



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Case No. EA/2016/0115

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FER0611770
Dated: 15 February 2016**

Appellant: MRS RITA HILL

Respondent: INFORMATION COMMISSIONER

Heard at: CHELTENHAM COURT CENTRE

Date of hearing: 5 OCTOBER 2016

Date of decision: 25 OCTOBER 2016

Date Promulgated: 02 November 2016

Before

ROBIN CALLENDER SMITH
Judge

and

MICHAEL HAKE and GARETH JONES
Tribunal Members

Attendances and written submissions:

For the Appellant: Mrs R Hill in person

For the Respondent: Written submissions from Ms E Kelsey, Counsel instructed by the Information Commissioner

Subject matter:

Environmental Information Regulations 2004

Request for information, Regulation 5

Exceptions, Regulation 12 (4) and (5)

- Information not held (4) (a)

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 15 February 2016 and dismisses the appeal.

REASONS FOR DECISION

Background

1. The Appellant (Mrs Rita Hill) made an information request to Gloucester City Council in respect of a planning matter relating to the boundaries of a planned housing development.
2. On 14 January 2015 she wrote to the Council requesting the distance of the alignment of the boundary fencing running along 244 Stroud Road and Barn Pair Court.
3. Initially, the Council refused to provide the information on the basis that it had already been provided in March 2012.
4. The Council referred to scale drawings which had been provided to the Appellant which set out the position and the alignment boundary fence at 244 Stroud Road. It referred to its letter of 3 March 2015.
5. The Appellant complained to the Commissioner who then investigated her complaint under reference FER 0535304.
6. The Council then wrote to the Appellant to clarify the meaning of the request. It provided her with information about the alignment of the existing boundary fence.

7. The Appellant told the Commissioner she considered that was not the information she had requested and, on 3 October 2015, she wrote to the Council making the request in different but similar terms.

8. It is this request that is at issue in the appeal.

9. On 3 October 2015 she asked:

.... I request the distance the boundary fence was moved from 244 Stroud Road land to the now correct boundary between 244 Stroud Road and [Barn Pair] Court.

10. On 28 October 2015 the Council replied stating that there had been no change in the position or alignment of the relevant boundary fence.

11. It provided the Appellant with the drawing of the development, showing the position of the fence prior to the development and the unchanged position of the fence.

12. On 11 January 2016 the Commissioner wrote to the Council asking it to confirm what information it had provided to the Appellant, what searches it had conducted, how the information would be held and whether information had been deleted.

13. The Council was specifically asked to explain how its response – that the boundary fence position had not changed – tallied with the information it had previously provided about the alignment of fence, specifically that:

the angle of the alignment of the existing fence and that shown on the approved drawings is approximately 1° over the 60 m length of the rear boundaries.

14. The Council explained how it had searched for information relevant to the request and confirmed that it had not deleted any relevant information.

15. It added that, while proposed drawings for the development had shown the boundary fence as being in a different position to that shown by the survey drawing provided to the Appellant (1° of difference), the actual fence had not been moved or realigned.
16. On 13 January 2016 the Appellant wrote to the Commissioner providing further background to her request.
17. She explained that the plans for the development showing the proposed housing only four feet from the boundary of 244 Stroud Road had been refused planning permission. The development had later been permitted when plans were resubmitted showing housing at six feet from the 244 Stroud Road boundary.
18. A planning officer from the Council had visited the site with the Appellant and had stated that it was "two feet out".
19. The Council's Planning Department and, subsequently, the Ombudsman had found no fault with the development.
20. The Commissioner, in his decision notice dated 15 February 2016, decided on the balance of probabilities that the Council did not hold any further information falling within the scope of the request.

The appeal to the Tribunal

21. In her Notice of Appeal, and at the oral appeal hearing in Cheltenham, the Appellant challenged the Commissioner's decision that – on the balance of probabilities – no further information was held by the Council.
22. She submits that the position of the boundary fence is different from that specified in plans for the development and that the development therefore does not comply with the plans.

23. Her position is that it is not in the Council's interest to provide her with this information, that there was motivation to conceal the information and the Council should have stopped the development in the light of the mistake.

The questions for the Tribunal

24. Whether, on the balance of probabilities, the Council holds any additional information that has not already been disclosed to the Appellant.

Conclusion and remedy

25. The Tribunal agrees with the Commissioner's summary of the issue in this appeal which is set out, succinctly, at Paragraph 29 of the original decision notice.

26. There, it states:

The complainant's issue in this case is in relation to an alleged breach of planning. She clearly believes that the new build does not comply with planning as it is two feet closer the boundary than it should be. Her request for information is an attempt to obtain evidence to take back to the Ombudsman so that her case can be reconsidered. The Commissioner can understand why the complainant wants the information requested but also considers that there may be a difference between the issue of the position of the new build and boundary, and the distance the boundary fence was moved. As stated above, the Commissioner is not in a position to adjudicate on planning matters.

27. It was clear to the Tribunal at the oral appeal hearing that the Appellant expected and hoped that the Tribunal could intervene in ways that are outside its statutory powers.

28. The limitations of what the Tribunal could lawfully consider within the appeal were explained.

29. The Appellant, however, maintained that the Commissioner had come to an erroneous decision – about the existence of further information that might be held by the Council – that could not be based on the balance of probabilities.
30. The Tribunal does not agree. It finds that all the information that could be provided by the Council, on the balance of probabilities, in respect of this matter has been provided to the Appellant
31. Specifically, at Page 91 of the Appeal Bundle, the Appellant's attention was drawn to the Council's letter dated 25 January 2016 and the Information Commissioner's Office.
32. This details the provision of all the information the Council believed it held in respect of the information request.
33. In answering the Commissioner's query - set out at Paragraph 13 above about an apparent mis-match in responses given by the Council to the Appellant – it stated:

The Council has interpreted this as the measurement of the actual unaltered position of the fence and that shown on the planning drawings. The angle was measured from the verification survey drawing JCL/005 (provided to Mrs Hill).

While the proposed drawings show the boundary fence in a different position (1° discrepancy). The fence between Barn Pair Court and No 244 Stroud Road was not repositioned/moved/realigned by the developer as this would have entailed works on land outside their control.

Drawing number JCL/003 provided to Mrs Hill by Mike Gethin as part of his investigation between the development site and 244 Stroud Road show the position of the fence has remained unchanged between the applicant's survey dated September 2004 and the Council's verification survey in March 2012.

34. For all these reasons we find that the Appellant's appeal cannot succeed.

35. Our decision is unanimous.

36. There is no order as to costs.

Robin Callender Smith
Judge
25 October 2016

