

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 20 August 2014

Public Authority: Staffordshire Moorlands District Council

Address: Moorlands House
Stockwell Street
Leek
Staffordshire Moorlands
ST13 6HQ

Decision (including any steps ordered)

1. The complainant has requested information from Staffordshire Moorlands District Council (SMDC) about its compliance with the Aarhus Convention Treaty in relation to the Core Strategy and Churnet Valley Masterplan. SMDC refused to respond to the request relying on section 14(1) of the Freedom of Information Act as it deemed the request to be vexatious. It is the Commissioner's position that SMDC should have considered the request under the Environmental Information Regulations 2004 (EIR). The Commissioner therefore considered regulation 12(4)(b) which relates to requests deemed to be manifestly unreasonable.
2. The Commissioner's decision is that SMDC has correctly applied regulation 12(4)(b) to the request.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 12 November 2013, the complainant wrote to SMDC and made 16 requests for information about its compliance with the Aarhus Convention Treaty in relation to its Core Strategy and Churnet Valley Masterplan. The requests are detailed in full in an annex to this notice.
5. On 25 November 2013, SMDC responded. It refused to provide the requested information. It cited the following exemption as its basis for doing so: FOIA section 14.
6. The complainant requested an internal review on 18 December 2013. SMDC sent the outcome of its internal review on 17 January 2014. It upheld its original position.

Scope of the case

7. Following SMDC's internal review, the complainant contacted the Commissioner on 23 January 2014 to complain about the way his request for information had been handled. The complainant asserted that SMDC has a history of failure to comply with requirements to provide information. He stated that he could provide copies of requests and responses from other residents in order to demonstrate a course of conduct which, objectively addressed, demonstrates a determination either not to supply information requested or not to answer specific questions asked. The complainant offered to provide a full statement of facts.
8. In the course of the Commissioner's investigation, he considered that the requests relate to environmental information and should have been considered under the EIR. SMDC accepted this view and provided arguments in support of the application to the request of the exception at regulation 12(4)(b).
9. The Commissioner considers the scope of this case is to determine only whether SMDC has correctly applied regulation 12(4)(b) EIR to these requests.

Background

10. The Core Strategy is a strategic plan which influences how and where the Staffordshire Moorland district will develop up to 2026. It sets out what SMDC would like to achieve in each of the towns and the rural

areas outside the Peak District National Park and provides the framework for other planning policy documents which identify specific areas for development or protection. The Core Strategy contains all the policies required to control development and the use of land and forms part of the statutory Development Plan for the District. Decisions on planning applications are required to be made in accordance with the policies in the Core Strategy. Policy SS7 of the Core Strategy identifies the Churnet Valley as an area for sustainable development and requires the production of a Masterplan for the area. The Core Strategy was prepared in accordance with the relevant planning acts and regulations and through an extensive public consultation and examination process.

11. The Churnet Valley Masterplan is a supplementary planning document which identifies key opportunities for development and provides detailed guidance for their development and measures to conserve and enhance the landscape as well as natural and built heritage assets of the area. The Masterplan does not have the same statutory weight as the Core Strategy but is a material consideration in the determination of any planning application. The Masterplan was also prepared through an extensive public consultation process, in excess of the requirements set out in the planning acts and regulations, but was not required to go through an examination.

Reasons for decision

Is it environmental information?

12. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR.

"2. Interpretation"

- (1) *In these Regulations "environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –*
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment affecting or likely to affect the elements of the environment referred to in (a);*

- (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements”;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c);*
13. The request relates to SMDC’s policies, plans and programmes associated with the development and protection of landscapes and natural and built heritage assets of the area. It is therefore defined as environmental information by EIR regulation 2(1)(c).

Regulation 12(4)(b)

14. Regulation 12(4)(b) of the EIR states that:

12(4) ...a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable”.

15. The Commissioner’s approach to considering requests deemed manifestly unreasonable or vexatious is broadly the same under both the EIR and the FOIA. His guidance on the issue can be found at the following link.

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

Do the requests cause a disproportionate or unjustified level of disruption, irritation or distress?

16. The complainant first contacted the council with an information request on 24 January 2011. Between then and the request under consideration in this notice, the complainant has submitted 24 sets of requests for information. SMDC has provided the Commissioner with copies of all of the requests and responses; he notes that they all relate to similar matters regarding the planning process
17. One officer, by virtue of his role within SMDC has had responsibility for dealing with 18 of the 24 requests. Although the correspondence comprises 18 letters, the requests for items of information contained

therein amount to around 270. This is in addition to other correspondence sent to SMDC by the complainant.

18. SMDC has advised the Commissioner that the complainant himself has acknowledged the volume of requests by using the word "vast".
19. In his submission to the Commissioner, the complainant has explained that his request was submitted to allow him to know if and how SMDC complies with its legal responsibilities under the Convention on Access to Information, Public Participation in decision making and Access to Justice in Environmental matters (often referred to as the Aarhus Convention Treaty).
20. In relation to the request under consideration, SMDC submits that it is manifestly unreasonable to expect it to reply as the complainant had received a response to a request under FOIA in relation to the issue of its compliance with the Aarhus Convention in September 2013.
21. In its submission to the Commissioner SMDC asserts that it is unreasonable for the complainant to persist with requests relating to compliance with the Aarhus Convention, the Core Strategy and Churnet Valley Masterplan. Furthermore it asserts that had it been failing to comply with the Convention there would likely have been High Court litigation, which to date there has not.
22. SMDC further submits that there have been considerable opportunities for the complainant to enter into discussion with council representatives. For example, the complainant is a member of a local action group, and was present at a meeting with council officers where considerable discussion took place relating to the Core Strategy and Churnet Valley Masterplan.
23. A small delegation from the same action group, which included the complainant, met with the Leader of the Council and the Executive Director earlier this year when this issue was again discussed. A further meeting was then held in June this year.
24. SMDC has made it clear to the Commissioner that it is content to maintain a dialogue on these issues in general terms but determines that it is the additional frequent and detailed requests which it deems to now be manifestly unreasonable. Since determining that the complainant's latest request was manifestly unreasonable, SMDC explained that the complainant has been invited to attend the meeting of the Renewable Energy Working Group. SMDC is satisfied that the approach taken evidences the positive yet proportionate approach it has adopted in the circumstances.

25. With regard to concerns about compliance with the Aarhus Convention, SMDC submitted that the complainant had made representations to the Planning Inspector, who is independent. The council's position on the Aarhus convention, which it had set out to the complainant in September 2013, was considered by the Planning Inspector who was satisfied that the SMDC Core Strategy complied with all UK legislation and therefore the relevant Articles in the Aarhus Convention.

Do the requests have a serious purpose or value?

26. Given the opportunities available to the complainant and the avenues already exhausted, SMDC asserts that the 16 requests in the latest correspondence are unjustified and disproportionate in this context. SMDC does not accept that the request has any real purpose or value other than to cause unnecessary work.
27. In considering the wider context of the current request, SMDC has provided the Commissioner with a document written by the complainant. It is his response to the Churnet Valley Masterplan. The document references the Aarhus Convention more than 45 times.
28. SMDC believes the complainant has already concluded that SMDC has not complied with the Aarhus Convention and it has cited examples from the complainant's response to the Churnet Valley Masterplan to support its position. Against this backdrop, SMDC asserts that the latest request is part of a campaign to undermine production of the council's planning documents and therefore lack serious purpose or value.
29. During the course of his correspondence with SMDC, the complainant has questioned the honesty and integrity of some of the officials at SMDC. Despite this, SMDC submits that it elected, in the interests of transparency, to reproduce the documents on its website with the caveat that it did not agree with a number of assertions made generally about the council or specifically about individual council officers. In the submission to the Commissioner, one council official has described the assertions as "*personally offensive and objectionable*".
30. The pattern of behaviour presented by the complainant's correspondence with SMDC suggests that it is justified in the belief that there will be no end to the complainant's requests.
31. In support of its assessment that the complainant's latest request is manifestly unreasonable, SMDC notes that the Core Strategy and Churnet Valley Masterplan were adopted by the council on 26 March 2014. Interested parties had one month to seek permission to challenge the Core Strategy and three months to challenge the adoption of the Churnet Valley Masterplan. The complainant has not exercised his right

32. in either respect. SMDC noted that the complainant has not sought to legally challenge any decision relevant to his requests but rather has continued to bombard it with a series of information requests.

Conclusions

33. When assessing whether a request, or the impact of dealing with it, is justified or proportionate, it is helpful to assess the purpose and value of the request. The Commissioner has considered the case thoroughly in respect of this request, its background, purpose or value and impact on SMDC.
34. The Commissioner is in no doubt that the request has a serious purpose and value to the complainant and that this may well extend to a group of people who have formed an action group within the local community. He is not persuaded however that the serious purpose and value of the request extends further. Given that SMDC's compliance with the Aarhus Convention has been considered by an independent Planning Inspector and that it had already responded on this issue in September 2013, the Commissioner accepts that the latest request has no serious value or purpose but has had the effect of harassing the public authority.
35. Furthermore, the Commissioner notes that the requests under consideration in this notice do not, in their entirety, appear to constitute requests for recorded information. Most of the requests would require SMDC to provide explanatory narratives rather than recorded information. Nevertheless, the 16 requests would all need to be considered by SMDC and this would represent a further burden upon its resources.
36. The Commissioner finds that the complainant's persistence in terms of communication has reached the stage where it could reasonably be described as obsessive. The fact that the complainant is able and willing to provide copies of requests and responses in relation to other residents suggests that the requests have become or are becoming something of a campaign.
37. The Commissioner accepts that the detail addressed in this, and the complainant's other requests have had the effect of consuming a disproportionate amount of SMDC'S finite time and resources. The Commissioner notes too that some of the correspondence has questioned the integrity and honesty of SMDC employees with the effect that they have felt personally harassed.
38. Despite this backdrop of public authority harassment and annoyance, the Commissioner notes that SMDC has sought to continue to engage

with the complainant and that since determining his request to be manifestly unreasonable, has met with the complainant. Given the background which has been provided, the Commissioner accepts the council's position that the complainant will not desist from making detailed requests for information.

39. The Commissioner considers it noteworthy that the complainant had opportunities to formally challenge the Core Strategy or the Churnet Valley Masterplan in the formal periods before they were adopted by SMDC. However, he did not do so. Instead, he has continued to submit further requests for information on the same topics.
40. In the context of this case, given the volume of requests and the detailed information required therein, the Commissioner finds that the use of EIR legislation on the part of the complainant represents an inappropriate and improper use of a public procedure to challenge decisions made by SMDC. This position is supported by the fact that the latest request does not, on the whole, request recorded information in accordance with the requirements of the EIR.
41. The Commissioner is satisfied that regulation 12(4)(b) is engaged, and has therefore gone on to consider the public interest test.

Public interest test

42. SMDC has not put forward any arguments as to why the public interest might favour disclosure. However, the Commissioner recognises that there are public interest factors which support the disclosure of the requested information in this case. In addition to the general principles of openness and transparency around the decision making processes of public authorities, there is a particular public interest in how local authorities like SMDC ensure they are complying with statutory responsibilities.
43. In considering the public interest in maintaining the exception, SMDC asserts that many of the requests relate to the Core Strategy which is a statutory process involving transparent and public scrutiny, including by an individual appointed by the Secretary of State. It would not therefore be in the public interest to scrutinise this again via the EIR route.
44. Furthermore, SMDC states that a number of the issues raised have already been answered and that documents in the public domain also provide relevant information; therefore it is not in the public interest to divert council resources to address these again.
45. SMDC considers that the issue of staff morale and the resource impact of continuing to respond to requests for the same or very similar

information mean that the public interest is not best served by continuing to handle these requests; therefore the public interest lies in maintaining the exception at regulation 12(4)(b).

46. The Commissioner considers that the balance of the public interest in this case favours the maintenance of the exception. While recognising there is a legitimate public interest in the topics covered by the requests, he agrees with SMDC's view that this public interest has been satisfied by its responses to previous requests and the public consultation around the Core Strategy and Churnet Valley Masterplan. He therefore finds that regulation 12(4)(b) is maintained.

Other matters

47. The Commissioner notes the complainant's assertion that SMDC has a history of failing to comply with requirements to provide information. This position is not reflected in decision notices issued. At the time of this decision notice, the Commissioner had issued one previous decision notice in respect of SMDC in 2007.

Right of appeal

48. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

49. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

1. *How has SMDC complied with its obligations under the Aarhus Convention and in particular Article 7 and 'ensured that it has taken all appropriate measures to avoid adverse effects on human health and the environment, including all necessary inspections, control measures and data'?*
2. *What mechanisms has SMDC used to distinguish between plans and programmes on the one hand and policies on the other hand with regard to the obligation set out in para. 1 above? If such mechanism exists when and how was it [or if more than one all such mechanisms] established, when, which persons or parties were involved and how were the public informed of same?*
3. *How has SMDC incorporated the provisions of Article 6 of Aarhus Convention into its procedures, how do they operate and which named people are included in the operation of those procedures, particularly with regard to time frames and the effectiveness of opportunities for public participation as well as the obligation to ensure that public participation is actually taken into account?. Please demonstrate by reference to the authorities production of the;*
 - [a]Core Strategy Documentation,*
 - [b] the first edition of the Churnet Valley Master Plan,*
 - [c]the 'Main Modifications' to the Core Strategy,*
 - [d]The September 2013 edition of the Churnet Valley Master Plan, giving specific dates, how the Authority complied the specific requirements of the Aarhus Convention Treaty and it's application under European Law.*
4. *How has SMDC complied with the obligation that requires them to provide for public participation during the preparation of plans and programmes relating to the environment that are 'transparent', have a fair framework and provides necessary information'?*
5. *How has SMDC complied with Article 6.3 with regard to the duty to 'establish specific time limits' that 'provide enough time for notification, preparation and effective participation by the public'?*
6. *How and by what mechanisms have SMDC complied with article 6.4 to meet the obligation that 'public participation takes place early in the process, that options are kept open and consultation is not pro forma'?*
7. *How and by what mechanism has SMDC ensured that there is 'a legal basis for the consideration of the environmental aspects of plans, programmes and policies that have a legally enforceable basis, that are a prerequisite for the application of Articles 6 & 7 of the convention'?*

8. *How has SMDC provided a process for 'integrating the consideration of environmental impacts into development plans, programmes and policies'?*
9. *How has SMDC ensured that the requirement that 'due account is taken of the outcome of public participation'?*
10. *How has SMDC ensured compliance with Council Directive COM/96/0511 Final-SYN96/0304 relating to strategic environmental assessments [SEA] so that 'the environmental consequences of plans and programmes are identified and assessed BEFORE adoption related in particular to transport, energy, waste, water, industry, telecommunications, tourism, town and country planning and land use generally and with specific application to Moneystone Quarry and Boltons Copperworks site at Frogall.?*
11. *What plans does SMDC have to stimulate public debate 'about proposed and alternative strategies for predicting and assessing the environmental impacts of proposed strategies and for documenting key findings for use in subordinate decision making processes?*
12. *With regard to para. 11 above when, how and in what format does SMDC propose to release to the general public the evidence, data and scientific principles that will allow them to understand and form a view of the environmental impacts on health of their plans, policies and programmes.*
13. *Please identify all local action plans that relate to local environmental issues in the area of the Staffordshire Moorlands and also environmental health action plans and confirm that these are a 'first step in reaching environmental protection goals'.*
14. *How has SMDC complied with Council Regulation [EC] 1260/1999 and in particular what strategy have they used, what are the planned action priorities, their specific goals and the related indicative financial resource implications?*
15. *Please provide ALL methods by which SMDC currently ensures compliance with its duty to provide ' a transparent and fair framework that emphasises that the public has an opportunity to participate effectively' in the process of plan making. Does SMDC have any current plans to change, expand or alter those mechanisms of consultation to ensure greater effectiveness?*

16. *What mechanism does SMDC have in place to 'guarantee rights in respect of public participation in decision making on issues of health and the environment and generally?'*