



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FS5081345**

Appeal Reference: EA/2020/0014

Considered on the papers

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

DAVE SIVERS & DAVID WILKINSON

Between

DAVID NORRIS

Appellant

and

INFORMATION COMMISSIONER

Respondent

Cases

Dransfield v Information Commissioner and others [2015] EWCA Civ 454
Hope and Glory Public House Ltd, R v City of Westminster Magistrates Court & Ors
[2011] EWCA Civ 31

DECISION

The appeal is dismissed

REASONS

1. Mr Norris has for many years lived in a house adjacent to a cemetery owned by Great Wyrley Parish Council. Trees in the cemetery shed debris onto Mr Norris's property. For many years he has tried to persuade the Council to

drastically reduce or remove those trees. The Council has had them inspected and has carried out some pruning but has decided that as the trees are in good health they do not pose a danger. This disagreement has been escalated by Mr Norris over the years and has been pursued by a variety of means including complaints against councillors and requests for information as well as extensive correspondence with and interventions at meetings of the Parish Council. On 30 November 2018 he made a further request for information:

"Can I please have a copy of the tree report"

2. The Parish Council refused to provide it claiming that the request was vexatious. In its refusal notice it explained its reasoning:

The nature of the request appears to be re-opening issues which have been disputed several times before.

To carry on responding to these requests would divert staff from their usual duties

3. Mr Norris complained to the Information Commissioner who, in her decision notice of 11 December 2019 upheld the Parish Council's decision.
4. In her decision notice the IC reviewed the meaning of the term "vexatious" as developed by the Upper Tribunal and approved by the Court of Appeal in *Dransfield* (DN paragraphs 16-22), summarised the position of the Council and Mr Norris (DN paragraphs 24-30, 31-33). The IC acknowledged that Mr Norris had pursued the issue of the trees beyond a reasonable point and relied on a letter from the Council of 13 January 2017 (DN paragraphs 35, 36 and for the text of the letter see paragraph 12 below), that a community protection warning notice had been issued (paragraphs 37,38), that disclosure would be ineffective and the request was vexatious:

42, On the basis of the evidence available to her, however, the Commissioner's view is that it is unlikely that compliance with this request would bring resolution. On the contrary, the complainant's previous conduct suggests to the Commissioner that a more likely outcome would be further information requests and contact with the Council based upon the content of the information disclosed.

Conclusion

43. On balance, whilst the Commissioner recognises that the request is of some value to the complainant, her view is that the previous conduct by the complainant and the likelihood of compliance with this request prolonging his contact with the Council tips the balance towards vexatiousness.

44. Therefore, having considered both the arguments and the supporting evidence provided, the Commissioner finds that the request was vexatious and therefore the Parish Council were right to rely on section 14(1) of the FOIA.

5. Mr Norris appealed against the decision. He argued that he was entitled to the report, that the Parish Council weren't maintaining the trees properly. With his appeal he submitted various documents including what he described as a "recommendation from Steve Doors (sic)" he stated that Mr Doors (a tree expert with the South Staffs District Council) had recommended that the trees be cut and this had been ignored. He explained that the warning notice had been served on him in connection with his raising of improper dealings between the Parish Council and a garage located adjacent to his property.
6. The IC maintained her position. The burden of the request itself was minimal but in its context considerable, the value of the information requested needed to be seen in the context of *Dransfield*, the disclosure of the report would not bring any resolution of the issue and the handling of the request would cause distress to the staff of the parish council.
7. Mr Norris argued in his reply that he had offered to pay half the cost, that he only wanted the trees to be properly maintained, that as a member of the public he was entitled to the report, that the Parish Council had not sent correspondence to the MP as it should have done, that the Parish Council did not help local people, that the community protection warning was to stop him raising an issue of fraud in meetings

Review of the evidence

8. The bundle prepared for the tribunal by the IC excluded material supplied to her by the Parish Council about other issues where Mr Norris has been in correspondence with the Parish Council, and also excluded information about some of the complaints which he had made about councillors. Despite these exclusions the bundle showed a history of contact about the trees going back to 2010 with 170 pages of correspondence and minutes from 2010-2018, of which 63 pages were from 2016 and 41 pages were from 2017. Relations have been difficult and on 13 October 2016 the Chair of the Parish Council wrote to Mr Norris:-

"I am in receipt of your undated letter to the Parish Clerk regarding the trees bordering your property

As you are well aware the Parish Council, only a few years ago, contracted a specialist tree surgeon to undertake a safety review of every tree in the cemetery. As a result of this works were swiftly carried out on the aforementioned trees bordering your property to ensure they were safe and healthy. The Parish Council were well aware of the visit made to your property by Steve Does as he was requested to attend by the Parish Council Mr Does has also been in regular contact with the parish clerk since his visit on 23rd August. He has raised no fresh concerns regarding the safety of any of the trees.

As you have already been advised on numerous occasions by myself, other parish councillors and the Parish Council as a body, we will not be undertaking any further works to the trees bordering your property for the foreseeable future. The decision is final.

I am growing increasingly concerned regarding the number of letters, phone calls and emails that you are bombarding the Parish Council with on this subject. I am also aware of a number of issues you are continuously raising including the sale of the old skate park and various matters concerning staffing at the Parish Council. I now consider these requests as vexatious in nature and accordingly will be entering into new further correspondence regarding these matters.

I note you raise concerns in your letter regarding the attitude of Members of this Council. I, as Chairman have no issue with the conduct of any of our Councillors at the last meeting and fully support them in their actions. I am aware of countless previous incidents whereby you have been abusive and aggressive towards Parish Council staff.

Any recurrence of such disrespectful behaviour will simply not be tolerated by myself or any other member of the Parish Council. Accordingly should any further incidents be reported to me I will have no choice other than to consider further action to protect our staff.

This letter comes directly from myself, Chairman of Great Wyrley Parish Council and has the full support of Members. Any response should be addressed directly to myself or the Parish Council.

9. The following day (14 October 2016) Mr Norris made a complaint against two named members of the Council, calling into question their honesty and integrity, arising out of the actions of the Council as a whole which had taken place. This complaint was rejected by the Monitoring Officer of South Staffs District Council as not giving rise to a complaint against individual councillors.
10. On 2 November at its meeting the Parish Council heard confirmation that some works had been carried out on trees on 17 October, but that Mr Does had confirmed that the trees were not dangerous. The Council also considered and approved a report on vexatiousness.
11. Over the years Mr Steve Does, Senior Arboricultural Officer for South Staffs Council has been repeatedly consulted with respect to the trees. On 13 December 2016 Steve Does sent a detailed note to Mr Norris (copied to the Parish Council) discussing various matters around the trees. The first part of this note was included by Mr Norris in his appeal to this tribunal however it was not as described a *recommendation*, rather the tenor of the note is to indicate that Mr Norris' concerns as to safety are misplaced. Of particular interest is where his comments indicate that he feels that Mr Norris and his

wife have misled him and where he summarises the position on the safety of the trees

"I have stated previously that my comments regarding the priority for works in the rolling program were based on what I was told by your wife when I met her at your property..."

. I had also suggested to the parish that the ivy growing on the trees were severed in order to that it should die and allow a fuller/proper inspection of the trees to be made. When we spoke on Friday you implied that this had not yet been done, I note from the photos you attached to your e-mail it appears that the ivy has been severed...

Please do not think that I'm being flippant, here there is certainly no intention, but whilst the trees may be of a nuisance value to you and affecting your quality of life this does not make them dangerous...

On Friday you also brought to my attention a tree that had come down in the cemetery about two weeks ago and for which you attached a photo of in your email clearly the tree has not come down but suffered a branch failure. This is a different species the tree adjacent to your property I do not know the circumstances around the failure of the branch and so cannot comment on it."

12. On 13 January 2017 the Chair of the Council wrote again to Mr Norris in similar terms to the letter of 13 October 2016:-

Dear Mr. Norris,

I am in receipt of your undated letter to the Parish Clerk regarding the trees bordering your property.

As you are well aware the Parish Council, only a few years ago, contracted a specialist tree surgeon to undertake a safety review of every tree in the Cemetery. As a result of this, works were swiftly carried out on the aforementioned trees bordering your property to ensure they were safe and healthy. The Parish Council were aware of the visit made to your property by Steve Dores as he was requested to attend by the Parish Council. Mr. Dores has also been in regular contact with the Parish Clerk since his visit on 23rd August.

Since we received your letter, Mr Dores has carried out a site visit to the Cemetery with the Parish Clerk. Mr Dores was able to see the tree concerned more clearly now that some of the leaves have fallen due to Autumn. He has again inspected the tree concerned and suggested minor works be carried out to two dead branches. These have now been removed by the Parish Council's approved contractor. Mr Dores made no further recommendations regarding the tree and as such the Parish Council will be carrying out no further works for the foreseeable future.

I am growing increasingly concerned regarding the number of letters, phone calls and e-mails that the Parish Council are receiving from you regarding this topic. I am also

aware of a number of issues you are continuously raising including the sale of the old skate park and various matters concerning staffing at the Parish Council. I am writing to inform you that the Parish Council now considers these requests to be vexatious in nature and accordingly will be entering into no further correspondence regarding these matters.

I understand that you have made several requests recently to obtain the details of the Parish Council's insurer. Any contact with our Insurer will be made via our Parish Clerk. Should you feel the need to make a claim against us, please contact your own Buildings Insurance provider who would be able to advise you further regarding the process for this. Alternatively you can contact the Parish Clerk with details of your claim who will action this as appropriate.

I also note that you raise concerns in your letter regarding the attitude of Members of this Council. I, as Chairman have no issue with the conduct of any our Councillors at the last meeting and fully support them in their actions.

This letter comes directly from myself, Chairman of Great Wyrley Parish Council, and has the full support of Members. Any response should be addressed directly to myself or the Parish Council.

Yours sincerely,

13. On 10 May 2018 the South Staffordshire District Council and Staffordshire Police served on Mr Norris a Community Protection Notice Warning under the provisions of the Anti Social Behaviour Crime and Policing Act 2014. This specified the conduct which had given rise to the need for a warning and the actions he was required to take:-

Your Conduct

The manner of your dealings with the clerk and other members of the Great Wyrley Parish Council both inside and outside the council offices and at parish council meetings. This includes persistently contacting the office about the same topic, even though you have been provided with an answer. Shouting at Parish councillors and being abusive and then refusing to leave parish council meetings

...

Action you must take

If you wish to communicate with (or ask questions of) the clerk to the parish council or 'the parish council or any member of the same or any employee of that council, then you must do so in writing. This should be sent directly to the parish council or emailed on,...

You must when attending a meeting at the parish council which is open to the public, refrain from shouting and being abusive and refusing to leave when asked.

...

Consideration

14. It is clear from Mr Norris's submissions that he considers that his behaviour leading up to the warning he received from the District Council and Police was entirely justified by what he saw as the wrongful acts of the Parish Council. The issue of the trees has been repeatedly raised by him over the years, the evidence within the bundle shows that the Parish Council as repeatedly considered the issue, has regularly had the trees professionally inspected and taken action which it considered appropriate, however Mr Norris has never accepted this and has imposed a significant administrative burden on the Council through his repeated correspondence seeking to engage with the issue. Furthermore, the material shows a consistent pattern of harassment of the Council and its Clerk in correspondence and at meetings as well as a pattern of unjustified complaints about individual councillors.
15. In her decision notice the IC applied an analysis of vexatiousness derived from the Upper Tribunal decision in *Dransfield* to conclude that the request was vexatious.
16. The Court of Appeal in *Hope and Glory* indicated that in an appeal against the decision of a regulator the burden lies with the Appellant to show that the regulator was wrong and some weight (depending on the quality of the reasoning and the evidence) should be given to the conclusions of the regulator. In this case the Information Commissioner has provided sufficient evidence and reasons in her decision notice to support her conclusion. They are a fair and sufficient summary of the material presented to her. Mr Norris has not advanced any grounds of substance to cause the tribunal to have any doubt as to the correctness of that decision. Having considered a significant bundle of evidence submitted by the Parish Council as well as the submissions of Mr Norris, the tribunal is satisfied that the IC's decision is clearly correct and dismisses the appeal.

Signed Hughes

Judge of the First-tier Tribunal

Date: 12 July 2021

Promulgated: 12 July 2021