



Neutral Citation Number

IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2018/0298

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FER0749214

Dated: 3 December 2018

Appellant: Simon Aldridge

Respondent: Information Commissioner

Additional Party:

Heard at: London

Date of hearing: 17 April 2019

Date of decision: 30 April 2019

Before

Angus Hamilton

Judge

Subject matter: Reg 5 of the Environmental Information Regulations (EIR) and Reg 12(4) of the EIR.

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal dismisses the appeal for the reasons given below.

REASONS FOR DECISION

1. There seems to be no dispute that the Information Commissioner (IC) has correctly set out the chronology in this matter and I have therefore adopted that chronology.
2. The IC correctly makes the preliminary point that the Planning Inspectorate referred to in this appeal is not a public authority in its own right for the purposes of FOIA and the Environmental Information Regulations. It is an executive agency sponsored by the Ministry of Housing Communities and Local Government (MCHLG) and the Welsh Government. These are public authorities. I have however adopted the same approach as the parties in this decision and have referred to the Planning Inspectorate (PI) rather than to the actual public authority.
3. On 10 September 2017 the Appellant wrote to the PI making the following requests in relation to a planning appeal:

"Please may I have a copy of the evidence the Inspector used to determine that occupiers would not use the facilities such as church, school and pub in Moggerahnger [sic] but would most likely travel to larger settlements to use similar facilities.

Also please may I have a copy of the evidence the Inspector used

to determine that the national cycle path to the north of the site would have little effect on the accessibility of the site in terms of its access to local goods and services.

Please may I have a copy of the evidence the Inspector relied upon to determine the appeal site is isolated and that the future occupiers of the development would have limited access to goods, services and public transport links."

4. It should be noted that the Appellant made additional requests at the same time but these did not then go on to form part of this appeal and are not therefore set out here.
5. The PI responded to these requests on 3 October 2017. The PI said that it did hold some evidence on the appeal but that it no longer had the appeal file. It went on to say that Central Bedfordshire Council was required to archive appeal documentation and it should be readily available on their website or on request.
6. The Appellant responded to this correspondence and the PI handled the response as a request for internal review.
7. On 20 October 2017 the PI informed the Appellant of the outcome of its internal review. The PI stated that, contrary to its previous response, it did hold a copy of the evidence submitted in respect of the planning appeal. The PI also set out in some detail how the planning appeal process worked:

"..it may help if I clarify that 'the evidence' taken into account by the Inspector consists of the appeal representations that are supplied by the appellant, local authority and interested parties. These representations are placed on the file by the [PI]'s case officer as submitted, and are also cross copied to the appellant and local

authority on this same basis. The Inspector will consider the information presented in the appeal representations and will, through exercise of their professional planning judgement, reach a decision on the appeal; with their decision notice providing their reasoning for this. The Inspector is not required to further break down the representations to identify the parts that they relied on in reaching individual conclusions - for example - to identify the specific information in the representations that led them to determine that the appeal site is isolated. Instead, should a party consider that the Inspector reached a conclusion that they could not, on the evidence presented, reasonably have reached, then the means to resolve this is through legal challenge to the Inspector's decision.

On this basis, and having reviewed your request, I consider that the response should have asked you to clarify your request so that we had common understanding of the information that you required. In that regard, I confirm that we do hold a copy of the representations submitted on this appeal, and if this is the information that you actually require by your requests then please let me know.

As we do not (outside of the appeal decision) hold a breakdown of how this evidence was relied upon by the Inspector to reach his individual conclusions; if this is how you wish to pursue your request the I confirm that this specific information is not held, and the exception to disclosure in Regulations 12(4)(a) of the (EIR] applies."

8. It should be noted here that although the PI had originally handled the requests under FOIA, it revised this position when it conducted the internal review and considered them to be requests under the EIR. The IC also considered that the information requested, relating to a planning decision, fell squarely within the definition of environmental information at reg. 2(c) EIR. This point is accepted by the PI and the IC. Confusingly, at paragraph 11 in the Appellant's lengthy Grounds of Appeal the Appellant asserts that the IC was wrong to treat his requests as 'an EIR request' but does not in any way explain why the IC was wrong. Having considered the definitions in Reg 2 of the EIR and in the absence of any coherent argument from the Appellant on this point I agree with the IC's and PI's analysis that the Appellant's requests are covered by the EIR and not FOIA.
9. The Appellant did then submit a further information request on 5 March 2018. The PI responded the following day stating that it considered that request was identical to those submitted previously. The IC when considering the matter took the same view and the Appellant does not dispute that analysis. That request is therefore neither set out nor considered in this decision.
10. The Appellant complained to the Commissioner on 23 May 2018 about the PI 's handling of his requests for information. The Appellant requested that the PI provide *'the information requested or confirm that it does not exist'*.
11. After conducting an investigation, the IC issued a Decision Notice dated 3 December 2018. The IC considered whether, on the balance of probabilities, the PI held any further information within the scope of the Appellant's requests. The Commissioner concluded that, on balance, the PI did not hold more information than that already provided to the Appellant's wife.

12. The Appellant then submitted an appeal to the Tribunal dated 28 December 2018. I will turn to the actual Grounds of Appeal later in this decision.

13 Reg 5 of the EIR provides:

.... a public authority that holds environmental information shall make it available on request.

Reg 12(4) of the EIR provides:

*... a public authority may refuse to disclose information to the extent that -
(a)it does not hold that information when an applicant's request is received;*

14. It follows that the requester is not entitled to information which the public authority does not hold. If the public authority does not hold the information, that is an end of the matter. In any dispute over whether a public authority holds the information requested the test to be applied is whether on the balance of probabilities the public authority holds that information.

15. I have read Mr Aldridge's Grounds of Appeal several times now. I do appreciate that he is a litigant in person and I have therefore sought to interpret what he has written as best as I can and to apply the relevant legal principles to his arguments. His Grounds are, however, unnecessarily lengthy and consist almost entirely of theory, speculation and opinion. In a case such as this where there is an argument over whether a public authority actually holds the requested information it would have been far better if the Appellant had identified the information or at least type of information that he says has not been provided and the grounds for believing that the public authority does actually hold this

information.

16. I note that during the course of the IC's investigation both the IC and the PI interpreted the Appellant's request as a request for a document(s) prepared by the Planning Inspector where she or he applied the parties' representations and the relevant legislation to form an initial opinion before producing his or her final decision. This has been referred to by the IC and PI as the 'reasons behind the reasons'. The Appellant has protested that this is an unreasonable misinterpretation of his request but given the rather vague an open-ended nature of his request I sympathise with and understand the IC's and PI's lack of comprehension.
17. My best interpretation of the Appellant's Grounds is as follows:
 - a) A Planning Inspector will not make a capricious or unreasonable decision. If a decision has the appearance of being capricious then this is because it must have been based on an undisclosed document(s).
 - b) A Planning Inspector will not make a decision which is inconsistent with other planning decisions. If a decision has the appearance of being inconsistent then this is because it must have been based on an undisclosed document(s).
 - c) The planning decision in which Mr Aldridge has an interest appears, he asserts, to be capricious and/or inconsistent. Applying the preceding arguments means that the decision must in fact have been based on undisclosed material and cannot actually be (on his analysis) either simply capricious or simply inconsistent.
18. In my view there are fundamental flaws throughout these arguments. The Appellant has not coherently explained why the decision in which he has an interest is capricious or unreasonable or inconsistent. Furthermore,

such matters cannot be matters which this Tribunal could properly determine. If the Appellant has formed the view that the decision he objects to is capricious or inconsistent then, as the PI has advised him, his remedy lies in an appeal against that decision. This Tribunal has no jurisdiction to consider such an appeal.

19. Even if it were the case that the decision troubling Mr Aldridge could be seen as unreasonable or inconsistent, it is not a compelling argument to assert that an Inspector's decision can never be simply unreasonable or inconsistent and that decisions with this appearance must in fact be based on undisclosed documents. It seems to me perfectly possible for an Inspector to reach such a decision without it being indicative of the existence of undisclosed documents. It is for that very reason that such decisions are open to challenge elsewhere.
20. In summary I do not find the Appellant's arguments to be coherent or compelling and they are certainly not a basis upon which I could conclude that, on the balance of probabilities, the PI has information which has not yet been disclosed to Mr & Mrs Aldridge.
21. This appeal is therefore dismissed.

Signed:

Angus Hamilton DJ(MC)

Tribunal Judge

Date: 30 April 2019

Promulgation date: 17 May 2019