

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 November 2016

Public Authority: East Cambridgeshire District Council
Address: The Grange
Nutholt Lane
Ely
Cambridgeshire
CB7 4EE

Decision (including any steps ordered)

1. The complainant has requested various information in respect of a specific planning application or the plot that the application involves. East Cambridgeshire District Council (the council) disclosed some information but withheld the remainder under section 41 of the FOIA. During the course of the Commissioner's investigation, it was determined that the information was environmental, the council withdrew its reliance on section 41, and additional information was disclosed.
2. The Commissioner's decision is that the council has complied with regulation 5(1) in providing all the information within the scope of the request, however, in supplying the information outside the required 20 working day time frame, the council has failed to comply with regulation 5(2) of the EIR.

Request and response

3. On 10 January 2016, the complainant requested the following information:

"1. Please supply copies of any email or correspondence (including notes or transcripts of conversations) of any communication made between

- a) *any ECDC Senior Executive/Councillor/member of the Asset Development Committee to any member of the Planning Dept (including its head) or external planning consultants engaged by ECDC in relation to Application 15/00652/FUL or the plot which that application involves.*
- b) *any Councillor /Officer or Consultant engaged by ECDC involved in the sales , marketing or development of this site on the Vineyards to the Planning Dept in relation to Application 15/00652/FUL or the plot which that application involves. I would expect these should be very easy to identify within case file documents.*

2. Declaration of any monies paid by ECDC to either the final applicant [name] or the initial applicant ([name]) or to Cheffins (who were commissioned to prepare the paperwork for the submission) in respect of the planning application or any monies paid by ECDC for external work carried out in support of or preparation for the specific application above or concerned with the land to which it relates for the 12 months prior to the application.

A simple supplier or cost centre search should uncover any payments.

3. Please supply copies of correspondence or notes of conversations between ECDC and

a) Cheffins or

b) The applicant [name] (or members of his family) regarding either the planning application itself or the sale, marketing or development of the plot that are not in the public domain as at 10 January 2016. These should include details of any agreement regarding the division of sales proceeds.

4. Copies of the FULL minutes regarding meetings of the Asset Development Committee where The Vineyards sites were discussed. This should include the matters discussed whilst public and press were excluded – the justification being that the public interest and good governance issues far outweigh the importance of any commercial sensitivity. You may redact items, but only where there is no significance directly or indirectly to The Vineyards sites.”

4. On 21 January 2016 the council responded. It provided information in respect of parts 1, 2 and 4 and stated that it needed further time in respect of part 3 to consider the application of section 41.

5. Following a chaser letter from the complainant, the council responded again on 26 February 2016 stating that it was withholding the information requested at part 3 under section 41 of the FOIA.
6. The complainant asked for an internal review on 28 February 2016. He added further points of dissatisfaction on 6 March 2016, including that the wrong information had been provided in respect of part 1, and that he expected further information in respect of part 4. The council provided the outcome of the review on 30 March 2016. It maintained its position in respect of all parts of the request.

Scope of the case

7. The complainant contacted the Commissioner on 4 May 2016 to complain about the way his request for information had been handled. He stated that he was not satisfied with the council's response to parts 1, 3 and 4 of his request.
8. He complained that information relating to the wrong planning application was sent in response to part 1, and some information was clearly missing. For part 3, he did not agree with the council's application of an exemption for withholding the information. For part 4, he complained that no information beyond July 2015 had been provided.
9. During the course of the investigation, the council withdrew its reliance on the exemption for the information at part 3, and this was provided. It also located further information in respect of parts 1 and 4.
10. However, the complainant was concerned that additional information for part 3 had not been provided, despite being referenced in some of the disclosed correspondence. He also complained that he had not been provided with any additional information in respect of part 1.
11. The Commissioner considers that the scope of this case is to determine whether all the information within the scope of the request has been provided, and record any procedural breaches.

Reasons for decision

12. Regulation 5(1) of the EIR states that a public authority that holds environmental information must make it available on request.
13. Regulation 5(2) of the EIR states that the information shall be made available within 20 working days of receipt of a request.

14. With regard to part 3 of the request, the council had initially withheld this information under section 41 of the FOIA. Following correspondence from the Commissioner on the matter, the council decided to withdraw its reliance on section 41, and accordingly on 19 August 2016, it disclosed additional information to the complainant. The council stated that this fell within parts 1 and 3 of the request:

- Letter dated 24 July 2014 from John Hill, Chief Executive of the council to Mr P Ambrose of Cheffins.
- Letter dated 10 December 2014 from John Hill to Mr Ambrose enclosing a letter from Cheffins dated 24 July 2014 and an email dated 4 December 2014 from Maggie Camp at the council to Mr Ambrose.
- Letter dated 15 January 2015 from John Hill to Mr Ambrose enclosing a copy email from William Rooke of Januarys dated 12 January 2015 and a letter from Cheffins to Mr Hill dated 8 January 2016.

The council advised the complainant that Cheffins was acting for the applicant in the matter, and it is for this reason that the correspondence regarding the split of the sale proceeds is with Cheffins and not the applicant himself.

15. In respect of part 4 of the request, the council provided copies of the following:

- The exempt report and meeting minutes for the 30 September 2015 Asset Development Committee meeting.
- The exempt report for the 16 December 2015 meeting. It advised that this information was redacted to remove information not within the scope of the request
- A further copy of the minutes of the 8 December 2014 meeting which it stated had previously been redacted under section 43. It advised that on review, as the sale of the land was completed on 6 July 2016, it was now able to release that information.

16. Once he had received this additional information, the complainant advised the Commissioner that it was clear to him that some information was missing. This consisted of:

- The letter dated 24 July 2014 from John Hill, Chief Executive of the council to Mr P Ambrose of Cheffins specifically mentions correspondence from Cheffins or the applicant to the council

dated 9 May 2014. The previous correspondence had not been provided.

- The email dated 12 January 2015 from William Rooke of Januarys was a response to matters put to it by the council and mentions receiving a copy of Cheffins' letter to the council dated 8 January 2015. The original communication from the council to Januarys had not been supplied.
 - This email of 12 January also refers to a "report" supplied by Januarys to the council containing a £37,500 valuation, this report and any accompanying letter or email had not been supplied.
 - In the letter dated 15 January 2015 from the council to Cheffins the council includes a condition as follows; "*The Council having the right to comment on and approve the planning application prior to submission.*" The complainant assumed that this statement was acted upon as specified and that the council approval (to Cheffins or the applicant for their planning application) was actually given prior to submission. If so, the council has not supplied any documents showing this process which would fall either under Part 1 or 3 of the original request.
 - The complainant was also particularly concerned that no internal communications between senior officers or councillors and the planning department, as requested at part 1(a), has been provided.
17. The Commissioner provided this detail to the council, and asked it to confirm whether such information was held, and if so whether it could now be disclosed. The council responded to the Commissioner on 19 September 2016 confirming that the first three documents listed in the bullet points above were held, and it provided copies to the Commissioner and then to the complainant.
18. In respect of the fourth bullet point, the council stated that it does not hold any correspondence with comments on the planning application with the exception of email correspondence which it states was provided to the complainant following his first request for information on 21 January 2016. This information consisted of email correspondence between Brian Flynn and Michael Jenner of Carter Jonas, and Richard Fitzjohn of the council's planning department dated 5, 12 and 16 January 2016. It has confirmed therefore that there is no additional prior approval information held.

19. With regard to the fifth bullet point and the complainant's concerns about part 1 of his request, the council advised that for part 1(a) it holds the consultee list for the planning application on its online planning portal. The list includes Councillors Richard Hobbs and Lis Every, because they are the local ward members for the area. However, it confirmed that they did not make any individual representations regarding the application and so the council does not hold any correspondence to or from them regarding the planning application.
20. The council has also confirmed that members of the Asset Development Committee would not have made comment directly to the planning department, as their only remit as part of the Asset Development Committee would be to consider any reports presented by officers to them at the Committee in relation to the disposal of a Council owned asset, which the land at The Vineyards, Ely was, and these reports have been disclosed.
21. The council states that the emails between Brian Flynn and Michael Jenner of Carter Jonas, and Richard Fitzjohn of the council's planning department, as provided in response to the original request on 21 January 2016, are the information that is held in respect of part 1(b). It confirms that there is no additional information held which falls within the scope of this part of the request.
22. The Commissioner recognises that there remains a dispute here between the information the complainant expects to be held, and the council's position that no more information is held. In situations where such a dispute exists, the Commissioner follows the approach of a number of information tribunal decisions which have applied the civil test of the balance of probabilities to make a decision as to whether a public authority has complied with its regulation 5(1) obligations.
23. To establish whether on the balance of probabilities, the council has complied with the request, the Commissioner asked it to confirm the locations that have been searched in order to respond to the request. The council advised that the only departments which would have been involved in this matter would have been the Planning Department in considering the application, the Chief Executive as he was approached by Mr Ambrose of Cheffins acting for the applicant, the Asset Development Committee as members sitting on a committee which considers reports in relation to the disposal or otherwise of Council owned assets, the legal adviser to Asset Development Committee and the Democratic Services team, who produce the agendas and minutes for the Asset Development Committee. It confirmed that these are the areas that have been searched for relevant information.

24. The council has explained that the Chief Executive's file on this matter did not contain any additional information falling within the scope of the request, but it did contain some other pieces of correspondence, which although have not been requested by the complainant, have been disclosed to him in order to provide a fuller picture of events surrounding the land.
25. On receipt of this information, the complainant explained that 10 of the 12 documents had already been provided to him. He is of the view that rather than being additional information, these documents fall within the scope of parts 1 or 3 of his request. With regard to the email of 7 August 2014 from Cheffins to the council, it is clear that this falls within the scope of part 3. However, the Commissioner does not consider that the second document referred to by the complainant, a letter from Januarys to the council, falls within either part 1 or part 3. It is not internal correspondence as requested at part 1, and it is not correspondence to or from Cheffins, or to or from the applicant as requested at part 3.
26. The council also confirmed that in order to locate information falling within the scope of the request, it has searched the electronic planning file relating to Planning Reference 15/00652/FUL.
27. The council has explained in detail the locations that have been searched for information within the scope of the request, and the reasons why the information is likely to be held there. The Commissioner observes that the person conducting the searches and responding on this matter was directly involved with the planning application, and so is well placed to know where the information is held. That said, complying with this request has also required the complainant and the Commissioner to point out information which is clearly missing as it has been referred to within the disclosed information.
28. On the balance of probabilities, the Commissioner is satisfied that the council has now provided all the information falling within the scope of the request, and therefore the council has complied with regulation 5(1).
29. However, the Commissioner notes that the disclosure has been only achieved by drip feeding the information to the complainant during the course of this investigation as and when the complainant highlighted various documents that were clearly missing as they were referred to in the disclosed information. It is clear that the council's initial searches for information within the scope of the request were not thorough or complete.

30. Therefore, in providing this additional information outside the prescribed 20 working day time frame, the Commissioner finds that the council breached regulation 5(2).

Right of appeal

31. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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

Andrew White
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