

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 May 2020

Public Authority: Hastings Borough Council
Address: Queens Square
Hastings
TN34 1TL

Decision (including any steps ordered)

1. The complainant has requested information relating to certain comments that were included in correspondence sent by Hastings Borough Council (the council) to the Local Government and Social Care Ombudsman (the LGO)
2. The complainant has confirmed that he has now received the information that he required.
3. However, the Commissioner has found that the council has breached regulation 5(2) of the EIR as it failed to provide any information in response to the complainant's request within 20 working days. In addition, the council has also breached regulation 11(4) as it failed to provide its internal review response within the required 40 working days.
4. The Commissioner does not require the council to take any steps as a result of this decision notice.

Request and response

5. On 4 March 2017, the complainant submitted his request to the council. This request is set out below, but has been edited to include the council's response of 27 November 2018:

'In comments made to the Ombudsman in April 2016 the Chief Legal Officer stated that:

*"The descriptions of the permissions **have never noted the total number of caravans on site** nor, has there been a condition attached to the permissions which restricted the number of caravans on site. One of the earliest layouts of the site we have seen does show a layout of the caravans which is where the number of caravans appear to be derived from. Certainly later permissions do site additional caravans where the specific number of additional caravans is noted in the description. **The implication of this is that subject to the caravan license, there is nothing that would restrict in planning terms the reduction or increase in caravan numbers.**"*

This statement is factually incorrect for the following reasons:

- The descriptions of two out of three permissions **do** specify the total number of caravans.*
- One later permission in 1978 does only mention 10 additional caravans; however the other permissions explicitly mention the total.*
- The implication drawn by the Chief Legal Officer can be shown to be incorrect – the numbers are controlled by both planning permissions and caravan site licence conditions.*
- The decision document from the 1991 planning appeal describes the history of the site and explicitly states that total numbers are defined.*
- The Bahcheli addendum report of 2014 describes the history of the site and explicitly states that total numbers are defined.*

The total number of caravans allowed is 82 and this number cannot be increased without seeking a new planning permission.

The planning permissions are readily available online. There is an appeal document that describes the history of the site. The Bahcheli report also describes the history of the site. SEG has also provided evidence about the lower slopes.

Please see Appendix A below for details of the permissions, the 1991

Appeal decision report and the Bahcheli report.

We request clarification on how this statement to the Ombudsman during an enquiry was formulated:

- *Please provide details of the planning permissions granted which HBC consider do not specify a total number of caravans on site*
Council response: All information is currently available online. <https://hastings.moderngov.co.uk/documents/s2523/Rocklands%20Caravan%20Park.pdf>

- *Please provide details of the planning permissions analysed by HBC prior to formulating this statement to the Ombudsman*

Council response: Information not held - this is not a request for recorded information.

- *Please provide a copy of the early site layout referred to by the Chief Legal Officer*

Council response: This has been provided to you previously.

- *Please provide copies of the advice given to the Chief Legal officer by planning when formulating the statement to the Ombudsman*

Council response: This has been provided to you previously.

- *Please explain why the 1991 Appeal Inspectors history of the site was ignored*

Council response: Information not held, this case is now closed therefore no information was kept.

- *Please explain why the 2014 Bahcheli addendum report was ignored*

Council response: Information not held - this is not a request for recorded information

- *Please explain why evidence provided by SEG was ignored*

Council response: Information not held - this is not a request for recorded information.

Please take this as a formal request under EIR regulations.'

6. The complainant asked for an internal review on 15 December 2018. On 11 April 2019 the council included the following information in its internal review response:

Bullet point 1: *I referred this back to our planning department and can confirm that the original information provided to you was incorrect.*

Please see below the permissions granted which we consider to do [sic] not specify the total number of caravans on site, these are also available online: <http://publicaccess.hastings.gov.uk/online-applications/>

1. HS/FA/17/00294
2. HS/FA/12/00952
3. HS/FA/10/00492
4. HS/FA/08/00819
5. HS/FA/04/00278

Bullet point 2: *Please see my response to Q4 - Unfortunately I am unable to answer this question as the officer that provided the information is currently on sick leave therefore, I am unable to determine which permissions were analysed at the time.*

Bullet point 3: *The plan that was referred to by the Chief Legal Officer is attached.*

Bullet point 4: *The Chief Legal Officer co-ordinated the response to the Local Government Ombudsman by sending the questions raised to the relevant officers to respond. This was done by annotating the Ombudsman's original document and this was submitted in our response, no other documentation was exchanged.*

Bullet point 5: *As you are aware many of your requests were placed on hold whilst the Council undertook 2 appeals – 1. Caravan Site Licence Appeal and 2. First Tier - Tribunal Appeal EA/2017/0084 - Hastings Borough Council vs Information Commissioner.*

Hastings Borough Council have been working hard to process the backlog however due to the quantity and complexity of these requests unfortunately they have taken longer than anticipated for which I apologise.

7. On 18 April 2019 the complainant contacted the council again to ask that it provide clarification on one particular point as follows:

'Does HBC still consider that there are no planning restrictions on the number of caravans that can be installed on site.'

8. The complainant went on to provide further comment in support of his reasoning for believing that it was of some importance to have this point clarified by the council.
9. On 23 May 2019, the council then provided the complainant with its response. It set out details of a number of planning permissions in relation to the relevant site. It also confirmed that *'there are planning restrictions on the number of caravans that can be installed on site. This is echoed by the conditions of the Site Licence in respect of the site.'*
10. The council then went on to say that, in direct response to other comments made by the complainant in his correspondence of 18 April 2019, any statements that had been recorded which stated that there were no restrictions on the number of caravans on the site were not correct.

Scope of the case

11. The complainant originally contacted the Commissioner on 17 March 2019 to raise concerns about the council's failure to respond to his request for an internal review.
12. On 29 March 2019 the Commissioner contacted the council to advise that it should now provide a response to the complainant; the council then provided the complainant with the outcome of the internal review on 11 April 2019. The council then went on to provide additional information to the complainant on 23 May 2019.
13. The complainant then contacted the Commissioner again on 27 May 2019 to complain about the way that his request had been handled by the council. He confirmed that whilst he had now received the information that he had required, he wanted the Commissioner to investigate the following:
 1. *Delays in answering initial request and putting request "on hold"*
 2. *The response to the request*
 3. *Delays in answering the review*
 4. *The response to the review*
14. Given that the complainant has confirmed that he is now satisfied with the information that has been provided to him, but still wants the procedural aspects of how his request was handled to be addressed, the Commissioner considers the scope of her investigation to be to determine whether the council dealt with the request in accordance with the EIR.

Reasons for decision

Regulation 5(2) -Time for compliance

15. Regulation 5(2) of the EIR states that information shall be made available *'as soon as possible and no later than 20 working days after the date of the request.'*
16. In this case the request was submitted on 4 March 2017. After putting this request *'on hold'* for a period of time, the council provided some information to the complainant on 27 November 2018. The council then went on to provide additional information in its internal review response of 11 April 2019.
17. With regards to council's decision to place a number of requests (including this request) *'on hold'* for a period of time, the Commissioner has already addressed this matter in a number of other decision notices. She would, in particular, make reference to decision notices FER0826308¹ and FER50830896² where she has set out her opinion in full in relation to this point.
18. To summarise, the council had viewed information that related to a number of requests it had received in 2017 and 2018 to be potentially relevant to two pending appeals. It therefore placed such requests *'on hold'* until both appeals reached conclusion in March and April 2018.
19. However, with regards to the complainant's request, the Commissioner is not persuaded that the information he had originally asked for would have been relevant to the two appeals. In any event, even if this had been the case, the EIR does not contain provision to place a request *'on hold'* for some 20 months.
20. Therefore, it is the Commissioner's decision in this instance that, as the council failed to provide any information to the complainant within 20 working days of the receipt of the request, it has breached regulation 5(2) of the EIR.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617318/fer0826308.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617144/fs50830896.pdf>

21. The complainant has stated that he was concerned that it had taken the intervention of the Commissioner for the information he required to be provided to him. He went on to say that he believed that the difficulties that he had experienced obtaining the information may be part of a '*systematic policy*' within the council that was preventing information from being released which should be in the public domain.
22. The Commissioner accepts that the council has failed to deal with a number of requests in accordance with its obligations under the EIR. She also appreciates that the delays which have occurred are likely to have caused the complainant some frustration. However, whilst the council was not correct in its approach to place a large number of requests '*on hold*', the Commissioner does not regard there to be any substantive evidence to support any claim that there is a '*systematic policy*' within the council, or that it has actively withheld information that it is aware should be in the public domain.
23. The complainant also states that the council's response to both his original request, and the internal review, failed to clarify whether the statement to the LGO which he had set out within his request was correct. He goes on to say that '*this request was a simple request for evidence that a statement made by the HBC Chief Legal Officer to the Ombudsman claiming that there were no planning restrictions on the number of caravans was correct.*'
24. In addition, the complainant states that some of the information which was provided to him, including certain planning permissions, was not relevant to the statement made to the LGO.
25. The Commissioner has given consideration to the content of the complainant's correspondence of 18 April 2019. In addition, she has had regard to the information which the council provided in its response of 23 May 2019, which included details of those permissions which related to the siting of caravans. It also confirmed that there were restrictions placed on permissions for the number of caravans that could be placed within the site.
26. The Commissioner accepts that the council did not provide all the information that the complainant was entitled to receive in its original response to his request. Indeed, the council itself acknowledged this at the internal review stage by revising its original response to certain bullet points set out within the request.
27. However, the Commissioner is mindful that the council, if given the opportunity, might dispute that the information that it provided in response to the complainant's correspondence of 18 April 2019 fell directly within the specific terms of his original request.

28. In any event, the Commissioner does not regard it to be a proportionate use of either the council's, or her own, resources to conduct a detailed investigation to establish exactly what information that was provided by the council at any stage did, or did not, meet the terms of the original request. As the complainant has confirmed that he now has the information that he required, she is satisfied that there is nothing of any value to be gained by any party from further consideration of this particular point.
29. In response to the complainant's concern that the council may have failed to retain certain 'historic' information, the Commissioner does not regard this to be a matter that she would be required to adjudicate upon in this particular case. If the complainant still has such concerns, he may wish to consider raising this formally, and separate to any information request, with the council in the first instance.

Regulation 11-Representations and reconsideration

30. Regulation 11 of the EIR provides that, if a requester is dissatisfied with a public authority's response to a request, the requester can ask for a review. Regulation 11(4) provides that a public authority should respond promptly and no later than 40 working days after the date of receipt of the request for review.
31. The complainant requested an internal review on 15 December 2018 and the council responded with its decision on 11 April 2019, and only after the Commissioner's intervention.
32. The Commissioner is satisfied that as the council failed to provide the outcome of the internal review within 40 working days it has breached regulation 11(4) of the EIR.

Right of appeal

33. 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@justice.gov.uk

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

34. 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.
35. 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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