

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

**Decision notice**

**Date:** 4 December 2017

**Public Authority:** Tamworth Borough Council  
**Address:** Marmion House  
Lichfield Street  
Tamworth  
B79 7BZ

**Decision (including any steps ordered)**

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1. The complainant has requested information on potential self-build sites. The Council provided the complainant with some information, confirmed that some information was not held and withheld some information under regulation 12(4)(d) EIR.
2. The Commissioner considers that the Council has incorrectly applied regulation 12(4)(d) EIR to the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information withheld under regulation 12(4)(d) EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

**Request and response**

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5. On 17 January 2017 the complainant requested information of the following description:

“1. With regards to [named individual’s] consultation with the Assets Team within Tamworth Borough Council, could you please provide details about the following: -

- i) Whom from the Assets Team did [named individual] consult with?
- ii) When and how often did these consultations take place (i.e. dates, times, durations, etc.)?
- iii) Could you please provide all details from these consultations (electronic correspondence, telephone calls, letters, etc.)?

2. Whom from Tamworth Borough Council is responsible for deciding if any proposed development on public land delivers the scale of benefits required to set aside council policy? Which department do they work in?

3. Whom from Tamworth Borough Council has the authority to dispose of public land or rent it out at less-than-market value? Which department do they work in?

4. Could you please provide details of all discussions, meetings or projects that have been led by or involved Tamworth Borough Council, regarding encouraging self-build and custom housebuilding in Tamworth?

For each discussion, meeting or project, please include the following details: -

- i) Dates the discussions or meetings took place or when the project started?
- ii) Details about the purpose of the discussion, meeting or project?
- iii) Details of discussion, minutes from meeting or details of project?
- iv) Who led the discussion, meeting or project?
- v) Which department do they work in? Who is their employer?
- vi) Details of all other people involved in the discussion, meeting or project?
- vii) Which department do they work in? Who are their employers?

5. Apart from the implementation of a Self-build and Custom Housebuilding Register, what actions have been taken by Tamworth Borough Council since 1 April 2016 to encourage and facilitate the take-up of self-build and custom housebuilding?

6. In light of current legislation and the Government’s intention to rely less on larger developers and encourage more small-to-medium developers, is it the intention of Tamworth Borough Council to go against the Government’s direction and discourage self-build and custom housebuilding?

7. How many permissioned serviced building plots have been made available by Tamworth Borough Council since 1 April 2016 to meet the demand on their self-build register?

8. Self-building and Custom housebuilding is not supported or even mentioned in Tamworth Borough Council's Local Plan that was adopted in February 2016. When will Tamworth Borough Council include self-build and custom housebuilding in its Local Plan?

9. Does Tamworth Borough Council have any separate policies to encourage or facilitate self-build and custom housebuilding?

10. For any proposed development on public land, what objective criteria (i.e. scale of benefits, size of site, quantity of homes, type of development, renewable technologies, sustainability features, energy performance, proposed use, agreements from interested parties, payments from interested parties, etc.) has to be met for Tamworth Borough Council to justify setting aside council policy?

11. For any proposed development on public land, what objective criteria (i.e. scale of benefits, size of site, quantity of homes, type of development, renewable technologies, sustainability features, energy performance, proposed use, agreements from interested parties, payments from interested parties, etc.) has to be met for Tamworth Borough Council to justify disposing the public land or renting it out at less-than-market values?

12. For any proposed development on public land, what objective criteria (i.e. scale of benefits, size of site, quantity of homes, type of development, renewable technologies, sustainability features, energy performance, proposed use, agreements from interested parties, payments from interested parties, etc.) has to be met for Tamworth Borough Council to justify using public money to assist with the preparation of the site for development?

13. For any proposed development on public land, what objective criteria (i.e. scale of benefits, size of site, quantity of homes, type of development, renewable technologies, sustainability features, energy performance, proposed use, agreements from interested parties, payments from interested parties, etc.) has to be met for Tamworth Borough Council to justify using public money to assist with the provision of Pre p approved/granted planning permission?

14. Could you please provide details about the sites that Tamworth Borough Council have assessed or are currently being assessed for self-build and custom housebuilding purposes?

Details for each site assessment should include the following: -

- i) Who is Tamworth Borough Council contracting/employing to carry out the assessment?
  - ii) Owner of the site?
  - iii) Location of the site?
  - iv) Size of the site?
  - v) How many homes could be built on the site?
  - vi) Has legal advice been sought relating to using the site for self-build or custom housebuilding purposes? Please include details of all legal advice sought, dates of legal advice, names of individuals/organisations who provided the legal advice, cost of all legal advice, etc
  - vii) Market value/independent evaluations of the site? Please include details of all evaluations, i.e. date of evaluations, names of individuals/organisations who provided the evaluations, actual valuation or market value of the site, cost of the independent evaluations to the public purse, etc.
  - viii) What is the total cost to the public purse of the assessment?
  - ix) Whom from Tamworth Borough Council will authorise or has authorised payments relating to the assessment?
  - x) When the assessment for self-build and custom housebuilding purposes began?
  - xi) When the assessment for self-build and custom housebuilding purposes will be complete or was completed?
  - xii) If the land is publicly owned, when will Tamworth Borough Council notify the public about its intention to dispose of the public land, if it has not already done so?
  - xiii) Who will be (or has been) involved in the preparation assessment and disposal/lease of the site? Please include details of their employer, department they work in, etc."
6. When the Council responded on 16 February and 3 March 2017, in relation to part 1 of the request, the complainant was advised to make a separate request for information under the Data Protection Act 1998. This part of the request has been dealt with under the DPA and therefore falls outside the scope of this Notice. Under FOIA it provided the complainant with some information but said that some information was not held. In relation to part 4 of the request, the Council applied the FOIA exemption at section 22 (information planned for future publication) and in relation to part 14(iii) of the request it applied the FOIA exemption at section 43(2) (prejudice to commercial interests).
7. The complainant requested an internal review on 6 March 2017. The Council sent the outcome of its internal review on 11 April 2017. It withdrew its application of section 22 FOIA but upheld its application of section 43(2) FOIA and reiterated that some information was not

held.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 7 July 2017 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation, the Council withdrew its application of section 43(2) FOIA and applied regulation 12(4)(d) EIR to part 14(iii) of the request as it considers the information to be environmental. In addition, parts of the complaint were resolved informally, in particular in relation to part 14(xiii) the Council had originally confirmed that this information was not held, however during the course of the Commissioner's investigation this information was provided to the complainant.
10. The only outstanding matter to be considered by the Commissioner was whether the Council was correct to apply regulation 12(4)(d) EIR to part 14(iii) of the request.

## **Reasons for decision**

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### **Part 14(iii) of the request**

#### **Regulation 12(4)(d)**

11. Regulation 12(4) states that, "For the purposes of paragraph (1)(a), 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.
12. If the information in question falls into one of those categories, 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, but any adverse effects of disclosure may be relevant to the public interest test.
13. The fact that the exception refers to both material in the course of completion and unfinished documents implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion. An example of this could be where a public authority is formulating and developing policy.

14. In this case the Council has explained that the withheld information is the name of two potential site locations that are currently being assessed as to whether they are appropriate self-build sites. It said that the site locations require a full assessment and then a formal decision is made to their suitability for a purpose. It said at this early stage this is not complete and no final decision has been taken. It said that it is feasible the use of the sites may change as the assessment continues. It argued that the Council needs a safe space to fully assess site location use/suitability without being hindered by external queries or involvement.
15. The need for public authorities to have a 'thinking space' for policy development was recognised in the original proposal for the Directive on public access to environmental information, which the EIR implement. The proposal explained the rationale for both this exception and the exception for internal communications:

"It should also be acknowledged that public authorities should have the necessary space to think in private. To this end, public authorities will be entitled to refuse access if the request concerns material in the course of completion or internal communications. In each such case, the public interest served by the disclosure of such information should be taken into account."<sup>1</sup>
16. The Commissioner would note that the fact that a public authority has not completed a particular project or other piece of work does not necessarily mean that all the information the authority holds relating to it is automatically covered by the exception.
17. In this case however the withheld information is the identity of the two sites currently under assessment and as a decision has not yet been taken, the Commissioner does accept that this information can be categorised as material still in the course of completion as they may or may not ultimately decide to designate the sites as self-build. The Council has clarified that if and when the sites are classified as self-build they will then be added to its register of self-build sites.
18. As the Commissioner does consider that the exception is engaged she has gone on to consider the public interest test.

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<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52000PC0402&from=EN>

## **Public interest test**

### **Public interest on favour of disclosure**

19. The Council acknowledged that there is a public interest in openness and transparency and following government guidance, it reiterated that it holds a self-build register and any sites that have been fully assessed and formally adopted for self-build use are made known on this register.

### **Public interest in favour of maintain the exception**

20. The Council said that to release these location details so early on into the assessment was not in the public interest. It is considered misleading to publish site locations that have not been formally adopted for the purpose outlined in the scope of the request, i.e. self-build.

### **Balance of the public interest test**

21. In this case the Commissioner considers that there is a public interest in openness and transparency surrounding decision making by the Council regarding the Government initiative behind self-build. This is particularly so given it is one initiative which may contribute positively to the housing crisis in the UK.
22. On the other hand the Commissioner does accept that there is a public interest in the Council having a safe space to assess potential self-build sites prior to making a decision on granting such planning permission.
23. In this case the Council has argued that disclosure of the site locations, prior to a decision being taken would be misleading which is not in the public interest. However the Commissioner considers that any disclosure can be made alongside background information to give greater context and minimise any confusion this would cause. In particular the Council could disclose the identity of the sites with the caveat that they are still under assessment and have not been formally adopted for the purpose of self- build.
24. Given the nature of the withheld information, that is the site name, the public interest in disclosure of this information given the housing crisis in the UK and the fact that it is within the Council's gift to provide any background or contextual information alongside disclosure, the Commissioner considers that the public interest in favour of maintaining the exception is outweighed by the public interest in disclosure.

## Right of appeal

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25. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

26. 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.
27. 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 .....**

**Gemma Garvey**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**