Neutral citation number: [2023] UKFTT 592 (GRC)

Case Reference: EA/2023/0045

First-tier Tribunal
General Regulatory Chamber
[Information Rights]

Heard by: Determination on the papers.

Heard on: 5 July 2023
Decision given on: 5 July 2023

Before

TRIBUNAL JUDGE ALISON McKENNA

Between

RUTH FARNSWORTH

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Decision: The appeal is struck out pursuant to rule 8 (3)(c) as having no reasonable prospects of success.

REASONS

1. The Respondent's Strike Out Application dated 23 March 2023 is allowed in respect of this appeal.
2. The Appellant made an information request to the public authority for information concerning a planning application. Some information was disclosed but a draft report was withheld under regulation 12 (4)(d) of the Environmental Information Regulations 2004. The Information Commissioner issued a Decision Notice on 20 December 2022 upholding the public authority's claimed exception in relation to this point and determining that the public interest favoured maintaining the exception. The Appellant appealed to the Tribunal.

3. On 23 March 2023, the Information Commissioner, in filing its Response to the appeal, applied for it to be struck out under rule 8 (3)(c) of the Tribunal's rules on the basis that it had no reasonable prospects of success.

4. The Appellant's grounds of appeal query only one paragraph in the Decision Notice and suggest that she should be able to see whether the draft report contained any consideration of alternative proposals which would have assisted her application.

5. The Appellant was invited to make submissions in response to the proposed strike out, as required by rule 8 (4). On 7 April 2023, the Appellant submitted that she just wanted a Judge to look at the draft report and tell her about it. She attached details of her correspondence with the planning department and the Local Government Ombudsman.

6. I have considered the Upper Tribunal's decision in *HMRC v Fairford Group (in liquidation) and Fairford Partnership Limited (in liquidation)* [2014] UKUT 0329 (TCC), in which it is stated at [41] that:

> *...an application to strike out in the FTT under rule 8 (3) (c) should be considered in a similar way to an application under CPR 3.4 in civil proceedings (whilst recognising that there is no equivalent jurisdiction in the First-tier to summary judgement under Part 24). The Tribunal must consider whether there is a realistic, as opposed to a fanciful (in the sense of it being entirely without substance) prospect of succeeding on the issue at a full hearing…The Tribunal must avoid conducting a "mini-trial". As Lord Hope observed in Three Rivers the strike out procedure is to deal with cases that are not fit for a full hearing at all.*

7. Applying this approach, I have considered both parties' representations and concluded that this is a case which may be described as 'not fit for a full hearing'. This is because the role of this Tribunal under s. 57 and s. 58 of the Freedom of Information Act 2000 (applicable to the Environmental Information Regulations 2004 also) is to decide whether there is an error of law or inappropriate exercise of discretion in the Information Commissioner's Decision Notice. The grounds of appeal simply do not engage with that jurisdiction but seek to use the Tribunal as a vehicle for further disclosure.

8. It does not seem to me that any Tribunal properly directed could allow this appeal because it does not suggest any error of law in the Decision Notice and the Appellant seeks a remedy which the Tribunal may not provide. In all the circumstances, I have concluded that this appeal should be struck out as having no reasonable prosects of success. I direct accordingly.

Signed *Alison McKennna* Date: 5 July 2023