

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 25 July 2013

Public Authority: Thanet District Council
Address: Cecil Street
Margate
Kent
CT9 1XZ

Decision (including any steps ordered)

1. The complainant requested information relating to the village of Acol dating back to 1948. The council provided some information but said that no more information was held. The complainant asked the Commissioner to investigate whether more information was held with particular relevance to an area of land that he owns.
2. The Commissioner's decision is that the request should be considered under the terms of the Environmental Information Regulations 2004 ("the EIR"). He found that the council held a limited amount of information which it ought to have provided to the complainant. He therefore finds the council in breach of regulation 5(1) and 5(2) of the EIR for the failure to provide this information. However, this information has now been made available and the Commissioner was satisfied that no other information was held.
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 2 September 2012, the complainant requested information in the following terms:

"By reference to maps or plans, please provide the following information: each and every delineation of the village confines of Acol

since 1 July 1948, stating the statutory authority and reasons for the same, specifying the date of the each [sic] decision and where the record of the decision can be located”.

5. The council responded on 27 September 2012 and said that the information was not held by the council.
6. The complainant replied on 30 September 2012 and said that he did not accept that the information was not held.
7. The council completed an internal review on 30 October 2012. It said that it did hold some relevant information but it was already accessible. The council said that the Thanet Local Plan 2006 including the Proposals Map delineating the built up confines of Acol, are available to the public on the council's website. The council said that it would review its archives to see if it still held a copy of the Thanet Local Plan 1998. The council said that it would not hold a development plan relating to the rural areas of Thanet earlier than the 1998 Local Plan as the development plan before that related solely to the Thanet Urban Area.
8. The Commissioner understands that following some further engagement between the parties, a copy of the Thanet Local Plan 1998 was identified and provided to the complainant.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council held more information falling within the scope of his request.
10. For clarity, when the Commissioner questioned the complainant about his dissatisfaction with the council's response, the complainant clarified that his interest was in the particular area of land that he now owns. The Commissioner's analysis below had been limited to that.

Reasons for decision

Is the information environmental?

11. The Commissioner considers that the request should be considered under the terms of the EIR. Environmental information is defined by regulation 2 of the EIR. Regulation 2(1)(c) provides that any information relating to measures, including activities and plans etc. affecting the

elements and factors of the environment, will be covered by the EIR. The complainant has asked about the delineations of the village of Acol and this clearly relates to the land which is one of the elements of the environment listed in regulation 2(1)(a).

Regulation 5(1) – General right of access

12. Regulation 5(1) of the EIR provides a general right of access to recorded environmental information held by public authorities. Public authorities should make environmental information within 20 working days unless a valid exception applies.
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 argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "on the balance of probabilities".¹
14. The Commissioner asked the complainant at the start of his investigation if he could explain more about why he was unhappy with the council's response. In response, the complainant provided some background information. He said that he and another individual own a parcel of land in Acol. The complainant said that the land was designated as being within the village confines of Acol on an inset map which was part of the "proposals map" annexed to the Thanet adopted Local Plan 1998. He said that the land was subsequently excluded from the Acol village confines for the purposes of the adopted Local Plan 2006. The complainant said that the previous owners of the land only became aware of the change, which affected the value of the land, at a stage when it was too late to object to the change.
15. The complainant said that what he is seeking is the "paper trail" of the decision-making process leading to that change in village confines. The complainant said that this change must have been subject to some lawful decision-making process. The complainant clarified that since the initial complaint to the Commissioner, the council had provided information from the Local Plan 1998 (the inset map referred to in the

¹ This approach is supported by the Information Tribunal's findings in Linda Bromley and Others / Environment Agency (31 August 2007) EA/2006/0072

last paragraph) but this only confirmed what the complainant already knew i.e. that at that time, the land was within the confines of the village. The complainant said that the information does not establish what, if any, lawful decision-making process was behind the change.

16. When the council responded to the Commissioner about this complaint, it said that the Local Plan 2006 had indeed excluded what is now the complainant's land from the built confines of Acol i.e. it placed it in the countryside where more restrictive countryside protection planning policies apply. The council referred again to the fact that this plan, including the proposals map, is available to view on the council's website. In addition, it said that the reports and minutes of the various meetings of the Cabinet and Council relating to the Local Plan generally are also available to view on the council's website. It said that this information begins with the consideration by Cabinet on 3 December 2002 of public objections to the "First Deposit Draft" and ends with the formal adoption of the Local Plan by full Council on 11 May 2006. The Commissioner understands that none of this information deals specifically with the area of land owned by the complainant but the council nonetheless disclosed it to the complainant during the Commissioner's investigation in an effort to assist. The council said that it no longer held a copy of the draft policies and their destruction would have been in accordance with the council's records management policy.
17. The council explained to the Commissioner that the above, in its view, represent the key planning documents relating to the overall process and there are no documents held by the council that deal specifically with the change to the area of land now owned by the complainant with the exception of one letter written to a former owner of the land in question. The council said that a redacted copy of this letter had already been provided to the complainant's co-owner but a further copy was also provided to the complainant specifically during the Commissioner's investigation. This letter provides some justification, albeit briefly expressed, for the decision to change the boundaries. The council also conceded that it could have addressed the question about under what statutory authority the change would have taken place. The council said that the Local Plans under consideration in this case would have been made under the Town and Country Planning Act 1990 and the Town and Country (Development Plans) Regulations 1991. The council said that regulations 10 to 20 prescribe the various stages of plan making.
18. The Commissioner asked the council if it could explain why it did not hold any further information about the specific decision. The council said that if a valid objection had been received to the council's proposal, it would have been considered specifically by the Local Plan Inspector who would have made a specific recommendation. The council said that in this case, no valid objection was received. In that scenario, the council

would have had no reason not to adopt its original proposal to modify the confines of the village. The council also explained that the Local Plan consists of a written statement and proposals map. Each policy in the written statement is preceded by an explanatory text which would set a context and provide rationale for the policy. The council said that unfortunately, the explanatory text in relation to the designation of the built confines of the Thanet Village settlements does not explain why the Acol boundaries were adjusted to exclude the site now owned by the complainant. The council said that it is possible that the pre-consultation or first or second drafts might have contained justification for the specific change however, as already mentioned, this information had been destroyed in line with the council's retention schedule.

19. The council said that it had conducted searches to check that there was no additional information that it could provide to the complainant about the changes that had taken place to the particular area of land. It said it had interrogated its website and researched Local Plan correspondence file records in the planning department. The council explained that any relevant correspondence would be held in this file. The council told the Commissioner that it accepts that it is likely to have held some relevant information in the past which was not subsequently retained, although because of the passage of time since these events took place, it could not now be sure of this. The council said that it had not retained any staff members involved in this process from that time that could provide greater clarity. The council also said that there was nothing in its retention policy that would suggest that the retention of the precise documentation being sought would have been appropriate. The council said that in its view, the information identified sets out, albeit in broader terms than the complainant would like, the way in which the council adopted the 2006 Local Plan and how the built confines of Acol changed.
20. In view of the above, while it is clear that there was a limited amount of information held that could have been provided to the complainant relating to the specific issue raised, this has now been provided. While the Commissioner can appreciate why the complainant anticipated that more information would have been held by the council relating to the specific decision-making process concerned, the council has been able to provide a reasonable account of why it has not retained that information, if indeed, recorded information was ever held. While the information available is, for the main part, more general than the complainant would have liked to see, the council has explained that it nonetheless satisfies the requirements in place to retain planning documents that are considered to be key records. The complainant has not been able to provide any specific evidence to the Commissioner that would cast doubt on the council's explanation that no further information was held and on the balance of probabilities, there is no alternative but to accept the council's position that no other information was held.

Procedural requirements

21. Regulation 5(1) of the EIR provides a general right of access to recorded environmental information held by public authorities. Regulation 5(2) provides that any information held should be made available within 20 working days. During the Commissioner's investigation, the council conceded that it could have provided information about the statutory authority under which the changes concerned would have taken place. The council also held a letter to a previous owner giving some account of the justification for the change. As the council failed to provide this information to the complainant within 20 working days, the Commissioner finds that the council breached these procedural regulations.

Right of appeal

22. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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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