



ON APPEAL FROM:

The Information Commissioner's Decision Notice No: EA/2013/0225

Dated: 8 October 2013

Appellant:

Respondent: The Information Commissioner

2nd Respondent: Steyping Parish Council

Heard at: Field House

Date of Hearing: 27 March 2014

Before

Chris Hughes

Judge

and

Narendra Makanji and David Wilkinson

Tribunal Members

Date of Decision: 3 April 2014

Attendances:

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

Subject matter:

Environmental Information Regulations 2004

Cases:

Information Commissioner v Devon County Council and Dransfield 2012 UKUT 440
AAC

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 8 October 2013 and dismisses the appeal.

Dated this 3rd day of April 2014

Judge Hughes

[Signed on original]

REASONS FOR DECISION

Introduction

1. For several years there have been plans by the Second Respondent, Steyning Parish Council (“the Council”), to build a skate as a facility for the young people of the village on the edge of the village green at Steyning and lying partly within the South Downs National Park. This has been a question of some controversy in the village and the appellant in this case, xxxxxxxxxxxx has been prominent in leading the campaign against the proposed development as xxxxxxxxxxxx. He has unsuccessfully applied for a judicial review of the matter (the Court held that the application was premature) and has had extensive correspondence with the Parish Council as well as with other bodies on issues relating to the proposed development. xxxxxxxxxxxx informed the Tribunal that the formal planning application was likely to be considered by a committee of the local planning authority (Horsham District Council) in approximately two months’ time.

The request for information

2. On 26 January 2013 he wrote to all the members of the Council giving his views of various issues raised by the latest version of the proposal, criticising it, indicating possible management difficulties arising from the proposal, asking questions arising from what he saw as the implications of the proposal for the management of the park once it was developed *Have you budgeted for this? How much?* Making specific criticisms of what he saw as the implications of the development he wrote - *This bunding will be an irresistible draw for youngsters to ride their bikes up and down and round and round. Great fun. But it will turn much of it into a mud-heap.* He argued that- *This is going to look nothing like the visualisations with their lovely manicured slopes – it’s going to look what it is – a concrete bowl with the spoil-comprising mud and ill-kempt straggly and patchy grass piled up around it. Lets have an honest visualisation of this.*
3. He set out his views on aspects of the legal duties of the Council:-

You are fully aware of your ongoing legal duty to have regard to national Park statutory purposes in exercising or performing any functions in relation to, or so as to

affect, land in an Area of Outstanding Natural Beauty or a National Park. You know that the legal duty applies to all decisions and activities that may affect land within an AONB or national Park and that activities undertaken outside AONB/National Park boundaries may affect land within them. You also know that this legal duty is ongoing and requires that this process should include consideration of all potential impacts on AONB/National Park purpose with the expectation that adverse impacts will be avoided or mitigated where possible. Finally you should also know that the performance of the legal duty should be documented. In the circumstances of this significantly increased impact on the national Park and on the view of the Area of Outstanding natural beauty from the Town as compared with the old plan where the bunding was much lower, and in the light of the fact that you know there is an alternative scheme for a skate park in the Leisure centre car park, please let me see the documented performance of your duty, or confirm that the duty had not been performed. Non-performance of your duty leaves the whole planning process open to judicial review.”

4. On 6 February 2013 the Council responded to the request explaining in detail, in the light of the current guidance from the First Respondent (“The Commissioner”), why it considered the request to be “manifestly unreasonable” and that it was in the public interest to refuse the request. The letter (bundle 1 pages 306-311) noted that
xxxxxxxxxxhad:-

... made a series of complaints to the Horsham District Council concerning the conduct of 12 councillors on the Parish Council and you have repeatedly accused the council of deceit, lying to the residents and illegal, unlawful and inappropriate conduct ... You advised that you would seek a Judicial review on a “no win no fee” basis and that you would join the Parish Council in the proceedings should the planning application be granted...

There had been

Correspondence ... many pages long ... all of which have required time, research, careful consideration and many of them a response. These letters are shown in the attached schedule....

In our opinion... the above matters, when viewed as a whole, point towards the request as being obsessive

The letter drew attention to the impact this conduct could have and implied that it could be seen as harassing and causing distress.

With respect to the burden imposed on the Council the letter stated;-

At the time of writing our review we have dealt with over 65 pieces of correspondence from you dealing not just with FOI/EIR requests, but other planning issues and questions you have raised some of which required many hours of research.

In considering whether the request was designed to cause disruption or annoyance the Council noted that the intention of xxxxxxxxxx organisation was to prevent the planning application from being granted.

The Council, having noted that all of the documentation relating to the planning application was available on the Horsham District Council website wrote *in the light of the enormous amount of correspondence between yourself and the Council and outside agencies on this matter we do not see that this request, on this issue, has any serious purpose.*

In considering the public interest balance and acknowledging the general public interest in disclose the Council concluded that in this case:-

1 The request is one of a series of requests that are now overburdening council officers and hindering council officers from undertaking other public duties.

2 The request is one of an obsessive nature

3 Much of the request has been duplicated in previous requests.

Therefore we consider the volume of information requested, together with the significant history of correspondence as shown in the attached schedule and all related to the same topic is evidence that the request is manifestly unreasonable and that it is in the public interest to refuse the request.

The decision of the Information Commissioner

5. xxxxxxxxxx complained to the Commissioner on 8 February 2013. In his decision the Commissioner found a procedural breach by the Council. He then considered the substantive merits of the case in the light of the decision of the Upper Tribunal *Information Commissioner v Devon County Council and Dransfield* which had recently been decided. He noted the need to view such cases (where it was alleged a

request was manifestly unreasonable/vexatious) broadly *Emphasising the attributes of manifest unreasonableness, irresponsibility and , especially where there is previous course of dealings, the lack of proportionality that typically characterise vexatious requests*” (Dransfield paragraph 45).

6. In reviewing these matters and the four broad issues instrumental in analysing the question (burden on the public body, motive of the requester, value or serious purpose, harassment of the public body and its staff) ,he found that:-

- (DN paragraph 22,23) The Council had demonstrated that the level of communication and the amount of time dealing with xxxxxxxxxxx communications *does seem to be excessive given the size of the council and the Commissioner considers that this would have placed a burden of the council’s resources to carry out its other duties.*
- (DN24) Allegations of negligence, cover ups and fraudulent activity by the Council. The Commissioner quoted statements by xxxxxxxxxxx in his correspondence including:- *I do not believe that you can possibly be so stupid, either individually or collectively, as you pretend to be when you repeatedly fail to follow an argument and confuse one point with another.*
- (DN29-33) The Commissioner noted the ongoing issue about the skate park , that there were other routes for resolution of this and other issues and he was not in a position to make findings as to the legality of the Council’s conduct with respect to the schedule of issues which xxxxxxxxxxx described as illegal, unlawful, deceptive and inappropriate.
- (DN34) The scale of the correspondence given that the Council had 2 employees – it was a parish not a city council meant a disproportionate amount of time was spent to the detriment of the Council’s other duties. There were other authorities to whom xxxxxxxxxxx could turn and the council was correct to rely on regulation 12 (4)(b).

7. In weighing the public interest questions the Commissioner noted the value of transparency and xxxxxxxxxxx actions to draw a wide range of planning issues to the attention of the Council and that xxxxxxxxxxx felt that he was pursuing a legitimate lobbying exercise on behalf of a pressure group. He noted that the Council’s

workings were impeded by the time its two staff had to spend dealing with xxxxxxxxxx, there were other public authorities to whom he could take his concerns and the Council had delayed its application to enable alternative sites to be considered. He concluded that given the severe impact of the correspondence on the work of the authority the public interest in disclosure would need to be substantial to outweigh the disproportionate burden placed on the Council, and he upheld the Council's stance.

xxxxxxxxxxx appeal

8. In his appeal and evidence to the Tribunal xxxxxxxxxx addressed the content of his correspondence with the Council. In written submissions he identified 16 different issues which he considered were distinct from the simple question relating to the skate park (in his oral submissions he increased this number). He demonstrated to his satisfaction that in each of these cases he had been correctly identifying some defect/illegality in the Council's actions.
9. He doubted whether the Council had taken into account its National Park duties. He attacked the integrity of the Council: they were “*making knowingly untrue public statements*”. He argued that the Council had “*publicly vilified*” him by releasing figures as to the costs in time and money incurred in dealing with his issues.
10. He had corresponded repeatedly with all of the Councillors “*where it was clear that the Parish Council was not aware of what was going on I have thought it appropriate to copy them in to emails going to the Parish Council.*” He emphasised his view of the impropriety of a parish councillor receiving Parish Council e-mails at an e-mail address he shared with his wife.
11. In addressing issue 13 – he argued that the Council invested its reserves in a bank account non-compliant with statutory guidelines. He referred a question the Tribunal asked him regarding the scale of the Council's finances to the Chair of the Council who was present. When the Chair was unable to provide a prompt reply xxxxxxxxxx commented “The Chairman of the Parish Council doesn't know his own budget”.
12. With respect to the arguments and evidence of the Council with respect to the costs of dealing with his correspondence – estimated at approximately £3000 for 2012 and a sum approaching that for the next nine months, he was unable to dispute the amounts

but argued that the staff were employed in any event and it was necessary to ensure the accountability and correct conduct of the Council.

13. In addressing the *Dransfield* analysis he argued that he had only asked for one or two documents and one needed to look at why all the other correspondence had been generated. He was not “*banging on*” at the same questions but that there were 16 different areas of concern in the correspondence. He stated that he had lived in Steyning for a very long time (he divides his time between London during the week and the village at weekends) and he had paid no attention to the doings of the Council until December 2011. He acknowledged that in a general sense all the issues were related, *but only in a very general sense*. His stance was that since his arguments on each issue were valid there could be no question that they were manifestly unreasonable. He was trying to hold the Council accountable to proper standards. There was suspicion of wrongdoing and it must serve the public interest for these matters to be scrutinised. The Council had not acknowledged the legitimacy of his concerns. He argued that there were at most one or two documents being sought since most of the material was in the public domain through the planning process. He denied that his intention was to overwhelm the Council and exhaust its resources so it could not continue with the scheme.
14. xxxxxxxxxxxx sought an order for costs against the Council. In his original application for costs he identified that he had spent 173 hours 50 minutes since October 2013 in handling the appeal, he costed his time for these purposes at £18 per hour and with disbursements lodged a claim for £3683.25 costs. The Tribunal noted the number of hours involved and considered that it served as some confirmation of the likely intensity of effort which the Council had needed to commit to responding to his communications over the two preceding years.

Consideration

15. In considering this appeal the Tribunal was conscious of the need to ensure that the issue of whether the request was manifestly unreasonable was viewed in the round in the light of the statutory purpose and the prevailing circumstances. The legislative intent was to advance the public interest by ensuring that information relating to the environment and held by public bodies is available. The purpose of the manifestly unreasonable provision is to ensure that the system works well by preventing abuse of

the right leading to a loss of confidence in the system of access and obstructing the effective working of the public bodies administering it.

16. xxxxxxxxxxxx by his own admission had no interest in the actions of the Council until the end of 2011. He then became a leader of a campaign group determined to prevent the Council from constructing a skate park on the village green.
17. The fact that within a short period of time he was able to identify to his own satisfaction so many examples of error and misconduct by the Council indicates the priority which he gave to scrutinising all its activities and raising concerns about them with the Council. It is transparently clear that the original motivation for this course of conduct was to challenge the plan to build a skate park. In order to achieve this he has systematically scrutinised and challenged a large number of the Council's operations.
18. Objectively this is a clear attempt to undermine the self-confidence of the Council and of the community's confidence in the Council's operations and to undermine the Council's willingness and ability to proceed with the project, by seeking information, challenging decisions, querying the conduct of individuals. It was clear to the Tribunal that in many cases xxxxxxxxxxxx was taking an extreme position on issues relating to the Council; placing the most severe interpretation on every issue that he had identified, he did not stand back, but pursued every argument to an extreme. The Council (using the previous edition of the Commissioner's guidance) identified this as obsessive. The lack of proportion and fairness in his conduct and criticism makes that conclusion entirely understandable.
19. His approach was remarkably similar to the disproportionate and aggressive approach to litigation adopted by some large organisations to overwhelm the legal and financial resources of smaller adversaries. The use of EIR and FOIA must be seen as part of this systematic process. In pressing his request and appeals he has placed very serious burdens on the resources of the Parish Council, he has denigrated the Council and its members which will undoubtedly have led to feelings of harassment. The scale of his engagement with the Council is reflected by the size of the bundles produced for this case three weighty bundles of 374, 218 and 249 pages. His determination to copy correspondence to all councillors as well as multiple other recipients demonstrated his intention to over-ride and disrupt the Council's processes. The hostility and contempt

he showed towards the Chairman of the Council during the hearing was entirely consistent with, and illuminated, his previous course of dealings.

20. The process (of which EIR/FOIA requests were a significant component) which xxxxxxxxxx had followed has not only caused a considerable burden on and harassment of Councillors and staff but was motivated by a desire to obstruct and, given the structure of decision making, was likely to be of minimal value in helping public understanding of issues relating to the environment. The request was an abuse of a statutory right. The Tribunal was satisfied that both the Council and the Commissioner had correctly characterised the request as manifestly unreasonable and had correctly analysed the facts and law.
21. The Tribunal upheld the Commissioner's decision and dismissed the appeal. It also dismissed xxxxxxxxxx application for costs.
22. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 3 April 2014