

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 28 November 2017

Public Authority: Guilford Borough Council

Address: Millmead House
Millmead
Guilford
Surrey GU2 4BB

Decision (including any steps ordered)

1. The complainant has requested information held by Guilford Borough Council (the council) relating to the Local Plan and route options for access to a proposed development.
2. The council provided the complainant with some detail about the relevant route options. However, it withheld the majority of the information it had identified as being relevant to the request under regulation 12(4)(d) (material still in the course of completion), regulation 12(5)(e) (confidentiality of commercial or industrial information) and regulation 12(5)(f) (interests of the person who provided the information).
3. The Commissioner's decision is that the council has correctly applied regulation 12(4)(d) of the EIR to all the withheld information and the public interest favours maintaining the exception in this instance.
4. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

5. On 7 February 2017 the complainant wrote to the council and requested information in the following terms:

"I have been told by a Surrey (County Council) officer that the University has provided commentary on route options for access to the Blackwell Farm site. Presumably, it is this commentary which informed

the decision to have a signalised junction at Down Place in the last draft of the Local Plan. It is this commentary that I would like to be sent to me. It should be held by both GBC [Guilford Borough Council] officers and councillors, who were involved in putting forward the proposals for the Reg 19 draft of the Local Plan."

6. The council responded on 2 March 2017. It provided some information to the complainant. However, it advised further information relevant to the request was to be withheld under regulation 12(4)(d), regulation 12(5)(e) and regulation 12(5)(f) of the EIR. The council confirmed that it had carried out public interest tests in relation to the application of each exception but had concluded that the balance of public interest lay in withholding the information.
7. The council also informed the complainant that as the public interest test is only relevant to the circumstances prevailing at the time that the request for information was received, the circumstances may favour a different conclusion at a future date.
8. On 6 March 2017 the complainant contacted the council to express her dissatisfaction with its response and requested an internal review.
9. Following an internal review the council wrote to the complainant on 24 March 2017.
10. The council advised that it had reviewed all the relevant information and upheld the original decision to refuse to release certain information relevant to the request. It went on to explain further its reasoning for the application of regulation 12(4)(d), regulation 12(5)(e) and regulation 12(5)(f) of the EIR to the information that had been withheld.
11. Upon reconsideration of the case after the Commissioner's intervention, the council advised it had become aware that one set of information that had been previously been withheld in response to the complainant's request was available on the University's website. It therefore provided the complainant with a link to this information.
12. The council then went on to provide the Commissioner with the remaining items of information that had been withheld.
13. The Commissioner considers that a very small amount of the bundle of information that the council provided for her consideration is not directly relevant to the request. This is because it does not appear to form part of the commentary on route options for access to the Blackwell Farm site but rather relates to the overall proposals for the site. However, it appears to be the case that each of the items presented by the council do, in the main, still contain information that falls within the scope of the request.

14. When considering the withheld information, the Commissioner also identified references to an additional record which it appeared might be relevant to the request. The council subsequently provided this information to the Commissioner but advised that it did not believe that it did fall within the scope of the request.
15. The Commissioner is satisfied that a limited amount of the information contained within the additional record would fall within the scope of the request. As a result, she asked the council to reconsider its position in relation to this particular information.
16. The Council has now confirmed to the Commissioner that, if the additional information does fall within the scope of the request, it should not be disclosed as it believes regulation 12(4)(d), 12(5)(e) and 12(5)(f) to be engaged.

Scope of the case

17. The complainant contacted the Commissioner on 4 April 2017 to complain about the way her request for information had been handled.
18. The Commissioner has focussed the investigation on whether the council correctly applied regulation 12(4)(d) to the request. If found to be necessary, the Commissioner has been prepared to then consider the council's application of regulation 12(5)(e) and 12(5)(f) to any remaining parts of the request.

Background

19. The council has explained to the Commissioner that, as the Local Planning Authority (LPA), it is responsible for the preparation of a new Local Plan for the Guilford borough. This Local Plan sets out the plan for the future development of the Guilford area and will guide the council's decisions on whether to approve planning applications.
20. The council states that the University of Surrey (University) controls the site at Blackwell Farm and has promoted it to the council as a potential site for urban extension. The council goes on to say that, as the LPA, it set out varying proposals for the Blackwell Farm site as a potential site for development in its draft versions of the new Local Plan published for consultation in 2014, 2016 and 2017.
21. Whilst the council informed the complainant that it was to withhold information in response to her request of 7 February 2017, it did provide some explanation of the proposed access route to the Blackwell Farm site set out in the 2016 draft Local Plan.

22. The council advised the complainant that it had discussed with the University options for a junction with the A31 road which would provide vehicular access to the Blackwell Farm site.
23. The council went on to say that in the period up to March 2016, the University proposed ideas of which a roundabout was its preferred option. It provided details to the complainant about where the roundabout would be situated and how it would link up to the site.
24. The council also advised that details were contained within the 2014 draft Local Plan about the junction arrangements being considered at that time. It went on to say that the 2016 draft Local Plan then set out some changes to the proposals for development of the Blackwell Farm site. It explained that it included provision of access to the site via the existing or a realigned junction of the A31 and the Down Place access road, with the junction being signalised. The council advised that these decisions recognised the Green Belt and landscape sensitivity of the southern part of the site.
25. The council also provided the complainant with a sketch drawing which had been provided by the University in March 2016. This showed the option for the provision of vehicular access to the Blackwell Farm site which was represented in the details contained in the 2016 draft Local Plan.
26. The Commissioner understands that the Local Plan process requires the LPA to comply with various statute, policies and relevant framework guidance and that these contain various provision for the disclosure of certain information to the public throughout the process.
27. The Town and Country Planning (Local Planning) (England) Regulations 2012 (the TCPR) appear to be particularly pertinent to the issues relating to this case, setting out a number of requirements in relation to the publication of information at various stages of the Local Plan process.
28. Regulation 19 and Regulation 20 of the TCPR concern the public consultation process and make provision for the local community, businesses and other interested parties to view and comment on the draft Local Plan.
29. An updated draft of the Local Plan is submitted in accordance with Regulation 22 of the TCPR to the Secretary of State for examination. Included with this is a summary of the main issues raised by the representations and the LPA's comments on this. The information which has been submitted to the Secretary of State must also be made publicly available 'as soon as reasonably practicable'.

30. The Secretary of State will appoint an independent Planning Inspector to undertake a 'public examination' of the draft Local Plan. The Inspector can recommend 'main modifications' (changes that materially affect the policies) to make a submitted Local Plan sound and legally compliant but only if asked to do so by the local planning authority. The latter can also put forward 'additional modifications' of its own to deal with more minor matters.
31. Anyone seeking to change a published Local Plan must be given the opportunity of attending a hearing to put forward their views. Consideration is given to the information provided by both the LPA and the representatives at the hearing and the Inspector may request further details, if required.
32. The Inspector's report on the plan will only be issued once the LPA has consulted on the main modifications and the Inspector has had the opportunity to consider the representations on these.
33. Once the examination process is complete, adoption is the final stage of putting a Local Plan in place. On adopting a Local Plan, the local planning authority will then make a copy of the plan, an adoption statement and Sustainability Appraisal available to the public.

Reasons for decision

Regulation 12(4)(d)

34. Regulation 12(4)(d) states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents, or to incomplete data. The Commissioner has published guidance in this exception which, for ease of reference, may be accessed here:

<https://ico.org.uk/media/for-organisations/documents/1637/eir-material-in-the-course-of-completion.pdf>
35. The exception sets out three distinct categories and the information must fall within one of these for the exception to be engaged. The first category is that the information relates to material which is in the course of completion. The 'material' in question may be a final policy document that is to be produced later. Therefore, although the requested information may be contained in a document which is, in itself, complete, if that document is intended to inform a policy process that is still ongoing, the information may attract the exception.

36. The interpretation of unfinished documents is more straight forward. A document will be unfinished if the public authority is still working on it at the time the request is received. Furthermore, a draft version of a document will remain an unfinished document even once a final, finished version of that document has been produced.
37. Incomplete data is data that a public authority is still collecting at the time of the request. Data that is being used or relied upon at the time of the request is not incomplete, even if it may be modified later.
38. The council has applied regulation 12(4)(d) to each item of information that has been withheld stating that it is material that is still in the course of completion. With regards to item 4, the council has taken the view that, in addition, some of the information is incomplete data.
39. The council has referred to the information being part of work that is in progress and which has not yet reached conclusion. It considers that the information within these documents is likely to be revised and refined by the University and its consultants for use as either part of a representation to the present public consultation on the Draft Local Plan, a representation to a future 'Examination in Public' of the emerging Draft Local Plan, or more likely, as evidence submitted to a future part of a planning application for the Blackwell Farm site.
40. The council also states that the proposal for the junction was 'live' at the time of the request and that this was still the case at the time of its response to the Commissioner in June 2017.
41. The council has also referred the Commissioner to a previous decision notice (FER0594317) which was issued on 23 March 2016. This related to a previous request made to the council by a third party for information held relating to the Local Plan.
42. Whilst the Commissioner notes that the circumstances of the two cases are not directly the same, as the request considered under decision notice FER0594317 was submitted at a much earlier date and was for different information, she did accept that there were some relevant similarities.
43. Given this, the Commissioner was of the view that there may be some benefit in providing the details of the previous decision to the complainant and forwarded a copy of the relevant decision notice for her information.
44. In response, the complainant advised that she wanted to submit further representations via a third party (representative) and these have been taken into consideration by the Commissioner before coming to a final decision on matters.

45. The representative believes that the two requests are so significantly different that the final outcome should not be the same.
46. They state that the information that had been requested in the previous case related to the draft Local Plan 'in preparation' which was circulated for consultation by the council in 2014. They go on to say that, at the time of that request, details were capable of being amended as it was at a stage prior to the council's formal 'Regulation 19' Local Plan.
47. The representative has argued that the circumstances in this case are significantly different because the council issued the Regulation 19 version of its Local Plan for consultation in June/July 2016 and submitted it to the Secretary of State in September 2016. The representative states that the council then 'unusually' took the step to have a further Regulation 19 consultation in June/July 2017.
48. The representative goes on to say that the Local Plan, with proposed revisions and the latest consultation responses, is to be added to the information that was submitted to the Secretary of State in 2016.
49. The representative therefore suggests that the 'Submitted Plan' will now only be changed if the Inspector considers that modifications are needed. They argue that, even then, the Inspector is only able to require changes to achieve 'soundness' and these would need to be quite significant changes, rather than minor amendments. The representative has suggested that, given this, the current 2017 Local Plan is even more final than the 2016 version previously submitted to the Secretary of State for Examination and therefore the position of this case is significantly different to that considered under decision notice FER0594317.
50. In addition, the representative has stated that the information requested does not form part of the Evidence base for the 'Submission Local Plan'. Therefore, the council cannot argue that the period of the formulation of ideas is still in progress.
51. As a result, the representative proposes that the information requested is no longer a 'work in progress' and therefore it cannot be regarded to be material in the course of completion so far as the council is concerned.

The Commissioner's position

52. The council has argued in support of its application of regulation 12(4)(d) that the relevant information is likely to be revised and refined by the University, and its consultants, for use as evidence submitted to a future part of a planning application for the Blackwell Farm site.

53. The Commissioner appreciates that planning applications will be submitted after the Local Plan is adopted and that there is the possibility, as suggested by the council, that the information that has been withheld may be used and developed by the University as part of that process. However, the Commissioner does not regard this to be a relevant argument when withholding information under regulation 12(4)(d) in response to the request under consideration.
54. This is because the Commissioner views the subsequent submission of planning applications to be a separate process to the adoption of the Local Plan. The information that has been requested is currently held by the council for the purpose of the formulation of the Local Plan and it has been requested in this context. The potential use of the information requested for future planning applications submitted by the University is therefore not considered to be relevant to this request.
55. However, the Commissioner does regard the council's argument relating to the position of the Local Plan process at the time of the request to be of some relevance when considering whether the information that has been withheld is 'material in the course of completion'.
56. The complainant's representative has suggested that the Local Plan has already been formally submitted to the Secretary of State for examination (in September 2016) and that any changes which arise from any further consultations would amount only to a submission of additional information.
57. However, this does not appear to concur with the other information that has been made available regarding the timeline of the Local Plan process to date. This includes the details set out in the Local Plan timetable currently published on the council's website¹ which are as follows;
- June/July 2016-pre submission publication and consultations (six weeks)(Regulation 19 of the TCPR)
 - August 2016-May 2017- Analysis of representations and other evidence base gathering, including testing of development distribution options, draft the plan, sustainability appraisal and governance processes.
 - June –July 2017 -Further targeted pre submission public consultation (six weeks) (Regulation 19 of the TCPR).
 - December 2017-Submission to the planning inspectorate for examination (Regulation 22 of the TCPR).

¹<http://www.guildford.gov.uk/newlocalplan/CHttpHandler.ashx?id=19953&p=0>

- February 2018 -Pre examination meeting.
 - April 2018-Examination in public-hearings (Regulation 24 of the TCPR).
 - December 2018-Anticipated adoption (Regulation 26 of the TCPR).
58. The information published on the council's website does not include details of any formal submission of the Local Plan to the Secretary of State in, or around, September 2016 as indicated by the representative. It does, however, confirm the intention to submit the Local Plan in December 2017.
59. The Commissioner also notes that the media² reported that the Local Plan was due for submission in December last year but this was postponed because the council needed additional time to consider the large number of responses it had received from the pre submission publication and consultation which had taken place in June/July 2016.
60. In any event, the Commissioner has concluded that, even if it is the case that there were submissions to the Secretary of State in 2016 as described by the complainant, she is of the view that the Local Plan process was not complete at the time the request was received, and it is still not complete.
61. The Commissioner views it to be of some relevance that, at the time the request was received by the council in February 2017, a '*further targeted pre submission public consultation*' under Regulation 19 of the TCPR was not due until June /July 2017. At the time that the council provided its response to the Commissioner (on 29 June 2017), this consultation was still ongoing.

It would appear that, at present, the 2017 draft Local Plan is due for submission to the Secretary of State in December 2017, and it is anticipated that it will be adopted by December 2018.

62. The Commissioner is satisfied that, at the time that the request was made, both minor, and major, amendments could still be made to the Local Plan. Having considered the various stages of the Local Plan process as set out in the 'Background' of this decision notice, it appears that this continues to be the case until that point in time when it is adopted.

²<http://www.getsurrey.co.uk/news/surrey-news/guildford-local-plan-submitted-planning-12635109>

63. Given the above, the Commissioner regards the Local Plan to be a work that is in progress which has not yet reached conclusion and she therefore regards regulation 12(4)(d) to be relevant in this instance.
64. The representative refers to that part of the Commissioner's guidance on regulation 12(4)(d) which states that if a public authority has not completed a piece of work, then this does not necessarily mean that all the information the authority holds in relation to this will be automatically covered by regulation 12(4)(d).
65. The representative argues that if the Commissioner concludes that it is still possible to change the Local Plan and therefore regulation 12(4)(d) is of relevance, then this part of our guidance 'comes into play'.
66. The Commissioner accepts that this is an important factor to consider. However, she is satisfied that, in this instance, the information in question is covered by the exception.
67. The Commissioner's guidance on regulation 12(4)(d) states that:

"The fact that the exception refers to both material in the course of completion and unfinished documents implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion."
68. The information requested provides detail and background to support the University's proposals for route access to the Blackwell Farm site. The Commissioner regards this information held by the council to form part of a broader, ongoing and incomplete process.
69. It is important to note that, at the time of the request, the revised 2017 Local Plan had not yet been made available for public consultation (under regulation 19 of the TCPR) and this did not occur until June 2017.
70. The Commissioner has also taken into account the fact that the Local Plan, once submitted to the Secretary of State, may still not be accepted or modifications may be required.
71. The Commissioner takes the view that the University has had a role in shaping the Local Plan which she considers to be an evolving process that is subject to change up to the final point of its adoption. Indeed, this has already been shown by the fact that the council has had what appears to have been four public consultations and at least three draft versions of the Local Plan published to date. The original plans for the Blackwell Farm site and its vehicular access have also changed over this time.

72. Having taken all relevant factors into account, the Commissioner is satisfied that the information that has been withheld relevant to the request forms part of 'material still in the course of completion' and that the exception under regulation 12(4)(d) is engaged.
73. The Commissioner would finally add that with regard to one item of information that was withheld, the council had advised that this contained both material that is still in the course of completion and incomplete data. However, it does not appear to have been specific about what information it regarded to be incomplete data.
74. This information contained within the item in question consists of emails between the council and the University's representatives about the route access options which had been proposed at that time. It also includes a basic hand drawn map which provides an answer to a question that the council raised and therefore, in the Commissioner's view, cannot be deemed to be incomplete data.
75. Whilst the Commissioner has had some difficulty establishing what the council believes to be incomplete information, given that she is satisfied that all the information contained within the item in question forms material that is in the course of completion, the council was not asked to provide further detail in relation to this point.
76. Given that the Commissioner is satisfied that Regulation 12(4)(d) is relevant to all the information that has been withheld, she has not gone on to consider the council's application of Regulation 12(5)(e) and 12(5)(f) in this instance.
77. The Commissioner has therefore gone on to consider the public interest test in relation to the application of Regulation 12(4)(d).

Public interest in disclosing the information

78. The complainant and their representative have put forward a number of arguments as to why they believe it is in the public interest for the relevant information to be disclosed.
79. Firstly, they have referred to the environmental impact that the preferred option for vehicular route access to the Blackwell Farm site may have.
80. They state that it is within an area of outstanding natural beauty and that this has been selected over other potential access routes. This route may also have an effect on what may soon be deemed to be an air quality management area which is close by.

81. In addition, the complainant and her representative argue that the current preferred route option may not be economically viable, or the optimum solution. They suggest it may be inadequate for the volume of traffic, it may cause congestion and affect the safety of pedestrians, cyclists and drivers.
82. The complainant also states that she is concerned that the site access has changed on a number of occasions throughout the process and that this does not inspire confidence that the issue has been given proper consideration.
83. The complainant and her representative have also voiced concern that the council, in withholding the requested information, may be protecting the interests of the University, potentially at the expense of the wider community. They argue that if the preferred route access option is the optimum solution and there are no problems with its proposal, then the disclosure of this information should not have any bearing on the council's decision to include this within the Local Plan and will improve public confidence in the decision making process. However, if any problems have been already been identified, or it is not the optimum solution, then it is important for this to be known so that the Inspector is made aware of this and is able to take this into consideration.
84. It is also argued that it is not unreasonable for the public to be allowed to see those documents which have informed the council's Local Plan decision making. There should be scope for independent review of the claimed highways benefits and road geometry and there should also be assessment of the environmental impacts of the road access.
85. The complainant and her representative suggest that the council may have refused the request in order to 'play for time'. They are concerned that the information will be provided at the last moment of the examination and possibly only when requested to do so by the Inspector. They go on to suggest that if this occurs, there would be insufficient time for the details to be scrutinised and they state that they believe that there would be no 'environmental justice'.
86. The complainant also argues that if interested parties engage in their own work and research to assess the viability and impact of the current preferred route option, this may incur some expense which could potentially be avoided if they have access to the University's commentary.
87. In the event that it is proposed that the council and its 'partner' need a 'safe space', the representative states that whilst this has some relevance in certain circumstances, and may indeed have been pertinent to the case considered under decision notice FER0594317, they do not

believe it to be a viable argument in this case. This is because they regard the consideration of route options to now be complete with the council choosing what it believes to be the best one. Given this, there should be no reason to withhold the information which details the options which were considered, and how the preferred option was selected.

Public interest in maintaining the exception

88. The council has acknowledged that the disclosure of the information may give the public a perception of transparency and greater awareness.
89. However, it states that it would like to encourage landowners and potential developers, including the University, who are proposing sites through the Local Plan process, to engage and consult with the council in a 'safe space'. The council states that it is concerned that the disclosure of information provided in this context will discourage these parties from engaging in frank discussions with the council, frustrating the process of preparing the Local Plan which is a statutory requirement of the council as the LPA.
90. The council goes on to say that that the disclosure of the information requested in this instance would not only result in 'a chilling effect' on the council's ongoing and future discussions, but also has implications for other landowners and potential developers engaging with the council as part of the Local Plan process.
91. The council also argues that the Local Plan process includes stages for the council to undertake public consultations. It states that at the time of the request in February 2017, there had been three consultations and, at the time of its response to the Commissioner (June 2017) a fourth was underway. It states that proportionate information regarding proposals is therefore already publicly available, and the submission Local Plan will also be subject to examination by a planning Inspector in an 'Examination in Public.'
92. The council goes on to say that if and when the University submits a planning application, or planning applications, for their promoted site, detailed proposals in relation to the information sought by the requester will be subject to planning application consultation.
93. The council also states that the Local Plan process and the planning application process are statutory and require public consultation at the appropriate stages. Disclosure now will only serve as a distraction from the task of preparing the Local Plan.

Balance of the public interest

94. Under regulation 12(1)(b) a public authority can only withhold information if the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In addition, under regulation 12(2), the public authority must apply a presumption in favour of disclosure.
95. The Commissioner accepts that there is always a general public interest in disclosing environmental information and there may be an argument for informing public debate on the particular environmental issue that the information relates to.
96. The Commissioner understands that, given the impact that the Local Plan may have on the local community, the strength of the public interest in transparency and accountability in this particular instance cannot be underestimated. Indeed, the indication is that there have been aspects of the Local Plan that have been controversial and it has been subject to a large number of objections during its formulation.
97. However, the Commissioner is of the view that equally, there are strong public interest arguments in favour of the non disclosure of the relevant information in this instance.
98. The council has argued that it is important for the University, landowners and potential developers to be able to engage and consult with the council in a 'safe space' and that disclosing the information would have a 'chilling effect' on the council's ongoing and future discussions.
99. Before considering the merit of such arguments in this case, the Commissioner believes it may be helpful to differentiate between the terms 'safe space' and 'chilling effect' in the context of their use under FOIA and EIR.
100. The term 'safe space' is about the need to be able to formulate policy, debate live issues and reach decisions without being hindered by external comment and/or media involvement. Whilst part of the reason for needing a safe space is to allow free and frank debate, it is the Commissioner's view that the need for a safe space exists regardless of any impact that the disclosure of information may have on this. The Commissioner views the 'safe space' argument to be about protecting the integrity of the decision making process and whether it carries any significant weight will depend very much on the timing of the request.
101. In contrast, the 'chilling effect' arguments directly concern the loss of frankness and candour in debate, should the information be disclosed. It

is said that this would then lead to poorer quality advice and less well formulated policy and decisions.

102. With regards to the council's argument that a safe space is needed to discuss certain ideas away from public scrutiny, the Commissioner appreciates that it is not unreasonable for the University, and other landowners, to expect to engage on certain matters in order to work out a practicable solution without unnecessary distraction. They should be allowed the time and space to develop and formulate their ideas and proposals for the Local Plan. In addition, they should be awarded the opportunity, as part of the process, to be assured that the safe space allowing them to discuss ideas and proposals that are still open to change is maintained whilst the process is still ongoing.
103. With regards to the consideration of the timing of the request, in this instance the Local Plan was not finalised at the time the request was received, and details relating to the Blackwell Farm site were still be subject to discussion and amendment and could still be until the point that the Local Plan is adopted.
104. Given the above, the Commissioner accepts that there would be a real risk of prejudice to the 'safe space', should the information be disclosed in response to the request.
105. With regards to the council's argument that the disclosure of the information would have a 'chilling effect', the Commissioner is satisfied that should the relevant information be supplied now, there is a realistic prospect that this will discourage the University, and other parties, from being so open in ongoing discussions regarding the Local Plan.
106. The Commissioner is of the view that 'the commentary' provided by the University which has been requested sets out certain proposals and ideas. It forms primarily the University's thoughts and ideas with the presumption that as the process progressed, they would be further developed, modified or possibly changed completely. She is mindful that the University volunteered certain information in order to fully engage in discussion with the council about different ideas and possible options.
107. The Commissioner notes that the University itself has voiced concern about the disclosure of the requested information. It would seem that it had an expectation that certain information which it provided to the council would not be placed in the public domain whilst the process remained 'live' and was supplied in order to facilitate the frank and open exchange of ideas and debate in what it viewed to be a confidential setting.

108. The Commissioner accepts that the University may have been more hesitant to provide certain if it was aware that this detail was to be disclosed at this stage of the process. This, in the Commissioner's view could have a detrimental impact on the process itself if those involved in the process become more inhibited and less open.
109. Given that the Commissioner is of the view that the disclosure of the information may inhibit such candid discussion and this may, in turn, have a detrimental effect on the Local Plan process, she is satisfied that there is a real risk of a 'chilling effect' in relation to the University and other parties, if the information was disclosed.
110. In this case, the Commissioner is sympathetic to the complainant's desire to have a greater understanding of how the current position of the vehicular access to the Blackwell site was reached. She appreciates the reasoning behind the request and why the complainant believes it to be in the public interest to have a greater understanding of how the preferred route option was selected over other options.
111. However, the Commissioner, when making her decision, would not want to undermine the Local Plan process and the statute by which it is governed. She is mindful that the Local Plan process, by its very nature, is required by statute to make information available to the public by way of public consultations and, once it has been submitted to the Secretary of State for examination, also hearings.
112. The Commissioner takes the view that the mechanisms in place allow for information to be made available at the various stages of the Local Plan process and this provides transparency and openness to the process. The Commissioner understands that LPA's are required to publish information which shows progress with the Local Plan preparation and how it is progressing at least annually. This is in order to enable interested parties and the community to fully understand how the Local Plan is progressing.
113. The Commissioner views the formulation of a Local Plan to be a fluid process and throughout the various stages of its development, it is subject to change. This is signified itself by the issues to which the request relates, that being the route access to the Blackwell Farm site. The Commissioner understands that the suggested route for access has developed and been altered as the process has continued and that the public has been made aware of the changes as set out in the most recent draft Local Plan. The council has also provided some detail to the complainant about the current preferred route option. Any interested parties have been given the opportunity to comment upon the options, and will continue to be able to do so, even after the Local Plan is submitted to the Secretary of State.

114. In this instance, the complainant has suggested that the council may be 'playing for time' and that the Secretary of State may decide that the council should provide the information. However, this suggests that the view is that the information should have been disclosed earlier in the process. The Commissioner would regard such a view to be primarily about the openness of the process itself and is not something that can be determined under the EIR.
115. It may, or may not, be the case that at a later stage the Inspector decides that some of the information should be made available for consideration as part of the Local Plan process. However, the Commissioner has to give regard to the circumstances at the time that the request was made and the rights of access under EIR.
116. The Commissioner is not persuaded that, in this particular instance, the arguments put forward in this case for disclosure under the EIR are sufficient to circumvent the formal processes set by the Local Plan at this stage.
117. Given the above, whilst the arguments are finely balanced, the Commissioner is of the view that the council has determined correctly that the public interest favours maintaining the exception under Regulation 12(4)(d) in this instance. She therefore requires the council to take no further action.

Right of appeal

118. 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

119. 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.

120. 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
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SK9 5AF