

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 June 2014

Public Authority: Planning Inspectorate (an executive agency of the Department for Communities and Local Government)

Address: 4/11 Eagle Wing
Temple Quay House
2 The Square
Bristol
BS1 6PN

Decision (including any steps ordered)

1. The complainant has requested copies of adopted policies maps and inserts for Local Planning Authority plans which have passed the soundness test. The Planning Inspectorate stated that this information was not held and, on balance, the Commissioner accepts the arguments presented by the Planning Inspectorate and considers it has complied with regulation 5(1) of the EIR.

Request and response

2. On 5 November 2013 the complainant wrote to the Planning Inspectorate and requested information in the following terms:

"I am interested in what used to be called the local plans, which used to form part of the UDP. I believe these are now known as 'Adopted Policies Plans', which form part of the LDF/LDP documentation. I would like a schedule of Local Planning Authorities (England, Wales & Scotland) with the status of the draft plans. By this I mean, whether the plans have either passed the 'soundness' test, have had 'modifications recommended' or have been adjudged as 'not to be adopted'.

Where draft plans have passed the 'soundness' test, I would like copies of the adopted policies maps and inserts, with a key which I believe to be standardised. As I believe (under regulation 22(2) of the Town & Country Planning (Local Planning) (England) Regulations 2012), these were required to be delivered in electronically, I should like them to be delivered to me similarly, ideally as a GIS layer(s)."

3. The Planning Inspectorate responded on 3 December 2013 stating that it did not hold the requested information on Local Planning Authorities progression in producing up to date local plans. It did provide a link¹ to a list of local plan progress across England which it considered may be of some interest to the complainant.
4. Following an internal review the Planning Inspectorate wrote to the complainant on 20 December 2013. It clarified that it had no involvement in the examination of local plans in Scotland so did not hold information in that regard. It also stated it did not hold a schedule as requested.
5. The Planning Inspectorate informed the complainant that it does receive the draft local plan, policies map and other documents for England and Wales. These are required to be submitted to the Planning Inspectorate under regulation 22(2) of the Town and Country Planning Regulations 2012 and this same information is also made publicly available by local planning authorities.
6. The Planning Inspectorate went on to explain that responsibility for making local plan documents rests with the local planning authorities, the Planning Inspectorate retains copies of the draft documents that it receives for a period of, generally, 12 months. Local planning authorities do not have to provide their final plans to the Planning Inspectorate once they have been adopted. As such the Planning Inspectorate explained it does not hold copies of the final plans including adopted policy maps that incorporate the appointed person's main modifications.
7. In terms of offering advice and assistance to the complainant; the Planning Inspectorate explained that to provide the information as requested it would have to approach each local authority to collate information and if the complainant wanted to do this it considered the document it had linked to already would provide a good starting point.

¹ <http://www.planningportal.gov.uk/planning/planningsystem/localplans#letter>

Scope of the case

8. The complainant contacted the Commissioner on 15 January 2014 to complain about the way his request for information had been handled. He explained he was satisfied with regard to the progress schedule being published on the planning portal and the fact that the Planning Inspectorate did not hold information for Scotland.
9. The complainant explained that he was unhappy with the response relating to the second part of the request. He stated that it was not clear if the Planning Inspectorate held final drafts of the local plans and he was concerned that if the Planning Inspectorate did not hold final drafts it would not be in a position to ensure what it has approved has been implemented.
10. The Commissioner considers the scope of his investigation to be to determine whether information within the scope of the second part of the request is held by the Planning Inspectorate.

Reasons for decision

11. Regulation 5(1) of the EIR states 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."

12. In this case the Planning Inspectorate has explained it does not hold final drafts or final copies of adopted policies maps and inserts.
13. In scenarios where there is a dispute about the amount of, or lack of information held by a public authority, the Commissioner applies the civil standard of 'the balance of probabilities', following the lead of a number of Information Tribunal decisions.
14. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
15. To be clear the information which is in dispute is copies of adopted policies maps and inserts for draft plans which have passed the 'soundness' test.

16. The Commissioner understand the Planning Inspectorate has taken this to mean adopted policies maps and inserts for Local Planning Authority's (LPA) plans which have progressed beyond the initial draft stage where they are examined by the Planning Inspectorate.
17. The Planning Inspectorate has explained that an Inspector's role as the person appointed to carry out the examination of a draft plan is to examine the LPAs plan in accordance with section 20 of the Planning and Compulsory Purchase Act 2004. The Planning Inspectorate (and it's Inspectors) do not have any statutory role beyond providing recommendations and reasons to the LPA on their submitted plan. The LPA can then consider the recommendations, amend their plan in accordance with the recommendations and move to adoption.
18. The LPA is under no statutory requirement to notify the Planning Inspectorate if it adopts the plan and the Planning Inspectorate does not have any monitoring or enforcement role in this.
19. As such the Planning Inspectorate has stated it does not hold adopted policies maps and inserts for draft plans which have passed the 'soundness test'.
20. The Commissioner has looked at the Planning Inspectorate's obligations under section 20 of the Planning and Compulsory Purchase Act 2004 and notes that it clarifies the purpose of an independent examination is to determine in respect of the development plan document –

"(5)(a) whether it satisfies the requirements of sections 19 and 24(1), regulations under section 17(7) and any regulations under section 36 relating to the preparation of development plan documents;

(b) whether it is sound."
21. The Commissioner considers this does support the position taken by the Planning Inspectorate that it has no role beyond the initial examination of the LPA plans and considering whether they are sound. The 'soundness test'² involves the consideration of whether the plan is justified, effective and consistent with national policy.
22. The Commissioner therefore accepts that the Planning Inspectorate do not hold final versions of the plans as there is no requirement for them to submitted to the public authority.

² http://www.planningportal.gov.uk/uploads/pins/ldf_dpd_soundness_guide.pdf

23. During correspondence with the Commissioner, the complainant has raised concerns that his request may have been misinterpreted. He has pointed to the additional information he provided when he requested information in which he informed the Planning Inspectorate:

"I should like to make clear that I am aware that the majority of adopted plans have been published by the relevant Local Authorities, and that the adopted policy maps are necessarily included. Having said this, I would like to compare those maps which were declared 'sound' with those which are actually published."

24. On this basis the complainant is of the view that his request should clearly have been interpreted as being for the draft versions of the plans as he wanted to compare the draft versions which were submitted to the Planning Inspectorate with the final adopted versions of the local authority.
25. However, the Planning Inspectorate maintains it treated the request as for adopted versions of the plans. It did not ask for clarification of the request which the complainant considers it should have done if there was any uncertainty about what was requested.
26. The Commissioner has considered these points and would like to make clear that he is not an expert in these issues and his awareness of how the LPA plans are processed is based on the information provided by both parties and via relevant online resources such as the Planning Portal³.
27. Having reviewed all of this the Commissioner understands the LPA plans are submitted to the Planning Inspectorate to be reviewed and to undergo the 'soundness' test which is to check that the plans are effective and justified. The next stage is for local authorities to amend the plans based on any recommendations before they are adopted.
28. The wording of the request is therefore somewhat confusing as it initially mentions draft plans which have passed the 'soundness' test but then refers to adopted policies maps and inserts. The Commissioner is of the view that the reference to adopted policies does suggest that LPA plans which had passed the soundness test and then been adopted were being requested. As such, he is satisfied that the Planning Inspectorate does not hold this information for the reasons set out in this notice.

³ <http://www.planningportal.gov.uk/planning/planningsystem/localplans>

29. It is therefore the Commissioner's decision that the Planning Inspectorate has complied with regulation 5(1) of the EIR. He finds that, on the balance of probabilities, the Planning Inspectorate does not hold the information in the second part of the request.

Right of appeal

30. 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

31. 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.
32. 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

Pam Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF