



Neutral Citation Number:

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

Appeal No: EA/2015/0298

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50589693
Dated: 25 November 2015

Appellant: Melvyn Bluck

Respondent: The Information Commissioner

Heard at: Field House, London

Date of Hearing: 4 May 2016

Before

Chris Hughes

Judge

and

Roger Creedon and Paul Taylor

Tribunal Members

Date of Decision: 11 May 2016

Attendances:

For the Appellant: in person

For the Respondent: no attendance

Subject matter:

Freedom of Information Act 2000

Environmental Information Regulations 2004

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 25 November 2015 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The Appellant in these proceedings, Mr Bluck, is a Chartered Engineer with qualifications in Management and Highway Engineering. He has lived for 50 years in the area served by Mole Valley District Council (“MVDC”, “the council”); indeed he worked for the council, its predecessor and the City of London during his career. He is deeply attached to the beauties of the area and concerned to maintain them. In 2009 he was concerned about an issue relating to his area (albeit claimed to be a different issue to the matter at the heart of this appeal), complained to the Council and, dissatisfied with the response, complained to the Local Government Ombudsman (“LGO”), who decided not to pursue the complaint.

2. On 29 November 2013 he wrote to the CEO of the council concerning three companies which appeared to him to have relocated from a business park to a house adjoining his home. He complained about large vehicles making deliveries and stated (bundle page 31):-

“These companies employ four or five people who work from a garage which has been converted into an office without the necessary permissions of planning or building regulations. There is no adequate means of escape with regard to building Regulations nor are toilet facilities provided under the Health and Safety Regulations. All in all this is a most undesirable intrusion in a residential area.

These companies not only flout all the regulations which are set in statute there is even a separate bell on the gates of this property for deliveries to these premises.

I would ask you to investigate these matters and arrange for these activities to cease and to be relocated on a proper business park paying proper business rates”

3. The council acknowledged the letter and Mr Bircher a Corporate Head of Service subsequently provided a substantive reply on 15 January 2014:-

“Thank you for your letter address[sic] to the Chief Executive which she has asked me to respond to.

I recall that you have contacted the Council on a number of occasions about the issue of a business being run out of [redacted] as well as other addresses, and we have investigated on each occasion.

We have revisited the property again. In the past our contention has been that the house has remained primarily a dwelling and not a business and that would appear to still be the case. As such, a change of use is not required. That is not to say that business is not conducted at the premises but we do not feel it is sufficient to warrant further investigation by ourselves.

You refer to three companies. One is a long standing association with that address namely Mici International. But we understand Conciluce is now defunct and had premises in Sutton and Lighting Design Partnership is registered to premises in Melville St in Edinburgh. We have also not seen any evidence of the type of deliveries that you describe in your letter.

Whilst I know you may find this disappointing, I do not propose to take any further action in this matter.”

4. Mr Bluck replied two months later enclosing information from the internet relating to the three companies, further information about a fourth company, Neolight “*the company size is given as 11 to 50 employees who would appear to operate from these premises.*” He developed his argument that there had been a fundamental change of use and set out his view of the statutory requirements for the employment of “*a staff of between 11 and 50 people*”. He stated “*what I require is a full investigation of these four businesses.*” He received no reply and sent a follow up letter in August. The council replied indicating that Mr Bircher had left the council and asking for another copy of the letter. On 23 October Mr Bircher’s interim replacement responded. He apologised for the delay in handling the letter and detailed the steps he had taken to consider the issues raised. He had made an unaccompanied site visit, consulted the planning development control manager, reviewed the history;-

“I note that under the Council’s Stage 2 complaints procedure you received a response on 25 November 2010 advising that enforcement action would not be pursued. You then referred the matter to the Local Government Ombudsman who responded to you... explaining that the Ombudsman should not pursue the complaint.

It appeared from my site visit that there was no business activity in the vicinity of the premises and the driveway gates were closed. There is no evidence contained in your letter dated 18 March 2014 to indicate that a change of use has occurred from the primary use as a residence. Planning permission is not required to brick up a garage opening and the garage may be used for uses incidental to the enjoyment of the dwelling. I cannot comment on Health and Safety Regulations or the Equalities Act. In the absence of any other evidence and having taken all available background information into account I regret to advise you that I do not intend to take any further action. However should circumstances alter in the future I will be pleased to review the position.”

5. Mr Bluck responded on 1 December. He did not accept the apology for delay in responding, he claimed that the complaint to the LGO was about a different matter and asked for an investigation into the matters raised by the 18 March letter. The reply of 8 December confirmed that no new information had been provided and that “*you have now exhausted the Council’s Complaints procedure*”. On 16 January 2015 Mr Bluck, ignoring this statement, wrote to the Chief Executive: “*I am writing to you as the Chief Executive of Mole Valley District Council and would ask you to treat this letter as an official complaint.*” He repeated the history of his correspondence, criticising council officers and asking for an investigation into the handling of his correspondence.

6. On 30 January 2015 the council’s “Customer Services Team Leader - FOI, Complaints & Improvements Officer” replied giving a three page response on the three issues raised about the handling of the 18 March letter and the delay in replying. Mr Bluck replied to him on 10 February 2015 (bundle pages 62-64):-

“I refer to your letter of 30 January 2015 which was in reply to my letter of 16 January sent to Yvonne Rees, Chief Executive. My letter to her was marked Private and Confidential as was the envelope and this was delivered by hand the [sic] Mole

Valley District Council. I was, therefore, surprised to receive a reply from yourself when I believe that she should have replied personally.

I note that you have now replied to me as a Stage 1 response, however, I note that the Chief Executive will respond at Stage 2. I would suggest therefore that you pass all the correspondence back to the Chief Executive, Yvonne Rees, in order that she can reply to me in accordance with your complaints policy as she should have done originally.”

7. The letter then went on to dispute the handling of this complaint so far. He indicated that the council should address the original matters of concern and the information he had provided. The letter then set out 20 questions or points relating to the handling of the complaint and his arguments why enforcement action should be taken (appended to the Information Commissioner’s decision notice) and concluded:-

“When may I expect a full and frank investigation carried out and a full reply to my complaints first sent to you on 29 November 2013...”

8. On 20 February the Deputy Chief Executive considered and responded at Stage 2 of the Complaints Policy/Procedure. He considered the question of enforcement action in respect of the adjoining premises, concluding that the decision was in accordance with the law and the council’s policies; and he considered the handling of the correspondence and apologised for the delays which had resulted. This was the final stage of the Complaints procedure and concluded:-

“I trust this clarifies the Council’s final position on this matter. However, if you remain aggrieved, I would encourage you to contact the Local Government Ombudsman at...”

9. Mr Bluck replied on 9 March (bundle pages 68-69). He argued that the complaints policy had not been complied with since the Chief Executive had not personally responded. He disagreed with the interpretation of the complaints the Deputy Chief Executive had used and asked for the 20 questions to be treated as requests under FOIA, adding a 21st request relating to inspections at the property (decision notice

paragraph 4). He advanced arguments as to his original concerns about the alleged change of use.

10. The council's reply reviewed the position with respect to the complaints (noting that a request for a service – to take enforcement action is not considered a complaint but a request for service which may or may not be accommodated). In addressing the question of FOIA stated:-

“...I note that several of the paragraphs in your 10 February letter are either an expression of your opinion (rather than questions), or are requests for comment rather than requests for information. Accordingly, I do not consider there is any duty on MVDC under FOIA to respond to these statements of opinion or requests for comment. To the extent that you have raised a request for information held by MVDC, I have considered your request and my opinion is that the exception at s14 FOIA is engaged (in respect of vexatious requests) and I therefore confirm that MVDC's response to your request is that it will not be putting the information requested by you in the public domain.”

11. On internal review the council maintained this position and in considering the possibility that some information fell within the Environmental Information Regulations (EIR) concluded that the request for that information was manifestly unreasonable and the balance of public interest was in not disclosing the information.
12. Mr Bluck complained to the Information Commissioner (ICO). The ICO considered the application of s14(1) FOIA and Regulation 12(4)(b) EIR in the context of the request and the dealings between Mr Bluck and the council taking into account the views of Mr Bluck and the council.
13. He noted that the 21 requests related specifically to the corporate complaint made by Mr Bluck which had been the subject of repeated review by senior council officers who had advised him that further complaint should be to the LGO (decision notice paragraphs 27,28). He considered that the resubmission of the points as information requests was an attempt to force the council to engage with Mr Bluck after the council had made its final position clear; the ICO *“considers that using the information rights provided by the FOIA and EIR in such a way represents a clear misuse of those access regimes”* and *“there is limited public value inherent within the requests.”*

14. The ICO noted that there was some burden on the council, very limited value in supplying the information and he considered: “...it reasonable to conclude that doing so would result in further information requests or correspondence, which would further divert public resources.”
15. In weighing the public interest the ICO recognised that the original ground of complaint, which could directly impact on Mr Bluck’s home was important to him and there was a public interest in ensuring that such complaints are properly addressed by the council (DN paragraph 35); however there was an absence of evidence to indicate that the council had acted unfairly or incorrectly and the mechanism for further pursuing the matter was the LGO. He concluded that complying with the requests would not address Mr Bluck’s underlying concern, would use public resources without any public value and the refusal was justified (DN paragraphs 36-37).
16. In his grounds of appeal Mr Bluck focussed on the complaint about the companies stating “MVDC has done nothing about this matter and these business activities continue up to this date” he stated that MVDC had done nothing about his complaint and had not investigated it “I therefore totally disagree with any and all of the decision notice...”. The outcome of the appeal he was seeking was “replies from MVDC... and to the five business’s at [redacted] ceasing their operations which still continue”.
17. In his response the ICO noted the absence of apparent grounds of appeal and the restatement of Mr Bluck’s position concerning the adjacent property. The ICO re-affirmed the position set out in the decision notice and set out the legal framework. He noted that Mr Bluck’s concerns about planning had been extensively reviewed, the 21 requests related to his corporate complaint about how the council had handled those concerns and were frequently assertions or requests for comments. He re-affirmed his view that using FOIA/EIR to force the Council to re-examine its decision was a misuse of the statutory right, the other arguments in the decision notice and invited the Tribunal to dismiss the appeal.

The oral procedure before the Tribunal

18. Mr Bluck criticised the conduct of the ICO in not attending the hearing and in delays in submitting documents and made a number of unsuccessful applications to strike out the ICO's reply. He criticised MVDC for, he claimed, not following its own complaints procedure because the Chief Executive had never written to him personally. He denied that the complaint to the LGO in 2011 had related to the neighbouring property, but did not produce any written evidence to contradict the statements of MVDC.
19. He considered that the ICO and MVDC had been insulting and that MVDC had been vexatious in the delay in responding to his correspondence. He was being attacked with "lies and false statements". He agreed that he had accused one council officer of lacking intelligence and he claimed one officer had lied in correspondence.
20. He produced photographs showing two cars parked in the road which, he claimed, belonged to workers at the company. He was robust in his view that between 11 and 50 staff were employed in the premises on the basis of a "LinkedIn" webpage showing that Neolight (with headquarters at the address) had a company size of 11-50 employees (the same document also showed it had addresses in Dubai, Malaysia and Sri Lanka).
21. He appeared to have two main concerns – that the planning issue be "*correctly investigated*" and he was concerned that his good name had been besmirched by the use of the term vexatious. Despite the prompting of the Tribunal he was unwilling to address the terms of the decision notice or the grounds that the ICO relied on to maintain his position.

Consideration

22. The question of whether a request for information is vexatious/manifestly unreasonable (they are in practical terms interchangeable) requires consideration of the context and value of the request. In this case the background (set out at paragraphs 1-11 above and reviewed by the ICO, paragraphs 12-16 above) is very clear. Whether the reference to the LGO in 2011 was about this specific building (as MVDC indicate) or a separate issue (as Mr Bluck claims) the question of whether there has been a breach of planning control has been repeatedly evaluated and reviewed by the council, which has concluded that it is not appropriate to take action.

A complaints procedure has been exhaustively followed (and despite Mr Bluck's belief that there should be detailed personal involvement by the chief executive in individual complaints the Tribunal has seen no evidence that the procedure has not been a proper procedure) and come to its conclusion. Mr Bluck is aware that he has exhausted the complaints procedure. On this occasion he has not chosen to take his complaint to the LGO. Mr Bluck having exhausted the complaints procedure has tried to use FOIA/EIR to force the council to continue to engage with him and to change its decision. This is a misuse of the right. There is no real public benefit from the requests (most of which are not for recorded information within FOIA/EIR), which are in reality statements of issues of complaint rather than requests for information.

Conclusion

23. The ICO, for the reasons he has stated in his decision notice, came to the only possible conclusion. His decision notice is correct in law and this appeal is dismissed.
24. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 11 May 2016