

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

Decision notice

Date: 16 June 2016

Public Authority: Craven District Council
Address: 1 Belle Vue Square
Skipton
North Yorkshire
BD23 1FJ

Decision (including any steps ordered)

1. The complainant has requested information from Craven District Council which concerns Planning Application 63/2015/15792, for a mixed use development with access from the A629 and Carleton Road, Skipton. The complainant is particularly concerned about the extent of the direct consultation exercise which the Council carried out in respect of this application.
2. The Commissioner's decision is that Craven District Council has complied with regulation 5(1) of the EIR.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 17 December 2015, the complainant wrote to Craven District Council and requested information in the following terms:

"Under the terms of a Freedom of Information Act Request please provide details of the 109 households referred to in your letter and include details of the selection criteria, what actual consultation took place and add reference to why all households affected were not included."

And:

"As a wider Freedom of Information Request please supply a copy of all documentation in relation to the planning application and approval for Wyvern Park including details of all of the consultation undertaken, impact assessments, highways assessments and any other item relevant to the application."

5. The Council responded to the complainant's request on 15 January 2016 using the following itemised list:
 1. Details of the 109 households referred to the Council's letter dated 15 December 2015.
 2. Details of the selection criteria for neighbour notification.
 3. Details of the actual consultation that took place and why all households affected were not notified.
 4. The name of the developer as this may have changed to RN Wooller.
 5. A copy of all documentation in relation to the planning application, including details of consultations, impact assessments, highway assessments, and any other relevant information.
6. The Council advised the complainant that the information he seeks at bullet points 1 and 5 is already wholly within the public domain and therefore subject to an application of Section 21 of the FOIA.
7. The Council directed the complainant to its 'Open Access Database'¹ where details of all previous planning applications can be found. The Council also advised the complainant that there 'is no specific criteria' for neighbour consultation (bullet point 2). Instead, regard would have been given to the legal requirements of Article 15 of the Development Management Procedure Order 2015: In this case, neighbour notification letters were sent to those properties which were considered to be closest and most affected by the development.
8. With respect to bullet point 3, the Council informed the complainant that the information is already in the public domain and can be obtained on the District Council's Open Access Database where he can inspect the planning file.
9. Additionally, the Council advised the complainant that the case officer took a view on the appropriate properties to directly notify of the

¹ <http://www.planning.cravendc.gov.uk/fastweb/welcome.asp>

development and that five site notices were posted in the local area and a press notice appeared within the Craven Herald.

10. With respect to bullet point 4, the Council advised the complainant that it does not hold any information that the name of the developer is now RN Wooler. Rather, it informed him that the application forms for planning ref. 63/2015/15792 indicate the applicant is Henry Boot Development Ltd.
11. On 16 January, the complainant wrote to the Council and asked it to conduct an internal review. The complainant asserted that no information had been supplied with regard to bullet point one and bullet point two does not contain all of the requested information. The answer to bullet three does not provide all of the documentary evidence collected during the consultation period and the information requested at bullet point five has not been provided.
12. The complainant did however accept the Council's response to bullet point four.
13. The Council completed its internal review and wrote to the complainant on 25 January 2016 to inform him of its final decision. The Council determined that its response of 15 January fully addressed the complainant's request for information and that it was provided within the 20 working days required by the FOIA. In the event that the complainant may have had difficulty in accessing the information on the Council's Open Access Database, the Council provided the following website address:

<http://www.planning.cravencdc.gov.uk/fastweb/fulldetail.asp?AltRef=63/2015/15792&ApplicationNumber=15792&AddressPrefix=&submit1=Go>

Scope of the case

14. The complainant contacted the Commissioner on 7 February 2016 to complain about the way his request for information had been handled.
15. The Commissioner contacted the complainant by telephone on 27 May to discuss his complaint. The complainant advised the Commissioner that he considers the Council has not provided him with all of the information he seeks, in particular, it has failed to supply him with the criteria used by the Council to determine who should be consulted in respect of this particular planning application. The complainant asserted that the Council must hold information which records how it made this determination.

16. In view of the complainant's assertions, the Commissioner focussed his investigation on whether the Council holds further recorded information, which falls within the scope of the complainant's request which it has not disclosed to him or made available via its planning Open Access Database.

Reasons for decision

17. Regulation 2(1) of the EIR defines what constitutes 'environmental information'. Subsections (a) to (c) state –

'(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 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) and (b) as well as measures or activities designed to protect those elements.'

18. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
19. The Commissioner has considered the nature of the information sought by the complainant. He notes that the information relates to a planning application. In the Commissioner's opinion the information falls to be considered under the Environmental Information Regulations 2004.

Duty to make environmental information available on request

20. Regulation 5(1) of the EIR states that –

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

21. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds further information which falls within the scope of the complainant's request, which has not been disclosed to him

directly or made available to the public on the Council's planning portal. The Commissioner makes this determination by applying the civil test of the balance of probabilities which is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

22. The Commissioner articulated the complainant's concerns to the Council as: '[The complainant] considers that the Council has not provided him with all of the information he seeks. He is particularly concerned about the Council's failure to supply him with the criteria used by the Council to determine who should be consulted in respect of this particular proposed development. [The complainant] asserts that the Council must hold information which records how it made this determination.'
23. The Commissioner investigated the complainant's complaint by asking the Council a number of questions about the searches it has made to locate the information sought by the complainant and questions about its possible deletion/destruction.
24. The Council has responded to the Commissioner's enquiries by confirming that the requested information, where it is held has been provided to the complainant or made available to the public via its Open Access Database.
25. Many of the questions asked by the Commissioner could not be answered by the Council on the basis that it has either disclosed to the complainant all of the information it holds relevant to his request information is available to him on the Council's Open Access Database.
26. The Council has given a firm assurance to the Commissioner that it is not withholding from the complainant any recorded information it holds.
27. In addition to this assurance, the Council advised the Commissioner that there are no specific selection criteria used by Craven District Council for determining who should be directly consulted in respect of proposed developments. The Council made clear to the Commissioner that regard is given to the requirements of Article 15 of the Development Management Procedure Order 2015, and neighbour notification letters were sent to those properties which the case officer considered to be closest and most affected by the development.
28. The Council explained that it does not have a separate policy for these matters; instead it relies on the requirements of the legislation in the relevant Order which is available to the public at:

<http://www.legislation.gov.uk/uksi/2015/595/article/15/made>

29. The Commissioner asked the Council whether the officer responsible for the consultation exercise holds any record of how he/she made the determination of which addresses should be consulted. The Council again assured the Commissioner that no record is held.
30. In view of the Council's representations and the assurances it has been able to give him, the Commissioner has decided that, on the balance of probabilities, the Council has disclosed to the complainant all of the recorded information it holds, either directly or through its publication on its Open Access Database.
31. The Commissioner's decision is that the Council has complied with Regulation 5(1) of the EIR.

Right of appeal

32. 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

33. 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.
34. 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
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