

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

Date: 16 July 2015

Public Authority: Spelthorne Borough Council
Address: Council Offices
Knowle Green
Staines-upon-Thames
Surrey TW18 1XB

Decision (including any steps ordered)

1. The complainant has requested information relating to the Local Plan Review. Spelthorne Borough Council (the "Council") provided links to information which was available online but refused to provide other information citing EIR regulation 12(4)(d) (unfinished documents) as its basis for doing so. It upheld this at internal review but disclosed some information in the early stages of the Commissioner's investigation.
2. The Commissioner's decision is that the Council is entitled to rely on EIR regulation 12(4)(d) in relation to that information which remains withheld.
3. No steps are required.

Request and response

4. On 25 November 2014, the complainant requested information of the following description:

"It is getting on for four weeks since your last email on 30 October to us on the subject of working with local communities on the ongoing Review of our Local Plan.

As was discussed at the quarterly meeting of the Planning Department and Residents Associations on 6 October, and subsequently in our exchange of emails, the Planning Practice Guidance issued by the

Department of Communities and Local Government (Paragraph: 007 Reference ID: 2a-007-20140306) states that local communities:

'should be involved from the earliest stages of plan preparation, which includes the preparation of the evidence base in relation to development needs.'

In your email you said that it would be 'some while before I will be in a position to let you know exactly what arrangements the Council will put in place'.

Since we will need to prepare in advance for our participation in this 'working together', please could you indicate how long this 'some while' will be.

In this regard, please could you make the following available to us:

1. In particular, the report referred to in paragraph 2.1 of the document titled Local Plan Working Party, Wednesday 3 September 2014, Report of the Assistant Chief Executive:

'At the Working Party's meeting on 7 and 30 January 2013 a report was presented which assessed the Core Strategy and all the other policy documents (Allocations DPD, Saved Local Plan Policies and SPDs) against the National Planning Policy Framework (NPPF).'

2. In particular, the background work/evidence which justifies the following statement in paragraph 2.28 of the same document:

'... on the basis of currently identified housing land availability in the period to 2026 we could sustain a net build rate of around 204 dwellings per annum across the 20 year period to 2026'.

3. In particular, the background work/evidence which justifies the following statement in paragraph 2.39 of the same document (and a very similar statement in paragraph 2.52):

'The scale of likely future housing needs is predicted to be beyond what the current Core Strategy and Allocations DPD can provide for. In this respect alone these plans are therefore not up to date.'

4. In general, all background papers to the Report of the Assistant Chief Executive, which, since it has now been considered by Local Plan Working Party, the Cabinet and the full Council, are required to be made available by the provisions of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 .

5. All information, including maps and graphics, held by Spelthorne Council dated later than 1 January 2013 relating to bus routes and bus services in the Borough of Spelthorne.

Please regard all of the above as also being a formal request under the Environmental Information Regulations 2004."

5. On 22 December 2014, the Council responded. It directed the complainant to information published online in relation to parts of the request and refused to provide the information described at his requests 4 and 5 citing the EIR exception at Regulation 12(4)(d) as its basis for doing so.
6. The complainant requested an internal review of the Council's response to requests 4 and 5 also on 22 December 2014. The Council sent him the outcome of its internal review on 9 February 2015. It upheld its original position.
7. It should be noted that on 22 December 2014, the Council sent him a response regarding request 5. The Council said:
8. "You ask for maps and graphics held on bus routes and bus services. We hold stocks at our reception of a free Surrey County Council publication which is a guide to bus services in 'Chertsey, Staines and Walton'. It covers the whole Borough. You can probably get a copy at the local library. As public transport matters are dealt with by Surrey County Council I am unclear exactly what else you might otherwise be expecting. Could you please be more specific."

Scope of the case

9. The complainant contacted the Commissioner on 29 January 2015 to complain about the way his request for information had been handled.
10. Following initial contact from the Commissioner to advise receipt of the complaint, the Council wrote to the Commissioner on 19 March 2015 to explain that it had now disclosed two further documents to the complainant.
11. The Commissioner's investigation has therefore been to determine whether the Council is entitled to withhold the information described in request 4 which has not been disclosed to the complainant. The Council directed the complainant to Surrey County Council for the information described in request 5. The Commissioner is satisfied that, on the balance of probabilities, the Council does not hold the information described in Request 5. When the Commissioner checked the Council's website it directed online enquiries about bus timetables to Surrey

County Council's website.¹ This supports the Council's assertion that detailed information about bus routes in the area is held by Surrey County Council.

Reasons for decision

12. Regulation 12(4)(d) provides an exception to the duty to make environmental information available when the request relates to material which is still in the course of completion, unfinished documents or incomplete data. By nature of being an unfinished document (by definition), draft documents will similarly engage the exception. A draft version of a document will still be considered an unfinished document even if the final version of the document has been published.
13. If the information in question falls into one of the categories above then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception, however, any adverse effects of disclosure may be relevant to the public interest.
14. The Council has stated that the withheld information is a document that is currently being circulated for approval to a number of parties including the Council itself. The Council insists that the document is therefore unfinished because it has yet to receive all the necessary approvals.
15. Having no evidence to dispute the council's position and having viewed the withheld information and considered the assurances provided by the Council, the Commissioner has concluded that the information is incomplete and in draft form and that the exception is engaged.
16. The Council may continue to withhold the information where, in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing it. Consequently the Commissioner has gone on to consider the public interest test.

¹ <https://www.spelthorne.gov.uk/article/1800/Buses>

This website directs enquiries to Surrey County Council's website for bus timetable information

<http://new.surreycc.gov.uk/roads-and-transport/buses-and-trains/bus-timetables>

Public interest in disclosure

17. In considering the public interest in this case, the Commissioner is mindful that regulation 12(2) of the EIR instructs authorities to apply a presumption in favour of disclosure.
18. The Council provided no arguments as to the public interest in disclosure either in its correspondence with the complainant nor in its correspondence with the Commissioner. The Commissioner had specifically asked the Council to set out what considerations it had taken into account as to the public interest in disclosure. Unfortunately, the Council failed to provide any.
19. The complainant insisted that the withheld information could not be considered confidential.

Public interest in maintaining the exception

20. In support of maintaining the exception, the Council provided three arguments. The first was an observation as to the inherent sensitivity of planning matters. The second was to assert that disclosure would be a distraction in any public debate.
21. It said:

“If a draft is issued with procedures or matters which are subsequently removed, the public may become agitated and protest about matters which are subsequently no longer relevant. This would not be in the best interest of the public or the Council in spending time in discussions about matters which might never be relevant”.
22. The third was to allude to the necessity of maintaining a safe space in which the document could be finalised by relevant parties before the information was disclosed.

Balance of the public interest

23. The Commissioner is disappointed that the Council did not engage sufficiently with his investigation such that it was prepared to provide detail with its arguments. It would have been helpful had it made arguments with specific reference to the withheld information (as requested by the Commissioner). Instead, its arguments were scant.
24. The Commissioner recognises that there is a public interest in maintaining a safe space in which decisions can be made. It is clear that the information in question had not been finalised for publication. The Council explained to the Commissioner what further steps would need to be taken before the information in the document in question could be

considered finalised such that it could be published. With that in mind, the Commissioner recognises that there is a public interest in protecting the integrity of the process in which information is agreed and finalised.

25. The Commissioner notes that in cases where an authority has concerns that disclosing information might create public confusion or might misinform debate, it can sometimes be appropriate for the authority to preface such disclosures with a corrective or explanatory narrative. However, he considers that this is not always appropriate since a public authority will not always hold final, completed versions of documents which allow for discrepancies to be resolved. That is the case here.
26. Without a completed version of the information to reference, the public would be left with provisional and potentially misleading information. The Commissioner accepts that this would not contribute to the public interest in participation in decision-making in this case.
27. The Commissioner accepts that there is a general public interest in transparency around decision making and in scrutiny of the procedures and practices followed by public authorities in this regard. Where there is evidence of malpractice, a strong case could be made for disclosure regardless of the grounds under which information is being withheld. However, in this case, the Commissioner has not been provided with any evidence of malpractice or evidence that the Council is in any way mishandling the matters covered in the withheld information.
28. The complainant has disputed whether the information in question could be construed as confidential. Having read the withheld information, the Commissioner has some sympathy with this point. However, he recognises that until the document containing the withheld information has been agreed, the safe space in which it is being considered would be undermined, contrary to the public interest.
29. In this case, the Commissioner is also mindful that there is a general presumption in favour of disclosing environmental information and that there is an inbuilt public interest in enabling public participation in decision making in planning matters. This is particularly the case with regard to the preparation and development of the Local Plan upon which many important decisions will be based. The Local Plan needs to be cleared by stakeholders other than the Council. The Commissioner understands that there has been a certain amount of delay outside the Council's control in this regard. The Commissioner accepts the frustration that this would cause. He recognises that disclosure would alleviate frustration with the delay.
30. Having considered all the factors referred to above, the Commissioner has concluded that, in this case, the public interest favours maintaining the exception and that the Council has correctly withheld the

information. In reaching this view, the Commissioner has had particular regard to the importance of protecting the safe space in which the matters in question can be discussed. He has also taken the Council's assertion that it intends to publish the final version of the information once it has been agreed by all relevant parties. It did not give a timetable for this but indicated that it would be soon. However, the Commissioner does wish to make clear that he has reached his view by a narrow margin.

Right of appeal

31. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF