

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

**Date:** 25 February 2013

**Public Authority:** West Berkshire Council  
**Address:** Council Offices  
Market Street  
Newbury  
Berkshire  
RG14 5L

**Decision (including any steps ordered)**

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1. The complainant requested information from West Berkshire Council (the council) relating to the decision to approve the demolition and redevelopment of a specified location and the decision-making process that led to its approval. The council provided some information during the course of the Commissioner's investigation but stated that no further information was held.
2. The Commissioner's decision is that, on the balance of probabilities, the council does not hold any further information.
3. The Commissioner does not require any steps to be taken.

**Background to request and response**

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4. On 12 September 2011, the complainant wrote to the council and requested information in the following terms:

*"I would be grateful if you could provide:*

*(1) A copy of, or link to, a signed copy of the Environmental Impact Screening Opinion for application number 10/01928/FULEXT - Demolition and redevelopment of the Priory/Platt Court.*

*(2) A copy of the letter from [named person] of [named company] dated 27th July referred to in the unsigned copy of the screening opinion published on the planning portal:*

*<http://planning.westberks.gov.uk/rpp/ind...>*

*(3) Any other correspondence to/from WBC from any source (applicant/agents/consultees/objectors etc) relating to the requirement or not for an Environmental Impact Assessment Assessment and/or screening opinion.*

*(4) The information 'considered' by [named person] to support his assessment that the proposed development is*

- (a) modest*
- (b) on brownfield land*
- (c) within the settlement boundary,*

*given that the application was presented to committee as a major application, that the applicants acknowledged in their D&A statement that following changes to PPS3 the garden/grounds of the existing buildings could no longer be classified as brownfield, and that the proposed buildings straddle the settlement boundary."*

5. The council responded on 13 September 2011. It refused the request on the grounds that it was vexatious, under the provisions of section 14 of the FOIA.
6. Following an internal review, the council wrote to the complainant on 12 October 2011 maintaining its earlier decision to refuse the request as vexatious.
7. The Commissioner intervened prior to an earlier decision notice regarding this complaint FS50421845<sup>1</sup>, and pointed out that the requested information was likely to be environmental information, and therefore the request should be considered under the provisions of the EIR. The council produced a further response to the complainant on 9 January 2012 which refused the request on the grounds that it was 'manifestly unreasonable', under regulation 12(4)(b) of the EIR. The council stated that it considered the public interest in refusing the request outweighed the public interest in disclosure.

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<sup>1</sup> Found at [http://www.ico.gov.uk/~media/documents/decisionnotices/2012/fs\\_50421845.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2012/fs_50421845.ashx)

8. On 25 January 2012, an internal review confirmed the application of regulation 12(4)(b) but released to the complainant information relating to point 2 of her request. Therefore a paragraph from the requested letter which related to environmental screening was disclosed at that time. The complainant was also advised that the full letter was available to view in the planning file.
9. Subsequently, the entire letter was provided to her on 1 June 2012, after the Commissioner had issued a decision notice (FS50421845) which upheld the complainant's view that the requested information was not 'manifestly unreasonable' and he required the public authority to respond to the request in compliance with the requirements of regulation 5(1) of the EIR. The council also provided at this time the signed copy of the letter from [named person] and the remaining requested information under point 4 was provided.
10. On 22 June 2012, the complainant asked the council whether it intended to provide a response under point 3. The council responded to say that it did not hold any information under point 3. However, the complainant specifically stated that she was aware that,

*"...at least one objector queried the need for an Environmental Statement but that objection letter and the response to it (I believe the regulations dictate that there should have been one) have not been supplied."*

### **Scope of the case**

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11. The complainant contacted the Commissioner on 19 July 2012 to complain about the way her request for information had been handled.
12. The Commissioner considers that the focus of this complaint is whether the council is correct when it says that it does not hold the information the complainant requested in relation to point 3 of the request. He extended the scope of this case to include point 4 of the request, despite the reservations expressed in paragraph 14 below.

### **Reasons for decision**

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#### **Is the information environmental?**

13. Information is environmental if it meets the definition set out in regulation 2 of the EIR. Regulation 2(1)(c) covers any information on plans or activities affecting or likely to affect the elements of the

environment, one of which is land. The requests in this case relate to plans for the demolition of an existing building and its subsequent redevelopment and the Commissioner therefore accepts that the request was correctly handled under the EIR.

### **Regulation 5(1)**

14. Regulation 5(1) provides a general right of access to environmental information held by public authorities. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. He will also consider the actions taken by the authority to check that the information was not held and he will consider if the authority is able to explain why the information was not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held. He is only required to make a judgement on whether the information was held "*on the balance of probabilities*"<sup>2</sup>.
15. When the Commissioner wrote to the complainant on 7 November 2012 he commented on point 4 of the request. The council had provided the complainant with the information from which the named person had derived his assessment. The council also provided links to documents, some of which concerned general planning legislation that may have informed that assessment. The Commissioner stated that it was likely that many different sources, as provided by the council, had gone into the named person's consideration. He stressed that the FOIA is about recorded information. How a named person arrived at a screening opinion, what exactly he consulted and when, was not a matter for the Commissioner.
16. On 20 November 2012, the Commissioner asked the council for its responses to questions about the steps it took to establish the extent of information it holds relating to the requests.
17. On 11 December 2012, the council responded to the Commissioner's detailed questions as follows:
  - The planning files are all held electronically on the EDRMS (the electronic records management system).

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<sup>2</sup> This approach is supported by the Information Tribunal's findings in *Linda Bromley and Others/Environment Agency* (31 August 2007) EA/2006/0072.

- The council detailed how it had looked within the planning files for the development in question. It further explained how it had sought correspondence of a substantive nature concerning the requirement for an Environmental Impact Assessment.
  - Documents were checked individually so no search terms were used.
  - No recorded information relevant to the scope of the complainant's request had been held and deleted/destroyed.
  - Planning documents are retained in perpetuity.
  - The council explained that there is a business purpose and statutory requirement for which the requested information is held as relevant planning law applies.
  - Two of the objection letters contained a brief mention of the environmental impact of the development. The council explained that no response was supplied to either letter beyond the standard acknowledgement because the planning process does not permit the authority to enter into correspondence regarding the content of letters of objection.
  - Although it was the council's view that these two objection letters did not come within the scope of the request, it was prepared to provide them to the complainant and did so on 11 December 2012. The objections had been published on the authority's website during the application process and were considered to have been available to the complainant.
18. The Commissioner asked if there was any further information held by the council (other than that already provided in response to point 4 of the request) that indicated what information the named person had considered in reaching his opinion, such as standard forms or internal supporting documents. The council stressed that senior planning officers constantly make assessments based on their knowledge of planning law, prior appeals and decisions, and on their professional expertise. An assessment of this nature could not be written down in a procedure or a form. The Commissioner had previously expressed a similar view to the complainant regarding how a decision such as this had been arrived at and the fact that the legislation only covered recorded information.
19. The Commissioner also asked the council if it had considered providing the complainant with any advice and assistance regarding the formulation of point 4 of her request. The council considers that the complainant's belief is that the assessment is wrong, and by extension

that the planning decision is wrong. There has been extensive correspondence about this matter and "*considerable advice and assistance*" had been provided regarding both the development and the planning process that related to it. An electronic link was provided that gave the history of the council's involvement with the complainant and the council also stated that it holds a range of emails sent to the council and to external bodies relating to the complainant's view that the planning decision was, as the council describes it, "*unsound*". The Commissioner considers that the complainant has sought to extend what is covered by the EIR legislation for the purpose of questioning procedural issues surrounding a planning decision that are beyond the Commissioner's remit. In any event, the Commissioner is satisfied that the information the council has already disclosed to the applicant in response to point 4 of the request represents the extent of the recorded information held by the council on that matter.

20. For the reasons given above the Commissioner accepts that the council has provided the complainant with everything it holds in relation to this request and that, on the balance of probability, nothing further is held.

## Right of appeal

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21. 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: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

22. 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.
23. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**