient, but it is to be expected that he would have passed the email to the relevant department). On 22 March, Mr Lister informed the ICO that Eversheds had said that their searches might take a little while but they were aware of the need for promptness **[215]**. In his letter of 11 January 2019 to the Tribunal, he said that, at the same time as writing to Eversheds, the GLA had approached its legal advisers, TfL Legal Services, who advised that they held a duplicate set of Eversheds' files. He said that Eversheds were therefore not asked to search their files – presumably he meant that they were asked to abort the search they had been asked to undertake.

55. In his letter of 10 May 2018 to the ICO **[238, 240]**, Mr Lister says that it had transpired that a copy of Eversheds' files relating to 'Formans/H. Forman & Son transaction' was held by TfL Legal Services. Formans were not directly involved in Albert Docks but Mr Lister must have been referring to that transaction as well because he went on to say that the search by TfL Legal Services had revealed the exchange agreement for Albert Docks and Stour Wharf. By 'Formans/H. Forman & Son transaction', Mr Lister must have been referring to the three linked transactions.

[11] In his letter of 11 January 2019 to the Tribunal, Mr Lister says that GLAP would be responsible for complying with its covenants as lessor, such as allowing the tenant quiet enjoyment and maintaining common areas such as roads, drains and landscaped areas

56. It would have been preferable if Eversheds had been asked to proceed with their search. However, it was not unreasonable for the GLA to rely on the fact that TfL Legal Services indicated that they held whatever Eversheds held. [12] It is, in fact, quite likely, indeed probable, that, 12 years after the transactions, Eversheds would no longer have retained their files. The Tribunal accepts that, on the balance of probabilities, neither the GLA nor anyone of its behalf (Glenny, Eversheds, GLAP or TfL Legal Services) held the Albert Docks valuation report at the time of the requests. The GLA has conducted thorough searches, even if it had to be encouraged to undertake some of them by Mr Rosen and the Commissioner, and has cooperated fully with both the Commissioner and the Tribunal.

VAT and stamp duty on Albert Docks

57. With both Albert Docks and Stour Wharf, Mr Rosen says that he would like to know how much VAT and stamp duty was paid even if the answer is nil.

58. VAT is not payable on a commercial lease, unless the lessor (the LDA here) elects that it should be, so that it can recover the VAT it subsequently pays in connection with the lease. It appears, from clause 2.3.1 of the LDA-CHG exchange agreement of 5 May 2006, that the LDA *had* made such an election. Presumably, therefore, CHG did have to pay VAT. Clause 2.3.3 says that '[s]ums payable under this agreement are exclusive of VAT' and that an invoice would be issued where relevant. The consideration was just £1 but VAT is chargeable on value.

59. The important point, however, is that the GLA says that it has not located any information relating to VAT despite thorough searches and there is no reason not to accept this.

60. Stamp duty is payable by purchasers (CHG here). Whether any was payable in respect of the Albert Docks lease would be matter between CHG and HMRC (the rules are complicated and have changed over time). The GLA has speculated that none was payable because of section 60 Finance Act 2003, which provides:

> '*(1) A compulsory purchase facilitating development is exempt from charge [to stamp duty].*
>
> *(2) In this section "compulsory purchase facilitating development" means –*
>
> *(a) in relation to England and Wales or Scotland, the acquisition by a person of a chargeable interest in respect of which that person has made a compulsory purchase order for the purpose of facilitating development by another person;*
>
> *…*
>
> *(3) For the purposes of subsection (2)(a) it does not matter how the acquisition is effected (so that provision applies where the acquisition is effected by agreement).*

[12] It is not clear whether TfL Legal Services hold Eversheds' files or a duplicate of them. The former seems more likely but in either event TfL Legal Services holds everything which Eversheds once held

…'.

61. Mr Rosen makes the point that paragraph 7.1 of Mr Blacker's report says that the CPO for the acquisition of the Olympic Zone had not yet been confirmed and that section 60 could not therefore have applied. However, a CPO had clearly been made (via the CPO Order) and, in any event, the transactions were executed by agreement in the context of compulsory purchase such that subsection (3) could have applied.

62. Ultimately, it does not matter whether stamp duty was payable because Mr Rosen says he wants to know the figure even if it was nil. The more fundamental point, once again, is that, whilst it is possible that the LDA or its solicitors held information about how much stamp duty CHG paid, they might well not have done (since stamp duty is the responsibility of a purchaser); but that, in any event, there is no reason to doubt the GLA's evidence that neither it nor the relevant third parties held the information at the time of the requests (or have held it since).

VAT and stamp duty on Stour Wharf

63. The LDA was the purchaser of the Stour Wharf freehold. As with the Albert Docks lease, VAT would not have been payable unless CHG had made an election. The exchange agreement says that it did not. Mr Rosen therefore in effect knows the answer to this request.

64. The LDA would have been responsible for any stamp duty payable on Stour Wharf. It is likely, therefore, that Eversheds as its solicitors would have held this information at one time (even if the figure was nil because of section 60 Finance Act 2003 or for some other reason). Once again, however, there is no reason not to accept the evidence of the GLA and TfL Legal Services that the information was not held at the time of the requests.

Conclusion

65. For these reasons, the appeal is dismissed. The decision is unanimous.

66. Mr Rosen has pursued his and Bluefoot's requests for information with great determination and considerable forensic skill. He believes that Bluefoot has been the victim of an injustice (although it should be said that, provided the company was properly compensated, the fact that other companies may have negotiated better deals is not ground for legal complaint). He also believes that something more sinister may have been going on, with the Revenue deprived of taxation properly due to it. It is no doubt frustrating to be denied what he regards as key pieces in the jigsaw necessary to make good his hypotheses.

67. The fact is, however, that Parliament has, unsurprisingly, only imposed an obligation on public authorities to disclose information which they hold (or which is held on their behalf). If a public authority does not hold information and it is not

held on its behalf, that is the end of the matter. In all the circumstances, the Tribunal has concluded, on the balance of probabilities, that the GLA did not hold any of the remaining requested information at the time of the requests and no one held it on its behalf.

Signed

Judge of the First-tier Tribunal
Date: 19 June 2019
Promulgation date: 25 June 2019