

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 September 2021

Public Authority: Central Bedfordshire Council

Address: Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire
SG17 5TQ

Decision (including any steps ordered)

1. The complainant has requested information from Central Bedfordshire Council ("the Council") relating to two specific planning applications.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration of a response it provided, under the Environmental Information Regulations ("the EIR"), within 40 working days and has therefore breached Regulation 11 of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
4. The Council 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 14 December 2020, the complainant wrote to the Council and requested information in the following terms:

"We act of behalf of [name redacted] and [name redacted] (U.K.) Limited ("the Applicant") who requests the below information pursuant to the Environmental Information Regulations 2004 ("the Regulations").

As a public authority, we require you to disseminate (regulation 4(1)) and make available on request (regulation 5(1)) the environmental information that is in your possession either being produced or received in relation to:-

- 1. All communications with or between the landowner [name redacted], the promoter (UK Regeneration or its employees or officers or representatives, including but not limited to [name redacted]), their agents [name redacted], Biggleswade Town Council and/or Homes England relating to planning applications with references [redacted] and [redacted] and any section 106 Agreement for either planning application.*
- 2. The request at item 1 above specifically extends to, but is not limited to, a request for all communications (including correspondence and emails) between individual councillors who sat on the Development Management Committee ("the Committee") which was held on Wednesday 11th November 2020 and the persons and organisations mentioned in item 1 relating to the matters mentioned in item 1.*
- 3. A copy of the Memorandum of Understanding that exists (whether or not it is still only in draft form) between the Council and the Applicant for planning applications with references [redacted] and [redacted], and any previous drafts. Specific reference was made to this Memorandum of Understanding at the examination hearing session for the Council's Local Plan on 10th December 2020 (Matter 3 Issue 4 - East of Biggleswade - Policy SA4).*
- 4. All communications with or between [name redacted] of Stantec who appeared as part of the Council's team at the examination hearing session mentioned in item 3 above (notwithstanding that he is agent for the promoter of the East of Biggleswade site).*

5. *All communications with third parties pertaining to any issues concerning consented or proposed accesses onto Baden-Powell Way relating to planning applications with references [redacted] and [redacted] and any section 106 Agreement for either planning application including references to the Applicant and/or Taylor Wimpey UK Limited/Admiral Developments Limited/Bryant Homes Southern Limited. Specifically including communications pertaining to the S.106 Agreement ("S.106 Agreement") dated 13th March 2019 and provision of a school access road between points marked A-B on the plan to the S.106 Agreement. A copy of the S.106 Agreement is attached for ease of reference.*
6. *All communications with or between the landowner [redacted] and or the promoter (UK Regeneration or its employees or officers or representatives, including but not limited to [name redacted]) and/or their agents [redacted] and/or Biggleswade Town Council and/or Homes England or internal communications within the Council regarding legal and/or contractual obligations the Council owes to the Applicant/Taylor Wimpey UK Limited/Admiral Developments Limited/Bryant Homes Southern Limited in respect of the Chambers Way access pursuant to [redacted].*
7. *Undisclosed communications or minutes of any meetings prior to or after the Committee meeting, which was held on Wednesday 11th November 2020, relating to planning applications with references [redacted] and [redacted]. Specifically did the Chairman or any members of the Committee have a written script? If the Chairman or any members of the Committee had written script or note, please provide ii.*
8. *Any interests of the Committee members which would be considered 'declared interests' in relation to planning applications with [redacted] and [redacted].*
9. *Any communication of the Committee members which gives any view about the planning applications with references [redacted] and [redacted].*
10. *All communications with or between the landowner [redacted] the promoter (UK Regeneration or its employees or officers or representatives, including but not limited to [name redacted], their agents [redacted], Biggleswade Town Council and the Councillors who sat on the*

Committee (Councillors [names redacted]) relating to planning applications with references [redacted] and [redacted] and any section 106 Agreement for either planning application.

- 11. Please provide the date on which [name redacted] became the portfolio holder for Planning and Regeneration.*
- 12. All communications between the Council or its agents, the landowner [redacted], the promoter (UK Regeneration or its employees or officers or representatives, including but not limited to [name redacted], their agents [redacted], Biggleswade Town Council and/or Homes England the Local Plan and the Local Plan Inspector in relation to the proposed allocation SA4 and/or the planning applications with references [redacted] and [redacted].*
- 13. Details of any charity (as referred to by Cllr [name redacted] in the minutes of the meeting of the Committee on 11th November 2020 at p.4) which is interested in the reservoir on the land the subject of planning applications with references [redacted] and [redacted] specifically including any minutes of meetings on or with such charities.*
- 14. All communications relating to i) any request for compulsory purchase by the Council from the landowner [redacted], the promoter (UK Regeneration or its employees or officers or representatives, including but not limited to [redacted], their agents [redacted] and ii) discussion on transport modelling in relation to the Chambers Way Junction land within the application boundary for planning applications [redacted] and [redacted] by the Council, the landowner [redacted] the promoter (UK Regeneration or its employees or officers or representatives, including but not limited to [redacted], their agents [redacted] and Highways England.*
- 15. All legal opinions supplied to the Council or obtained by the Council (including Committee members) in relation to planning applications [redacted] and [redacted] and any related agreement, whether pursuant to S.106 Town and Country Planning Act 1990 or otherwise, including but not limited to the Opinion by [name redacted] QC referred to during the Committee's proceedings on Wednesday 11th November 2020.*

16. A copy of the 'sustainable transport plan for Biggleswade' and details of the 'autonomous pods' referred to by UK Regeneration or its employees or officers or representatives, including but not limited to [redacted] as per comments made to the Development Management Committee together with all communications between the Council, the landowner [redacted], the promoter (UK Regeneration or its employees or officers or representatives, including but not limited to [redacted], their agents [redacted] relating to this and the development of such in reference to planning applications [redacted] and [redacted].

We further request that where any information pertaining to the above request is being held by a third party on behalf of the Council that this information is also disclosed (regulation 3(2)(b)). In this regard we note Councillors from the Committee chose to stay on the Committee notwithstanding their position and dealings on the neighbourhood plan.

As you are no doubt aware, the Court of Appeal has confirmed that the context of how and why environmental information was created and used, and its significance to the wider environmental measure, is a relevant factor (The Department for Business, Energy and Industrial Strategy v Information Commissioner and another [2017] EWCA Civ 844) and we request that this information is disclosed without delay.

We reserve the right to produce this letter in any proceedings against the Council or complaint to the Information Commissioner or Local Government Ombudsman and request a response as soon as possible and in any event no later than 20 working days from receipt, failing which we shall take our client's instructions to pursue this matter further. Please acknowledge safe-receipt of this request for our records."

6. On 8 March 2021 the Council wrote to the complainant and refused the request citing regulation 12(4)(b) (manifestly unreasonable), regulation 12(5)(b) (course of justice) and regulation 12(4)(d) (material in the course of completion) of the EIR.
7. On 6 April 2021, the complainant wrote to the Council to request an internal review. By the date of this notice, the Council has not provided the complainant with the outcome of its internal review.

Scope of the case

8. The complainant contacted the Commissioner on 20 May 2021 to complain about the way her request for information had been handled.
9. In line with her usual practice, the Commissioner contacted the Council on 6 August 2021 to highlight the outstanding response. She requested that the Council complete its reconsiderations within 10 working days. The correspondence was neither acknowledged nor responded to.
10. The Complainant contacted the Commissioner on 9 September 2021 to inform her that they had not received the outcome of the Council's internal review.
11. The scope of the Commissioner's investigation is to determine whether the Council has complied with Regulation 11 of the EIR.
12. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether the Council was entitled to rely on the exception which it has done or holds further information.

Reasons for decision

13. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*
 - (b) *factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);*
 - (c) *measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*

- (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*
14. The Commissioner believes that the requested information is about the environment. For procedural reasons, she has therefore assessed this case under the EIR.
15. Regulation 11 of the EIR states that:
- (1) *Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
 - (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
 - (3) *The public authority shall on receipt of the representations and free of charge—*
 - (a) *consider them and any supporting evidence produced by the applicant; and*
 - (b) *decide if it has complied with the requirement.*
 - (4) *A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
 - (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
 - (a) *the failure to comply;*
 - (b) *the action the authority has decided to take to comply with the requirement; and*
 - (c) *the period within which that action is to be taken.*
16. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, the Council has breached Regulation 11 of the EIR.

Right of appeal

17. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

18. 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.
19. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF