



Case Reference: EA/2024/0068

Neutral Citation Number: [2024] UKFTT 00794 (GRC)

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

Heard on: 19 August 2024

Decision given on: 22 August 2024

Before

**TRIBUNAL JUDGE HEALD
TRIBUNAL MEMBER YATES
TRIBUNAL MEMBER SIVERS**

Between

JAMES MOONEY

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

The Appeal was decided without a hearing as agreed by the parties and allowed by the Tribunal by rule 32(1) of the Tribunal Procedure (First -Tier Tribunal) (General Regulatory Chamber) Rules 2009

Decision: The Appeal is Dismissed

REASONS

1. This Decision relates to an Appeal brought by the Appellant pursuant to section 57 Freedom of Information Act 2000 ("FOIA") and Regulation 18 of the Environmental Information Regulations 2024 ("the EIR"). It is in respect of a Decision Notice ("DN") ref IC-269704-L1TB issued by the Information

Commissioner ("IC") on 31 August 2023 and concerns a request for information made by Mr Mooney to Lincolnshire County Council ("LCC") on 19 April 2023.

2. What follows is a summary of the submissions, evidence and our view of the law. It does not seek to provide every step of our reasoning. The absence of a reference by us to any specific submission or evidence does not mean it has not been considered.

Background

3. From our review of the various papers in the case from Mr Mooney it is clear to us that he has a concern about issues he takes seriously. For example only he says in the complaint (D132) *"The right to life and a quality of life of UK citizens must override all other considerations including the use of exemptions under the FOI"*

4. He also says (D136):-

"To clarify, the purpose of the information request is not to seek disclosure of "environmental" information as it relates to information on "the state of the elements of the environment" but to establish if the decision by LCC to remove the consented and approved MS29 with a plant and bagging site north of the A1175 from the proposed "Updating of the Lincolnshire Minerals and Waste Local Plan" and replace it with SG17 which has a plant and bagging site south of the A1175 in close proximity to the village of West Deeping which will have a negative impact upon the quality of life of the West Deeping residents and is in violation of LCC's duty of care and statutory obligations as set out in the Human Rights Act and the Health and Safety at Work Act and supporting Regulations."

and (D132)

"The request for information was to establish if the decisions taken by LCC were lawful. It is considered such information should not be withheld as it promotes an unhealthy attitude towards the obligation of a Local Authority to protect the life and quality of life of UK citizens. I am sure such views by LCC would not be supported by those impacted by the Grenfell Tower Disaster, the Post Office Scandal, the Cladding Scandal, the various NHS Scandals and potentially any unlawful deaths associated with the Covid 19 Disaster."

5. Further among many matters raised he says in the GoA (A47):-

"80. The decision by the Information Commissioner is considered invalid as it did not address the primary duty of care and statutory obligation under safety legislation on a corporate entity and its employees including a Local Authority if a hazard has been identified that can impact upon the life and the quality of life of

UK citizens which can be avoided then the duty to avert applies and such duty overrides all other obligations and exceptions including those within the FOI Act and the EIR."

6. Other concerns raised by Mr Mooney include matters raised in his Reply (A70) such as at paras 4 and 6.
7. While noting Mr Mooney's concerns and submissions on a wide range of issues it is important to record that the role of the Tribunal in this matter is limited to the authority provided in section 58 FOIA and reg 18 EIR that is to consider the DN and decide if it was in accordance with the law and if the IC should have exercised his discretion differently.

Evidence and matters considered

8. For the Appeal we had the content of an open bundle ("the Bundle") of 1604 pages. References to page numbers are to the Bundle.

Request, Response and Review

9. On 19 April 2023 (B120) Mr Mooney asked LCC for:-

"All recorded information held by Lincolnshire County Council including notifications, forms, letters, emails, minutes of meetings, dates of telephone calls, notes of telephone calls, file notes, diary notes, proposals, assessments, reports in respect to the following decisions and actions. This information also to include all communications with external organisations, e.g. local and central government organisations, legal firms, consultants, other landowners and gravel companies (Breedon/Cemex): -

1. Decision not to carry the consented MS29 into the proposed new "Updating of the Lincolnshire Minerals and Waste Local Plan".

2. Decision to include SG17 in the "Updating of the Lincolnshire Minerals and Waste Local Plan" as a nominated site with a plant and bagging site in close proximity to the community of West Deeping.

3. Development and approval of the document entitled "Updating of the Lincolnshire Minerals and Waste Local Plan" from conception up to publication on 10 November 2022

4. Decision not to include the public in the current consultation phase of the "Updating of the Lincolnshire Minerals and Waste Local Plan" when it was put out for selected consultation on 10 November 2022, notwithstanding the impact this would have on the health, safety, wellbeing and quality of life of the community of West Deeping and the wider communities of Lincolnshire.

5. Decision to delay the current consultation phase of the "Updating of the Lincolnshire Minerals and Waste Local Plan" by a year to 2024.

6. Policies and procedures that were employed on the development of the "Updating of the Lincolnshire Minerals and Waste Local Plan" to ensure Lincolnshire County Council complied with its legal obligations for the administration, implementation, investigation and enforcement of safety legislation and the Human Rights Act in order that the community of West Deeping and the wider communities of Lincolnshire are not placed at risk."

10. On 12 May 2023 LCC replied (C120). They explained their view as to why the request engaged the EIR and that they held the information requested (C122). They refused to provide the information by reg 12(4)(d) EIR.

11. Mr Mooney on 16 May 2023 (C125) asked for an internal review. We note he said for example:-

"To clarify, the purpose of the information request is not to seek disclosure of "environmental" information as it relates to information on "the state of the elements of the environment" but to establish if the decision by LCC to remove the consented and approved MS29 with a plant and bagging site north of the A1175 from the proposed "Updating of the Lincolnshire Minerals and Waste Local Plan" and replace it with SG17 which has a plant and bagging site south of the A1175 in close proximity to the village of West Deeping which will have a negative impact upon the quality of life of the West Deeping residents and is in violation of LCC's duty of care and statutory obligations as set out in the Human Rights Act and the Health and Safety at Work Act and supporting Regulations.

To refine and simplify my request, I require all recorded information relating to the decision by LCC to not go forward with the consented and approved MS29 with a plant and bagging site north of the A1175 from the proposed "Updating of the Lincolnshire Minerals and Waste Local Plan" and replace it with SG17 which has a plant and bagging site south of the A1175 in close proximity to the village of West Deeping including all reports on how LCC exercised its duty of care and statutory obligation in the protection of life and the quality of life of the West Deeping community."

12. The outcome of the review was notified to Mr Mooney on 11 July 2023. LCC did not change its position on whether the EIR applied nor on the applicability of reg 12(4)(d) EIR.

Complaint and DN

13. Mr Mooney complained to the IC on 13 November 2023 (D129-142). In it (for example) he raised his concerns about the use of the EIR by LCC and said:-

"The decision by LCC to direct they know best, and I do not understand my own mind by stating the requested is in their view submitted under EIR is a breach of freedom of thought and consequently undermines the principles of the FOI.

The requirement for the information was not to seek disclosure of "environmental" information as stated by LCC but rather the information relating to why LCC would consider it had the legal right to place the quality of life of the residents of West Deeping at risk in violation of the Health and Safety at Work Act..."

14. He also said (for example only):-

"LCC refuses to provide the information on the basis that no decision has been made and it is still considering the issues. This is factually incorrect LCC has made the decision to relocate the plant next to village of West Deeping this despite there exists an approved proposal by the Secretary of State which does not impact upon the community of West Deeping and there exists an area some 1.2 Km in length in which the plant could have been located away from the community of West Deeping. It is considered the refusal on the grounds stated by LCC is to cover up a criminal offence as set out in the Health and Safety at Work Act by placing the quality of life of the residents of West Deeping at unnecessary risk."

15. He concluded the complaint as follows:-

"In summary it is considered LCC has a duty to provide the information under FOI and the disclosure of information relating to a criminal offence which is a breach of the Health and Safety at Work Act, cannot be covered by exemptions under the FOI.

The right to life and a quality of life of UK citizens must override all other considerations including the use of exemptions under the FOI."

16. The IC issued the DN on 12 February 2024 (A1) saying:-

"The complainant requested information related to the updating of the Lincolnshire Minerals and Waste Local Plan. Lincolnshire County Council (the "council") withheld the information under the exceptions for material in the course of completion (regulation 12(4)(d)) and manifestly unreasonable (regulation 12(4)(b)).

2. The Commissioner's decision is that the council correctly applied regulation 12(4)(d) to withhold the requested information.

3. The Commissioner does not require the council to take any steps"

17. The IC also referred to another request from Mr Mooney to LCC dated 7 April 2023 with a resulting complaint and DN dated 14 November 2023 and provided a copy of that DN ref IC-244702-D9T4 at page A4.

Appeal

18. On 22 February 2024 this Appeal was commenced by Mr Mooney. In it he said that the outcome he was seeking was (A26):-

"The release of all documents referenced in the ICO Decision Notice that the ICO state Lincolnshire County Council has withheld under the exceptions for material in the course of completion Regulation 12(4)(d) of the EIR"

19. The reasons for the Appeal are at A25 and supported by Grounds of Appeal ("GoA") from A31- A50 with supporting documents. Thereafter the IC provided its Response on 28 March 2024 (A51-A69) and Mr Mooney replied on 10 April 2024 (A70-A92) with supporting documents.

EIR/FOIA

20. There is a disagreement as to whether Mr Mooney's request was for environmental information to be dealt with under the EIR or not. The parties have provided their views on this on a number of occasions including in LCC's refusal letter of 12 May 2023 (C121), Mr Mooney's request for an internal review of 16 May 2023 (C125), LCC internal review of 11 July 2023 (C126), the Complaint (D132), the DN (A4), the GoA para 1 (A31), para 18 of the IC's response (A60). As part of his submissions as to why FOIA not the EIR applies Mr Mooney refers to why he has made the request. For example he starts the GoA as follows (A31):-

"A. The purpose of the requested information

1. To obtain information under an FOIA request (not the EIA as stated by LCC and the Information Commissioner) to establish if the decisions taken by Lincolnshire County Council (LCC) associated with the determination of which gravel sites will be incorporated into "Updating of the Lincolnshire Minerals and Waste Local Plan" before publication in November 2022 is a breach of LCC's obligation to protect the life and the quality of life of UK citizens as provided under the Health and Safety at Work Act and the Human Rights Act."

21. As set out above he also said to LCC (D136) when seeking a review:-

"To clarify, the purpose of the information request is not to seek disclosure of "environmental" information as it relates to information on "the state of the elements of the environment" but to establish if the decision by LCC to remove the consented and approved MS29..."

22. He also said (D132) *"The request for information was to establish if the decisions taken by LCC were lawful."*

23. Mr Mooney also says in the complaint (D132) that *"The decision by LCC to direct they know best, and I do not understand my own mind by stating the requested is in their view submitted under EIR is a breach of freedom of thought and consequently undermines the principles of the FOI"*

24. It is almost always the case that the EIR (and FOIA) is not concerned about a requester's motive. Why Mr Mooney has made a request is not relevant when considering if the request is for environmental information or not. That question is judged by consideration of the content of the request itself and the definition of environmental information at reg 2(1) EIR. If the request is for environmental information as defined it falls within the EIR.

25. We agree with the DN (A5). In our view the request engaged the EIR. Further we consider there to be no basis for the assertion that LCC was in some way acting in breach of Mr Mooney's rights by stating its view that the EIR applied.

Scope

26. LCC responded to the request by referring to reg 12(4)(d) EIR and then at review by adding reference to reg 12(4)(b) EIR. The DN's outcome related to 12(4)(d) EIR (see A1) and did not go on to consider (b). This Decision also relates only on that basis to reg 12(4)(d) EIR.

Law

27. Reg 5(1) EIR provides that:-

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."

28. This obligation is subject to exceptions. Reg 12(1) EIR provides as follows:-

12.—(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—
(a) an exception to disclosure applies under paragraphs (4) or (5); and
(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

29. Reg 12(4)(d) states that a public authority may refuse to disclose information to the extent that *"(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data"*

30. When considering the PIBT we had regard to Decisions such as that of the UT in *Department of Health -v- the Information Commissioner and Lewis [2015] UKUT 159 ACC* and *All Party Group on Extraordinary Rendition v IC [2013] UKUT 560*.
31. We noted that in *Montague v ICO and Department for Business and Trade [2022] UKUT 104 (AAC) (58-60)* the UT concluded that the correct time for determining the PIBT is the date the public authority makes its decision on the request which has been made to it.
32. Reg 12(2) EIR requires a public authority to apply a presumption in favour of disclosure (*Vesco -v- the Information Commissioner & the Government Legal Department [2019] UKUT 247 ACC*).
33. In his GoA Mr Mooney (see A32) made submissions on a number of subjects such as the right to life in Article 2 European Convention on Human Rights and (see A32) and also (in a reference to Human Rights Act 1998, The Health and Safety (Enforcing Authority) Regulations 1998 and FOIA:

"The need to establish the hierarchy of legal obligation from the various Acts of Parliament placed on public funded bodies and their employees to avoid placing the life and quality of life of UK citizens at unnecessary risk "

and at A33:-

"21 The need to establish a definite hierarchy of these acts in respect of how they interface between each other is critical to ensure the intent of the law is not being misrepresented or manipulated to cover up ill-conceived decisions by public funded bodies and their employees including Local Authorities that places the life and quality of life of UK citizens at risk and thereby avoids scrutiny, investigation and enforcement of the law to protect the UK citizens."

" 22 Which of the three Acts is supreme will determine the outcome as to who is being protected public funded bodies and their employees or the UK citizens..."

and at B117:-

"Due to the significant public interest in these matters the Tribunal has a duty to put these matters to the Supreme Court for a ruling if the issues are not within the Tribunal's scope and authority."

34. We do not agree that this Appeal is required to consider these questions. The issues before us are those relevant to the EIR and FOIA and the role and authority of the Tribunal is limited to that provided for in FOIA as set out below.

Role of the Tribunal

35. The Appeal is by reg 18 EIR and section 57(1) FOIA . By section 58 FOIA:-

If on an appeal under section 57 the Tribunal considers—

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

The Parties' positions on engagement of the exception

36. In response to the request LCC said that exception provided as 12(2)(d) EIR was engaged because (C122) *"The Council is satisfied that the requested information relates to materiel which is still in the course of completion, as it relates to the updating of the Lincolnshire Minerals and Waste Local plan"*

37. At review (C128) LCC added:-

"The specific information you say you are seeking does relate to decisions made in relation to the development and proposed update to the Lincolnshire Minerals and Waste Local Plan. This does, therefore, relate to a process and materiel which is in the course of completion. The updating of the Lincolnshire Minerals and Waste Local Plan follows a very specific statutory process, involving a number of public consultations and may undergo a number of amendments before the final plan is produced and approved. It would not be a good use of the Council's limited resources or in the public interest for the updating of the Lincolnshire Minerals and Waste Local Plan to be delayed by the diversion of the Council's resources in dealing with requests for disclosure of this information and also in managing the effect of any disclosure"

38. In his complaint Mr Mooney said (D132):-

"LCC refuses to provide the information on the basis that no decision has been made and it is still considering the issues. This is factually incorrect LCC has made the decision to relocate the plant next to village of West Deeping this despite there

exists an approved proposal by the Secretary of State which does not impact upon the community of West Deeping and there exists an area some 1.2 Km in length in which the plant could have been located away from the community of West Deeping. It is considered the refusal on the grounds stated by LCC is to cover up a criminal offence as set out in the Health and Safety at Work Act by placing the quality of life of the residents of West Deeping at unnecessary risk."

39. The DN in this matter (A6) referred back to its previous Notice saying:-

"20. As noted above, the Commissioner has previously issued a decision (the "previous decision") in relation to a request the complainant submitted to the council for comparable information, namely, information relating to the Lincolnshire Minerals and Waste Local Plan ("LMWLP")

21. The previous decision concluded that, as the updating of the LMWLP was still in the process of completion at the time of the request.....

22. The Commissioner notes that the request here was submitted around the same time as the request in the previous decision (during April 2023). Having considered this and new submissions provided by the council, the Commissioner considers that the context within which both requests were received is the same."

40. In his Appeal Mr Mooney says for example (A25 and A31):-

"5. Given the publication of the "Updating of the Lincolnshire Minerals and Waste Local Plan" is a key milestone in the decision process then that phase of the process is complete and any decision to suspend the process after that date cannot be classified as work in progress."

41. He also makes submissions on whether this exception in the EIR is engaged at para 74 of the GoA (A45) in which he says (for example):-

"The history of events as set out below demonstrates that the information requested was in its final and complete form and should have been issued and the decision to suspend was to avoid the consequences that would result if the deception by LCC became public knowledge – Doc 16, 17, 28, 30 in the attached Document 3 and Doc 45 in the attached Document 4 and the proposed injunction as provided in the attached Document 16:

a. The current Mineral Local Plan (MLP) Site Locations document was adopted in December 2017 following extensive assessments, public consultation and, finally, scrutiny from the Planning Inspectorate and covers the period up to 2031.

b. The approved plan included the site at West Deeping (MS29) with LCC as one of the landowners and Cemex being the gravel operator. Gravel proposal MS29 had a

plant and bagging site north of the A1175 some distance from the village of West Deeping.

c. Sometime between the approval of the Mineral Local Plan in 2017 and the call for sites in 2022 for the purpose of "Updating of the Lincolnshire Minerals and Waste Local Plan" LCC the landowner terminated the contract with Cemex and entered into a new agreement with Breedon.

d. During the Call for Sites process in 2022, Breedon in conjunction with LCC as the landowner submitted high level details for a change to the approved MS29 site. This new site designated SG17 changes the location of the plant and bagging site from the north of the A1175 road to the south of the A1175 road in close proximity to the village of West Deeping

e. Breedon in conjunction with LCC as the landowner presented the proposal to LCC planning and LCC as the statutory authority for public safety. This proposal was accepted subject to SG17 being classified as a new development and included as such in the "Updating of the Lincolnshire Minerals and Waste Local Plan".

f. The new site SG17 was incorporated into the document presenting LCC's requirements for the "Updating of the Lincolnshire Minerals and Waste Local Plan", went through all the LCC processes of obtaining corporate approval, and when formal approval was obtained it was published for consultation.

g. At this stage the "Updating of the Lincolnshire Minerals and Waste Local Plan" was complete and in its final format and it was this information the request related to.

75. In summary the information was in its complete form when the request was submitted and there is no legal or logical reason why it should not be disclosed other than it will demonstrate if LCC violated the intent of safety legislation by disregarding a proposal for gravel extraction (MS29) approved by the Secretary of State in 2017 which formed part of LCC adopted Mineral Local Plan (MLP) for the period up to 2031, which had a plant and bagging site north of the A1175 road for which limited objections were raised by the residents of West Deeping and replaced it within the 2022 "Updating of the Lincolnshire Minerals and Waste Local Plan" with a plant and bagging site south of the A1175 road (SG17) in close proximity to the village of West Deeping which the residents consider will have a major negative impact upon their quality of life.

42. In its Response the IC says (in summary) that the issues raised about human rights and health & Safety are irrelevant to the question as to whether reg 12(4)(d) EIR is engaged and referred (see A61) to what LCC had said including:-

"We are preparing a new minerals and waste local plan for Lincolnshire. The new plan will replace both parts of the adopted plan which covers the period to the end of 2031. It is proposed that the updated plan will extend this period until the end of 2040. The new plan will be prepared in stages in accordance with the Lincolnshire minerals and waste development scheme."

We are currently at an early stage of plan preparation. A consultation on the issues and options for updating the plan took place from 28 June 2022 to 12 August 2022.

The timetable for updating the plan, as set out in the Lincolnshire minerals and waste local development scheme, has been delayed. This is due to the large number of comments and site nominations that have been received. As a result, we anticipate that public consultation on the draft plan (preferred approach) will not take place until 2024."

43. The IC also referred to the following said by LCC (A64)(again in summary):-

"You have previously been advised by my Minerals and Waste Policy Team that the nominated sites have not been assessed and that no decision has been taken on which of these sites will be provisionally allocated in the draft Lincolnshire Minerals and Waste Local Plan that will be prepared next year. I can concur with that advice.

I have no other comments to make on your representations other than to provide clarification over the relationship between MS29-SL and SG17. Contrary to what you indicate, this was not a direct swap and the inclusion of SG17 does not imply that the county council is promoting this site. I will attempt to explain why below"

44. The IC concludes in its Response with (A68):-

"Given the Council's submissions, and the nature of the relevant statutory process and the need for further consultation and discussion before matters are finalised, the Commissioner remains satisfied that the requested information does indeed relate to material in the course of completion / an unfinished document in the form of the updated Plan which is not a finished document as it remains subject to discussion, consultation and drafting processes. The exception was clearly designed to provide a safe space for such ongoing developments and the exception is engaged."

45. In his reply on the subject of whether the exception is engaged Mr Mooney (see A71) says for example:-

"10 The first element of preparing the "Updating of the Lincolnshire Minerals and Waste Local Plan" was the establishment of a complete list of gravel sites that the landowners and gravel operators wished to be considered for evaluation in the next two elements of the process. The second element was the determination

based on environmental considerations and the appropriate mitigation requirements which sites would be selected as suitable site to meet LCC future gravel requirements. These sites would then be fully investigated in accordance with planning policy with the final proposed selected sites being presented to the Inspector appointed by the Secretary of State for approval.

11. Taking note of the above it can only be deemed as a matter of fact that when LCC published the "Updating of the Lincolnshire Minerals and Waste Local Plan" in November 2022 for third party consultation to the proposal then that element of the process was complete.

12. It is further considered that the publication of the "Updating of the Lincolnshire Minerals and Waste Local Plan" by LCC in the manner they did meets the requirement of completeness as set out in the Respondents response in Section B – Applicable Law

Tribunal's conclusion on reg 12(4)(d)

46. Having considered the matters raised by the parties and having reviewed the provisions of reg 12(4)(d) EIR we concluded that the request did relate to information and material that was in the process of being completed. We also took the view that LCC were correct when they said in their initial response that:-

"Material which is still in the course of completion can include information created as part of the process of formulating or developing policies and plans, and reaching decisions, where the process is not complete and unfinished documents can include draft documents, even if a finished document exists."

47. Accordingly our decision is that in this matter reg 12(4)(d) EIR is engaged.

The parties' position on the PIBT

48. LCC listed these arguments in favour of disclosure:-

(a) because of the presumption for disclosure in the EIR

(b) to provide accountability and promote transparency in respect of their decisions and how public resources are spend

(c) because of the actual interest in these matters

(d) to assist with public awareness

(e) to enable members of the public especially those who may be impacted by decisions to be aware

(f) to promote public participation in the process

49. LCC also said that:-

"The objective of the EIR is to allow the public and in this case the affected community to have relevant factual information in time for them to participate effectively in environmental decision making..."

50. However about this they said:-

(a) the process is subject to public consultations

(b) it has provided a significant amount of information in relation to this statutory process on its website and thereby met the public interest in that way.

51. As regards reasons to maintain the exception LCC said in its response (C122-123) that:-

(a) *it considers the need for officers to have a private thinking space to consider new ideas and to be able to debate live issues and reach decisions away from external interference and distraction as a significant factor in favour of maintaining the exception.*

(b) *it also considers that good governance requires that officers are able to fully engage with each other and third parties, including statutory consultees, in order to exchange views away from public scrutiny. If this exchange of views is required to be made public, this is likely to inhibit the process and lead to less rigorous exploration of options. The loss of frankness and candour would damage the quality of deliberation and lead to poorer decision making which would not be in the public interest*

(c) *disclosing the requested information would result in a small number of officers spending a significant amount of time and resources locating, retrieving and collating the requested information and then managing the effects of the disclosure. This would then result in delays in the updating of the Lincolnshire Minerals and Waste Local Plan.*

52. The IC in the DN said:-

"33 The Commissioner has considered the arguments provided by both parties. He recognises the legitimate public interest in disclosing information that would inform the public about changes to existing mineral and waste locations and the details of new proposed sites which may have an impact (whether positive or negative) on the environment and the local communities.

34 The Commissioner is also mindful that access rights under the EIR are designed to support public access to environmental information and public participation in decision making

36 A key factor in assessing the weight of public interest arguments is the extent to which the information itself would inform public debate on the issue concerned. There is always an argument for presenting a full picture of how a decision was made or arrived at. If disclosing incomplete material or draft documents would support this, then it increases the weight of the argument for disclosure.

37 The Commissioner also recognises that authorities will need a safe space to develop ideas, debate issues and reach decisions away from external interference and distraction. This may carry significant weight in some cases, particularly when the issues in question are still live or only recently decided.

38. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the stage the process had reached at the point the request was responded to. There will always be a stronger public interest in protecting a process that is ongoing than one that has concluded.

39. In this case, the Commissioner does not consider disclosure would satisfy this public interest as the information would not represent the final analysis or concluded position relating to the updating of the LMWLP. The withheld information is incomplete and still at draft stages, with the public and third-party consultations ongoing and no firm decisions made as to the locations for waste sites."

53. The IC in its Response to the Appeal (A68) added:-

"With regards to the public interest test the Commissioner properly considered the public interest, and the presumption in favour of the disclosure of environmental information, but was correct to conclude that due to the timing of the request the Council was entitled to a safe space to and finalise its position. It is unclear to the Commissioner why the Council could not at this juncture still amend any of its proposed plans in light of the consultation responses received, even if there would be a cost in doing so. It appears no final decisions have been reached such that there will be further opportunities for the Appellant to raise his concerns regarding the MS29 and SG17 sites as a part of the process."

54. We considered what Mr Mooney said specifically as regards the PIBT for example in his GoA from para 76 (A45/A46). We noted his submissions such as:-

(a) *"77. It is considered the Information Commissioner in only considering the issues presented in terms of the presumption in favour of the disclosure of environmental information when undertaking the Public Interest Test, is incorrect as it permits LCC to place the quality of life of the Appellant and the West Deeping community at risk in violation of safety legislation and the Human Rights Act."*

(b) *"In terms of the Information Commissioners comments at Item 22 of his statement dated 26 January 2024 "It is unclear to the Commissioner why the Council could not at this juncture still amend any of its proposed plans in light of the consultation responses received, even if there would be a cost in doing so." There is only one proposal that LCC has to address within the "Updating of the Lincolnshire Minerals and Waste Local Plan" and that relates to West Deeping. LCC cannot amend this proposal because to do so LCC would have to admit its decision to replace MS29 with SG17 is a criminal act in breach of safety legislation and this would leave LCC open to legal challenge due to a breach of contract relating to the land agreement LCC entered into with the developer that has the potential to be either illegal or will result in major contractual difficulties or financial liabilities to LCC."*

(c) *"This statement by the Information Commissioner is tantamount to accepting that a Local Authority has the legal right to place the life and quality of life of the West Deeping community at risk and is stating that the law cannot protect the UK citizens from ill-conceived decisions by Local Authorities. The consequences of which provides a legal right for all UK citizens to take any action, they deem necessary including the taking of life if they consider or just believe a Local Authority has placed their life and/or quality of life at risk"*

55. We also reviewed Mr Mooney's Reply of 10 April 2024 (A70 -A92). This starts with the following

"3 The Appellant considers the decisions taken by the Respondent that the request should be considered under the Environmental Information Regulations (EIR) and the request for the information be refused on the basis of the exemption of 12(4)(d) in the EIR to disclose information to the extent that "the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data" is completely wrong in that it fails to consider the actual events that took place. It does not address the primary role of the State to protect the life and quality of life of UK citizens and the decision by those in authority to manipulate the facts to avoid errors in judgement relating to the placing at risk of the quality of life of UK citizens by them and/or their organisation and which could have serious consequences on their future wellbeing from entering the public domain."

4. The issues the Tribunal must consider when determining its decision are:

a. The legal obligation of the State including all public bodies and public officials to protect the life and quality of life of UK citizens from risk as set out in Appeal Document 2 in Section D items 11 to 17 together with the provisions of the Health and Safety at Work Act (HASAWA) and supporting Regulations and the Human Rights Act.

b. The hierarchy of legal obligation from the various Acts of Parliament placed on public funded bodies and their employees to avoid placing the life and quality of life of UK citizens at unnecessary risk as set out in the Appeal Document 2 in Section E items 18 to 22.

c. The misleading statements coming from Government Ministers on the intent of the law to protect UK citizens, the contradictory scope of statutory bodies (the Ombudsman, the planning court, the Local Government Monitoring Officer, the HSE and the Police) to consider breaches of safety legislation and the direction that the taking of life and the destruction to the quality of life of UK citizens by those in public funded organisations is deemed a civil not criminal act and the failure to enforce the laws put in place by Parliament to protect UK citizens as set out in HASAWA."

56. We did not find that these submissions or the many other points raised in the Reply assisted on the specific arguments on the PIBT in this case.

The Tribunal's Decision as regards the PIBT

57. The PIBT is tested (*Montague*) as at the date of refusal.

58. First we were satisfied that LCC had given an appropriate level of thought to this and had considered both reasons the public interest might favour disclosure as well as maintaining the exemption.

59. In our view LCC's reasons the public interest might favour publication or maintenance of the exemption and the balance between those positions was appropriate and we agreed with their conclusions.

The Presumption

60. As regards reg 12(2) EIR and this 3rd stage we had regards to *Vesco* and noted:-

*"19...If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure under Regulation 12(2) of the EIRs. It was "common ground" in the case of *Export Credits Guarantee Department v Friends of the Earth* [2008] Env LR 40 at paragraph 24 that the presumption serves two purposes: (1) to provide the default position in the*

event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations.

61. In our view the interests were not equally balanced being clearly in favour of the position taken by LCC and the IC and that there had been regard to this presumption for example in LCC's submission on the PIBT.

Decision

62. For the reasons set out above we consider reg 12(4)(d) EIR to be engaged and that the public interest favours maintenance of that exception. Accordingly we concluded that the DN was in accordance with the law and to the extent that the DN involved an exercise of discretion by the IC we do not conclude that he ought to have exercised his discretion differently.

63. The Appeal is dismissed.

Signed: Tribunal Judge Heald

Date: 22 August 2024