

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 October 2022

Public Authority: Cornwall Council
Address: New County Hall
Treyew Road
Truro
Cornwall
TR1 3AY

Decision (including any steps ordered)

1. The complainant has requested information held by Cornwall Council (the council) that relates to proposed sites considered for development as part of the 2016 Cornwall Local Plan (the Local Plan).
2. The Commissioner's decision is that the council has, on the balance of probabilities, provided the complainant with all the information held that is relevant to the request.
3. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

4. On 11 January 2021, the complainant wrote to the council and requested information in the following terms:

Please confirm, as I firmly believe to be the case, that Cornwall Council relied upon sites on the south side of the A390 in support of the agreed figure of 3900 housing units to be built up to 2030 in the Truro and Threemilestone area as set out in the Cornwall Local Plan adopted on 22nd November 2016 and let me know the number of housing units involved.

5. On 9 February 2021, the council responded to the complainant. It provided information about the apportionment of the 3,900 homes in the Truro and Threemilestone area, and the housing commitments set out within the Local Plan.
6. On 18 February 2021, the complainant requested an internal review, raising concerns that the information provided did not include details of the proposed housing allocation within a particular site (to be referred to as Site 1 within this decision notice).
7. On 26 April 2021, the council's internal review response confirmed that it was satisfied that its original response to the request was adequate and complete. However, it went on to provide further explanation of the information which had been included within the Local Plan.

Scope of the case

8. On 14 July 2021, the complainant raised concerns with the Commissioner about the way that the council had handled their request.
9. The complainant has said that they had been allowed to view information held on a laptop of a consultant who carried out work for the council on the Local Plan. They state that this information confirmed that a number of units proposed for Site 1 were to be included within the figure of 3,900 units planned for the Truro and Threemilestone area.
10. The complainant argues that this information must therefore be held, and should have been provided in response to their request.
11. The Commissioner will decide whether the council holds any additional information, specifically about Site 1, that is relevant to the complainant's request.

Reasons for decision

Regulation 5 - duty to make environmental information available on request

12. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority that holds environmental information shall make it available on request.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and

arguments. He will also consider the actions taken by the authority to check that the information is not held, and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.

14. The council has advised the Commissioner that Site 1 was not used to justify the Local Plan housing target of 3,900 dwellings within the Truro and Threemilestone area, and therefore, holds no additional information that is relevant to the request.
15. The council has provided the Commissioner with details of the proposed units for the Truro and Threemilestone area that were used to support the Local Plan. It includes details of over 4000 units in various sites within the Truro and Threemilestone area. The Commissioner accepts that Site 1 is not one of the sites referenced within this information.
16. The council has confirmed that, in response to the request, council officers from the planning policy team have carried out searches for any relevant information that might be held; this includes information contained within emails and documents stored on their systems.
17. The council has also confirmed that it has given consideration to the complainant's assertion that information relevant to their request is held on a consultant's laptop. It states that whilst this consultant provides services to the council, they do not hold information relating to the evidence prepared to demonstrate to the Planning Inspectorate how the 3,900 figure for Truro and Threemilestone would be achieved (other than that which has already been made available to the Commissioner and/or the public).
18. The council has, however, provided the Commissioner with copies of two documents that it has identified from its searches that do make reference to Site 1. It states that these documents were prepared in 2010, and 2011, and therefore predate the Local Plan. It has explained that these documents were part of work that was abandoned, and not consulted upon, because the parish councils of Truro City and Kenwyn sought to take the lead on the planning for their area by preparing their own Neighbourhood Plan.
19. The council goes on to say that the identification of Site 1 within the two documents does not give any justification for the future development of the land at that site; instead, they are documents that, in part, demonstrate why the land was discounted from consideration for development.

20. The Commissioner accepts that the two documents that contain reference to Site 1 do not represent evidence as to how the 3900 dwellings within the Truro and Threemilestone would be achieved, and therefore do not fall within the scope of the request.
21. The Commissioner cannot provide an explanation as to what information the complainant viewed on the consultant's laptop. However, having considered all the available information, he is satisfied that there is no evidence that the council holds further information relating to Site 1, or indeed any other information, that falls within the scope of the complainant's request.
22. Given this, the Commissioner concludes that, on the balance of probabilities, the council has provided the complainant with all the information held that is relevant to the request.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF