

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

Date: 17 October 2022

Public Authority: Shropshire Council
Address: Shirehall
Abbey Foregate
Shrewsbury
SY2 6ND

Decision (including any steps ordered)

1. The complainant requested from Shropshire Council the legal documents it considered and the discussions its Head of Legal and Democratic Services had with officers in relation to the sale of and planning permission for land at Greenfields Recreation Ground.
2. Shropshire Council responded under the FOIA by applying Section 21 of FOIA on the basis that the requested information was reasonably accessible to the complainant elsewhere
3. The Commissioner's decision is that the information requested was 'environmental' within the meaning of the EIR and therefore Shropshire Council was incorrect to apply the FOIA.
4. The Commissioner also finds that Shropshire Council failed to engage Regulation 6(1)(b) of the EIR in relation to the information it held within the scope of the complainant's request based on the balance of probabilities.
5. However, as the information held by Shropshire Council has since been obtained by the complainant, the Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Background

6. On 4 October 2017 Shrewsbury Town Council sold land described as "off Greenfields Recreation Ground" to a developer, CSE Developments (Shropshire) Limited, for £550,000 with outline planning consent granted in 2016 for housing development.
7. The outline planning application granted in 2016, was submitted by Shrewsbury Town Council to Shrewsbury Council under reference 12/00620/OUT¹.
8. The complainant objected to this sale on the basis that, in his view the land sold was part Greenfields Recreation Ground. He communicated these views to both Shrewsbury Town Council and Shropshire Council both of which categorically stated, on numerous occasions, that this was not the case. They pointed out that the local plan and other documents showed the land sold as being separate from Greenfields Recreation Ground.
9. A subsequent planning application was submitted to Shrewsbury Council by CSE Developments (Shropshire) Limited under reference 17/05234/FUL² for the erection of 15 dwellings.
10. The planning application 17/05234/FUL³ was granted by Shropshire Council on 8 November 2018.
11. Subsequently, Shropshire Council's decision to grant planning permission to CSE Developments (Shropshire) Limited was challenged in the courts by way of a judicial review. The relevant documentation relating to this review and subsequent appeals may be found on Shropshire Council's website⁴. The current position is that following decisions in the High Court on 19 December 2019 and Court of Appeal on 23 December 2020, permission was granted to appeal to the Supreme Court on 15 February 2022.

¹ [Microsoft Word - 8 Land off Greenfields Recreation Ground Falstaff Street Shrewsbury \(shropshire.gov.uk\)](#)

² [Item 5 - Land off Greenfields Recreation Ground 17-05234-FUL.pdf \(shropshire.gov.uk\)](#)

³ [Item 5 - Land off Greenfields Recreation Ground 17-05234-FUL.pdf \(shropshire.gov.uk\)](#)

⁴ [17/05234/FUL | Erection of 15 dwellings \(including 2 affordable\) to include new access road and associated parking \(amended description\) | Land Off Greenfields Recreation Ground Falstaff Street Shrewsbury Shropshire](#)

Request and response

12. In relation to discussions that the land sold by Shrewsbury Town Council was not part of Greenfields Recreation Ground and referencing outline planning permission 12/00620/OUT, the complainant wrote to Shropshire Council's (the Council) Head of Legal and Democratic Services on 17 September 2018 and requested information in the following terms:

"Can you in the meantime forward the legal documents you say have been considered in the land at Greenfields Recreation Ground in total and the discussions you have had with officers as a FOI request. These conversations will be useful in understanding the officers considerations".

13. The Council's Head of Legal and Democratic Services responded on 21 September 2018 and stated the 'documents (deeds of title)' should be available at the Land Registry. Therefore the Council was applying Section 21 of FOIA on the basis that the information was reasonably accessible by other means. With regard to any discussions, the Council's Head of Legal and Democratic Services stated there was no record of any conversations with officers. Therefore, the information was not held. Furthermore, the Council added that even if there were conversations, they would be subject to legal privilege and exempt from disclosure under FOIA. The Council concluded by stating that it had already provided detailed responses to the related issues raised and further requests for the same or similar matters would be treated as vexatious.
14. On 9 October 2018 the complainant requested an internal review.
15. The Council responded on 10 October 2018 indicating that it was only obliged to conduct an internal review in relation to any decision to withhold information which was not the case here. The only information held was legal documents easily accessible from the Land Registry. The Council referenced its earlier comments and stated the complainant's correspondence on the matter was now considered vexatious.
16. The complainant has contacted to Commissioner on numerous occasions since September 2018 to complain about the Council's responses to his various related requests including the present one. He is particularly dissatisfied with the Council's decision claiming that it does not hold any recorded information falling with the scope of his request apart from that which is already accessible by other means.

17. The Commissioner's investigation will be to determine firstly, the correct legislative regime under which the complainant's request should be considered and secondly, whether the Council holds any recorded information falling within the scope of the request based on a balance of probability test. The Commissioner will not consider any discussions that may have taken place in relation to the matter by Shrewsbury Town Council as this would have to be subject to a separate information request.

Reasons for the decision

'Legal documents'

18. In its responses to the complainant the Council has stated that the only information held falling within the scope of the request is the legal documentation which is publicly available and easily accessible in another form or format.
19. In its initial responses to the complainant, the Council indicated the information requested was covered by FOIA by citing the exemption under Section 21. However, in its responses to the Commissioner, the Council, having reviewed its position, stated its belief that the information was 'environmental' within the meaning of the EIR. The Commissioner will therefore start by considering the appropriate legislative regime applicable to the request.

Is the requested information environmental as defined by the EIR?

20. 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)."

21. The Commissioner considers that, as the information requested in this case relates to the sale of public land to a private developer and an application for planning permission for domestic housing, it is a measure affecting or likely to affect the elements and factors of the environment, such as land and landscape, as defined by Regulation 2(1)(a). He is therefore satisfied that the information falls within the definition of environmental information under Regulation 2(1)(c) of the EIR.

Regulation 6(1)(b) of the EIR

22. In its responses to the complainant, the Council has stated that the only information held falling within the scope of his request is the legal documentation which is publicly available and easily accessible in another form or format.

23. Regulation 6(1)(b) of the EIR states that;

"6(1) Where the applicant requests that information be made available in a particular form or format, a public authority shall make it available, unless –

(b) the information is already publicly available and easily accessible to the applicant in another form or format".

24. In this case the Council stated to the Commissioner that the relevant 'legal documents' of title were available to the complainant from the Land Registry. Any other 'legal documents' had already been disclosed to him as part of his judicial review proceedings against the Council. It

confirmed that no external legal advice was sought. The Council added that there were communications with its planning officers verbally and by email but it did not believe these constituted 'legal documents' within the meaning of the request.

25. In relation to the legal documents comprising of title deeds, the Commissioner accepts that such documents are publicly available and reasonably accessible from the Land Registry. However, he does not believe it is acceptable to simply refer to title documents without specifying what they are. The Commissioner's Decision Notice FER0497378⁵ states "the Commissioner is of the view that a complainant cannot be expected to search for unspecified information that may or may not be held by another public authority". Accordingly, the Commissioner is not satisfied that in this case the Council has engaged Regulation 6(1)(b) of the EIR in relation to the legal title documents.
26. In relation to the other 'legal documents' which the Council claims are available to the complainant as part of the judicial review proceedings, the Commissioner does not accept that Regulation 6(1)(b) applies to these either, as this information has not been clearly specified nor, more importantly, is it publicly available. The Council has stated that to specify all documents provided as part of the judicial review proceedings would not be practical and would take a lot of time and trouble as no specific list already existed. The Commissioner is not persuaded by such arguments and accordingly is not satisfied that the Council has engaged Regulation 6(1)(b) of the EIR in relation to the other 'legal documents'. However, the Council has since produced and shared with both the complainant and the Commissioner an 'Index to Trial Bundle' from the judicial review proceedings listing all the documents relating to the matter in hand including those falling within the scope of the request. All of these have been made available to the complainant as part of the civil litigation rules and procedures.
27. In circumstances like the present one, the Commissioner would normally require the public authority to specify which 'legal documents' of title accessible from the Land Registry were considered. However, this would be somewhat academic in this case as the complainant has admitted to the Commissioner that all of the Land Registry documents have since been purchased and researched. The Commissioner therefore finds the Council failed to engage Regulation 6(1)(b) of the

⁵ [FER0497378 \(ico.org.uk\)](https://ico.org.uk/fer0497378)

EIR but makes no order as the complainant has since purchased and considered all of the Land Registry documents of title. With regard to the other 'legal documents' the Commissioner makes no order, as the information has already been received by the complainant under the civil procedure rules in the judicial review proceedings.

'Discussions between the Council's Head of Legal and Democratic Services and officers'

28. The Council has claimed that it does not hold any recorded information as any discussions relevant to the request were verbal and no notes were made. Accordingly, it stated there were no manual or electronic records relating to this aspect of the request. The Council added that, if any discussions were recorded, they would most likely be in the form of hard copy or electronic notes.
29. As part of his investigation, the Commissioner asked the Council to specify the enquiries and searches it carried out to identify and locate any recorded information held in relation to any discussions between its Head of Legal and Democratic Services and officers concerning the sale and planning applications relating to the land described as "off Greenfields Recreation Ground".

Electronic communications

30. The Head of Council's Legal and Democratic Services confirmed that the only discussions that took place were between herself and the Democratic and Elections Manager within the Legal and Democratic Services who is a solicitor.
31. With regard to the enquiries and searches carried out the Council's Head of Council's Legal and Democratic Services confirmed her discussions with the Democratic and Elections Manager were verbal in nature and not recorded or written down. Therefore there are no manual or electronic records relating to this aspect of the request. The Council added that if discussions were recorded they would most likely be in the form of hard copy or electronic notes. However, for sake of completeness the Council asked both the Head of Legal and Democratic Services and the Democratic and Elections Manager to search their emails for any relevant information and any hard copy notes.
32. The email search completed by the Head of Legal and Democratic Services was in relation to any email communications between herself and the Democratic and Elections Manager relating to the request and did not reveal any recorded information.

33. The same search was completed by the Council's Democratic and Elections Manager in relation to the emails with the Head of Legal and Democratic Services and this too revealed no recorded information.
34. As a result of the enquiries and searches carried out as described above the Council concluded that no electronic communications were held between the two individuals identified based on a balance of probabilities.

Notes or paper copies

35. The second part of the search carried out by the Council related to any notes or paper copies of information held in relation to the request. This search did not reveal any notes and/or paper copies of discussions carried out relevant to the request based on a balance of probabilities.
36. The Council has also stated there was no legal or business requirement to retain records of these discussions or to record them.

Interpretation of 'officers'

37. The complainant's request specifically references discussions between the Council's Head of Legal and Democratic Services and 'officers'.
38. As part of the Council's enquiries, as requested by the Commissioner, its Data Protection Officer spoke to the Head of Legal and Democratic Services who reiterated she only discussed the matter directly with the Democratic and Elections Manager. She then went on to clarify that whilst she may have used the term 'officers' this does not mean it was more than one person. She clarified that she would always use the term 'officers' in such communications to avoid the question of 'who', which would inevitably arise if she used the term 'officer'. She therefore confirmed she always uses the term 'officers' in such communications regardless of how many individuals she has spoken to and uses it as a generic term.
39. The Council confirmed to the Commissioner that it has a detailed retention schedule that covers all documents held in both hard and electronic formats. It stated its records management policy sets out clear retention periods for information based on either legislative requirements or records management good practice. It added that staff are told clearly through policies and training that information should be retained for as long as it is needed for the set purpose and then must be securely destroyed unless any legislation requires for it to be retained for longer.

The Council's view

40. In summary, the Council concluded that discussions did take place in relation to the matter between its Head of Legal and Democratic Services and its Democratic and Elections Manager. However, no notes were made or recorded. The Council believes it has carried out all relevant enquires and searches in relation to any discussions that may have taken place and has concluded, on a balance of probabilities, that no recorded information was held.

The complainant's view

41. The complainant disputes the Council's stance that it does not hold any recorded information apart from that already disclosed or accessible from the Land Registry and the judicial review proceedings. He believes the Council should hold information to back up their public statements that the land sold was not part of Greenfields Recreation Ground. In his opinion such information would include legal documents referencing and describing the specific land sold for which outline planning permission was granted.

The Commissioner's view

42. The Commissioner has considered the comments of the Council in relation to the enquiries and searches carried out and the arguments put forward by the complainant. However, he is not persuaded on the balance of probabilities, that the Council holds any recorded information apart from the legal title documents accessible from the Land Registry which the complainant has now purchased and the legal documents from the judicial review proceedings which the complainant has received.
43. The Commissioner has, on numerous occasions, made the complainant aware of the outcome of his detailed investigation and his views regarding the Council's stance in relation to the information request. However, despite this the complainant has insisted that the Commissioner issues a formal decision.

Other Matters

44. The Commissioner notes that this is the latest of a number of decision notices on similar matters that the complainant has requested of the Commissioner. In this particular case he would like to point out the

excessive use of resources expended to address concerns about a request for information which asks for information that the requester already has access too. In the future the Commissioner is likely to consider exercising the discretion afforded to him at section 50(2)(c) to refuse to handle the matter.

Right of appeal

45. 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

46. 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.
47. 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

**Laura Tomkinson
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SK9 5AF**