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

Appeal Reference: EA/2018/0282

Decided without a hearing

BEFORE

JUDGE DAVID THOMAS

TRIBUNAL MEMBERS ROSALIND TATAM AND ROGER CREEDON

BETWEEN

LLOYD BAILEY

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

The appeal is dismissed. No further action is required of the Vale of Glamorgan Council.

NB Numbers marked OB/ refer to the open bundle prepared by the Commissioner; documents in the additional bundle prepared by Mr Bailey are referred to as AB/ .

1. This is the appeal by Mr Lloyd Bailey against the rejection by the Information Commissioner (the Commissioner) on 30 November 2018 of his complaint that the Vale of Glamorgan Council (the Council) had wrongly refused to disclose certain information to him. The Council initially treated the request as made under the Freedom of Information Act 2000 (FOIA) but later argued that the Environmental

Information Regulations 2004 (EIR) were the applicable legislation. The Council is not a party to the appeal.

2. The parties opted for paper determination of the appeal. The Tribunal was satisfied that it could properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended) (the Rules). [1]

3. The Commissioner applied to strike out the appeal under rule 8(3)(c) of the Rules on the basis that it had no reasonable prospects of success but the Registrar dismissed the application on 1 February 2019 because Mr Bailey should, she said, have an opportunity of explaining why the requested information should be disclosed on public interest grounds.

4. In his pleadings, Mr Bailey has given a detailed history of the dispute which generated his request and has put in his own bundle of some 300 pages (the additional bundle).

Factual background

5. The background is a dispute about the ownership of, and therefore liability to repair, a retaining wall in Barry in the Vale of Glamorgan said to be dangerous.

6. Mr Bailey owns 14 Bastian Close, Barry. In a background document attached to his Reply **[OB/78]**, he describes the relationship of his property to other houses and the retaining wall as follows:

> '*My property is located in **Bastian Close** and was built in 1991. Kez House, along with Glebe House are much older properties, built circa 1892. Kez House and Glebe House today exist located to the rear gardens of some Bastian Close properties. Kez House adjoins Glebe House, where a highly elevated retaining wall supports both of these properties, which decreases in elevation – this is where 16-20 Bastian Close today exists. However, my property, number 14, is at the height of the elevated retaining wall and Kez House runs to the rear of numbers 14-15 …*' (his emphasis).

He included some photographs.

7. The Council, having for a long time maintained that the wall was owned by Kez House and perhaps Glebe House, eventually came to the view that the wall was owned by Mr Bailey and some other residents of Bastian Close. It has served a series of notices under section 77 Building Act 1984 (the Act). Section 77 enables a local authority to apply to the Magistrates' Court for an order requiring the owner of a dangerous building or structure to remove the danger or demolish the building or

[1] SI 2009 No 1976

structure. If the owner fails to do so, the local authority may execute the order itself and recover its reasonable expenses of doing so. The owner is in that event also liable to a fine. A section 77 notice provides the owner with an opportunity of carrying out the necessary works and thereby avoiding court proceedings. This is why the Council sometimes refers to the notices as informal.

8. Section 78 of the Act enables a local authority to take emergency action to remove a danger where this is warranted, where possible after first giving notice to the owner or occupier.

9. Mr Bailey maintains that he does not own the wall, which he says does not abut onto his property.

10. The cost of repairing the wall is put at around £90,000.

Chronology

11. This is the key chronology:

- **14 April 2008**: the Council serves section 77 notices on the owners of Glebe House and Kez House **[AB/2]**, but does not take court action. It appears that the owner of Glebe House may have undertaken some works but not, according to Mr Bailey **[OB/81]**, to the wall. The notice was placed on the Council's Building Register

- **4 October 2012**: the Council serves a section 77 notice on the owner of Kez House, but again does not pursue it **[AB/10]**. The notice is not placed on the Building Register but a note is placed on the Land Charges Register

- **20 June 2013**: the Council serves other section 77 notices on the owners of Kez House and, it is believed, Glebe House but once again does not bring proceedings (the Kez House notice is at **[AB/13]**). The notice is not on the Building Register but a note is again placed on the Land Charges Register

- **16 December 2013**: the Council writes to the then owners of 14 Bastian Close giving notice that it intends to take remedial action under section 78 of the Act **[AB/25]**

- **17 April 2014**: Mr Bailey bought and moved into 14 Bastion Close

- **10 December 2014**: draft report about ownership commissioned by the Council from Ball & Co (Cardiff) Ltd and sent to nine residents

- **July 2016**: the Wales Ombudsman, following a complaint by Mr Bailey, recommends that the Council addresses the time it had taken to resolve the dispute and the quality of its communications with the affected residents

- **26 February 2018**: the request
- **26 February 2018**: the Council's initial decision
- **11 April 2018**: the Council's review decision
- **17 April 2018**: the Council commissions a report by Chris Hyatt about the state of the wall
- **17 April 2018**: the Council issues Mr Bailey with a notice under the Building Regulations 2010
- **11 May 2018**: report by David Gregson Ltd commissioned by Mr Bailey into ownership, concluding that he did not own the wall
- **15 June 2018**: the Council issues a summons against Mr Bailey
- **28 June 2018**: the Magistrates' Court gives directions, including for written evidence and the questions which could be put to the authors of reports (the Council's note of the directions is at **[OB/119]**)
- **7 November 2018**: the Council provides Mr Bailey with the 2012 and 2013 section 77 notices
- **13 November 2018**: the Magistrates' Court hearing at which the Council dropped its case, following an indication by the judge that it might not be able to establish that Mr Bailey owned the wall. The judge ordered the Council to pay Mr Bailey's costs
- **30 November 2018**: the Commissioner's decision

The request

12. On 26 February 2018, Mr Bailey made the following request of the Council **[OB/93]**:

> '*Following the issue of an Informal Notice to Kez and Glebe House in 2008 under the Dangerous Structures of the Building Act 1984 by the Planning Department, can specifically the Legal Department and conveyancers (not Planning Department) confirm their advice provided to the Planning Department at this time and then further in 2013 that resulted in a letter dated 16th December issued by Planning to address the same works to residents. Any emails, minutes and correspondence and notes held would be requested specifically in advising Planning on boundary ownership including Kez House and numbers 14 and 15 Bastian Close individually and respectively*'.

13. The Council responded the same day **[OB/93]**. It said that the information was covered by the exemptions in sections 40(2) (third party personal information) and 42 FOIA (legal professional privilege (LPP)). Mr Bailey asked for a review on 8 March 2018 and the Council responded on 11 April 2018. It explained that it was now relying on the exception in regulation 12(5)(b) EIR (course of justice) instead, again on the basis that the requested information was covered by LPP. Like all EIR exceptions, regulation 12(5)(b) is subject to a public interest test. The council argued that the public interest favoured withholding the information.

14. Mr Bailey and his mother have in fact made a large number of other requests – at least 36 - for information of the Council arising out of the same subject-matter. For example, on 21 February 2018 he asked for information leading to the 2008 section 77 notices and the December 2013 section 78 letter. The Commissioner in her Response says that she is dealing with over 20 FOIA and Data Protection Act 1998 complaints made by Mr Bailey (he says the figure is 26). In addition, the Commissioner has treated some questions raised by him in his Grounds of Appeal as themselves information requests. In its email of 26 October 2018 to the Commissioner **[131]**, the Council said that it could have relied on the exception in regulation 12(4)(b) of the EIR on the basis that the requests were manifestly unreasonable. However, it has not done so and the Tribunal has focused on regulation 12(5)(b).

Proceedings before the Commissioner

15. Mr Bailey made a complaint to the Commissioner on 12 April 2008 **[OB/100].**

16. In its email of 1 August 2018 to the Commissioner **[OB/117]**, the Council explained that proceedings had been issued in June of that year in the Magistrates' Court (i.e. after the Council's review decision). Mr Bailey was represented by a lawyer at a procedural hearing and could, the Council argued, have asked for disclosure of any relevant information. Disclosure was now within the jurisdiction of the court. Mr Bailey's lawyer had not asked for the legal advice the subject of Mr Bailey's request and, had he done so, the Council would have resisted. It indicated that it now relied on paragraph (d) of regulation 12(5) of the EIR (confidentiality of proceedings) as well as (b). It claimed both litigation and advice privilege in relation to paragraph (b) (see below).

17. At the Commissioner's prompting, the Council provided her with certain internal communications falling within the scope of the request. These are held by the Tribunal as closed material under rule 14(6) of the Rules. So are certain passages in notes of telephone conversations between a case officer at the Commissioner's Officer and a Council official on 10 and 21 August 2018 (the redacted versions are at **[OB/120-121]**).

The Commissioner's decision

18. The Commissioner gave her decision on 30 November 2018 **[OB/1]**. She held that regulation 12(5)(b) of the EIR was engaged and that the public interest favoured withholding the information. She was mindful of the fact that the Magistrates' Court hearing had been due to take place that month and she therefore considered that the subject-matter of the advice in question was live.

19. Because of her decision on regulation 12(5)(b) the Commissioner considered she did not need to consider paragraph (d), although she indicated that she would have decided that it was not engaged.

20. She did make some critical remarks about the Council's record-keeping: the Council appeared to have been premature, given its 10 year retention policy, in destroying documents relating to the 2008 notices (retaining simply the request for advice); and it had failed to give the explanation sought by the Commissioner about why advice relating to the December 2013 section 78 notice has been destroyed after just over four years.

21. It should be said, however, that there are no grounds for thinking that the Council has deliberately destroyed documents in order to frustrate Mr Bailey's request.

Discussion

The Tribunal's role

22. The Tribunal's principal function is to decide whether the Commissioner was correct to rule that the Council was entitled to rely on the exception in regulation 12(5)(b) of the EIR in relation to information falling within the scope of the request. That includes applying the public interest test in that context. Much of Mr Bailey's arguments, and the voluminous documents said to support them, are directed at who owns the retaining wall and the way the Council has dealt with that issue. Those are not issues for the Tribunal.

Scope of the request

23. Mr Bailey's request specifically asked for advice leading to the 2008 section 77 notices and the December 2013 letter to the previous owners of 14 Bastian Close given by the Council's legal department and conveyancers (who presumably work in that department) to its planning department. It is clear, therefore, that he wants to see the Council's internal legal advice and it is not surprising that the Council has relied on LPP.

24. The Council provided the Commissioner with all the documents it says it has retained falling within the scope of the request. In fact, most of the communications relate to the 2013 section 77 notices. These are not explicitly within the scope of the request, which asks for documents relating to the 2008 notices and the December 2013 section 78 notice. There is a solitary communication which has survived in

relation to the 2008 notices. It is possible to construe the final sentence of the request – where Mr Bailey asked for '[a]ny emails, minutes and correspondence and notes held would be requested specifically in advising Planning on boundary ownership including Kez House and numbers 14 and 15 Bastian Close individually and respectively' - as not being time-specific but the better view is that, in the overall context, Mr Bailey meant the emails etc leading up to the 2008 section 77 notices and the December 2013 section 78 notice. That is certainly how the Council and the Commissioner appear to have construed that sentence. Even if that is wrong, it would make no difference to the outcome of the appeal: a wider swathe of information would still be excepted from disclosure by regulation 12(5)(b) of the EIR.

Is the requested information 'environmental'?

25. Mr Bailey has not disputed the Council's revised position that the requested information constituted 'environmental information', such that the EIR and not FOIA applied.

26. Regulation 2(1) of the EIR provides:

> *'"environmental information" has the same meaning as in Article 2(1) of the Directive [Council Directive 2003/4/EC (the directive)], namely any information in written, visual, aural, electronic or any other material form on –*
> *(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
> *(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
> *(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*
> *…*
> *(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c)*
> *…'.*

27. The definition is very wide, consistent with the objective of Directive 2003/4/EC (the directive), which it transposed, to facilitate access to information relating to the environment. In *BEIS v Information Commissioner and Henney*, [2] the Court of Appeal looked for a sufficient connection between the information requested and the environment. The Tribunal has done likewise and has concluded that the there is a sufficient connection between advice leading to the section 77 and 78 notices and

[2] [2017] EWCA Civ 844

the environment. The information relates to 'measures' (paragraph (c)) likely to affect the state of 'land' (paragraph (a)).

The time for consideration of EIR exceptions (including the public interest)

28. There is some inconsistency in the caselaw as to the time at which there should be assessment of whether an EIR exception or FOIA exemption (together with the public interest, where relevant) applies. The better view now is that the key time is when the public authority first communicates its decision. [3] In the present case, that was 26 February 2018 (the same day as the request).

Was regulation 12(5)(b) of the EIR engaged at that time?

29. Regulation 12(5)(b) provides:

> *'… a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –*
>
> *…*
>
> *(b) the course of justice …'.*

30. There is no doubt that 'course of justice' includes, though is not limited to, LPP (the subject of the exemption in section 42 FOIA).

31. There are two types of LPP: legal advice privilege and litigation privilege. Legal advice privilege attaches to all communications passing between a client and his or her lawyers, acting in their professional capacity, in connection with the provision of legal advice which 'relates to the rights, liabilities, obligations or remedies of the client either under private law or under public law' (*Three Rivers DC v Bank of England (No 6)* [4]). There is no need for litigation to be contemplated or in existence. Litigation privilege, by contrast, relates to communications between clients or their lawyers and third parties for the purpose of litigation. The communications in question in the present case do not involve any third parties and litigation privilege does not therefore apply. The fact that there was always the possibility that court proceedings might be needed to resolve the question of ownership and therefore responsibility for repairing the retaining wall, and that such proceedings were indeed brought, makes no difference.

32. It is beyond doubt that internal legal advice about section 77 and 78 notices is covered by covered by legal advice privilege. The real issue in the appeal is whether the public interest nevertheless favours disclosure.

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[3] See, for example, in relation to the time for application of the public interest test *Maurizi v The Information Commissioner & The Crown Prosecution Service (Interested Party: Foreign & Commonwealth Office)* [2019] UKUT 262 (AAC) Case No. GIA/973/2018 (23 August 2019) http://www.bailii.org/uk/cases/UKUT/AAC/2019/262.pdf

[4] [2004] UKHL 48, [2005] 1 AC 610 per Lord Scott at [38]

The public interest: the legislation

33. Regulation 12(1) provides:

> *'… a public authority may refuse to disclose environmental information requested if –*
>
> *(a) an exception to disclosure applies under paragraphs (4) or (5); and*
>
> *(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information'.*

Included in paragraph (5) is the course of justice exception. It follows that, even if disclosure of requested information would have an adverse effect on the course of justice (through setting aside of LPP), it must be disclosed unless the public interest in maintaining the exception outweighs that in disclosing it.

34. Regulation 12(2) then states:

> *'A public authority shall apply a presumption in favour of disclosure'.*

The effect of this is that the onus is on a public authority to prove that there is a greater public interest in withholding the information.

The public interest: arguments in favour of withholding the information

35. Caselaw has made it clear that there is a strong public interest built into maintaining LPP, and therefore in upholding the exemption under section 42 FOIA and the exception in regulation 12(5)(b) EIR. This is to enable clients freely to discuss their legal problems with their lawyers without fear that the discussions might become public. In *R v Derby Magistrates Court, Ex p. B*, [5] cited by a three-judge Upper Tribunal in *DCLG v Information Commissioner and WR*, [6] Lord Taylor of Gosforth CJ said, after reviewing the caselaw: [7]

> *'The principle which runs through all these cases, and the many other cases which were cited, is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence, limited in its application to the facts of a*

[5] [1996] AC 487
[6] [2012] UKUT 103 (AAC) (*DCLG*) http://www.bailii.org/uk/cases/UKUT/AAC/2012/103.html (28 March 2012)
[7] 507D

particular case. It is a fundamental condition on which the administration of justice as a whole rests'.

There might, Lord Taylor said, be rare exceptions, but the drawback would then be that 'once any exception to the general rule is allowed, the client's confidence is necessarily lost'. [8]

36. In *DCLG*, where the request related to the disclosure of legal advice, the Upper Tribunal said that 'the words "would adversely affect the course of justice" [in regulation 12(5)(b)] include the effects on the administration of justice generally by reason of a weakening of confidence in the efficacy of LPP which a direction for disclosure in the particular case would involve'. [9]

37. More generally, the Upper Tribunal said this:

> '*42. Section 42 of FOIA contains a qualified exemption for "information in respect of which a claim to legal professional privilege could be maintained in legal proceedings". In DBERR v IC & O'Brien [2009] EWHC 164 (QB) Wyn Williams J, on an appeal (which at that time lay to the High Court) from the Information Tribunal, concluded at para. [39] that in previous decisions under s.42 the Information Tribunal had taken the correct approach to the public interest balancing exercise. That approach had been summarised in Rosenbaum (EA/2008/0035/ 4.11.2008), in a passage approved by Wyn Williams J, as follows:*
>
> > *"…… the Tribunal does not agree with Mr Rosenbaum that LPP merits only "some weight" … From the cases referred to above, this Tribunal is satisfied that LPP has an in-built weight derived from its historical importance, it is a greater weight than inherent in the other exemptions to which the balancing test applies, but it can be countered by equally weighty arguments in favour of disclosure. If the scales are equal disclosure must take place."'*

38. The Upper Tribunal expanded on the qualified nature of the exemption:

> '*43. Wyn Williams J. went on at [53] to hold that*
>
> > *"the proper approach for the Tribunal was to acknowledge and give effect to the significant weight to be afforded to the exemption in any event; ascertain whether there were particular or further factors in the instant case which pointed to non-disclosure and then consider whether the features supporting disclosure (including the underlying public interests which favoured disclosure) were of equal weight at the very least."*
>
> *44. In other words, although a heavy weight is to be accorded to the exemption, it must not be so heavy that it is in effect elevated into an absolute exemption*'.

39. It is clear that the Upper Tribunal intended that the same approach should apply to regulation 12(5)(b) of the EIR as to section 42 FOIA as far as LPP was concerned.

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[8] P508C

[9] [51]

40. Of critical importance in the present case is that fact that the dispute to which the legal advice relates – the ownership of the retaining wall – had still not been resolved by the time of the request or the Council's initial decision (or, in fact, its review decision). That is the critical time, not when the Commissioner gave her decision. Legal advice privilege is particularly strong where the advice in question remains current. [10] By contrast, it may be weaker (though still significant) where the advice is no longer current.

The public interest: arguments in favour of disclosure

41. There is always a general public interest in, as the Commissioner put it, [11] '[d]isclosure which may allow individuals to better understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions' and in promoting transparency in the dealings of authorities. The Council is wrong to characterise the substantive dispute as 'essentially a private matter', as it does in its email to the Commissioner of 26 October 2018 **[131, 132]**. The Council performs public functions under sections 77 and 78 of the Act and there is a public interest in ensuring that it does so lawfully and fairly, even if the owners of the relevant properties are affected more than the local population as a whole.

42. Mr Bailey does not really articulate, at least not in readily digestible form, why he says that the public interest favours disclosure. However, he appears to rely on two principal arguments: first, that the Council has changed its mind about ownership of the retaining wall; and, second, that he needed the requested information in order to defend himself in any court proceedings which the Council brought. He also complains that it took a long time before the Council made available the 2012 and 2013 section 77 notices.

43. Although Mr Bailey does not identify this, there is also a public interest in resolution of a dispute about a dangerous structure.

The Tribunal's assessment of the public interest

44. It is true that the Council has changed its mind about ownership. For many years, it considered that the owners of Kez House and Glebe House owned the wall. It then decided that the owners of relevant properties in Bastian Close (including Mr Bailey) owned it. That is no doubt frustrating for Mr Bailey, who has faced a large potential liability he presumably did not expect when he bought his house. It is fair to point out that the Council had served the section 78 notice on the previous owners three months earlier: in the normal course of events, the notice would be disclosable to a purchaser following pre-contract enquiries. However, the Tribunal

[10] See, in this connection, *Kessler v Information Commissioner and HM Commissioners for Revenue & Customs* EA/2007/0043 and *Kitchener v Information Commissioner and Derby City Council* EA/2006/0044
[11] Para 18 of her decision

readily accepts Mr Bailey's plaintive cry that the dispute has taken a significant financial and emotional toll on him.

45. However, the Council has been faced with a difficult situation too. It is responsible for public safety arising from risks from dangerous structures. Before it can exercise its powers under section 77, it has to identify who the owner is (under section 78, it can take remedial action itself where there is immediate need and then recover the costs from the owner or occupier). In this case, the ownership of the wall is clouded by the mists of time. The owners of all the candidate houses deny that they own the wall. The Council cannot be criticised for reassessing the question of ownership faced by repeated denials by the owners of Kez House and Glebe House and their lawyers. It eventually commissioned an independent report, though no doubt could have done so earlier.

46. There is nothing in the internal communications held by the Tribunal as closed material which suggests that the Council acted from improper motives or flimsy evidence in changing its mind. Had there been, that would have made a material difference. The Council was simply following the evidence of ownership as best it could. Whether its assessment of the evidence was reasonable is beside the point for the present appeal.

47. For much of the time Mr Bailey appears to argue that he needed the legal advice in order to defend himself in any Magistrates' Court proceedings (which were at least a possibility at the time of the request and which soon materialised). [12] This is misconceived. The court has to decide two principal issues in such proceedings: (i) who owns the structure; and (ii) is it dangerous? Mr Bailey does not appear to dispute that the wall is dangerous but he does dispute that he is a part-owner of it. The way for him to address that issue was by obtaining his own legal and surveying advice, admittedly at some cost. He did eventually commission a surveyor's report and instructed solicitors and barristers to represent him at the Magistrates' Court proceedings.

48. In the event, the judge gave a clear steer to the Council that it was not able to establish that Mr Bailey was the owner (or part-owner) and, no doubt wisely, it then withdrew its case. The outcome demonstrates that Mr Bailey did not need the Council's internal legal advice to defend himself. That was foreseeably the case when he made his request. As the Council notes, Mr Bailey's lawyers did not seek disclosure of the legal advice in the proceedings. This is hardly surprising because it is highly unlikely that they would have been successful.

49. Mr Bailey's complaint about the non-availability of the 2012 and 2013 section 77 notices is also without merit in the context of LPP. First, they are outside the scope of the request. Second, and more importantly, section 77 notices - at least those in evidence in the present case - do not explain *why* a local authority has concluded

[12] Although he disclaims that this was his motive on page 23 of this Reply **[OB/75]**. If that is his position, it is difficult to understand why he has made the request

that the recipient is the owner of the dangerous structure. They simply assert that the recipient *is* the owner. Mr Bailey knew the limited content of section 77 notices from the 2008 notices, to which he did have access throughout. The 2012 and 2013 notices would not therefore have helped him build his case earlier. He knew that the notices had been issued to the owners of Kez House and Glebe House and therefore that the Council's position at those times (as in 2008) was that they, and not the owners of relevant Bastian Close properties, owned the wall.

50. Subject to not making vexatious or manifestly unreasonable use of the legislation, Mr Bailey was entitled to use FOIA or the EIR to obtain information to bolster his case that he did not own the retaining wall and was therefore not responsible for repairing it. However, for the reasons explained above he would have needed very strong grounds to displace the LPP attaching to the Council's internal legal advice and, in the Tribunal's judgment, he does not come anywhere near establishing such grounds. This is particularly given that the dispute about ownership of the wall was still live around the time of this request. There is no suggestion that the Council has waived privilege to the advice in question. [13]

51. Although there is an important public interest in resolving a dispute about a dangerous structure, the requested information does not make a sufficient contribution to resolution of the ownership of the retaining wall, when set against the importance of maintaining LPP.

52. In the Tribunal's judgment, for these reasons the public interest lies firmly on the side of maintaining LPP.

Other matters

53. In his Grounds of Appeal, Mr Bailey claims manipulation of the FOIA process (presumably, he means the EIR) by both the Council and the Commissioner. There is no evidence to support the claim.

Conclusion

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

Signed
Judge of the First-tier Tribunal
Date: 4 November 2019
Promulgation date: 5 November 2019

[13] In his email to one of the Bastian Close owners on 16 August 2013 **[AB/130]**, the Council's building control officer said: '… we have been advised by our legal department that we cannot pursue enforcement action unless we are certain of ownership of the retaining wall'. That is no more than a statement of the legal position (save that *certainty* about ownership is not a prerequisite for a section 77 order) and in any event does not constitute waiver of the information Mr Bailey has requested