



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

**Appeal Reference: EA/2016/0195**

**Consideration of the papers at the Residential Property Tribunal Alfred Place WC1  
On 15 December 2016**

**Before**

**CHRIS HUGHES  
HENRY FITZHUGH  
NARENDRA MAKANJI**

**Between**

**BRIAN EDMONDS**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DATE OF PROMULGATION: 21<sup>TH</sup> DECEMBER 2016**

**DECISION AND REASONS**

1. The Appellant in these proceedings has long been concerned about a proposed development in Farnham and raised questions about the Environmental Impact Assessment ("EIA") relating to the East Street Planning Approval/Brightwells Development in 2009. On 7 August 2015 a local newspaper the Farnham Herald reported that "work gets under way finally at Brightwells" and printed various concerns about aspects of the development

voiced by a local residents group and the response of a leading councillor of Waverley Borough Council ("the Council") confirming that the implementation arrangements for temporary works had been agreed by officers had been considered by Surrey County Council and found "satisfactory". She stated:-

*"The council has taken proper legal and planning advice and I am fully satisfied that a lawful start [on Brightwells] has been made."*

2. On 10 August the Appellant wrote to the councillor at her personal email account seeking information:-

*"I note that in the Farnham Herald it is advised that the Waverley BC have taken proper legal advice and planning for East St, please could this advice be placed in the public domain to fulfil the statutory consultation obligation."*

3. She replied promptly on 18 August:-

*"All public decisions of the Council as landowner and Local Planning Authority have been made having taken into account relevant legal advice, and committee reports containing that legal advice are available to the public on the Council's website." that legal advice are available to the public on the Council's website"*

4. The Appellant repeated his request on 19 August to the FOI officer of the Council asking that the Council's legal advice be placed in the public domain to fulfil consultation obligations and that this be done both electronically and by placing a physical copy in Farnham Library. On 16 September she responded confirming that the relevant material was already in the public domain and directing him to two addresses on the Council's website and advising that any other legal advice held would be subject to legal professional privilege and not subject to disclosure under FOIA. The Appellant asked for a review of this decision; raising issues of European Environmental law and the cost of EIAs. In the Council's review it was pointed out that the Council had not produced the EIA and that the Council was therefore unable to provide copies of the EIA.
5. In her Decision Notice ("DN") the Respondent confirmed that the request should have been considered under the Environmental Information Regulations ("EIR"), rather than FOIA. The Council reconsidered the scope of the request recognising that it specifically related to the EIA rather than legal advice on all aspects of the development. The Council confirmed that did not hold specific information on legal advice regarding the EIA and all information within the scope of the request was exempt as already published by the Council on its website.
6. In considering the Appellant's concerns about whether the information on the website was publicly available and easily accessible to the Appellant

(Regulation 6(1)(b) of EIR) she noted that he had been directed to various websites, and whilst he had complained that these did not have the information he sought, he had not claimed that he lacked IT skills. The Respondent was therefore satisfied that with respect to information the Council confirmed that it held, it was available to the Appellant and his complaint failed (DN paragraphs 14-18).

7. The Council had confirmed to the Respondent that it had not sought legal advice on the narrow issue of an EIA, accordingly no such information was held and all related information was on the website. The Respondent accepted that, in the light of the statement that no specific advice had been sought, no information was held and the complaint failed on this issue (DN paragraphs 19-24).
8. In his appeal the Appellant raised various issue relating to the history of this development and how it was handled by the Council. He indicated that he was concerned with the EIA for the Brightwells development (as he had confirmed in an email to the Respondent of 29 April 2016) he wanted "*legal unambiguous confirmation that the 2008 environmental impact assessment remained statutory compliance for the development.*" He noted the response of the Council to the Respondent that it had not sought advice on the narrow issue and stated his view that this failure was incompatible with the law. He emphasised the importance of environmental information and argued that website information could be moved and was hard to examine and he claimed that this publication of environmental information was incompatible with the Council's obligations under EIR.
9. The Respondent resisted the appeal confirming that the complaint to the Respondent had been properly dealt with under EIR rather than FOIA, that the scope of the request had been properly defined by the Respondent (and agreed by the Appellant) was for information which was legal confirmation that the EIA met legal requirements. The scope of the Respondent's Decision Notice was whether such information was available to the Appellant (Regulation 6(1)(b)) and whether such information was held (Regulation 12(4)(a)). The Appellant had internet access and the Respondent had properly concluded that the information the Council held was available to the Appellant through its website. The Council had confirmed that no information within the very specific scope of the request was held, the Respondent had accepted this and the Appellant in his notice of appeal had not disputed this but had argued that the Council should obtain legal advice now.

### Consideration

10. The scope of this appeal is limited by the powers of the Respondent Information Commissioner and by the Tribunal's own powers. The role of the Respondent is not to consider the lawfulness or otherwise of an EIA, it is to

consider whether information which is held by a public body should be published. The Tribunal's role is to consider the lawfulness of the Respondent's decision in the light of the evidence.

11. There is no evidence that information within the scope of the request (which while originally expressed as "legal and planning advice" taken by the Council and has been clarified by the Appellant as being advice on the lawfulness of the EIA), has ever existed. The Council denied taking it, the Respondent and the Appellant both accept that such advice was not taken. The Tribunal is satisfied that, to the extent that a ground of appeal was that such advice should be disclosed, the appeal fails, disclosure is an impossibility. The second issue is whether the information should be made available as a hard, rather than electronic copy. In the light of the previous finding on an uncontested fact, this appeal must also fail. It is however entirely unmeritorious. The appellant is clearly able to access such material as exists and is published on the Council's website. The Tribunal is therefore satisfied that, were the information to exist its publication on the Council's website would meet the requirements of Regulation 6 of EIR since the Council could show that:-

*"6(1)(b) the information is already publicly available and easily accessible to the applicant in another form or format."*

12. The Tribunal is satisfied that the grounds of appeal are not made out; the Respondent's Decision Notice is in accordance with law. The appeal is without merit and is dismissed.
13. This decision is unanimous.

Signed Christopher Hughes

Judge of the First-tier Tribunal

Date: 20 December 2016