First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FER0885973

Appeal Reference: EA/2020/0112

Before

JUDGE CHRIS HUGHES

IN CHAMBERS

Between

ROBERT LATIMER

Appellant

and

INFORMATION COMMISSIONER

First Respondent

DECISION AND REASONS

Background

1. On his account in the 1990s Northumbrian Water (NWL) contacted Mr Latimer about its plans to construct a pumping station and storm interceptor tunnel near his premises. He was assured that it would rarely operate. There were difficulties during construction and when it began operating in 1996 it flooded. Mr Latimer raised concerns about the effects on the local environment and received a reply from NWL in October 1997:-

"You refer to discussions with [name redacted] and myself regarding the nature of the liquid entering the station. Both [name redacted] and myself have always used the terminology storm water to describe the liquid when talking with yourself and others. This reflects the fact that it is generated only during storm conditions. Its presence in the tunnel only occurs when excess rainwater, particularly from the roads, enters the combined sewerage system. Clearly the storm water will be contaminated by the sewage already in the sewer and some sewage debris is carried forward to the pumping station where it is removed by screening. I can confirm that the station is not used to

pump raw sewage; the sewer passing in front of the garage forecourt carried all foul sewage from Whitburn to Hendon. I hope that this clarifies the position"

2. Mr Latimer was concerned that this was not an accurate description of the operation of the station which discharged frequently and since then sewage has frequently been washed up along the coast. Over the years Mr Latimer has strenuously sought to change the position so that such discharges no longer pollute the beaches. Partially as a result of his interventions the European Commission began infraction proceedings against the UK with respect to its compliance with its obligations under the Directive 91/271/EEC relating to Urban Waste Water in 2010. The decision of the Court of 25 October 2012 reviewed the different interpretations of the Directive adopted by the UK and the Commission. With respect to Whitburn it noted the different interpretations offered:-

   39. So far as concerns, more specifically, the agglomeration of Sunderland (Whitburn), the Commission complains that, at the date of the expiry of the deadline fixed in the additional reasoned opinion, excessive storm water overflows from the Whitburn leg of the Sunderland collecting system were still occurring and that that system was therefore not compliant with Article 3 of, and Annex 1(A) to. Directive 91/271.

   40 While the frequency of the spills has been reduced (in the years 2002 to 2004, between 56 and 91 spills per year and annual volumes of untreated urban waste water discharges of between 359 640 m3 and 529 290 m3), the collecting system is still not compliant with the requirements of Directive 91/271, particularly given the close vicinity of the bathing waters in Whitburn and Seaham and the numerous complaints received by the Commission concerning debris on the beaches around Whitburn.

   41 The United Kingdom considers that those storm water overflows are compliant with Directive 91/271.

   42 The United Kingdom also submits that the bathing waters around Whitburn have been found compliant with Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1975 L 31, p. 1) and that they are thus compliant with Directive 91/271. Furthermore, it is unlikely that the debris comes from Whitburn, but rather from the Tyne where the overflow channels were not equipped with screens until the end of March 2010.

   The Court concluded

   77 It must be stated, first, that, in accordance with the letter of 2 March 2005 sent by the United Kingdom to the Commission, the number of waste water discharges indicated for 2001 was 310 with an annual volume of 561 240 m3 and that, during the period covering the years from 2002 to 2004, that number varied between 56 and 91 with volumes between 359 640 m3 and 529 290 m3 . Also, it should be noted that, between 2006 and 2008, the number of waste water discharges per year varied between 25 and 47 with a volume from 248 130 m3 to 732 150 m3 while the volume for 2009

was 762 300 m3. The Commission, basing its observations on the frequency of those discharges and their intensity, has clearly demonstrated that, both before and after the expiry of the period laid down by the additional reasoned opinion, they were a normal occurrence, as such a number of discharges cannot be linked to exceptional circumstances. Indeed, the United Kingdom does not contend in its observations that those discharges are exceptional in nature.

78 Second, it is to be noted that according to a study carried out in 2010 it would be possible, from a technological point of view, to reduce the number of waste water discharges from the Whitburn collecting system by enlarging the interceptor tunnel that already exists, a fact which has not been contested by the United Kingdom.

79 So far as concerns the costs required to be incurred and the benefits obtained, that study shows that an improvement of 0.3% in respect of the quality of the receiving waters could be achieved by the tunnel enlargement works, on the basis of 20 discharges per year.

80 Although the improvement in water quality appears marginal and, as the United Kingdom contends, Directive 76/160 is complied with, a fact which can be taken into account in the general examination of the conditions for applying the concept of BTKNEEC, it must be stated that the costs of such an enlargement of the tunnel are not mentioned at any time, either in the observations of the parties or in the reports and studies carried out.

81 Thus, the Court is not in a position to examine whether the costs of such works are excessive and disproportionate to the environmental benefit obtained.

82 It follows that the United Kingdom has not demonstrated to the required legal standard that the costs of works to increase the capacity of the collecting system were disproportionate to the improvement in the state of the environment.

83 Accordingly, the Commission was right in finding that the collecting system put in place in Whitburn does not meet the obligations laid down in Article 3 of, and Annex 1(A) to, Directive 91/271.

3. There was therefore a different of view between the Commission and the UK as to the extent of the obligations imposed by the Directive and the level of resources which had to be committed by member states in attempting to prevent spills. The Court found the UK in breach of its obligations and the issue is still not resolved. On 26 November 2019 the European Commission wrote to him:-

"I would like to provide you with a further update on the file seeing also numerous e-mails that you have sent to us commenting on the situation in Whitburn…."

4. On 21 October 2020 the European Commission wrote to Mr Latimer to provide him with an update on its position, in the light of improvement works on the system completed in 2017. The letter concluded:-

"In the latest communication, the United Kingdom authorities reiterated that improvement works on the Whitburn long sea outfall and Saint Peters pumping station were completed on 14 December 2017. According to the United Kingdom authorities, the system meets its design target of 20 spells per annum. The authorities went on to explain that this was despite the recurrence of significant storms in 2018, a very wet 2019 and a wet and stormy start to 2020. The figures provided by the United Kingdom authorities showed that there were 17 spills from Whitburn long sea outfalls (LSO) in 2018, discharging a total volume of 376,593 m³….

Given the continued elevated level of spills since December 2017, both in terms of frequency and quantity, the Commission is of the opinion that the main elements of the judgement of the court in case C-301/10 with regard to Whitburn have not been met."

Previous requests for information

5. Over the years Mr Latimer has worked assiduously on this issue seeking information from NWL and the Environment Agency and raising the issue with MPs and the local authority. He has made a very large number of requests for information, some of which have been considered by the Information Commissioner and the tribunal to be manifestly unreasonable.

The background to the current request

6. In 2018 a successful planning application for the construction of 64 homes the "South Bents" development was made Miller Homes. In July and September 2019 local councillors and the local MP were raising concerns about the drainage aspect of the development and on 20 September NWL e-mailed to the MP's office clarifying the issue:-

"I can confirm we have not given consent for manhole 5610 to be used to live for sewage and surface water drain, and nor would we do so – this is part of the storm system and therefore unsuitable for a connection for this purpose. This had previously been marked incorrectly on the drawing, which is where any confusion may have a listen. We are working with Miller Homes identify suitable connections, but these have not yet been confirmed.

Please let me know if you need anything further from me."

The request

7. In response to this proposed development Mr Latimer had made a request for information on 13 June 2019 to the Environment Agency. The Agency confirmed to him on 17 July that it did not hold the data and 19 days later, on 5

August 2019, he forwarded the EA response to him to NWL linking it to a complaint about the smell he experienced in his home:-

"This is a complaint and also a request for information under the EIRs, requesting the information below that the EA [the Environment Agency] claim NWL hold…
…I refer to your telephone conversation with [Redacted] at 13 June 2019 requesting exact locations for the flow rates detailed in the Whitburn Steel Station Pumping Station permit (Ref 2451207) at the following points:

- *Seaburn: SU51, SU52, SU53, SU66, SU67*
- *Roker: SU65, SU70, SU71, SU72""*

The response

8. NWL refused on 19 August 2019 claiming that the request was manifestly unreasonable and upheld that conclusion on internal review on 7 October 2019. This set out the history of his requests to NWL by reference to previous decisions of the Information Commissioner:-

"You made a request to Northumbrian Water Limited on 1st August 2019 for certain information under the Environmental Information Regulations 2004 on the Whitbum sewerage system. Northumbrian Water refused the Request on 19th August on the grounds that it was manifestly unreasonable within the exception in Regulation12(4)(b). You then wrote to Northumbrian Water on 19th August asking for an internal review of the Refusal.

I have conducted the internal review as you requested, and this letter sets out the analysis which I have carried out My conclusion is to uphold the Refusal. The reasons for this are set out below, as are your options for appealing this internal review.

Background

The Whitbum sewerage system is a matter on which you have made extensive information requests to Northumbrian Water, as well as other public authorities, and there have been numerous Decision Notices in respect of your requests.

In Decision Notice FER0667011 (31 August 2017), the Commissioner considered an earlier appeal which you made against Northumbrian Water's 20th January 2017 internal review upholding a refusal to comply with a previous EIR request from you on this same topic. As the Commissioner made a number of comments which apply equally here, I am attaching a further copy of this Decision Notice. The Commissioner noted:

"Having considered all the circumstances of this case, and as in her decision in FS50598562, the Commissioner considers that the complainant continues to demonstrate an unreasonable persistence regarding his concerns about Whitbum sewerage system, and that there remains an obsessive quality to his previous requests to other authorities and these most recent requests to Northumbrian Water. This is

because of the length of time the complainant has been corresponding with Northumbrian Water on this matter (over 20 years); the fact that the matter has been considered independently at a Public Inquiry; and the complainant's interaction with other public authorities on this matter under EIR (FER0667011 para. 36.)

The Commissioner considers that any serious purpose or value behind the complainant's requests is further diminished by the fact that they have already been answered. It is therefore very difficult to justify Northumbrian Water allocating any time to comply with the requests. This would effectively keep reopened a topic that has been long since been independently concluded. (para 37.)

The comments cited above from the Decision Notice FER0667011 justify Northumbrian Water refusing to disclose the information sought on the basis that such request is manifestly unreasonable within Reg. 12(4)(b).

Public interest

The public interest test was carefully evaluated by the Commissioner in FER0667011. Rather than recite these same considerations, I will simply refer you to paragraphs 39/46 of the attached Decision Notice. This same evaluation applies here equally.

Decision

For the reasons given above, the EIR Refusal of 19 August 2019 is upheld."

The complaint

9. Mr Latimer complained to the Information Commissioner. He sent the commissioner a range of material including a refusal by NWL in response to a detailed request from the Chair of the Whitburn Neighbourhood Forum of 6 July. The 5 August response listed numerous previous requests which had been made by Mr Latimer. The Information Commissioner advised him that, given the past history it was likely that the Commissioner would uphold NWL's refusal. In response to this Mr Latimer wrote:-

"Since making the complaint to the ICO we have received further information from other authorities that makes it imperative that we now receive the requested information in the public interest.

The need to acquire this information is more important than ever now we have found out, by my persistence, that NWL have allocated the incorrect manhole to the South Bents Development.

Had I not persisted by approaching the MP's, Councillors etc. then NWL would have just connected the foul sewage from a development of 64 houses to the storm system."

10. Accompanying that communication he included a letter to him from NWL dated 25 October 2019:-

In February 2018 Miller Homes made a predevelopment enquiries to connect the proposed development to our network. As their storm flows could be dealt with without entering the network our team suggested to Miller Homes that 3l/s foul connection point to either MH5610 or MH5601 to direct flows into what they thought was a combined sewer.

In September 2018 Miller Homes then made a full planning application to Sunderland City Council quoting MH5610 as a connection.

In September 2019 we received correspondence from MP Julie Elliott are correctly questioning the connection is Miller homes foul flows to the storm system. This is when we spotted the error and responded to Julie Elliott stating that the connection to could not be used as this was part of the storm system.

Since then we have worked with Miller Homes to find a suitable connection to the foul system and have offered them a connection further north into a 300MM combined sewer with sufficient capacity to accommodate the 3l/s foul flow.

We have explained the error to Sunderland City Planning and the subsequent alternative connection point. Miller Homes will now apply for a variation to their planning as part of the normal process to indicate the new proposed connection point to our network. Miller Homes had not started any drainage connection prior to the error having been spotted.

The decision

11. In her decision notice the Information Commissioner stated that she had not found it necessary to seek further information from NWL and drew her analysis of the history of dealings between NWL and Mr Latimer from her previous decisions. In paragraph 21 she summarised her position:-

"…She is satisfied that the circumstances have not changed in the interim period and that the current request meets the same criteria for vexatiousness: disproportionate burden and distraction; request designed to cause disruption or annoyance; harassment or distress to staff and obsessive nature of the request."

12. She concluded:-

37. The Commissioner considers that any serious purpose or value behind the complainant's request is further diminished by the fact that his previous related requests have already been answered. It therefore continues to be very difficult to justify NWL allocating any time to complying with the current request. This would effectively keep reopened a topic that has been long since been independently concluded.

13. In considering the public interest she concluded that at the time of the request there was no strong public interest in disclosing the information and the balance lay in maintaining the exception.

The appeal

14. In his appeal Mr Latimer explained his role in Whitburn Neighbourhood Forum which was a statutory body concerned to develop a new plan for the area. He explained why he had made the request:-

What has also recently come to the fore is planning applications have been submitted for two development sites in the Seaburn area, 64 houses on one and 82 houses on the other. The foul sewage from both these developments are to be connected to the Whitburn system.

This is what has brought about my request, I was trying to find out which manholes are to be used to connect the foul sewerage to. NWL don't want me to find this out and with the ICO support they are managing to do that.

15. He considered that EIR were not effective:-

"The reference made by the ICO to past decisions FER0667011, FS50598562, FER0230659, only goes to show how the Environmental Information Regulations are failing the public when after 20 years the flows records show that in only 10 months of 2019, Whitburn discharged over 680,000 tonnes of untreated sewage."

16. He rejected the Information Commissioner's reliance on the fact of a planning inquiry held in 2001 as effectively settling the matter, pointing to the infraction proceedings. In seeking to challenge her approach he relied on findings of a successful appeal he made to this tribunal in February of this year against the decision notice FER0826020 when the tribunal, in case EA/2019/0347 had found that his request was not manifestly unreasonable and directed that NWL provide him the information he had requested. He described the important features of the February case from his perspective:- *"I have never requested this information before, the request came about following the planning application to connect two new housing developments (64 & 82) to the existing sewage system. It is stated that under the EIRs environmental information must be released unless there are compelling reasons and substantive reasons to withhold it, there are none in this case. I ask the First Tier Tribunal to allow this appeal so we can move on."*

17. He supplied witness statements which showed the level of upset caused to local people by the presence of sewage on the beach.

18. In responding to the appeal the Information Commissioner reviewed the long history of Mr Latimer's many requests for information from and correspondence with a number of public bodies and local representatives. She referred to previous decision notices on the subject:-

"In FS50598562, NWL had noted that the Appellant had been corresponding with it about the Whitburn Steel sewage system for over twenty years. NWL had noted that at October 2015 it had received over 280 contacts from the Appellant, excluding correspondence between solicitors and correspondence between NWL and other organisations involved in the Appellant's many complaints (17).

Having looked at the DNs and FTT decisions referenced by NWL, the Commissioner considered that the Appellant continued to demonstrate an unreasonable persistence regarding his concern about Whitburn. She believed there is an obsessive quality to his previous requests to not only NWL but other authorities as well. (36). For these reasons, she was satisfied that NWL correctly applied Regulation 12(4)(b) as the Request can be categorised as manifestly unreasonable."

The issues raised by this appeal

19. In considering whether a request for information is manifestly unreasonable it is necessary to look at the request holistically in its context. The Environmental Information Regulations are derived from the Aarhus Convention (25th June 1998) agreed by the UN Economic Commission for Europe; the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The Convention's aim is to support human flourishing by protecting the environment:-

"Article 1
OBJECTIVE

1) *In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention."*

20. The Convention has been adopted as a Directive by the EU. The website of the European Commission explains that the Convention consists of three mutually supportive pillars:-

"the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Applicants are entitled to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;

the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it ("public participation in environmental decision-making");

the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").

21. There is a presumption in favour of disclosing environmental information and the right to information is set out in Article 4 of the Convention:-

"Article 4
ACCESS TO ENVIRONMENTAL INFORMATION

1. Each Party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

…
3. A request for environmental information may be refused if:
(a) The public authority to which the request is addressed does not hold the environmental information requested;
(b) The request is manifestly unreasonable or formulated in too general a manner;"

22. The right to information is therefore part of a framework concerned to make the environment safer for humanity, it is an instrumental right concerned with enabling public participation in decision-making and, where appropriate, access to the courts to enable the public to challenge decisions which are harmful to the environment. It is within the context of the three pillars that this request for information should be considered.

23. Partly as a result of Mr Latimer's actions infraction proceedings were brought by the European Commission against the UK; these related to the Thames estuary and to the discharges with which Mr Latimer was concerned. In the ECJ the UK argued that it was in compliance with the Bathing Water Directive (76/160, now updated). However neither party to the litigation – the UK and the Commission addressed the cost/benefit calculation to determine whether the or not improvement required excessive cost and as a result "*the United Kingdom has not demonstrated to the required legal standard that the costs of works to increase the capacity of the collecting system were disproportionate to the improvement in the state of the environment*" and the Court found against the UK. Since then

some works have been carried out but they have not had the effect that Mr Latimer would wish.

Consideration

24. The starting point for considering whether a request is manifestly unreasonable is a consideration of the criteria set out in *Dransfield*, the burden on the public authority, the motive of the applicant, harassment of staff and the value or serious purpose of the request.

25. The Information Commissioner in her decision addressed these issues by considering the range of decision notices made over the years in response to Mr Latimer's requests for information on discharges to demonstrate how these criteria were met. In FS50598562, a decision from 2016 she set out the background of a high level of contact and considerable amounts of information supplied:-

"9 Northumbrian Water explained that since 1992, the complainant has raised concerns about the Whitburn sewerage system with various different authorities, including the Environment Agency, Defra and Northumbrian Water. It explained that over the years, Northumbrian Water has received 282 contacts from the complainant, excluding correspondence with external solicitors either acting on its behalf or on behalf of the complainant or numerous pieces of correspondence between Northumbrian Water and other authorities dealing with the complaints.

10. It said that this cumulated in a Public Inquiry in 2001, lasting 11 days, regarding the frequency of spills from Whitburn storage and pumping systems (the Whitburn System). It said that the complainant did attend the Public Inquiry. It said that a significant amount of information was provided to those attending the Inquiry in the form of an Inquiry bundle (a copy of which was provided to the Commissioner). It explained that it considers that the meetings, telephone calls, legal action and full Public Inquiry over the last 23 years demonstrate that everything possible has been done to answer the complainant's concerns and he has been provided with a significant amount of information relating to the Whitburn System.

26. In FER0230659 (a 2009 case relating to the Environment Agency) the Information Commissioner noted:-

17. The list provided by the public authority records 699 communications. This list includes internal communications between the public authority's staff and also Communication s between the public authority and third parties regarding the complainant and issues he raised regarding the Sunderland sewage system. However the records featured on the list are overwhelmingly of direct communications between the public authority and the complainant.
…
39. Having reviewed the communications on the list supplied by the public authority, the Commissioner has observed that whilst the complainant has contacted members of

staff from across the public authority he has also focused a lot of his correspondence on particular individuals within the public authority. Furthermore, in the past the complainant has demanded that certain members of staff within the public authority resign and has levelled various charges against the public authority accusing it of incompetence, lying and collusion."

27. In FER0667011 the Information Commissioner found with respect to burden on NWL (at paragraphs 22-26) that NWL had a small team handling such requests and Mr Latimer's requests diverted them from other requests, they were often complex, required the involvement of many people around the business, were copied into people outside the organisation requiring interaction with them, they diverted the staff from carrying out their statutory functions and *Given the extensive correspondence Northumbrian Water has received from the complainant about Whitburn sewage system over the past twenty years, Northumbrian Water argues that it is reasonable to assume that it will continue to receive more requests from him on the same topic. It says that it is its experience that answering his requests does little to satisfy the complainant, or bring any resolution to the matter*.

28. With respect to requests to cause disruption and annoyance FER0667011 noted repetitious requests for information already provided, refusing to attend public meetings but demanding access to private meetings, refusing to correspond with the appropriate part of NWL which showed an intention to cause annoyance. It may be noted that his request for information in this case appears to have been sent some days after The Environment Agency had told him that it did not hold the information and was coupled with a complaint claiming there had been a discharge.

29. With respect to harassment NWL pointed to the history, the style of correspondence and the effect on staff. FER0230659 (the 2009 case relating to the Environment Agency – see above) documented the accusations made against employees. In his statement supporting this appeal Mr Latimer is abusive of the Information Commissioner's staff:-

"What an insult from an ICO employee to suggest it had not received any other requests for information on this topic from anyone else. Considering the ICO responses, everyone else is wise and like my wife says, you should give up - these people are a waste of time. The ICO process is not fit for purpose along with its employees who have fabricated such a story."

30. With respect to the question of serious purpose or value paragraph 23 above demonstrates Mr Latimer's scepticism about the value of EIR and the circumstances of the request show that the issues which the request purported to illuminate were resolved without the information. The Information Commissioner was correct in finding that there was an obsessive quality about these requests for information.

31. In weighing the public interest the Information Commissioner recognised the public interest in bathing water quality and that there had been a public inquiry two decades ago but she did not consider that the material Mr Latimer had sent made a coherent or compelling case for disclosure. She noted that a great deal had been done over the years to meet the public interest in disclosure and the steps NWL had taken to inform the public, she suggested that there had been no interest in the issues apart from Mr Latimer and the extent of public resources being devoted to answering Mr Latimer's requests. She was satisfied that the public interest lay in upholding NWL's stance.

32. Although Mr Latimer has argued that this is new information, which he has not requested before (an argument which was successful in EA/2019/0347), I am not satisfied that that is a complete answer to the position adopted by the Information commissioner.

33. Over the many years since the Commission started the infraction proceedings it is exceptionally hard to see how his multiple requests for information have had any effect. Indeed Mr Latimer in his appeal (paragraph 14 above) explicitly stated that the EIRs were failing the public. Although he conflates the request for information with the changes to the drainage arrangements for the new development, there are problems with this claim. It is by no means clear what role Mr Latimer played in that decision-making and, even if he had some influence, there is absolutely no evidence that the flow rates at the various points he identified were taken into account by NWL, since the flow rates were not disclosed to the public the interventions by councillors and the MP were not assisted by the information and the arrangements have been changed after NWL identified an error on a plan. The information request has not facilitated public participation in decision-making which has been achieved without it.

34. The decision in the Infraction proceedings demonstrates that the issues are by no means as simple as Mr Latimer claims. While there is some discharge of sewage during high flows of run-off following rain, whether there was an obligation on the UK government to stop all such run-off was not fully established at that stage. As the Court found, *the Court is not in a position to examine whether the costs of such works are excessive and disproportionate to the environmental benefit obtained.*

35. Mr Latimer, as he has acknowledged, has received a large amount of data; however there is always the possibility of seeking more data and a key question is what good will that data do, once it is in the public domain. While Mr Latimer can be persuasive (as the tribunal in EA/2019/0347 found):- *"The Tribunal found the Appellant to be a reasonable, articulate and conscientious individual who presented his submissions in a competent, coherent and comprehensive manner. As an engineer he was able to explain to us the detail of concerns he has had for many years. He describes how despite years of effort the citizens of Whitburn and beyond have been deprived of suitable water treatment facilities. He feels he has come*

to the end of the line. He does not dispute that he has received assistance and information from the Public Authorities concerned but he has sought more and new information, as it is necessary to establish the cause of the problems and the need for change." This is beside the point. The release of data is not necessary to establish what the problem is, that is fully explored in numerous processes whether it be the planning inquiry of 2001 or the proceedings of the ECJ. Nor is the disclosure of further evidence necessary for action to be taken, works have been carried out on the system and NWL identified an error in the plans before the latest housing development was inappropriately linked to the wrong part of the system. There is a clear disconnect between these requests for information and the real world consequences which EIR should facilitate. There is little or no public interest in this request for information.

36. On the other side of the balance it is clear that Mr Latimer has for very long time been pursuing a campaign about these discharges. This leads him to exaggerate the significance of each request, to co-opt others to make requests on his behalf (the chair of the Neighbourhood Forum), to use any partially related issue as a hook to make further requests and to exaggerate what he is talking about. While the presence of waste material on the beach is undesirable and the material discharged from the outfalls during storms is not rainwater, however it is not (contrary to Mr Latimer's claims) hundreds of thousands of cubic meters of sewage. As was pointed out to him in 1997 (paragraph 1 above) it is contaminated water. The material he has submitted confirms the intensity of his pursuit of his campaign (for example paragraph 3 above a reply from the European Commission) *"seeing also numerous e-mails that you have sent to us"*, or again *'thank you for your email of 24 February, 2 March and 4 March.' 'As I have advised you on many occasions..* This pattern of behaviour is consistent over many years as is evidenced by the numerous decisions of the Information Commissioner detailing the burden created by his requests, the hostility he is recorded as evincing and the claims of misconduct that he has made over the decades are again demonstrated in his comments on the Information Commissioner's staff in this appeal (paragraph 29 above).

37. Mr Latimer is manifestly unreasonable in his pursuit of this information, if information is provided he seeks more, he has over the decades imposed a substantial burden on several public bodies and been abusive to their staff. He has diverted their staff from more productive work to meet their public interest objectives. This is an abuse of EIR. Viewed objectively there is no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public.

38. I am satisfied that the Information Commissioner correctly found that the request was manifestly unreasonable and the public interest did not require disclosure of the information.

39. The appeal is dismissed.

Signed Hughes

Judge of the First-tier Tribunal
Date: 30 November 2020
Promulgated: 01 December 2020