

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 August 2014

Public Authority: Arun District Council
Address: Arun Civic Centre
Maltravers Road
Littlehampton
BN17 5LF

Decision (including any steps ordered)

1. The complainant has requested information about the Local Plan evidence base. Arun District Council (the council) provided the information. The complainant does not consider that all of the information requested has been provided to him.
2. The Commissioner's decision is that the council has provided the information it holds in relation to the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 15 October 2013, the complainant wrote to the council via the WhatDoTheyKnow¹ website and requested information in the following terms:

"Can I please request a list of all reports/surveys/studies that the council intends to use as part of its Local Plan evidence base.

¹

https://www.whatdotheyknow.com/request/local_plan_evidence_base_and_cs#incoming-462248

Where costs have been incurred in producing/commissioning these reports/surveys/studies can you please indicate the cost."

5. On 11 November 2013, the council responded. It provided the net expenditures for the Local Plan studies and an electronic file list regarding the Local Plan Evidence Base² which allows him to click on links to the information the council will be using as its evidence base.
6. On the 13 November 2013 the complainant advised that there was no information provided relating to the new settlement proposals (Eco Town) at Ford Airfield. He asked the council to confirm whether or not it intends to use any reports/ surveys/ studies relating to this part of its Local Plan evidence.
7. The complainant then requested an internal review. The following was the basis for his reasons for requesting a review:

*"The agenda for the Local Plan Sub Committee confirms that
"Additionally there was a Select Committee in relation to the site and its issues when it was proposed under the governments Eco Town proposals. The various papers that were discussed by the Select Committee also form part of the evidence base for the Local Plan..."*

The information provided to in response to this FOI request has deliberately excluded any information relating to the Eco Town process.

I require answers to the following:

- a) *Why did the council exclude the Eco Town process from the information supplied in response to this FOI request?*
- b) *Which officer was responsible for this?*
- c) *Why does the council exclude this evidence from its background documents page on the web site?*
- e) *What else has been excluded?*
- f) *Have any costs incurred as part of the Eco Town process been included in your figures?*

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<https://www.whatdotheyknow.com/request/181150/response/448500/attachment/html/3/13.10.30%20Attachment%201%20re%20Oct13%2018.pdf.html>

I now require an accurate list of the background evidence, this time with nothing excluded.

I also require the background documents page on the web site bringing up to date with immediate effect.

I am concerned that the council is "hiding" this information from public view (by not including it in the background documents) to avoid public comment in its consultations."

8. The council provided an internal review on the 23 December 2013. It advised that it has included Ford Airfield (Eco Town) in many studies, such as, IDP, soils, habitats, SA, A27 and A259 stating that these are its evidence base documents for the Local Plan. The council also advised that it still has the select committee documents on its website. It also provided a link to the Eco Town section of the council's website:
<http://www.arun.gov.uk/main.cfm?type=ECOTOWNS>
9. Lastly the council advised in its review that some of the points in the review request are asking questions, and not requesting recorded information, so those would not fall within the remit of the EIR to respond to.
10. The council confirmed the information now provided, is all the information it holds within the scope of the request.

Scope of the case

11. The complainant has advised the Commissioner that he believes that the council has deliberately excluded information relating to the Eco Town process from its response and is therefore providing incomplete and misleading information with regards to the Local Plan evidence base.
12. The Commissioner considers the scope of the case is to determine if the council has provided the complainant with the list of all the reports/surveys/studies it intends to use as part of its evidence base for the Local Plan.

Reasons for decision

Are the EIR relevant?

13. The appropriate regime for information that is "environmental" is the EIR. Environmental information is defined by regulation 2 of the EIR. Regulation 2(1)(c) of the EIR provides that any information affecting or

likely to affect the elements and factors of the environment will be environmental.

14. In the Commissioner's view, this request should be considered under the EIR, as it is a request for information about reports/surveys/studies that the council intends to use as part of its Local Plan evidence base. These matters would affect the environment and falls under regulation 2(1)(c) of the EIR:

"Measures (including administrative measures), such as policies, legislation, plans, programs, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;"

Regulation 5 of the EIR

15. Regulation 5(1) of the EIR requires a public authority to make available environmental information on request, subject to exceptions in regulation 12 of the EIR.
16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
17. Therefore the Commissioner must decide whether, on the balance of probabilities, the public authority holds any other information which falls within the scope of the request (or was held at the time of the request).
18. The complainant has advised the Commissioner that he considers information has been excluded relating to the Eco Town process.
19. The Commissioner asked the council to revisit the request, provide details about the way it manages records, how the council searched its records and also asked it to explain about the Eco Town Process.
20. The council has confirmed to the Commissioner that it has provided all the information it holds in respect of a list of all reports/ surveys/ studies that the council intends to use as part of its Local Plan evidence base.
21. It has confirmed that the list it supplied was accurate at the date of the request. The council states that whilst the list does not include information on the Eco Town Programme, it does include information

relating to Ford which was an area highlighted by the Eco town programme.

22. The council states that it sought the information from its Planning Service as that is the service involved with the assessment of evidence relating to the Local Plan. Also information was obtained from the council's accounts department for the financial information requested about the budget.
23. The search for the reports, surveys and studies were carried out on the council's website as this is the medium used by the Planning Service to routinely publish the documents which form the evidence base for the Local Plan. The council confirmed that all the background studies that form the evidence base, with links to specific documents, are located on its website.
24. The council has confirmed to the Commissioner that no information relevant to the request has been deleted or destroyed. It has however stated that as the Local Plan is a live process, because the council has not yet made its final submissions for the adoption of the Local Plan, documents are still being finalised. This means that documents can be superseded following consultations and the completion of policy analysis.
25. The council has stated to the Commissioner that although the council's evidence base for its Local Plan continues to be published on its website, the evidence has not changed since the complainant's information request was answered.
26. The council has told the Commissioner that the documents forming the evidence base are published on its website and are publically available. It has stated that any documents not published do not form part of the council's evidence base for the Local Plan.
27. The council has advised the Commissioner that it is required to publish the evidence base which it seeks to rely on for the production of its Local Plan and the council must retain an up to date evidence base for its Local Plan. This is in accordance with the planning legislation and Government guidance. This is because the evidence is submitted to the Secretary of State for examination before the Local Plan can be adopted by the council.
28. The council has specifically told the Commissioner that the council does not intend to rely on the evidence of the Eco Town Programme which was part of a national campaign bypassing both local and regional plan

making processes. It will be relying on its own 'options for growth' consultation. The council state this was advised that:

"The specific proposal being put forward by the promoters has already been assessed by Arun District Council Select Committee in May/June 2008. Details of this separate process are available on the Council's website.... However the option presented here considers Ford as a potential strategic development location, and is not necessarily tied to the specific proposal(s) submitted in response to the Eco-Town Programme"

29. With regards to the paragraph from the Local Plan Sub-Committee minutes dated 28 November 2013³, as highlighted by the complainant's internal review request in paragraph 7 of this decision notice. The council has informed the Commissioner that the quoted part of the paragraph in full reads: -

"7.3 Additionally there was a Select Committee in relation to the site and its issues when it was proposed under the Governments Eco Town proposals. The various papers that were discussed by the Select Committee also form part of the evidence base for the Local Plan, although many are now out of date and require updating. However due to the low sustainability scores that have consistently applied to this site, it has not so far been taken forward. As a result, if this location was to be chosen, a further Regulation 18 consultation would be required."

30. The council accepts that the paragraph could have caused some confusion, but on speaking with its Head of Planning Policy, the council has explained to the Commissioner that there are two issues regarding Ford that need to be separated. One relates to the Eco Town Process which was a national policy championed by central government and was wholly separate to the council's Local Plan.
31. The other involves Ford being considered as a location to accommodate a housing supply as part of the council's Local Plan.
32. The council has advised the Commissioner that what the minutes attempt to explain, when taken in context, is that the select committee

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http://www.arun.gov.uk/mediaFiles/downloads/89539691/Local_Plan_Agenda_28_11_13.pdf

considered papers which also formed part of the council's Options for Growth Consultation in 2009. The Eco Town proposals for Ford were discounted as a result of the Council's Options for Growth Consultation in 2009 and the Draft Local Plan and Sustainability Assessment Consultation in 2012.

33. So at the time the complainant submitted his information request, those proposals no longer formed part of the current evidence base for the Local Plan, but links to the separate process of the Eco Town program have been provided to him.
34. The Commissioner recognises that there has been confusion caused with the interpretation of the 28 November 2013 sub-committee minutes, discussed in this decision notice, but accepts the council's explanations in this case.
35. On considering the above and the council's explanations, and that the council has specifically advised that the Eco Town Process is not part of the Local Plan evidence base the Commissioner is satisfied that, on the balance of probabilities, the council has provided the complainant with all reports/surveys/studies that the council intended to use as part of its Local Plan evidence base, as it was at the time of the request.

Right of appeal

36. 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

37. 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.
38. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF