



Neutral citation number: [2023] UKFTT 919 (GRC)

Case Reference: EA/2022/0427

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard on: 22 September 2023 on the Papers
Decision given on: 02 November 2023**

Before

**TRIBUNAL JUDGE WILSON
TRIBUNAL MEMBER MANN
TRIBUNAL MEMBER SIVERS**

Between

GAIL JUDSON

Appellant

and

INFORMATION COMMISSIONER (First Respondent)

REDCAR AND CLEVELAND BOROUGH COUNCIL (Second Respondent)

Respondents

Decision: The appeal is Dismissed

REASONS

Mode of hearing

1. The parties agreed that this appeal could be determined on the papers without a hearing. The Tribunal was satisfied that it was fair and just to determine this appeal in this way.

Background to Appeal

2. This appeal is against a decision of the Information Commissioner (the "Commissioner") dated 17 November 2022 Ref. IC-153819-W0G3, (the "Decision Notice"). The appeal relates to the

application of the Environmental Information Regulations (EIR) 2004 (“EIR”). It concerns a site known as King George V fields. The appellant asserts that the fields are protected by way of a deed of dedication such that they are to be used for public recreation in perpetuity. The appellant asserts that an agreement (which the appellant asserts is a lease) and planning permission granted by the Second Respondent (the Council) enabled a local football club to construct a 3m high fence which would be locked to exclude the public.

3. This appeal relates to two information requests made by the appellant.
4. On 19 November 2021 the appellant wrote to the Second Respondent and made a request (the First Request) for the following information:

“In relation to King George V Playing Fields in Guisborough, please could you provide details of the current Covenant and Deed of Dedication on the land from Fields in Trust. Also, if you could provide information in relation to whether the Covenant has been changed in the past 2 years and details of Fields in Trust approving a licence agreement between Guisborough Town Football Club and RCBC.”

5. The Second Respondent responded citing s.1(1) of the Freedom of Information Act 2000 (FOIA) and stating that they did not hold the information. In addition, the Council set out:
 - a. how and when the land was acquired;
 - b. that a declaration was made in 1954 by Guisborough Urban District Council that land was dedicated as a memorial field;
 - c. In 2006 charities Commission Advised that the dedication was unlawful because it conflicted with the original purpose for which land was acquired and such a dedication would have been treated as a disposal at less than best value which would have required the approval of the Secretary of State;
 - d. the council were invited to rededicate the field but declined to do so;
 - e. Counsel’s opinion was sought in both 2011 and 2013 and confirmed the position as stated by the Charities Commission in 2006.
6. On 23 December 2021 the appellant sought an internal review. The appellant asserted that a Fields in Trust solicitor had informed her that “the deed remained valid under contract law” and that “Fields in Trust’s consent was sought for the proposal”. The implication being that there was external information which contradicted the Second Respondent’s position. The appellant stated that the information requested had not been received and also provided photographs of signage at the playing fields which the appellant asserted contradicted the information provided by the Respondent.
7. On internal review the council maintained its position. In addition, the council indicated that a contradictory search and statement by a third party did not affect the council’s position and the signage to which the appellant referred had not been erected by the Second Respondent but by a friend of King George V playing fields group.
8. On 2 November 2022 the appellant made a complaint to the First Respondent in relation to the First Request.
9. On 22 January 2022 the appellant wrote to the Second Respondent and requested the following information (“the Second Request”):

1. *Copies of the conveyances relating to the acquisition by Guisborough Urban District Council of King George V Playing Field, Guisborough from Lord Guisborough's estate in 1954.*
2. *A copy of the 'brief declaration' made by Guisborough Urban District Council in 1954.*
3. *A copy of the statement by The Charities Commission in 2006 advising that the dedication made in 1954 was not lawful.*
4. *A copy of the communication by RCBC stating they were declining to 'rededicate the field' after they were invited to do so.*
5. *Documentation relating to the land being reappropriated under S122 of the Local Government Act 1972 to the Open Spaces Act 1906.*
6. *Details of why Fields in Trust were consulted in relation to a licence application and subsequent planning application R/2021/0009/FF by Guisborough Town Football Club if this consultation was not necessary.*
7. *Documentation relating to site visits conducted by Council Officers in relation to planning application R/2021/0009/FF.*
8. *Documentation relating to reviews of traffic levels in the vicinity of King George V Playing Fields following the recommendation of this by Colin Monson in November 2021, and details of any subsequent Traffic Regulation Order relating to this area."*

10. The appellant requested an internal review on 28 April 2022. On internal review the appellant confirmed that the following information was outstanding:

1. *"A copy of the Deed of Dedication between Redcar & Cleveland Borough Council and Fields in Trust (Trustees of 27/05/2022, 23:15 Page 1 of 4 KGV Playing Field).*
2. *A copy of Fields in Trust's approval of a licence agreement between the Council and Guisborough Town Football Club, including any conditions relating to the proposal.*
3. *A copy of the communication by the Council stating they were declining to 're-dedicate the field' after they were invited to do so."*

a.

11. The Second Respondent responded to the internal review as follows:

- *In response to the first request, the Council was wrong to state they hold the information requested. It holds information surrounding the legal status of the Playing Field, which it provided, but it does not hold the Deed of Dedication between Redcar & Cleveland Borough Council and Fields in Trust (Trustees of KGV Playing Field)*
- *In response to the second request, the Council was wrong to state that it did not hold Item 2 (A copy of the 'brief declaration' made by Guisborough Urban District Council in 1954). This declaration was actually attached to Item 1 (Copies of the conveyances relating to the acquisition by Guisborough Urban District Council of King George V Playing Field, Guisborough from Lord Guisborough's estate in 1954).*
- *In response to the second request, the Council was wrong to state that it held Item 4 (A copy of the communication by RCBC stating they were declining to 'rededicate the field' after they were invited to do so). It apologised for wrongly confirming that it holds this document and stated: "The Reviewing Officer has been advised that this*

was a genuine error in that it was expected that the communication would be available in the file but when the file was thoroughly checked it was not.”

12. On 22 March 2022 the appellant made a separate complaint to the First Respondent in relation to the Second Request.
13. The Respondent decided both complaints in the Decision Notice. Prior to the Decision Notice the First Respondent wrote to the Appellant and confirmed that the scope of the investigation into the complaint would be limited to whether the Second Respondent was correct to state that it did not hold the following information:
 - Item 1 – a copy of the Deed of between Redcar & Cleveland Borough Council and Fields in Trust.
 - Item 2 - a copy of Fields in Trust’s approval of a licence agreement between the Second Respondent and Guisborough Town Football Club, including any conditions relating to the proposal.
 - Item 3 - a copy of the communication by the Council stating they were declining to ‘re-dedicate the field’ after they were invited to do so.
14. In the Decision Notice the First Respondent decided that:
 - a. Items 1 -3 were within the scope of the requests and the investigation other than the request for *“any conditions relating to the proposal”* in relation to item 2. The First Respondent considered that to be a new request for information for which the Appellant would need to submit an internal review.
 - b. The complaint was considered under the EIR which the First Respondent considered to be the correct regime.
 - c. With regard to Item 1 the First Respondent considered the Appellant’s assertion that the Second Respondent’s position was contradicted by the evidence provided by third parties. The Respondent concluded that there was no evidence produced that expressly stated that the deed of dedication exists or any third party had been provided a copy of such document.
 - d. In relation to Item 2 the First Respondent noted the Second Respondent’s explanations regarding the use and permissions the relevant land. The First Respondent noted that the Second Respondent had advised the appellant that is the land was not dedicated; there was no requirement to consult Fields in Trust in relation to the site, if there was any such consultation it did not involve the council and accordingly no information was held.
 - e. In relation to Item 3 the First Respondent noted the Second Respondent’s confirmation that there was correspondence held relating to whether to rededicate the land. However, it did not hold any specific communication that confirms it was “declining to rededicate field”.
 - f. Taking into account all of the information available including the searches that have been carried and the explanations as to why certain information was not held the First Respondent was satisfied, on the balance probabilities that the Second Respondent did not hold any information in addition to that which had already been provided to the Appellant.

The Appeal and Responses

15. The Appellant appealed. The appeal was received on 13 December 2022. The Appellant asserts that:
- a. King George V fields are protected fields in trust by way of a deed of dedication to ensure their protection in perpetuity for public recreation;
 - b. Communication with Fields in Trust indicates that there is a valid deed; there was a meeting between the Second Respondent and Fields in Trust in 2019 which confirmed their legal obligations; the Second Respondent consulted Fields in Trust to request their approval for the licence application and subsequent planning application.
 - c. The Second Respondent's consultation with Fields in Trust is confirmed by the supporting information with the planning application R/2021/0009/FF.
 - d. The Second Respondent has not released information which demonstrates that the deed is not valid and claim legal privilege. Why would they not disclose legal advice when it supports their position?
 - e. Fields in Trust have confirmed that they believe the deed is valid. Contrary to the Second respondent's position Fields in Trust have provided an email stating the deed is valid but they were unable to provide a copy.
 - f. With regard to Item 2, the copy licence with "the bare minimum of information on it" combined with advice that football club will manage the land "as they best see fit" does not constitute an explanation regarding the use and permissions of the relevant land.
 - g. The appellant has provided evidence which the appellant asserts demonstrate that all King George V fields are dedicated and protected together with emails from Fields in Trust stating that the Second Respondent was required to consult and did consult upon the football club's proposal. The appellant asserts that this weighs significantly against the Second Respondent's statement the land was not dedicated and there was no requirement to consult Fields in Trust.
16. The First Respondent responded and maintained that the Decision Notice was correct. The First Respondent indicates that he believes that there is a single ground of appeal but nonetheless addresses other assertions made by the appellant. The First Respondent's response can be summarised as follows:
- a. The single ground of appeal is the appellant's assertion that the evidence indicates that the land is dedicated and accordingly it is more likely than not that the Second Respondent is withholding the requested information or have disposed of it .
 - b. Fields in Trust's confirmation that a deed of dedication exists, albeit that they cannot provide a copy to the appellant, does not mean that the Second Respondent holds a copy of the deed. It does not provide any evidence to undermine the Second Respondent's position that it does not hold a deed of dedication.
 - c. The First Respondent maintained his position that on the balance of probabilities the Second Respondent does not hold information in relation to item 2 of the disputed information other than that which is already been disclosed to the appellant.
 - d. The Second Respondent has maintained from the outset that they have not consulted with Fields in Trust. The First Respondent asserts that there may be some confusion on this point. In the email chain produced Fields in Trust make reference to the Parish Council not the Second Respondent. Therefore, the First Respondent believes it is possible that Fields in Trust are referring to a different Council.

- e. The dispute regarding the legal status of the relevant land is not a matter for the First Respondent. The First Respondent is only required to investigate whether the information that has been requested is held by the Second Respondent. .
- f. In terms of the searches conducted by the Second Respondent the First Respondent considered such searches appropriate and thorough given that they included archive materials. In addition, a council restructure was a reasonable explanation as to why some information was held and some was not.
- g. The First Respondent noted that a detailed response was given to the First Request. In response to the Second Request items 1,2,3, & 7 were provided. The Second Respondent confirmed it did not hold item 4 and provided advice and assistance relation to items six and eight. Accordingly, the First Respondent asserts that the Second Respondent been transparent with the appellant at all stages of the requests.
- h. The transparent approach is further evidence by the Second Respondent answering questions outside of the requests for example questions raised by the appellant on 12 April 2022.
- i. When taken as a whole the First Respondent concludes that the Second Respondent approach was one of transparency attempting to assist the appellant with queries about the playing fields and where it was permitted to do so the Second Respondent providing the information requested.
- j. There is no evidence to suggest that the Second Respondent has attempted to mislead the appellant or there is a motive for the Second Respondent to withhold or dispose of the information.
- k. Nothing within the information produced by the appellant indicates that the Second Respondent is withholding items 1 to 3 above or have disposed of such information. Accordingly, the First Respondent asserts that on the balance of probabilities the Second Respondent did not hold the information requested at item 1 of the decision notice; no more information is held other than that provided in relation to item 2 and the Second Respondent did not hold the exact documentation requested in item 3.

17. The Second Respondent has provided a response to the grounds of appeal. The contents of that response can be summarised as follows:

- a. The Second Respondent has been transparent at all stages and has tried to be as helpful as it can in the circumstances. Much of the information requested was created by predecessor authorities before the establishment of the Second Respondent.
- b. The Second Respondent accepts that the initial response to the second request includes statements that were not correct. It stated that the declaration was not available and the Second Respondent indicated that it held a copy of the communication stating that it was declining to dedicate the field. However, simply because there are errors in the response does not mean that the Second Respondent held the information.
- c. The declaration was included with a conveyance which was disclosed. There seems to be confusion as the fields in trust referred to a deed of declaration whereas the inclusion on the relevant conveyances is headed "memorandum declaration".
- d. The Second Respondent confirmed that it held communication declining to rededicate the field and this was a genuine error. The responding officer had believed that the relevant information would be on file but following a thorough search was clear it was not. These are genuine errors and there has been no intention to mislead.

- e. The Second Respondent confirmed that it holds no further information in relation to the documents requested by the appellant other than counsel's opinion which is considered to be legally privileged and exempt from disclosure.
 - f. The Second Respondent never approached nor consulted Fields in Trust. Reference by Fields in Trust in their email is to is to a Parish council and is likely to refer to a different Council.
18. The appellant responded as follows:
- a. it is notable that the Second Respondent has given incorrect statements for example that the football club had withdrawn their planning application pending public consultation.
 - b. The errors of the Second Respondent are only one part of the appellant's case and she also relies upon the supporting evidence in relation to the history of all King George V fields including the field to which the information request relates.
 - c. The appellant's view is that the declaration was sent in error and the implication being that the Second Respondent had no intention to send the declaration.
 - d. The declaration shows that the field will be preserved in perpetuity as a memorial to his Majesty King George V under the period in provision of the King George V field foundation. The fact that Fields in Trust has a copy of this declaration is evidence that that they are trustees of the field.
 - e. Fields in Trust was constituted by a trust deed which Fields in Trust's solicitors confirms contains standard wording applicable to all King George V fields.
 - f. The Second Respondent treats the field as King George V field including when applying for grants.
 - g. The Second Respondent should have only given a response once it had reviewed all available information.
 - h. If the legal advice supports the Second Respondent position why not disclose it.
 - i. The approach of the Second Respondent is inconsistent with emails from Fields in Trust which reminded the Second Respondent of their obligations in relation to the fields and the football club who on their planning application confirmed the requirement to consult with Fields in Trust.
 - j. The Second Respondent is the land owner and not the parish council. It is the landowner who must consult.
 - k. There are also links between 10 councillors and the town council.
 - l. The Second Respondent's interpretation of the law and approach differs with other councils in the country who will follow correct procedures.
 - m. The Second Respondent entered into a lease under the guise of a licence and has been far from transparent.
 - n. Councillors of the Second Respondent are supporters and sponsors of the football club.
 - o. The Second Respondent cannot receive the benefit of King George V status (for example obtaining obtaining) without accepting the obligations which come with that status.
 - p. In light of the above the Second Respondent must have a copy of the requested correspondence with Fields in Trust and a copy of the trust deed which formed the basis of the dedication of the King George V field by way of the declaration made.

Applicable law

19. The relevant provisions of the EIR are as follows:

5 Duty to make available environmental information on request.

.....

(1) ...a public authority that holds environmental information shall make it available on request.

.....

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of a public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

6 Form and format of information

(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

12 Exceptions to the duty to disclose environmental information.

(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

20. In determining whether or not information is held, the standard of proof is the balance of probabilities. It is rarely possible to be certain that information relevant to a FOIA request is not held somewhere in a large public authority's records. The Tribunal should look at all of the circumstances of the case, including evidence about the public authority's record-keeping systems and the searches that have been conducted for the information, in order to determine whether on the balance of probabilities further information is held by the public authority.

21. A relevant and helpful decision is that of the First-Tier Tribunal in Bromley v the Information Commissioner and the Environment Agency (EA/2006/0072). In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application 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 the search 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."

22. In Oates v Information Commissioner and Architects Registration Board EA/2011/0138 at [11], the First-tier Tribunal stated *"As a general principle, the IC was, in the Tribunal's view, entitled to accept the word of the public authority and not to investigate further in 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 IC, with its limited resources and its 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."*
23. In Councillor Jeremy Clyne IC and London Borough of Lambeth EA/2011/0190 [23] the Tribunal accepted that the Commissioner was entitled to accept at face value the response of a public authority, where there was no evidence of an attempt to mislead the Commissioner, or of a motive to withhold information actually in its possession.

Issues and Evidence

24. The issues for determination in this appeal are:
 - a. the scope of the appeal; and
 - b. whether the council holds information in relation to items 1 and 3 above that has not already been disclosed to the appellant.
25. There is no dispute between the parties that the EIR is the correct regime in which to assess the information request.
26. By way of evidence and submissions we had an agreed bundle of open documents and written submissions all of which we have taken into account in making our decision.

Discussion and Conclusions

27. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision. We deal in turn with the issues.

Scope of the Appeal

28. A significant proportion of the appellant submissions relate to the correct legal status of the land to which the request relates and the lawfulness of the Second Respondent's decision making in

light of that claimed status. Whilst these submissions are relevant to context they are not issues that the Tribunal can determine. The Tribunal's remit is to establish whether the requested information is held and if so whether it should be disclosed.

29. In addition, to the two requests considered above, there has been ongoing dialogue between the parties as to the disclosure of the Second Respondent's legal advice in relation to the dedication of the land to which the request relates. The Second Respondent has claimed that the legal advice is exempt from disclosure due to legal privilege. However, this element of the dispute between the parties does not appear in the Decision Notice. The First Respondent clearly defined the scope of the investigation and Decision Notice as limited to items 1-3 above. While the legal privilege exemption is referred to within the Second Respondent's response and referred to in correspondence between the parties it was not identified as an issue before the First Respondent. In addition, the legal advice is not specifically requested in the grounds of appeal. There is no closed bundle setting out the legal advice for the Tribunal to consider and the arguments in relation to public interest in disclosure, notwithstanding the legal privilege exemption, have not been fully developed by the parties. For example, the appellant does not fully engage with public interest arguments but rather states that if the legal advice supports the Council's position why would it not be disclosed. In the circumstances the Tribunal believes that it is inappropriate for it to make a decision in relation to the disclosure of the legal advice. If there is still a dispute in relation to this issue it is within the appellant's gift to make a request and if necessary a further complaint to the Information Commissioner and appeal to the Tribunal in relation to this issue.
30. Accordingly, the scope of the Tribunal's decision is limited to the whether the information described in items 1 to 3 above is held by the Second Respondent and if so whether it should be disclosed. In addition, we agree that the request for any conditions relating to the proposal for a licence agreement between the Second Respondent and Guisborough Town Football Club was not a feature of either request or internal review. Accordingly, we find that this element is beyond the scope of the Tribunal's decision. However, should the Appellant require this information it is within her gift to make a subsequent request of the Second Respondent.

Supporting Evidence Produced by the Appellant.

31. We have considered the evidence produced by the appellant and contained within the bundle.
32. The appellant has produced a Charity Commission Guidance note. The appellant refers to page 5 of that note which indicates that where a local authority has entered into contractual covenants with the foundation or its trustees, Fields in Trust, those legal obligations remain in force. They are not affected by the charitable status of the land in question. We find this does not advance the appellant's case. The issue before the tribunal is whether the information is held. A statement in guidance from a third party that contracts or covenants are not affected by the charitable status of the land has no evidential weight in relation to assessing whether the Second Respondent holds the information requested.
33. The appellant relies upon the King George V Fields foundation final report at page 32 of the PDF bundle. The appellant has drawn the Tribunal's attention to sections of that report which provide that the King George V scheme was open to any local authority or other body to register a field as a King George V field. The predecessor of Fields in Trust was involved in the administration of the scheme. Certain conditions that had to be observed including security of tenure of the land by the local body and its dedication for permanent preservation as a King

George V field were intrinsic to the conception of a national memorial and funds could not be properly spent on schemes which might disappear after a few years. Again, we find that the information is general in nature, it applies to King George V fields generally, it provides no insight into whether specific documents are held by the Second Respondent and we give this evidence no weight in this regard.

34. The appellant has produced photographs which they assert are “heraldic panels” at the entrance of the relevant fields which the Appellant claims would have been supplied by the foundation, a predecessor of Fields in Trust. This is corroborated by the extracts of the internet pages considered below. Again, we find that the information is general in nature, it applies to King George V fields generally, it provides no insight into whether specific documents are held by the Second Respondent and we give this evidence no weight in this regard.
35. The appellant has produced a photograph of a plaque/sign (with a transcript of the text) which the Appellant asserts is displayed at the land. The plaque indicates that the field was dedicated as King George V Field in 1954 by a deed of dedication. However, it is unclear who has written the text contained in the plaque. The Second Respondent asserts that the plaque was erected by a local community group. It is unclear from where the information has been derived. Accordingly, we place little evidential weight upon this photograph in terms of its corroborative value that a deed of dedication exists. The plaque provides no insight into whether specific documents are held by the Second Respondent and we give this evidence no weight in this regard.
36. The appellant has produced what appears to be a screenshot of an internet page relating to King George V playing fields [page 40 PDF bundle]. The article highlights that all King George V fields are protected forever with Fields in Trust. The protection is a legal agreement between Fields in Trust and the spaces landowner that they will retain it for use as public use in perpetuity. The article indicates that heraldic panels are displayed at the entrance to King George V fields. The article states that consent to Fields in Trust is required for changes to include the grant of a lease to a sports club. The article states that whether consent is required is set out within governing instruments which may be included in conveyances transfer documents deeds and land registry office copy entries. Applications will need to be made by the landowner and that permanent fencing which requires key would require consent. Again, the evidence is general in nature. The article goes no further than stating that the arrangements may be set out in a deed. The standard in this case is the balance of probabilities and accordingly the possibility that arrangements are set out in a deed is insufficient. In any event, the documents provide no insight as to whether specific documents are held by the Second Respondent.
37. An email dated 5 December 2019 from Fields in Trust [page 58 PDF bundle] states “I have also met previously this year with the football club and council representatives to discuss their obligations to Fields in Trusts and all parties”. Firstly, there is no indication as to who the relevant Council is whether this is the Second Respondent or a parish council as referred to in other emails of Fields in Trust. Secondly whilst there may be discussions in relation with Fields in Trust the issue for determination by this Tribunal is whether the relevant information is held. The relevant email gives no insights as to whether the specific documents are held by the Second Respondent. We give the email no evidential weight in relation to whether the documentation is held by the Second Respondent.

38. The appellant relies upon an email from Fields in Trust dated 14 April 2021. The email states that the proposal was approved on a number of conditions being met by the parish council. The appellant stated that the application must have been submitted by the council as landowner and accordingly reference in the email to a “council” is a reference to the Second Respondent. However, the email does not say that. The email refers to a parish council. The email also states that all decisions were made in accordance with a deed of trust. The email does not refer to the second respondent engaging with Fields in Trust. It refers to a parish council. In any event we find that an email from a third party organisation about consultation has no evidential value in relation to whether the disputed information is held by the Second Respondent. Similarly, the email from Fields in Trust dated 4 April and August 2022 which refers to the Second’s Respondent’s position as to the validity of the deed have no evidential weight as to whether the deed is held by the Second Respondent or not.
39. The appellant has produced an extract from Bill Clarke’s social media posts which states “this field is protected forever by the fields in trust who must be consulted and also friends of King George V’. However, again there is no evidential basis upon which this assertion is made. In addition, this post has no evidential weight in relation to assessing whether the information is or is not held.
40. Within the bundle [page 188 PDF stitched bundle] there is a conveyance dated 11 August 1950. The conveyance includes a memorandum. The memorandum states:
- “Memorandum of dedication made by the Council on 12 February 1954 that that part of the land laid out as a playing field shall be preserved in perpetuity as a memorial to King George V and the provisions of the King George fields foundation henceforth be known as King George field”.
- We note that the memorandum does not record that a deed of trust was entered into. We note that the other memorandum endorsed upon the conveyance record the type of document that was entered into. Accordingly, we find that the memorandum does not support the assertion that a deed of dedication exists. We find that the memorandum and conveyance have no evidential weight in relation whether the Second Respondent holds such a document.
41. Indeed, the appellant has produced a document which starts “it is declared by the urban district council of Gainsborough”. The document identifies a field within Gainsborough which will be preserved in perpetuity as a memorial to King George V under the provisions of the King George V fields foundation. The document is sealed with the seal of Urban District Gainsborough. The document is dated 12 February 1954. On the balance of probabilities, we find that this is the document the memorandum of which is noted on the conveyance. We note that this document has been supplied to the appellant by Fields in Trust. Accordingly, we find that there is no indication within the documents produced that the process that was undertaken in 1954 with the intention of dedicating the fields was carried out otherwise than pursuant to the memorandum endorsed on the conveyance and the declaration document produced. There is no significant evidence other, than one email from a third party, that deed of dedication was ever entered into. Accordingly, we find the appellant has failed to demonstrate that a deed of dedication exists. Failure to demonstrate such documentation exists supports the Second Respondent’s assertion that this document is not held. It also supports the Second Respondent’s assertion that there has been a misunderstanding that there is a separate deed of dedication.

Second Respondent’s Approach to the Requests.

42. We find that the responses from the Second Respondent set out detailed background information to assist the Appellant. For example, in relation to the first request the Second Respondent set out in full detail how the land was acquired, the declaration that the land would be dedicated as a memorial field in 1954, why that declaration was considered to be unlawful and the subsequent reappropriation pursuant to section 122 of the Local Government Act 1972. We find that the Second Respondent has acted in a transparent manner and demonstrated a desire to assist the appellant in fully understanding why they consider the land not to be dedicated.
43. We find that where the Second Respondent has subsequently discovered that it has responded to requests in error it has promptly sought to rectify its responses. For example, in relation to the internal review in relation to the second request the Second Respondent apologised that there was relevant information in that regard to the declaration noted in a memorandum on the conveyance which had already been disclosed. The Second Respondent also confirmed it had made an error and did not hold communications stating it was declining to re-dedicate the land. We find that the Second Respondent's approach in correcting errors promptly weighs in favour of openness and transparency, it is not indicative of attempts to mislead.
44. There are other similar examples of open transparent and co-operative behaviour within the correspondence passing between the appellant and the second respondent. On the balance of probabilities, we find that the Second Respondent has acted in an open and transparent manner and has used all reasonable endeavours to assist the appellant in understanding the circumstances and legal status of the relevant land to which the requests relate.
45. The appellant has indicated that there is evidence that certain Councillors have links to the football club who was granted a licence. The suggestion being that there is some motive for withholding the information. The implication being bias or impropriety. We find that evidence of mere connections between local councillors and the local football club is insufficient to demonstrate that there was a motive for withholding the information or that the Second Respondent has in some way acted improperly.

Searches Conducted by the Second Respondent

46. During the First Respondent's investigation he asked the Second Respondent a number of questions. One of those questions was what searches were conducted in order to locate the information and whether these included searches of archived materials. The Second Respondent indicated that it was able to identify that it held records relating to land in question dating back to the 1970s. The records were both paper and electronic records. The Second Respondent also confirmed that it held files in relation to the tenants of the land in question such as the football club and leisure centre. The Second Respondent confirmed that extensive searches of all relevant records were conducted but none of the files contain the information requested. The second respondent confirmed searches included archived information.
47. The Second Respondent also asked why it held some documents from 1954 but not all. The Second Respondent indicated that it was only formed in 1996 following the abolition of Cleveland County Council. The Second Respondent indicated that it retained some documents which related to predecessor authorities especially where they were of historical or legal importance such as the conveyances.

48. We find that there is no evidence of any reluctance by the Second Respondent to conduct searches. Indeed, the evidence indicates quite the opposite and that the Second Respondent took a transparent and open approach seeking to assist the Appellant. We find that the searches conducted were reasonable within the context of the requests. The Second Respondent took an appropriate approach in identifying where relevant information was likely to be held then conducting an extensive search of those records. The Second Respondent has provided reasonable explanations why some records may be incomplete, which is that there has been restructures following which the Second Respondent inherited files of other councils. The explanation is plausible. There is no significant evidence to suggest a motive for withholding information. Accordingly, we find that the council has conducted appropriate searches for the information in question. In the absence of any significant countervailing evidence that would suggest that the information exists and/or is held we find that the Second Respondent's appropriate searches have not revealed the existence of the information.

Conclusion

49. We have considered the appellant's evidence but found that there is no significant corroborative evidence to support the appellant's assertion that the council holds the information in question. Indeed, in relation to item 1 we have found there is no significant evidence to indicate that a deed of dedication exists. We have found that the council has acted in an open and transparent way and has sought to assist the appellant in understanding the circumstances surrounding the land and the former dedication. We have found that the appellant has failed to demonstrate that there is a motive for withholding the information. We found that the Second Respondent has carried out appropriate searches which confirm that the information is not held. We remind ourselves that the relevant standard is the balance of probabilities. For all of the reasons set out within this paragraph we find on the balance of probabilities that the council does not hold the information.

50. The EIR require that a public interest assessment is made in relation to disclosure in all circumstances. However, where the information is not held there can be no public interest in its disclosure.

51. We dismiss the appeal and uphold the Decision Notice.

Signed *G Wilson*

Date: 30 October 2023

Judge of the First tier Tribunal