Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 February 2016

Public Authority: Bristol City Council
Address: City Hall
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant has requested information which concerns the granting of two planning applications by Bristol City Council under references 14/05573/H and 15/00164/H, and information associated with those applications.

2. The Commissioner's decision is that Bristol City Council is entitled to rely on Regulation 12(4)(b) on the grounds that her request of 15 July 2015 is manifestly unreasonable.

3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 15 July 2015, the complainant wrote to Bristol City Council to ask it to undertake a review its response to a request for information made on 13 March 2015. The complainant identified the information she seeks as:

> "1. Report planning permission ref 15/00164h states it is not necessary for a development of this scale to provide details refuse bin and cycle storage. Please forward me recorded information which ever format form recorded and applicable that any extensions or new developments are subject to the scale size and or number of bedrooms for applicants to provide details refuse bin and cycle storage to their proposal? and any public recorded information requirements that applicants require to provide written or site layout plans to parking space details addressing

inside and or outside area amenities to their refuse and bin cycle usage prior to the authority granting planning permission?

2. Ref 14/05573h Decision notice states that refuse and recycle storage and bicycle storage are on approved plans please send me any recorded information that may have now been provided by the applicant and conform to any bcc recorded information am requesting regarding bcc policies? Please send me copy recorded information you may hold that Bcc will have works monitored and completed in accordance to any recorded details published before the residential extension use of ref 14/05573h? Please also send me recorded information whether bcc require to publish any discharging outside conditions on the planning website in full or may any member of the public request further details to the authority in future as a general query or do they require to make a foi request?"

5. The above request concerns some of the same information which the complainant had requested in another email sent to the same Council on 13 March 2105. That request states –

"Further to my request dated 29 January 2015 You have not replied appropriately to my foi request i.e. Please now confirm were c2 conditions regarding site plans assessed in line with new c2 conditions introduced November, 2014 regarding delegates assessment to parking amenities and refuse storage applications ref 14/05573/h and 15/00164/h in [a specified location] regarding their similar design extension project plans for their front porches canopies protruding with and on the ground front storey extension and that now would effect parking amenities spaces to drives i.e. would they require additional on street parking when the developments are completed? Please also confirm my official fair comment complaint number with fair comment team [a named person] holds on his account? and as concerns have escalated and require further responses that my fair comment case with Development management regarding planning matters i.e. remains open? If not Please forward response confirming the position number and complaint stage of my case."

6. The complainant wrote to the Council again on 5 August. She asked the Council to confirm its receipt of her request for internal review.

7. The Council responded to the complainant's request on 6 August 2015. The Council informed the complainant that it considers her request to be vexatious and unreasonable and in consequence of this it had applied Regulation 12(4)(b) to it. The Council stated that:

"The request largely repeats issues previously raised. The primary purpose of the requests is to sustain a dialogue between yourself and

the Authority by requiring officers to provide opinion and enter into protracted discussion about policy and service delivery which purpose falls outside of the terms of reference of the FOIA and EIR. The number and frequency of requests require disproportionate amount of staff time to be spent in dealing with the requests, leading to an unjustified level of disruption to the service. You have previously been directed to the planning website for the availability of planning information.

As has been stated previously through similar requests, the fact that you have, in relation to both this matter and on other previous planning applications in your street, sent numerous requests to the Council upon learning that permission has been granted is indicative of the fact that you will not accept any development within the vicinity of your property. Sending a high volume of requests in relation to planning officers post-decision is not the appropriate mechanism of appeal and we will not be responding to any further requests in relation to these planning applications."

Scope of the case

8. The complainant contacted the Commissioner 14 August 2015 to complain about the way her request for information had been handled.

9. The complainant was particularly concerned about the loss of parking spaces on the road where she lives.

10. The Commissioner has noted the complainants concerns and has investigated whether the Council is entitled to apply Regulation 12(4)(b) to her request of 15 July 2015.

Reasons for decision

Regulation 12(4)(b) – where the request is manifestly unreasonable

11. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.

12. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable.

13. A request can be manifestly unreasonable for two reasons: Firstly if it is vexatious and secondly where the public authority would incur

unreasonable costs or where there would be an unreasonable diversion of resources.

14. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of *The Information Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011).* In the Dransfield case the Tribunal concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of formal procedure." The Tribunal identified four factors likely to be relevant in vexatious requests:

    - The burden imposed by the request on the public authority and its staff
    - The motive of the requestor
    - Harassment or distress caused to staff
    - The value or serious purpose of the request.

15. The Upper Tribunal's decision established the concepts of "proportionality" and "justification" as being central to any consideration of whether a request for information is vexatious.

16. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

17. In this case the Council asserts that the primary purpose of the complainant's requests is to sustain a dialogue with the Council about its policy, procedure and service delivery in a matter which concerns planning and enforcement matters.

The Council's representations

18. The Council has provided the Commissioner with information concerning its past dealings with the complainant and with representations in support its application of regulation 12(4)(b) to her request of 15 July 2015.

19. The Council points out that the planning applications of concern to the complainant relate to properties which are adjacent to her own address. Those applications have been dealt with under the Council's existing

planning system which, as the Council asserts, is open and transparent. This being the case, the Council considers that the complainant's request serves no wider public interest.

20. The Council advised the Commissioner that the complainant has had on-going issues with new developments in her street for a number of years and it draws the Commissioner's attention to correspondence dating back to 1999.

21. The complainant has used her correspondence to submit planning objections after the period for doing so has passed and she has generated a number of complaints which have needed to be considered internally by the Council and externally by the Local Government Ombudsman ("the LGO").

22. The complaint has taken her complaints to the LGO who has found no maladministration on the Council's part.

23. Having exhausted the Council's complaints procedure, and in addition to making numerous objections to planning applications, the complainant has submitted over 22 requests for information to the Council between 5 November 2014 and 13 August 2015.

24. In respect of planning application 14/03959, the complainant has submitted numerous objections during the planning process itself. Once the time for making objections had passed, the complainant began making requests for information, commencing on or around 5 November 2014. The Council considers that this represents an attempt to 'circumnavigate' the planning process in an effort to continue her objections to any planning developments in the vicinity of her own property.

25. The complainant's behaviour is, in the opinion of the Council, a personal campaign about any development in her road.

26. The number of emails generated or received solely by the Council's Legal Department number around 335, and they relate to around 82 complaints.

27. For each of the complainant's emails around 10 minutes, on average, of officer time has been required to read, respond to or otherwise action. This has resulted in around 70 hours of officer time being spent on matters relating to the complainant.

28. This 70 hours estimate does not account for the time spent by officers in the planning department. It is believed that these officers would have spent an equal or greater amount of time in dealing with the complainant's numerous requests.

29. To support its position, the Council has provided the Commissioner with:

- Emails held by its Legal Services
- Emails and correspondence held by its Customer Services
- Emails and documents held by its Planning Department

30. The Council has advised the Commissioner that it once held more correspondence from the complainant than that which it has provided. This correspondence has been deleted on the grounds that it was of no further value to the Council to retain it.

31. The Council informed the Commissioner that it holds recorded information within the scope of the complainant's request and it insists that this has been provided to the complainant through the provision of links to the various planning applications on its planning portal.

32. The Council points out that many of the matters raised by the complainant are not requests for recorded information. Rather they are requests for opinion and explanation rather than for information held in recorded form.

33. The Council further points out that its planning officers record their findings in the planning officer's reports: These are accessible online. However officers have gone beyond their remit and have engaged with the complainant over some of the matters she has raised by treating them as service delivery issues. Nevertheless that information is not generally held as recorded information and the officers have been able to provide 'answers' only through their knowledge and experience.

34. In respect of application 14/03959/H, the complainant has recorded at least 31 comments. These comments, together with those made by other individuals, were considered during the planning process. The officer's report for this application is online, as is the officer's report for 14/05573/H[1].

35. All the information relating to the planning applications was available on the Council's planning portal. The Council has provided the complainant with links to that information.

[1] http://planningonline.bristol.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=NETTP1DNMRC00

36. The information has included a copy of the officer's report, which discussed:

- the issues raised by the application
- what policies apply and how the case does or doesn't meet the policy
- and other documents for each planning case
- planning policy documents are all available online either from the Council itself BCC or from the Gov.uk website.

37. The requestor has previously been made aware of this. The officer report for 14/03959/H lists the policies which are relevant to the application. These are

- National Planning Policy Framework – March 2012 https://www.gov.uk/government/publications/national-planning-policy-framework--2
- Bristol Core Strategy (Adopted June 2011) https://www.bristol.gov.uk/c/portal/layout?p_l_id=216794
- BCS21 Quality Urban Design
- Bristol Site Allocations and Development Management Policies (Adopted July 2014) https://www.bristol.gov.uk/c/portal/layout?p_l_id=216794
- DM26 Local character and distinctiveness
- DM27 Layout and form
- DM28 Public realm
- DM29 Design of new buildings
- DM30 Alterations to existing buildings
  - SPD2 A Guide for Designing House Alterations and Extensions (October 2005) https://www.bristol.gov.uk/c/portal/layout?p_l_id=216902

The Commissioner's considerations

38. The Commissioner has considered the Council's representations in respect of its application of Regulation 12(4)(b) and also the documentation it has provided in support of its position.

39. He has noted the number, frequency and focus of the complainant's requests.

40. The Commissioner agrees with the Council that the complainant's requests have passed the point where they have become burdensome to the Council and he too finds that their requests represent a disproportionate use of the Council's resources.

41. It is apparent to the Commissioner that the Council is likely to be correct in its belief that the complainant is using the provisions of the EIR to sustain a dialogue with the Council in a matter which has been properly dealt with during the formal planning process.

42. The Commissioner agrees with the Council that the information sought by the complainant is of very limited interest to the wider public, particularly since planning matters are available to the public via the Council's planning portal.

43. For these reasons, the Commissioner considers that the complainant's requests have now passed the point where it is plainly unreasonable for the Council to continue to respond to them. Consequently the Commissioner is drawn to conclude that Regulation 12(4)(b) is engaged in respect of the request of 13 March 2015.

The public interest test

44. The Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in responding to the complainants' requests of 13 March 2015.

45. The Commissioner will always give weight to factors which favour the disclosure of information which would increase the public's understanding of the actions taken by a public authority and of the processes by which it makes its decisions. Such disclosure of information increases transparency and provides accountability of public authorities.

46. In this case the Commissioner is satisfied that the planning and enforcement issues associated with the complainant's request have been extensively considered by the Council as part of an open and transparent planning process. He is satisfied that the public interest in these planning matters has been served through the provision of information on the Council's planning portal.

47. Likewise, the Commissioner agrees with the Council that, the information sought by the complainant is either not held or is already available to the public online.

48. In the Commissioner's opinion the Council appears to have endeavoured to assist the complainant in her understanding of its actions through the provision of information and by its consideration of her many complaints.

49. The point has been passed where officers within the Council must be allowed to focus on their primary role of delivering the Council's planning service. It is important for the Council, particularly those of its planning department, to focus on its core business activities without a

continuous stream of requests. These requests are often received before officers have been able to answer previous requests. The Commissioner recognises that this has been a source of stress to officers.

50. The Council has assured the Commissioner that it has never sought to withhold any of the information which the complainant has requested: That information has always been in the public domain.

51. In this case the evidence suggests that the complainant has used Council's processes to maintain a dialogue with planning officers over a sustained period in respect of planning developments in her road.

52. In the Commissioner's opinion there is little or no public value to be had by asking the Council to spend further time or expense in responding to the complainants' requests. He agrees with the Council that by responding to further requests regarding these planning applications is unlikely to satisfy the complainant's on-going scrutiny of the Council's actions or assist with her understanding of these.

53. The Commissioner agrees with the Council's assessment of the narrow public interest associated with the information sought by the complainant. He must be mindful of the disproportionate effects of the complainant's requests on the Council's resources; particularly at a time when resources are particularly stretched and consequently he must give greatest weight to the public interest in upholding the Council's position.

54. Having considered the cumulative weight of the above factors, the Commissioner finds that the public interest lies in favour of the Council's position: The Commissioner has therefore decided that the Council has properly applied Regulation 12(4)(b).

Right of appeal

55. 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@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.

57. 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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