



NCN: [2023] UKFTT 443 (GRC)
Case Reference: EA-2022-0241V

First-tier Tribunal
General Regulatory Chamber
Information Rights

Heard in GRC Remote Hearing Rooms, Leicester: via CVP

Heard on: 27 April 2023

Decision given on: 25 May 2023

Before

TRIBUNAL JUDGE A. MARKS CBE
TRIBUNAL MEMBER D. COOK
TRIBUNAL MEMBER P. TAYLOR

Between

PATRICIA GUTHRIE

and

THE INFORMATION COMMISSIONER

Appellant

Respondent

Representation:

The Appellant: appeared in person

The Respondent: did not appear at the hearing

Decision: The appeal is **dismissed**.

REASONS

Introduction

1. This is an appeal against a decision notice ('DN') of the Respondent ('the Commissioner') relating to a request for information ('Request') made to Brent Council ('the Council') by the Appellant ('Ms Guthrie') on 16 February 2020. The Request asked for various information about the Stonebridge Park Complex ('SPC') situated in the London Borough of Brent. The Council is the registered proprietor of the freehold title to SPC registered at HM Land Registry under title number NGL426015.
2. In the DN, the Commissioner concluded that the Council had properly relied on exceptions contained in the Environmental Information Regulations 2004 ('EIR') when it granted Ms Guthrie's request for information only in part. In summary, in response to Ms Guthrie's general request (for '*all information relating to SPC...*') and part (1) of her specific request (for '*plans for developing SPC...*'), the Commissioner upheld the Council's reliance on EIR 12(4)(b) (manifestly unreasonable requests). In respect of the remainder of Ms Guthrie's specific 12-part request, the Commissioner upheld the Council's position that it did not hold the information requested or, where it did hold such information, it had either provided it or, in the case of one document it had provided it was entitled under EIR 12(5)(e) (commercial confidentiality) to withhold a small amount of information by means of redactions to the document.
3. The Tribunal was provided with an Open Bundle by the Commissioner, and by Ms Guthrie a Supplementary Bundle which included her 'Skeletal Argument'. References to those materials in this decision are shown emboldened text by page number e.g. [**Ax**] for the Open Bundle; [**SBx**] for the Supplementary Bundle; and [**SA para. x**] for Ms Guthrie's skeleton argument. The Tribunal also had access to a Closed Bundle which was not disclosed to Ms Guthrie or the public, in accordance with Rule 14 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ('GRC Rules'). The possible unfairness of withholding this information from Ms Guthrie is dealt with in paragraphs 51-55 below.
4. The Tribunal convened an oral hearing which was held remotely using HMCTS's Cloud Video Platform.

Brief factual background

5. Since at least the 1980s, SPC has been an important site in Brent, particularly for the local black community. As described in the opening paragraphs of the judgment relating to SPC by Mr Michael Green QC (as he then was) in *London Borough of Brent v. Johnson [2020] EWHC 2526 (Ch)* [**D414-415**]:

'The Bridge Park Community Centre was a remarkable concept, the brainchild of Mr Leonard Johnson, the First Defendant, and the organisation that he founded, the Harlesden Peoples Community Council (HPCC). The vision in 1981 was to establish a centre in the London Borough of Brent that was owned and managed by the local black community for themselves, not beholden to anyone else, and which, by its very nature, would empower that community and would prevent unrest, principally by its disaffected youth, from becoming violent, leading to riots similar to those that had taken place in Brixton and Toxteth at that time. Brent was the most ethnically diverse borough in the country and it was feared that there would be similar riots to those that had taken place elsewhere. But Mr Johnson and the creation of Bridge Park were a massive factor

in ensuring that Brent did not suffer in the same way. (para 2)

'Bridge Park was an old LTE Bus Depot and Mr Johnson and HPCC identified the site and determinedly pursued its acquisition as a place where they could realise their philosophy of providing a space where the local community could establish themselves and grow and succeed by their own efforts, without interference from outside. (para. 3)

'The reason why the Defendants are maintaining these claims against Brent's title to [SPC] is because they object to what Brent wishes to do now with the site. After successfully developing and operating Bridge Park through the Steering Group Company during the 1980s, the early 1990s saw the beginning of its demise. Whilst the reasons for this are contested, possession proceedings were commenced by Brent in 1992 and by 1995 Brent had taken over control of Bridge Park and it was managed directly by Brent since then. Over the years it has fallen into disrepair and it is proving very expensive for Brent to run. (para. 6)'

6. In 2013, the Council consulted local residents on various options for redevelopment of SPC, including provision of a new leisure centre with sports facilities. The Council planned to fund the new centre by selling part of the site to an adjoining landowner for residential and commercial development.

7. During 2017, Leonard Johnson, who claimed to be a trustee of the Harlesden People's Community Council ('HPCC'), applied to enter a restriction on the Land Register of SPC. The restriction was intended to prevent the completion of a Conditional Land Sale Agreement ('CLSA') relating to SPC made 14 June 2017 between the Council as seller and Stonebridge Real Estate Development Ltd as purchaser.

8. As the Council disputed Mr Johnson's application, the Land Registry referred the matter to the First-tier Tribunal Property Chamber. However, those proceedings were stayed on 28 June 2018 because, on 6 June 2018, the Council applied to the Chancery Division of the High Court for a declaration that the Council was the sole legal and beneficial owner of the land on which SPC stands. Ms Guthrie is a member of the local black community who strongly disagrees with the Council's proposals to redevelop SPC. On 11 November 2019, she applied unsuccessfully to be joined as an interested party in the Council's application for a declaration by the High Court. In October 2020, the High Court in the above cited proceedings granted the Council's application for a declaration [D410-509]. In January 2022 the Court of Appeal upheld the High Court judgment in the Council's favour ([2022] EWCA Civ 28).

9. Ms Guthrie's Request dated 16 February 2020 and her complaint to the Commissioner made in May 2020 preceded by several months the High Court judgment in October 2020. The Court of Appeal judgement was made in January 2022, almost two years after the Request. It is apparent to the panel from Ms Guthrie's written and oral submissions that she does not accept those Court decisions. In her own words, she is pursuing the Request because *'I have (sic) seeking to conclusively prove there has been a clear breach of covenant. When [SPC] was purchased, it was generally understood that the property would be granted with a covenant, that the property would be held in trust by the Council on behalf of a vulnerable group of community beneficiaries...and that the covenant would remain enforceable in perpetuity...'* [B250 at para. 4]

The request for information, internal review and response

10. Ms Guthrie's Request was sent to the Council by email on 16 February 2020 [C264-265]. It said (the numbering of the paragraphs below having been added here for ease of reference):

“I would like to make a Subject Access Request (SAR) for information under the Freedom of Information Act 2000 in relation the activities of public authorities. I would like to see all information relating to the property: Stonebridge Park Complex, Harrow Road, London, NW19 0RG property Title No. NGL426015. Including the business units and the Technology House block.

Specifically:

(1) Can you please provide me with Brent Council's plans for developing the Stonebridge Park Complex NW10 0RG?

(2) Can you please provide me with any Contracts for sale of the Stonebridge Park Complex NW10 0RG made between 2016-2020?

(3) Can you please provide me with Copies of the Business rates, the re-evaluation and any business rate cancellations for the 37 Stonebridge Park complex business unit for the years 2016 -2020?

(4) Can you please provide me with the document that lists all the individuals who are acting as trustees for the Stonebridge Park Complex NW10 0RG, whilst Brent Council are acting as custodians of the trust?

(5) If you determine the sole trustee of the Stonebridge Park Complex is Mr Leonard Johnson can you please provide a document that confirms this?

(6) Can you please provide me with a copy of the Covenant document dated circa 1982 that was removed from the HM Land registry records by Officer Shave, for property address: Stonebridge Park Complex, Harrow road, London, NW19 0RG property Title No. NGL426015?

(7) Can you provide me the original copy of the title deed from 1982 for the property address: Stonebridge Park Complex, Harrow road, London, NW19 0RG, an original copy of which would have the Name Mayor of Bromley on the title?

(8) Can you please provide the document which records release of covenant and the transfer of the custodianship of the assets from the Mayor of Bromley to the Mayor of Brent?

(9) Can you please provide the document which records the Release and transfer of the custodianship of the assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent?

(10) Can you please provide the document proof of the GLC charge Release with the Mayor of Bromley which records the evidence of consultation with the transfer of the custodianship of the assets from the trustees HPCC/BPCC or other trustee of the property to the Mayor of Brent?

(11) The council has alleged it is the sole owner of the Stonebridge Park Complex NW10 0RG property as alleged can you please provide a document that confirms that Brent Council has the power and authority to disburse land or other assets owned by Steep Village War Memorial Club?

(12) Please provide me with annual reports for the Stonebridge Park complex for the most recent 3 years.”

11. The Council responded on 16 March 2020 [C266-268] under the Freedom of Information Act 2000 ('FOIA') which the Council later accepted was incorrect (see paragraph 17 below) [C298-305]. Initially relying on section 12 FOIA (cost of compliance), the Council replied to Ms Guthrie that her request was too wide as the cost of compliance would exceed the appropriate limit. The Council invited Ms Guthrie to be more specific about the information she sought beyond the 12 specific requests set out above. To those specific parts of the Request, the Council replied as follows:

(1) Council plans for developing SPC

The information is publicly available and exempt from disclosure under section 21 FOIA (information accessible by other means). However, the Council provided a hyperlink to the 2019 Cabinet approval for the New Bridge Park Centre and attached a copy of the 2019 report outlining the Council's plans for developing Bridge Park [C275-284]. The Council also provided a hyperlink to the 2017 Cabinet approval for entering into the CLSA and attached a copy of the 2017 decision report [D579-590].

(2) Any contracts for sale of SPC

The Council confirmed that it had entered into a CLSA on 14 June 2017. The Council relied on the FOIA exemption in section 43 (commercial interests) not to disclose the CLSA.

(3) Business rates/re-evaluation/cancellations for 37 SPC business unit for 2016-20

The Council's technical team had searched the business rates database and the only records for 37 Stonebridge Park were from 1995 and 1996.

(4) The individuals acting as trustees for SPC.

As far as the Council was aware, no such document exists.

(5) If Mr Leonard Johnson is the sole trustee of SPC, the document which confirms this.

The Council did not believe that SPC is held on trust and as far as the Council was aware, no such document exists.

(6) The covenant document dated c. 1982 removed from the SPC Land Registry records.

The Council provided a copy of the legal charge dated 21 June 1982 which contains covenants in favour of the Greater London Council ('GLC') [A128-132]

(7) The 1982 title deed with the name of the Mayor of Bromley on the title.

The title to SPC was never held by the London Borough of Bromley ('Bromley').

(8) The document which records release of covenant and the transfer of the custodianship of the assets from the Mayor of Bromley to the Mayor of Brent.

The title to SPC had never been owned by Bromley. The Council had granted a legal charge in favour of the GLC, and Bromley was the successor in title to the London Residuary Body which was itself the successor in title to the GLC. The legal charge had contained covenants, but entries registered against the Land Registry title had been cancelled on application by the

Council [C271-74] accompanied by a DS1 form [Cancellation of entries relating to a registered charge] sealed by Bromley [C269-270]. By that DS1 form, Bromley acknowledged that the property was no longer charged as security for the payment of sums due under the charge, and so the charge had been formally released.

(9) The document recording the release and transfer of the custodianship of assets from the trustees of HPCC etc. to the Mayor of Brent.

The Council did not believe there had been a transfer of the custodianship of assets from the trustees of HPCC or any other trustee of the property to the Mayor of Brent and therefore no consultation about such a transfer had taken place. Documents relating to the cancellation of the entries on the Land Register relating to the GLC Charge were the two forms DS1 and DS2 of which it had provided copies in response to (8) above.

(10) Documentary proof of the GLC Charge release recording evidence of consultation with the transfer of the custodianship of the assets from the trustees of HPCC etc. to the Mayor of Brent.

As above in response to (9).

(11) A document confirming the Council has power and authority over land and assets owned by Steep Village War Memorial Club.

As far as the Council was aware, it did not have any such power or authority.

(12) Annual reports for SPC for the most recent 3 years.

The Council asked Ms Guthrie to clarify which annual reports she was seeking.

12. Ms Guthrie was dissatisfied with the Council's response, claiming it did not provide the information she required. On 18 March 2020 [C286-289], Ms Guthrie therefore asked the Council to carry out an internal review. Her email included clarification of her request for annual reports (part (12) of the Request) as follows:

'...Specifically, could you please provide the annual reports for the rent and service charge for the occupied Business units at Technology House and for business hire or rental at SPC over the last 3 years. Could you also provide me with the itemised cost for any maintenance and repairs carried out on the business units over the last 3 years.'

13. The Council replied on 27 April 2020 [C290-293] that it had conducted a review under FOIA and the Environmental Information Regulations 2004 ('EIR') taking account of guidance and decisions from the Commissioner. The Council did not uphold Ms Guthrie's request for a review. The Council stated that all relevant information held by the Council had already been provided where no exemption from disclosure applied.

14. The Council noted that Ms Guthrie had not made any representations about the application of the three exemptions (under sections 12, 43 and 21 FOIA) on which the Council relied in its original response.

15. However, the Council noted that it had not addressed the public interest test in relation to the disclosure of the CLSA. The Council was of the view that the CLSA relates to land and is therefore 'environmental information' for the purposes of EIR 2(1)(a). According to EIR 12(5)(e), a public

authority can refuse ‘to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.’ This exception is qualified and therefore subject to the public interest test. Having considered all the relevant factors and guidance, the Council concluded that maintaining the exemption (to withhold the information) outweighed the public interest in disclosing the information.

The Complaint to the Commissioner, the Commissioner’s investigation and Decision Notice

16. On 22 May 2020 [D306-308] Ms Guthrie complained to the Commissioner about the Council’s handling of her Request. Ms Guthrie expressed her belief that the Council was not the sole legal and beneficial owner of SPC but held it on trust. Ms Guthrie stated that she wished to challenge all the exemptions or exceptions relied on by the Council to withhold information.

17. During the Commissioner’s investigation, the Council accepted that it should have considered the entire Request (not just that part which referred to the CLSA) under EIR rather than FOIA. At the Commissioner’s request, the Council agreed to provide Ms Guthrie with a revised response to her Request applying EIR rather than FOIA [D393].

18. The Council revised its response to the Request on 15 November 2021 [C298-305] though – due to difficulties in the response reaching Ms Guthrie because of the size of the email attachments– it was made available to Ms Guthrie only a month later, on 15 December 2021 [D815].

19. The Council’s revised response refused to provide information sought by the general introductory part of the Request under EIR 12(4)(b) as manifestly unreasonable. However, the Council provided a partially redacted copy of the CLSA, explaining that the redacted information was withheld under EIR 12(5)(e) as commercially confidential. The Council then provided responses to the remainder of the 12 specific requests for information [C300-304] in similar terms as its original response in March 2020 [C266-268]. However, in its revised response, the Council relied on EIR 12(4)(b) (manifestly unreasonable) rather than section 21 FOIA (information accessible by other means) to withhold information in addition that already provided in response to part (1) of the Request.

20. The Commissioner’s DN was based on the Council’s revised response to the Request and its reliance on exceptions under EIR.

The Decision Notice (DN)

21. On 5 August 2022 [A1-39], the Commissioner issued Decision Notice IC-40998-V0Z0 which in summary concluded that:

(a) The Council was entitled to rely on EIR 12(4)(b) in respect of the general part of the Request and part (1) of the Request, and that the balance of the public interest favoured withholding the information rather than disclosing it.

(b) The Council was also entitled to rely on EIR 12(5)(e) to redact information from the CLSA provided in response to part (2) of the Request and that again the balance of the public interest favoured withholding this information rather than disclosing it.

(c) As to the remainder of the Request, the Commissioner was satisfied that more likely than not the Council did not hold the information requested save in response to part (6) which the Council had already provided.

(d) Since the Council had already voluntarily rectified its original error by supplying a response to the Request under EIR rather than FOIA, no further steps were required to remedy its failure to respond within the statutory time limit.

(e) The Council had failed to respond to part (12) of the Request (annual reports for the most recent 3 years) even though Ms Guthrie had clarified what she was seeking in March 2020 (see paragraph 12 above). However, in its revised response in November 2021, the Council had failed to take this into account. The Council was directed to issue a fresh response to that part of the Request.

Appeal to the Tribunal

22. On 31 August 2022, Ms Guthrie sent a Notice of Appeal to the Tribunal [A40-51] challenging the DN [A1-A39].

23. In her Notice of Appeal, Ms Guthrie sought disclosure not only of the unredacted CLSA but also disclosure of various other documents listed in the Notice [A44-45]. These documents, Ms Guthrie said in her Notice of Appeal, comprise clarification and revision of her original Request and were submitted to the Council on 8 December 2021.

24. However, by December 2021 – indeed more than 18 months previously – Ms Guthrie had already complained to the Commissioner about the Council’s handling of her original Request. The consequence was that Ms Guthrie’s ‘*clarification and revision*’ email of 8 December 2021 was treated by the Council as a separate request for information. The Council responded to such new request accordingly; Ms Guthrie objected to that response; and then complained to the Commissioner who has since issued a separate decision notice (Ref. 199169-T9L3) dated 20 February 2023. That decision notice and the matters referred to in it are not part of this appeal.

25. The papers available to panel and the parties are set out in paragraph 40 of this decision.

The Law

Section 1(1) FOIA: general right of access to information held by public authorities

26. Public authorities’ duty to disclose information is set out in section 1(1) FOIA:

‘Any person making a request to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if this is the case, to have that information communicated to him.’

27. Where there is a dispute as to whether a public authority holds information within the scope of a request, the Commissioner and Tribunal apply the civil standard of proof, namely ‘*the balance of probabilities*’ in other words ‘*more likely than not*’.

28. For example, in the case of *Linda Bromley and Information Commissioner v Environment Agency (EA/2006/0072)* at para. 13, the Tribunal considered whether information is ‘held’ for the purposes of section 1 FOIA and stated:

‘...[this] requires us to consider a number of factors including the quality of the public authority’s initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which was then conducted. Other matters may affect our assessment at each stage, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.’

29. While this case is not binding on us and relates to FOIA rather than EIR, it is persuasive. The panel considers that a similar approach applies to environmental information.

EIR 2: definition of ‘environmental information’

30. EIR 2(1) defines ‘environmental information’ as including information on *‘the state of the elements of the environment such as ...soil, land, landscape...and factors... such as energy, noise...affecting or likely to affect the elements of the environment...’* and *‘measures...such as activities affecting or likely to affect the [above] elements and factors...’*

EIR 5: access to environmental information held by public authorities

31. EIR 5(1) sets out a specific duty by public authorities to make environmental information available on request and EIR 5(2) provides this shall be *‘as soon as possible and no later than 20 working days after...receipt of the request’*.

EIR 12: exceptions to the duty to disclose environmental information

32. There are exceptions to public authorities’ duty to make environmental information available. Those pertinent to this appeal are set out in EIR 12, the relevant parts of which provide:

‘12 (1) Subject to paragraphs (2), (3) and (9), 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.

(2) A public authority shall apply a presumption in favour of disclosure.

...

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant’s request is received;

(b) the request for information is manifestly unreasonable;

...

(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; ...'

33. In assessing 'commercial confidentiality' under EIR 12(5)(e), the Tribunal in *Bristol City Council v. Information Commissioner and Portland and Brunswick Squares Association (EA/2010/0012)*, said that the exception can be broken down into four parts:

- (1) The information is commercial or industrial in nature;
- (2) Confidentiality is provided by law;
- (3) The confidentiality is protecting a legitimate economic interest; and
- (4) The confidentiality would be adversely affected by disclosure.

34. This decision is not binding on us but is persuasive and has been consistently applied by this Tribunal for many years.

35. In assessing what is '*manifestly unreasonable*' under EIR 12(4)(b), we are bound by the decision of the Upper Tribunal in *Craven v Information Commissioner and DECC [2012] UKUT 442 (AAC)* where Judge Wikeley said at para. 30:

'...the tribunal should have regard to the same types of considerations as apply to the determination of whether a request is "vexatious" within FOIA...Insofar as a request is for environmental information, it therefore follows that the meaning of the expression "manifestly unreasonable" is essentially the same as "vexatious".'

36. Caselaw on section 14 FOIA (vexatious or repeated requests) is therefore relevant to EIR 12(4)(b) (manifestly unreasonable). In *Cabinet Office v. Information Commissioner and Ashton [2018] UKUT 208 (AAC)*, the Upper Tribunal, having considered the relevant caselaw, stated at para. 27:

'...The application of section 14 of FOIA requires a holistic assessment of all the circumstances. Section 14 may be invoked on the grounds of resources alone to show that a request is vexatious. A substantial public interest underlying the request for information does not necessarily trump a resources argument...

'...In some cases, the burden of complying with the request will be sufficient, in itself, to justify characterising that request as vexatious, and such a conclusion is not precluded if there is a clear public interest in the information requested...'

37. Under EIR 12(1)(b) a public authority is permitted to withhold the requested information under the exceptions in EIR 12(4) and 12(5) *only* if the public interest in maintaining the exception outweighs the public interest in disclosing the information.

The role of the Tribunal

38. The powers of the Tribunal in determining appeals against the Commissioner's decisions for the purposes of EIR are set out in FOIA, as follows:

s.57 Appeal against notices...

(a) Where a decision notice has been served, the complainant or the public authority may appeal to the Tribunal against the notice...

s.58 Determination of appeals

(1) If on an appeal under section 57 the Tribunal considers -

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.'

The burden of proof

39. The burden of proof rests with the appellant, Ms Guthrie, in satisfying the Tribunal that the Commissioner's decision was wrong in law or involved an inappropriate exercise of discretion.

Evidence

40. Before the hearing, the parties had submitted written evidence. This comprised an Open Bundle of 830 pages (including an Index); a Supplementary Bundle of 33 pages including Ms Guthrie's Amended Skeleton Argument dated 17 February 2023 which consisted of 28 numbered paragraphs plus conclusion on 14 pages; three videos (labelled EX16, 17 and 18); and case management directions dated 6 February 2023. As mentioned above, the panel also had access to a Closed Bundle.

41. On 25 April 2023, two days before the hearing, Ms Guthrie emailed the Tribunal and the Commissioner expressing concern that certain of her Exhibits 1-27 [A73-147] and Exhibits 1-11 [A188-239] had not printed well in the hard copy Open Bundle she had received (some pages being either too small or printed upside down). However, the panel was working from electronic versions of the Open Bundle and was able to enlarge and rotate the pages in order to read them perfectly well. Nevertheless, on 2 May 2023, Ms Guthrie sent the Tribunal further copies of some of the same Exhibits.

42. Also on 25 April 2023, Ms Guthrie sent full copies of press cuttings included in part in the Open Bundle [A232-234].

43. On 2 May 2023, Ms Guthrie also sent the Tribunal her Reply to the 9 November 2022 response of the Information Commissioner. This Reply, dated 28 November 2022, comprised 15 pages and was already included in the Open Bundle [A173-187] as was the Information Commissioner's Response dated 9 November 2022 [A148-171].

44. At the end of the hearing, Ms Guthrie indicated that she intended to send further documentation to the Tribunal, apparently comprising newspaper and Parliamentary reports of alleged incidents of

fraud by Council employees and other related matters. In the event, Ms Guthrie did not submit any further documentation after the hearing except as referred to above (all of which was already included in the Open Bundle). Had Ms Guthrie submitted any further material, then to the extent such material was new, the panel would have refused to accept it on the basis (a) it would have been unfair to take account of material the Commissioner had not seen nor had opportunity to comment on; and (b) the hearing by then had ended and no more material, information, evidence, or submissions could be taken into account.

Submissions

Ms Guthrie's written submissions in her Appeal Notice dated 31 August 2022 [A44-48] and Amended Skeletal Argument dated 17 February 2023 [SB2-15]

45. In summary, in Ms Guthrie's lengthy grounds of appeal, she made the following points:

- (a) She had clarified and revised her general request for *'all information relating to SPC'* on 8 December 2021. This issue is addressed in paragraphs 23 and 24 above.
- (b) The information requested in parts (4) to (12) is not *'manifestly unreasonable'* but very specific.
- (c) The Council has falsely claimed that the property was never held in trust and refuses to disclose any documents that would prove to the contrary. The Council wrongly obtained a declaration from the High Court that it was sole and beneficial owner of the property. She cited in support of this that she had learned in November 2021 that HPCC (the defendant in the High Court proceedings) had *'somehow acquired documents that refer to the original governing documents and prove that [the] Council was a trustee'* and that at an update meeting of HPCC in December 2021, she learned from an individual from HPCC's solicitors *'that the Council does indeed hold the property in a custodial trust'*.
- (d) The Council has failed to disclose the prejudicial terms of the CLSA and has redacted all the key information.
- (e) The Council has breached the Equalities Act 2010 by failing to consult with the community; failed to disclose the trust/governing documents; and failed to give the Afro-Caribbean beneficiaries of the trust the opportunity to form a local community group.
- (f) The Council seeks to take the disputed community property against the will of the community beneficiaries without proper consultation and intends to sell the land to a private offshore hotel developer and build a development disregarding the land use specifically laid out in the land title and covenant.
- (g) The Council has not done any meaningful background check on the proposed purchaser of the land. An individual associated with the purchaser is a convicted fraudster with outstanding extradition proceedings against him in France.
- (h) The Council is *'famed in Parliament as being a corrupt council, lots of fraud and theft'*.
- (i) The CLSA is outside the Construction Act 1998 and the development plan cannot be reversed if CLSA goes through.
- (j) Ms Guthrie is herself facing insurmountable costs and is under serious duress by the Council.

(k) She has provided sufficient reasons to get the information she has requested.

46. Attached to the Notice of Appeal was a 21 page ‘Skeletal Argument’ dated 1 September 2022 (an amended 14 page, 28 numbered paragraph version of which dated 17 February 2023 was included in Ms Guthrie’s Supplementary Bundle **[SB2-15]** and is summarised in paragraph 47 below). Also attached to the Notice of Appeal were 27 Exhibits. These included three videos (EX.16-18) which were provided to the panel; the other 24 Exhibits are included in the Open Bundle **[A73-147]**.

47. Ms Guthrie’s Amended Skeletal Argument dated 17 February 2023 **[SB2-15]** in summary states that (in addition to the matters in the Notice of Appeal itself, summarised in paragraph 45 above):

(a) The Council is determined to complete a ‘*very dubious*’ CLSA with an offshore company for a luxury hotel development in an already highly built-up Borough **[SB31]** by appropriating community land believed to be held in trust. **[SA para. 1]**

(b) The community was told that the Council’s action was in the High Court ‘*rather than the truth that the private estoppel (sic) action in the Chancery. The Chancery action is mainly to determined (sic) whether Brent should be named the beneficial owners and how much compensation, if any the alleged defendants...*’ **[SA para. 1]**

(c) The development was never put out to public tender. **[SA para. 1]**

(d) There are unanswered questions as to how the ‘*very specific community land use covenant was removed*’ when this covenant imposed ‘*very strict condition on land usage and that the usage be for the benefit of the Afro Caribbean Community*’. **[SA para. 1]**

(e) The community beneficiaries require ‘*transparency and disclosure about the nature of the trust, and how the Council came to take control of and acquire the property and whether it would be possible for the community to redeem the SPC, if the community have rights in the decision making process and whether there is a protective community land use covenant on the property, or if the property could be more properly tendered.*’ **[SA para. 1]**

(f) The Council ‘*is a corrupt authority*’ and the ‘*sale is extremely prejudicial to the rights of the vulnerable Caribbean beneficiaries of the trust*’. The Council ‘*have broken the community land use covenant, for community and sports usage*’. **[SA para. 2]**

(g) The Council have ‘*not met the Community Infrastructure Levy in the alleged development plan*’, nor ‘*provided proof of the removal of the covenant between the Council and TfL*’ (imposed when the Council acquired the land from TfL’s predecessor, London Transport Executive (‘LTE’)). The Council have ‘*erroneously alleged that... Council officers and Bromley Council officers did release the TfL charge*’. **[SA para. 2]**

(h) The Council has ‘*failed, or decline to disclose the evidence that could be adverse to their claim. This type of dispute, where a local Council wrongfully appropriates trust land, has happened in the past.*’ **[SA para. 3]**

(i) The Commissioner has ‘*entered a heavily redacted bundle into evidence*’. **[SA para. 4]**

(j) The Council is ‘*discriminating against a vulnerable group of people and obtaining prime real estate cheaply at their expense*’. **[SA para. 4]**

- (k) *'The Black community should be at least made aware of the conditions surrounding the sale and be informed as to the content and validity of the covenant, the trust, the land survey, the purchase price and the terms of the CLSA...'* [SA para. 4]
- (l) *'A Local Authority cannot be sued in the usual way and this allows for private individuals to take office in local councils and abuse their role as public officers for private gain...The Council's officers are committing fraud, deception, civil theft and victimising the vulnerable people they have a duty to protect.'* [SA para. 5]
- (m) *'The Council has a duty to disclose the documents requested and the ICO has a duty to compel the Council to do so.'* [SA para. 5]
- (n) *'The CLSA is for a billion dollar luxury hotel development which circumvents the Community Infrastructure Levy payable for developments with no social housing planned...There is no affordable housing planned for the development'.* [SA para. 6]
- (o) *'The Council has disclosed to the Chancery that the sale is in the amount of £3 Million...However...the Council have revealed that they will have to pay the offshore [purchaser] £30 million if the Council breaks the Contract/CLSA that they have made...'* [SA para. 7]
- (p) *'The Council asserts that "The public are able to challenge any decision taken by the Council by way of Judicial Review" This assertion is untrue. The Council wields influence in the courts and although I am a vulnerable member of the community with no income'.* [SA para. 8]
- (q) *'The Council did not carry out a consultation [A74] ...and after lengthy argument in the court the Council did admit that no consultation was carried out.'* [SA para. 8]
- (r) *'The covenant was made between TfL and Brent...The "Deed" itself, which has the schedule and the land transfer, has a covenant for specific land use to benefit the community and stipulates a community cooperative run the project on behalf of the community'* [SA para. 9]
- (s) *'Brent Council agreed to accept a restrictive covenant to run with the land precluding development on the site'* [SA para. 10]
- (t) *Officers on behalf of the Council 'sought to remove the protective 'Community' Covenant and restricted viewing of the documents in the Land Registry records...The title deed and covenant also restricted land use to leisure, recreational and community use...[T]he land use covenant was not between Brent and the GLC but between Brent and TfL on behalf of the community'* [SA para. 10]
- (u) *'The Council has also refused to furnish the annual reports for SPC and rents and rates.'* [SA para. 11]
- (v) *'The governing documents for the Stonebridge Project have been withheld...[Ms] Guthrie believes the Council may have acted as custodian trustee, whereby the property is vested in the local Council and it has custody of all documents relating to the property'* [SA para. 12]
- (w) *'...If the local Council acted as sole trustee...the authority would have failed in its duty to signpost the community organization or make the Black Afro-Caribbean community beneficiaries of the trust aware that they were required to form a trust...The SPC project was meant to be superseded by a community trust.'* [SA para. 12]

- (x) *I am sceptical [as set out in para. 120 of the DN] that “...the Council will not be selling the Bridge Park land for a set price: the final sale price will be determined after the developer...has achieved outline planning permission at their own cost for the entire Bridge Park development and the Planning Condition contained within the CLSA has been satisfied.”* [SA para. 13]
- (y) *The Council has wrongfully withheld the terms of the CLSA* [SA para. 16]
- (z) *The ICO has conceded that they take the Councils assertions at “face value”* [SA para. 16]
- (aa) *The Council’s officers cheaply obtained adjoining property on behalf of [the purchaser] by abuse of the Council’s powers...[and were] able to obtain Wembley Car Breakers through unsavoury means because the owner was persecuted and beaten up...I believe the owner of Wembley Car Breakers was not compensated for the proper value of his land* [SA para. 19]
- (bb) *‘...[Council] officers sought to evict the Bridge Park Business Unit tenants and seize the Afro-Caribbean Community property without consultation and... repossess the business units by creating fraudulent documents...[referring] to substantial changes to the business rates and service charges...someone in the Council changed the tenancies to At Will tenancies and sent out business rate letters and increases to business rates and eviction notices were given...on the grounds of what now appears to be non-existent business rates evaluations.’* [SA para. 21]
- (cc) *‘...in year 2016/17 the Council changed the tenancy arrangement and business rents for tenants and removed their rights... In 2019, the Council broke into and padlocked an after school tuition centre in the Stonebridge Park Business Units and then on or around 28 February 2020 evicted the tenant Mr [KM] of Unit 13-14 without warrant...The Council were also able to seek in excess of £32,000 in the county court eviction action based on these alleged default in business rates, using their own court venue and judges... Other Business Unit tenants said that Council officers had tricked them to get out of their units, saying they could use space in the Willesden Library. Therefore it is my belief that the Council must have more recent documents on the business rates...’* [SA para. 22]
- (dd) *‘...Brent Council’s off-shore partners in this development were neither incorporated nor registered in the UK, the Cabinet paper did not mention that the companies were registered in tax havens... nor that the leading shareholder in the holding company was a convicted fraudster...Additionally, if the land survey was disclosed, Councillors could certainly be surcharged for not getting “best value” in a deal...’* [SA para. 24]
- (ee) *‘There is a clear conflict of interest. The director of Brent Council and [the purchaser’s leading shareholder] are close friends... while [the director] is the lead member for the CLSA...’* [SA para. 27]
- (ff) *The community would be better informed as to what when wrong and why the Bridge Park complex was neglected, deliberately mismanaged and left derelict for almost 30 years...Brent Council is claiming they can’t find or do not have the governing documents and other documents pertaining to the SPC...’* [SA para. 28]
- (gg) *The Council’s officers have sought to sell off a property worth around £70 Million to ‘friends’ for £3-4 million...The survey value needs to be disclosed. These are matters of public law, but without the necessary disclosure, which the Council has a duty*

to give, transparency and disclosure obligations [have not been met]...' [SA Conclusion]

Submissions on behalf of the Commissioner dated 9 November 2022 [A148-171]

48. Because of the detail and length of the grounds of appeal and skeleton argument, and in light of the Commissioner's limited resources and the overriding objective in Rule 2(2)(a) of the GRC Rules, the Commissioner's submissions did not address every point. In summary:

(a) The Commissioner opposes the appeal and relies on the comprehensive reasoning and legal analysis set out in the DN.

(b) The grounds of appeal refer to matters beyond the Tribunal's jurisdiction under section 58 FOIA. For example, Ms Guthrie seeks disclosure of documents not included in the Request; repeats issues addressed during the Commissioner's investigation such as allegations of wrongdoing; breach of fiduciary duty; the Equality Act 2010; inadequate due diligence surrounding the sale of the land; and selling the land at below market value (DN paras. 41, 109, 110, 112, 114, 117-120) [A15-31]

(c) In response to Ms Guthrie's complaint about the Commissioner accepting the Council's statements at '*face value*', the Commissioner submits this was a proper and lawful exercise of his discretion in the circumstances of the case. In any event, the Commissioner is entitled to accept a public authority's responses at face value unless there is some reason not to do so, for example evidence that the Commissioner is being misled. In *Oates v. Information Commissioner and Architects Registration Board EA/2011/0138*, the Tribunal remarked at para. 11:

'As a general principle, the [Commissioner] was, in the Tribunal's view, entitled to accept the word of the public authority and not to investigate further in the circumstances, where there was no evidence as to an inadequate search, any reluctance to carry out a proper search or as to a motive to withhold information actually in its possession. Were this to be otherwise, the [Commissioner's Office], with its limited resources and national remit, would be required to carry out a full scale investigation, possibly onsite, in every case in which a public authority is simply not believed by a requester.'

(d) Ms Guthrie does not identify any error of law or inappropriate exercise of the Commissioner's discretion in applying EIR 12(4)(b) and EIR 12(5)(e).

(e) The Commissioner was entitled to find that the Council could rely on EIR 12(4)(b) (manifestly unreasonable) given the significant demands placed on the Council's resources, and in accordance with the caselaw on '*vexatious*' requests under FIOA cited in paragraphs 35 and 36 above.

(f) The Commissioner considers that the limited information withheld from the CLSA falls within the commercial confidentiality exception for the reasons set out in the DN. The Tribunal will be able to reach its own view by considering the withheld information in the Closed Bundle.

(g) Ms Guthrie does not refer to any evidence which, on the balance of probabilities, proves that the Council held further information within the scope of parts 3, 4, 5, 7, 8, 9, 10 and 11 of the Request when it was made.

(h) As regards information within the scope of part (1) of the Request, the Commissioner noted that most current plans were already in the public domain and the Council had

provided links to the most relevant Cabinet approvals and attached copy reports. To the extent that Ms Guthrie was seeking *all* plans relating to SPC, the Commissioner accepted the Council's argument that the request was manifestly unreasonable.

(i) The Council reached the right balance in disclosing the vast majority of the CLSA which it had provided in response to part (2) of the Request. This disclosure has enabled Ms Guthrie and others to critique it.

(j) The Commissioner decided that the Council was entitled to rely on EIR 12(4)(b) in because parts of the Request were the manifestly unreasonable, given the significant demands that they would place on the Council's resources. This approach is correct and in accordance with caselaw cited above.

(k) Where the Council had relied on exceptions to disclosure under EIR, it had carefully considered the public interest test and reached the right balance.

(l) The Commissioner made directions for the Council to make a further response in relation to part (12) which has since been provided. Should Ms Guthrie be dissatisfied with that response, it falls outside the scope of this appeal because it post-dates the DN.

Ms Guthrie's oral submissions at the hearing

49. In summary, Ms Guthrie made the following additional submissions at the hearing (references to her amended skeleton argument are marked **[SA para. x]**):

(a) The GLC and Department of the Environment jointly funded the original SPC in the 1980s. It was accepted that the Black community (many of the male members of which had criminal convictions) would not be able to run the community facilities themselves: an appropriate body was needed to do this while the community set up a trust. TfL's predecessor, LTE, which owned the former bus garage site, had employed - and then laid off - many Black drivers and bus conductors, hence its wish for the Black community in the area to benefit from its land. LTE did not want the Council involved, but in fact the Council did buy LTE's land and thereafter continued to work with HPCC on the development of the site. (Brent Report No. 24/88 of senior Council officers) **[SB20-23]**

(b) Leonard Johnson took out a loan to build the business units but the Council raised money and just took away allocated funding so that he could no longer pay and the Council repossessed the land.

(c) No signposting was given to the community of the need to set up a trust to run SPC. There has been no disclosure on that: the community assumed that it owned the property.

(d) Ms Guthrie wants to see various reports relating to the intended trust and governing documents listed in the Brent Report No. 24/88 **[SB23 para. 10]**. She accepts that these were not within the scope of her specific Request which is the subject of this appeal.

(e) The covenants on the land preclude the proposed redevelopment: confusingly whilst the Council claims that the covenants with the GLC have been removed, those with TfL have not.

(f) The Council's Director of Regeneration's 2013 report **[A82-110]** says at the end of para. 3.1 **[A84]** that the '*site had a covenant on it that sports and community uses should be protected and around half of any value of any development would have to be paid to the London Borough of Bromley (as successor body to the GLC). However officer shave (sic) have successfully removed this covenant*'.

- (g) The Transfer of the land from LTE to the Council dated 5 May 1982 includes a provision (at paragraph (5)(ii)) [A192] that *'the land hereby transferred is being acquired by the Purchaser [the Council] for the purpose of the provision of Community facilities being a purpose for which the Council is authorised by section 120(1) of the Local Government Act 1972 to acquire property.'*
- (h) Ms Guthrie is convinced there is *'another document'* - rather like the CLSA - which preceded the 1982 Transfer from LTE to the Council [A190-192]. Ms Guthrie believes that this *'other document'* details the covenants that LTE required to be imposed on the site when it sold the former bus garage to the Council. Was this removed from the Land Register?
- (i) Council officers have stripped members of the community of their entitlement to the land and have engaged in much obfuscation and confusion as well as lack of cooperation in providing relevant documents.
- (j) The Council has also changed the zoning of the land to allow residential use when it was previously zoned for community use.
- (k) The purchaser under the CLSA had previously bought the adjoining Unisys site and let it become derelict. Squatters on that property found plans for a hotel in the 1990s.
- (l) The community does not want the proposed new development [A112, A114-115]: gentrification is being used as a weapon.
- (m) Covenants were put in place to benefit the community but they are being disregarded or the community was deceived into thinking that such covenants had been imposed by LTE. The Council promised in a letter to LTE before the land transfer in 1982 that it would enter into such covenants. [A189 and SB16]
- (n) For the reasons given in her Notice of Appeal and Skeletal Argument (see paragraphs 45 and 47 above), the CLSA should be *'looked at with a magnifying glass'*, hence Ms Guthrie seeks the full CLSA pursuant to part (2) of the Request.
- (o) The purchase price under the CLSA was said to be £3 million by the Deputy Master who dealt with Ms Guthrie's application to intervene in the High Court proceedings brought by the Council in 2019 [A134]. The price is now rumoured to have gone up to £16 million. The full unredacted CLSA should be provided to show that the Council has achieved 'best value' for the property. Other Councils have disclosed unredacted sale contracts for example by Hammersmith & Fulham Council in relation to the Gibbs Green Estate [D309-310].
- (p) The CLSA is not fair. The proposed restrictive covenants in the CLSA say nothing about community land use.
- (q) The proposed development is so prejudicial and devastating to the local community which is so deprived and with few resources like proper schools. Gentrification of the area will push out the local community just like Brixton and Notting Hill. The proposed new sports centre will benefit new residents, not the existing community, especially the young people who really need such facilities.
- (r) Members of the community who were tenants of the business units have already been forced out: they did not want to sell and have been inadequately compensated. They were effectively given no choice in the matter.
- (s) SPC has been seized from the community for Council officers' own private benefit. Numerous newspaper articles reveal fraud and corruption within the Council. [A232-234]

(t) Despite the Council's claim to the contrary, the community was not properly consulted about the proposed redevelopment [A74]. The Council admitted this during Ms Guthrie's attempt to bring Judicial Review proceedings CO/829/2020 [A135]. The community does not know what to do but people need the truth, hence the information request to make things clear.

(u) So much money is involved in this proposed development that there is a danger of fraud and corruption. Residents feel intimidated because they cannot challenge what is going on except at court where they are penalised in costs as Ms Guthrie has been as a result of her failed attempts to intervene in the High Court action and then bring Judicial Review proceedings [A144].

(v) Ms Guthrie does not accept that the Council has no rates records for 2016-2020 as sought by part (3) of her Request. She is aware that tenants of the business units received letters increasing their rates by 200% and were even served notice to quit [A142] and taken to Court to recover arrears [A113 and A238-239].

50. In answer to questions from the panel, Ms Guthrie said that she is not pursuing the general part of her Request, just the parts numbered (1)-(12). Meanwhile, however, Ms Guthrie has submitted a further request to the Council - also in 12 parts [D340-341] - by email to the Commissioner dated 24 June 2021. At the hearing Ms Guthrie accepted that her attempt to include that request in this appeal had not worked so she will await the outcome of this appeal before deciding whether to take that request further.

Discussion

Possible unfairness of information being withheld from Ms Guthrie

51. The Tribunal first considered the possible unfairness of withholding certain information from Ms Guthrie.

52. Ms Guthrie has been provided with only a redacted version of the CLSA: these redactions were permitted by the Tribunal pursuant to Rule 14 of the GRC Rules. The redactions effectively withhold certain information from Ms Guthrie and the public. For the purposes of the hearing, however, the panel was provided with a Closed Bundle containing the unredacted pages of the CLSA.

53. The panel takes account of the Tribunal's Practice Note on Closed Material. This explains that, where disclosure of the disputed information - and/or supporting evidence - would defeat the object of the exercise, the law permits the Tribunal to deviate from the normal rule about all material seen by the Tribunal being available to all parties. However, such deviation is permissible only so far as is necessary to ensure that the purpose of the proceedings is not defeated.

54. The panel accepts that there is inevitably *some* prejudice in material being withheld from a party requesting it, but considers that this prejudice is mitigated by:

- (a) the Tribunal's expertise, and exercise of an investigatory rather than adversarial function;
- (b) the Commissioner being an independent, expert regulator who does not take sides. On the contrary, the Commissioner's role is to point out the strengths and weaknesses of both parties' cases in assessing the correct application of the law and regulations;
- (c) informing parties excluded from 'closed' information as much as possible with maximum possible candour in the written reasoned decision; and

(d) in this case, virtually the whole of the CLSA – comprising nearly 200 pages – has been disclosed [D616-804]. The redacted information comprises a one page Financial Appraisal and the whole or part of seven definitions, the nature of each of which is clear from the redacted document itself. Together, the redacted information consists of around two pages of text, less than 2% of the document supplied.

55. Having considered all these matters, the panel is satisfied that the withholding of the requested information by means of redaction was and remains necessary to ensure the purpose of the proceedings is not defeated. Moreover, the prejudice to Mr Guthrie’s case – mitigated as described above – is justified in the interests of justice overall.

The facts

56. The panel went on to consider the relevant facts of this case. Some facts are agreed but many others are disputed. The panel’s findings of fact are emboldened. Where those facts are disputed, the reasons for the panel’s findings are set out in unemboldened text below:

(a) The Council is the sole and beneficial owner of SPC, not a ‘custodian’ of the property for any other party or body. SPC is not held subject to any trust in favour of HPCC or anyone else, nor on trust for charitable purposes.

(i) We make these findings despite repeated assertions to the contrary by Ms Guthrie (for example summarised in paragraphs 45(c), 47(w) and 49(i) above). Our reasons are that the High Court (full case citation at paragraph 5 above) found that the Council is sole and beneficial owner of the property and is not a custodian trustee. The judge also found that the property is not held on any trusts nor for charitable purposes. Ms Guthrie’s claims that the Council has wrongfully appropriated trust land; has failed to disclose relevant evidence; and that since-discovered documents or other material contradict the High Court judgment are not plausible without supporting evidence. None has been produced. In any event, ultimately the High Court judgement is binding on this Tribunal.

(b) Neither the Mayor of Bromley nor the London Borough of Bromley has at any time owned title to the property since 1982 when it was transferred to the Council by LTE.

(i) Our reason for this finding is that, on the balance of probabilities, the Council’s explanation set out in paragraph 11(8) above is correct.

(ii) Based on the documentary evidence we have seen, Bromley’s only interest in the property was as chargee under a legal charge created on 21 June 1982 [A128-132] in favour of the GLC (Bromley being successor body to the GLC). Documents show that the 1982 charge in favour of the GLC was discharged by Bromley on 29 November 2012 [C269-270]. The charge, and consequently the covenants contained in the 1982 charge deed, were removed from the Registered Title of the property by HM Land Registry on 12 December 2012 [C271-274].

(c) The covenants contained in the 1982 charge deed (since discharged as explained above) were not created for the benefit of the local community or any residents of the London Borough of Brent.

(i) We make this finding despite the submissions to the contrary by Ms Guthrie (for example summarised in paragraphs 47(d) and 47(t)) and despite the misleading statement in the Council’s 2013 report (quoted in paragraph 49(f) above) which

indicates that *'the site had a covenant on it that sports and community uses should be protected'* (emphasis added).

(ii) Our reasons are that, based on contemporaneous documentary evidence, on the balance of probabilities the proper interpretation of clause 1 of the charge Deed [A129] is that the covenants were created as a trigger for repayment of the £700,000 contribution which the GLC had made to the proposed 'Community Project' (as defined in the Schedule to the Deed [A131-132]). The trigger was to be activated – and either £700,000 or 7/18ths of the then open market value of the site with vacant possession, whichever the higher, was to be paid to the GLC - if the Council ceased to own the property (or let it without the GLC's prior approval) or failed promptly to use, or thereafter ceased to use, the property for the Community Project. There is no reference to these covenant provisions being for the benefit of the Afro-Caribbean community or any other specific residents of the London Borough of Brent or indeed for the benefit of anybody other than the GLC.

(d) The only covenants still affecting the property are those imposed in the transfer of the property to the Council by LTE on 5 May 1982 [A190-192], ('LTE covenants'). These covenants were still on the Register of Title on 25 February 2016 [D656] appended to the CLSA, and the Council sold SPC subject to the LTE covenants [D645 clause 11.5.4].

(e) The LTE covenants restrict building or other works on SPC *'without previously submitting detailed plans and sections thereof to [LTE]'*; and restrict office use of SPC *'in excess of 25,000 square feet or 25% of the total built floor space, whichever is the greater'*, without the consent of LTE [A191].

(f) The 1982 transfer to the Council by LTE [A192] does not create any restrictive, 'protective' or other covenant binding the land or for the benefit of any residents or local communities in Brent.

(i) Ms Guthrie relies on a Council letter saying that it would enter into covenants with LTE (see paragraph 49(m)). That letter dated 25 March 1982 [A189], stated that the Council would *'...be prepared to accept a restrictive covenant precluding the development on the site of any offices in excess of 25% of built area etc.'* (emphasis added). The LTE covenants still recorded on the Registered Title to the property are indeed of the nature envisaged by the Council's letter. Contrary to Ms Guthrie's claim, however, there is no reference at all in that letter, in the covenants themselves nor on the Land Register to *'very strict community land use'* nor that the restrictions were for the benefit of the Afro-Caribbean community or any other specific residents of the London Borough of Brent.

(ii) Contrary to Ms Guthrie's submissions (for example summarised in paragraph 47(s) and 49(e) above) – the LTE covenants do not have the effect of *'precluding development on the site'*. Instead they merely restrict the amount of space allowed for office use without LTE's consent, and entitle LTE to see plans and sections of any proposed development. Again, there is no reference to these restrictions being imposed for the benefit of the Afro-Caribbean community or any other specific residents of the London Borough of Brent.

(iii) At the hearing, Ms Guthrie drew the panel's attention to paragraph 5(ii) of the 1982 transfer by LTE. This says that *'the land hereby transferred is being acquired by the purchaser [the Council] for the purpose of the provision of Community facilities being a purpose for which the Council is authorised by Section 120(1) of the Local Government*

Act 1972 to acquire property.’ Based on the introductory words to paragraph 5(ii) that ‘*It is hereby agreed and declared...*’, the panel reasons that on the balance of probabilities the purpose of paragraph 5(ii) was simply to assure the seller, LTE, that the Council had statutory power to buy the property.

(iv) Paragraph 5(ii) does not state that it is creating a covenant nor any other provision binding/running with/attaching to the land. Nor is there any reference to paragraph 5(ii) creating any benefit for the Afro-Caribbean community or any other specific residents of the London Borough of Brent. Paragraph 5(ii) is also not reflected on Registered Title at HM Land Registry which is definitive as to matters affecting the land.

(v) The panel does not accept Ms Guthrie’s unsubstantiated assertions that the community was deceived about the LTE covenants or that there is ‘*another document*’ which preceded the LTE transfer which details the covenants LTE required to be imposed on the site. There is no evidence that such a document exists nor, as hinted by Ms Guthrie, that it might have been removed from the Land Register.

(g) The Council does not have any business rates records for 2016-2000.

(i) Based on the evidence provided, we are satisfied that the Council has searched its records and has been unable to find any information about business rates for the years 2016-2020 as sought by the Request. For the reasons stated in paragraph 48(c) above and noting this Tribunal’s decision in the *Oates* case (which is persuasive but not binding on the panel), we consider that the Commissioner and this Tribunal are entitled to accept statements by a public authority unless there is some reason not to do so such as evidence of wrongdoing.

(ii) The panel recognises Ms Guthrie’s sincerely held belief that Council officers and members have acted wrongfully, indeed deceitfully and ‘*fraudulently*’, by concealing documents amongst other things. Ms Guthrie has produced various press cuttings relating to fraudulent behaviour of individual Council employees and in one case a report of auditors commenting that procedures in one Council department exposed the Council to a risk of fraud [A232-234]. In the panel’s judgment, however, little weight can be attached to these reports which even if wholly accurate fall very far short of evidence of any fraud or other dishonest behaviour on the Council’s part relating to the proposed sale or management of SPC, the business units or CLSA.

(iii) Further, the panel does not accept that documents in the Open Bundle are evidence that tenants of the business units at the property were ‘*forced out*’ or evicted because of business rate increases or default in business rates. None of these documents mention business rates let alone increases in those rates or any business rate arrears. No letters allegedly sent to tenants increasing rates ‘*by 200%*’ have been produced. The documents in the bundle relating to business units refer only to Units 13 & 14. They comprise notice to quit under a tenancy-at-will and a notice under Section 25 Landlord & Tenant Act 1954 both given in November 2019; then County Court proceedings in February 2020 for nearly £33,000 rent and service charge arrears (not business rates); and a County Court hearing date of 30 March 2020 [A113, A142, A238-239].

(iv) These documents and other evidence fall far short of enabling us to find it more likely than not that the Council does in fact hold business rates records for the SPC business units for 2016-2020.

(d) The Council has no power or authority to disburse land or other assets owned by Steep Village War Memorial Club.

(i) Our reasoning is that the Council has stated it has no such power or authority [C304] and at no point in these proceedings has any evidence or submission been made to the contrary. In the voluminous papers produced to the panel there is no mention of Steep Village War Memorial Club except in part (11) of the Request.

(e) Current plans for developing SPC are in the public domain, have been provided to Ms Guthrie

(i) Ms Guthrie did not contest the Commissioner's finding that current plans for developing SPC have been provided to her. Ms Guthrie appeared to indicate during the hearing (and in her caption to Exhibit 5 to her Notice of Appeal) that she had not seen the Bridge Park 2013 redevelopment proposals [A82-110] before receiving the Open Bundle in April 2023. However, the panel notes that this document was exhibited (as Exhibit 4) to Ms Guthrie's reply to the Commissioner's response to her appeal dated 28 November 2022 [A173-187] and Ms Guthrie quotes from that document in her reply (para. 24(c)) [A183].

Error of law or wrongful exercise of discretion?

57. Having made the above findings of fact, the remaining issues for the panel in this case are (a) whether the Commissioner made any error of law in the DN and (b) whether the Commissioner wrongly exercised his discretion.

58. In the panel's view, the first issue of law is that EIR rather than FOIA is the applicable regime for the Request. Indeed, this issue is not disputed. Given the definition of '*environmental information*' in EIR 2(1), an extract of which is set out in paragraph 30 above, the panel is satisfied that the information sought by the Request falls within that definition. The Commissioner made no error of law in this respect.

59. In light of the facts we have found proved in this case (as set out in paragraph 56 above), the panel concludes that the Commissioner made no error of law in the DN nor wrongly exercised his discretion in upholding the Council's responses to parts (3), (4), (5), (7), (8), (9), (10) and (11) of the Request that it did not hold the information requested. The panel is satisfied on the balance of probabilities that the information does not exist.

60. The panel is also satisfied that the Council complied with its obligation under section 1(1)(b) FOIA by disclosing information in response to part (6) of the Request.

61. The panel agrees with the Commissioner's submissions in paragraph 48(1) above: the Council's revised response to part (12) of the Request does not fall within the scope of this appeal because it post-dates the DN against which Ms Guthrie is appealing in these proceedings.

62. The remaining parts of the Request for the panel's consideration are (A) the general introductory part (seeking '*all information relating to the property*') and part (1) (asking for the Council's plans for developing SPC); and (B) part (2) of the Request which seeks any contracts for sale of SPC. Taking these in turn:

(A) '*all information relating to the property*' (general introductory request) and '*plans for developing SPC*' (part (1) of the Request) – manifestly unreasonable exception (EIR 12(4)(b))?

(a) As mentioned above, during the hearing Ms Guthrie said that she was not pursuing the general introductory part of her Request. In the panel's judgment, Ms Guthrie was

wise to take this course. However, Ms Guthrie apparently pursues part (1) of her request to obtain '*plans for developing SPC*' beyond information that has already been supplied.

(b) The panel therefore had to consider whether the exception in EIR 12(4)(b) (manifestly unreasonable) was engaged in respect of part (1) and, for completeness, also considered whether that same exception *would* have been engaged in respect of the general introductory request for '*all information*' relating to SPC had Ms Guthrie pursued it.

(c) The panel acknowledges that EIR 5(1) imposes a duty to disclose and that EIR 12(2) provides a presumption in favour of disclosure. Further, EIR unlike FOIA imposes no specific limit on the amount which a public authority must do to respond to a request. Accordingly public authorities may be required to accept a greater burden to provide environmental information under EIR than other information under FOIA.

(d) However, the panel takes note of the decision of the Upper Tribunal in the *Craven* case and the *Cabinet Office* case (paragraphs 35-36 above). Both the introductory request and part (1) are very broad, particularly as no specific time period is specified. Bearing in mind that information relating to SPC and its development goes back more than 40 years, the panel considers that the Commissioner made no error of law nor wrongful exercise of discretion in accepting the Council's contention that responding to those parts of the Request would require a disproportionate use of public resources and impose a disproportionate burden on the Council.

(e) As stated in paragraph 37 above, the panel acknowledges that this exception under EIR, once engaged, is nevertheless subject to the public interest test in EIR 12(1)(b). This issue is addressed below.

(B) Part (2) CLSA – confidential commercial information exception (EIR 12(5)(e))?

(a) Ms Guthrie strongly contests the redactions made to the CLSA. These redactions effectively withhold information by relying on the commercial information exception in EIR 12(5)(e). The information withheld by the Council under this exception is the whole or part of the definitions in the CLSA of the Construction Costs Cap [D623]; Longstop Date [D628]; Professional Fees Contribution Cap [D632-633]; percentage of Residual Land Value in the Purchase Price calculation and Valuation assumptions [D634 and D636]; Residual Land Value [D634]; Ultimate Date [D636] and the Current Financial Appraisal in Schedule 8 [D758]. Ms Guthrie claims that these terms are '*prejudicial*' and '*key*' provisions of the CLSA.

(b) For the reasons set out in paragraph 54(d) above, the panel considers that – contrary to Ms Guthrie's assertion that the bundle is '*heavily redacted*' (paragraph 47(i) above) – the redactions are actually very limited in the context of the CLSA and the evidential bundles as a whole.

(c) The Commissioner considered EIR 12(5)(e) and in paragraphs 95-106 of the DN [A25-27] applied the four-stage test set out in paragraph 33 above. He concluded that the four-part test was satisfied and that EIR 12(5)(e) was engaged.

(d) The panel notes that Ms Guthrie in neither her Grounds of Appeal nor Skeletal Argument give reasons for challenging the engagement of EIR 12(5)(e).

(e) The panel concludes that the Commissioner made no error of law nor wrongly exercised his discretion in concluding that EIR 12(5)(e) is engaged.

(e) However, Ms Guthrie argues that the public interest in disclosing the withheld information outweighs the public interest in continuing to withhold it. The panel's judgment on the balance of the public interest is set out below.

Balance of the public interest

63. As mentioned above, neither the Notice of Appeal nor Ms Guthrie's Skeletal Argument give reasons for challenging the Commissioner's decision that the exceptions in EIR 12(4)(b) and 12(5)(e) are engaged in this case. No error of law on the Commissioner's part is suggested. For the reasons given above, the panel upholds the DN and the Commissioner's reasons for concluding that these exceptions are engaged.

64. The panel went on to consider whether the Commissioner had applied his discretion inappropriately, in other words whether he had wrongly balanced the public interest under EIR 12(1)(b) when he concluded that the public interest in favour of withholding the information under the exceptions in EIR 12(4)(b) and 12(5)(e) outweighed the public interest in disclosing that information.

65. The panel notes the explicit presumption in the EIR in favour of disclosure. We acknowledge that there is a public interest in disclosing the environmental activities of local authorities, including the sale of public assets such as freehold land within their ownership. We also recognise that there is a public interest in understanding the terms on which public authorities agree to sell public assets, as well as a public interest in understanding how such authorities make their decisions. We consider that this not only enhances trust in public authorities but may also allow greater public participation in the decision-making process as well as enhancing public understanding of environmental matters.

A. Manifestly unreasonable

66. As regards the '*manifestly unreasonable*' exception for withholding '*all information relating to the SPC*', and all '*plans for developing [SPC]*' the panel notes again the decisions of the Upper Tribunal in the *Cabinet Office* case (see paragraph 36 above) that even '*...a substantial public interest underlying the request for information does not necessarily trump a resources argument.*' The panel notes that the Commissioner took account of Ms Guthrie's very detailed and lengthy submissions about the interests of the Afro-Caribbean community for whose benefit she believed that the Council held SPC (DN paras. 69-71) [A20]. The Commissioner recognised and appreciated Ms Guthrie's strongly held concerns but concluded that much of her arguments were based on a misconception of the nature of the Council's ownership of SPC which the High Court and Court of Appeal have since resolved (DN para 72) [A21].

67. The panel notes that the High Court proceedings obliged all parties to disclose information relevant to the nature of the Council's ownership and whether the Council held the property subject to any kind of trust or for charitable purposes. Voluminous documentation was disclosed in those High Court proceedings and lengthy submissions made both before the trial and during the eight-day oral hearing. The Court's judgment was set out at length and in detail over 300 paragraphs on 100 pages.

68. The panel has itself taken careful account of Ms Guthrie's impassioned written and oral submissions. As the panel's findings of fact indicate, the panel considers that these submissions are based on Ms Guthrie's attempt to disprove issues which have already been determined by the courts. For many of Ms Guthrie's claims, the documentary evidence she points to for support of her position does not substantiate her claims sufficiently or at all.

69. The panel agrees with the Commissioner's conclusion that whilst there is a strong public interest in transparency and accountability on the part of public authorities as regards environmental information, this is outweighed by the even stronger public interest in protecting public authorities from exposure to disproportionate burden of resource and expense in responding to such wide-reaching requests for information.

70. Accordingly, we find that the Commissioner correctly decided that the public interest favours withholding the information sought by Ms Guthrie and maintaining the exception from disclosure in EIR 12(4)(b).

B. Confidential commercial information

71. As for the EIR exception relating to confidential commercial information, the Commissioner's own guidance acknowledges that respect for confidentiality in favour of public authorities themselves is likely to carry little weight because they should expect such information may need to be disclosed under EIR, even if they would prefer to keep it confidential.

72. On the other hand, the panel notes that the Council when negotiating the sale of land has a duty to achieve best value for it. To ensure '*best value*' in this case, the Council obtained a valuation report for the SPC and negotiated the terms on which it was prepared to sell. In the panel's view, some of the most sensitive commercial terms in the CLSA are clearly confidential and, given that the CLSA was only conditional, disclosure of those terms would provide a competitive advantage to any other would-be purchaser should the CLSA not complete. Any such competitive advantage would obviously hinder the Council in achieving best value, contrary not only to the Council's duties but also the economic interests of local taxpayers.

73. The panel also considers that breaching the confidence of the purchaser under the CLSA in this case would also have a long-term detrimental impact on the Council. This is because any obligation to disclose even the most sensitive commercial terms of a contract would hinder the Council's ability to negotiate with commercial entities in future because it would be unable to keep certain details of such deals confidential. This, in turn, would directly and adversely affect the Council's ability to reduce the financial burden on Brent taxpayers by entering into commercial arrangements such as the sale of land at the best value. This would not be in the public interest.

74. We are not persuaded by Ms Guthrie's implication that a better deal could have been achieved had development of the SPC been put out to tender. First, the purchaser under the CLSA owned adjoining land, thus enhancing the possible development opportunities for SPC. This made SPC a uniquely attractive proposition for that adjoining landowner, and therefore worth a significant uplift in the price otherwise likely to have been achievable from other prospective purchasers had the site been put out to tender. Both the Council, and ultimately local taxpayers, would likely benefit from the sale of the site to a neighbouring landowner with a 'special interest'. Moreover, it is clear even from the redacted version of the CLSA that there are detailed 'overage' provisions which provide for the Council to share in the increased value of the property rather than merely obtain a fixed sale price. Finally, it is clear from the parts of the CLSA which have been disclosed that this purchaser was prepared to agree to various terms as part of the proposed development, including the provision of an enhanced sporting facility for public use, thus providing a community amenity to the local population which the Council has a legitimate interest in protecting.

75. We have considered what weight to attribute to Ms Guthrie's claims about the supposed sale price of the property, rumoured value of the property and alleged penalty on the Council for breach of the CLSA. The panel concludes that disclosing the redacted information might have a limited bearing on these matters. However, having seen and been able to judge that redacted information for ourselves, we

consider that, for the reasons above, the public interest in favour of disclosure is outweighed by the public interest in withholding that information.

76. We went on to consider the extent to which other claims by Ms Guthrie (summarised below in this paragraph) add weight to the public interest in disclosing further information in response to her Request. We paid careful attention to Ms Guthrie's claims that the Council failed to conduct proper consultation about the proposed redevelopment; that the Council breached the Equality Act 2010; that by entering into the CLSA, the Council is *'discriminating against a vulnerable group of people'*; that the Council failed to *'signpost'* to HPCC and the community the need to set up a trust; that the Council has *'stripped the community of their entitlement to the land'*; that the Council engaged in *'much obfuscation and confusion'*; that the CLSA purchaser is a *'private offshore hotel developer'*; that the Council failed to conduct a meaningful background check on the purchaser; that an individual associated with the purchaser is a convicted fraudster; that the CLSA is *'outside the Construction Act 1988'*; that the CLSA has *'not met the Community Infrastructure Levy'*; that attempts to challenge the CLSA by Judicial Review have failed; that Ms Guthrie faces *'insurmountable costs'* as a result of her attempts to intervene in or bring proceedings relating to the ownership of SPC; that the community was deceived about the nature of the High Court proceedings; that the Council has withheld *'governing documents for the Stonebridge Project'*; that the Council *'cheaply obtained adjoining property...by abuse of'* its powers; that business unit tenants were evicted and the units *'seized...without consultation'*; that the Council *'deliberately mismanaged and left [SPC] derelict for almost 30 years'*; that the Council has changed the zoning of the land from community use; that the area is being *'gentrified'* which the community does not want; that the CLSA is not fair and does not refer to community land use; and that the proposed development is *'prejudicial and devastating to the community'*.

77. This Tribunal has neither the capacity nor the power to investigate or adjudicate on any of these claims. Many of them have already been raised during previous High Court (Chancery Division) and Administrative Court proceedings. For the purposes of this Tribunal's remit, we conclude that – because the information redacted in the CLSA has no bearing on Ms Guthrie's claims – those claims do not influence the balance of the public interest when it comes disclosing confidential commercial terms in the CLSA under the EIR. Nor do Ms Guthrie's claims have any impact on question of disclosure of other information sought by the Request.

78. However, we note Ms Guthrie's grave concerns about wrongdoing on the part of certain Councillors and officers whom she says or implies were involved in the sale of SPC. Ms Guthrie describes Council officers as *'committing fraud, deception, civil theft and victimising the vulnerable people they have a duty to protect'*; *'repossessing business units by creating fraudulent documents'*; that there was a conflict of interest due to a friendship between a Council member involved the CLSA and the purchaser; that various unnamed Councillors and officers were corruptly motivated for *'substantial private gain'*. The panel is mindful of the Commissioner's guidance that suspicion of wrongdoing on the part of the public authority can give rise to a public interest in disclosure.

79. It appears in this case that Ms Guthrie considers that the information requested would shed light on her allegations that the Council has committed various forms of wrongdoing. Given the very limited nature of the redactions to the CLSA, the panel is not persuaded that disclosure of this information would have any bearing on these allegations. Our reasons are set out below.

80. According to the Commissioner's guidance on suspicions of wrongdoing:

- (a) disclosure must serve the wider public interest and go beyond the requester's private interests; and
- (b) the suspicion of wrongdoing must amount to more than a mere allegation – there must be a plausible basis for the suspicion, even if it is not proven.

81. In considering whether this plausible basis for suspicion exists in this case, the panel has carefully considered all the evidence provided to it. Having examined the evidence in this light, the panel considers that as regards Ms Guthrie's allegations mentioned in paragraph 78 above:

- (a) there is either little or no reliable evidence to support them; or
- (b) the allegations are not pertinent to the question of disclosure under EIR; or
- (c) they are contradicted by reliable information in the Closed Bundle.

82. The panel therefore considers that disclosing the information requested by Ms Guthrie would not indicate that her suspicions are justified. It is also important to remember that (a) certain highly pertinent information about the sale of SPC will in due course enter the public domain when it is registered by HM Land Registry; and (b) the timing of the public interest balancing exercise is when the public authority responds to the original request (in this case when the sale agreement was still conditional, and may not have proceeded), not when either the Commissioner or an appellate body such as this Tribunal considers it.

83. The panel concluded that, despite Ms Guthrie's vigorous and impassioned submissions, the evidence simply did not support her allegations of Council wrongdoing. Such allegations therefore remain merely speculative and in the panel's view are misconceived. After careful consideration, the panel has been unable to give her claims about fraud and other wrongdoing more than minimal weight.

84. Overall, Ms Guthrie has not satisfied us that the Commissioner should have exercised his discretion differently when balancing the competing public interests. We agree with the Commissioner that in all the circumstances of the case, on balance the public interest favours the confidentiality of commercial information of the purchaser and the Council, both of which would be adversely affected by disclosure.

85. Accordingly, we find that the Commissioner correctly decided that the public interest favours withholding the information sought by Ms Guthrie and maintaining the exception from disclosure in EIR 12(5)(e).

Closing observations

86. The panel feels it fair to record that the Council made some errors in its handling of the Request - for example initially responding under FOIA rather than EIR. In addition, some of the Council's responses may not have been readily understandable to a lay person such as Ms Guthrie with little knowledge of legal, especially property law, matters.

87. In the end, however, the panel agrees with the Commissioner's DN that the Council complied with its duties under FOIA and EIR (save as to timeliness and responding to part (12)). The panel also considers that the Council dealt courteously and lawfully with Ms Guthrie's Request and follow-up communications. During its consideration of this case, the panel found particularly helpful Counsel's concise and clear response dated 9 November 2022 to Ms Guthrie's lengthy grounds of appeal and submissions. The panel records its thanks to Counsel.

Conclusions

88. For the reasons set out above, the panel finds that Ms Guthrie, the appellant, has not discharged the burden of satisfying the Tribunal that the Commissioner's decision was wrong in law or that he wrongly exercised his discretion. Accordingly, the DN is confirmed.

89. The appeal is dismissed.

Signed:

Date: 24 May 2023

Alexandra Marks CBE
(sitting as a First-tier Tribunal Judge)