

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 February 2021

Public Authority: Huntingdonshire District Council
Address: Pathfinder House
St Marys Street
Huntingdon
Cambridgeshire
PE29 3TN

Decision (including any steps ordered)

1. The complainant requested information relating to the proof which the council had of the ownership of a piece of land subject to a planning application in 2000. The council provided details of the planning application however it redacted the name provided in the declaration of the ownership of the property on the basis that that information was personal data. It confirmed that it does not hold any further information falling within the scope of the complainant's request for information.
2. During the course of the Commissioner's investigation, the council disclosed the name of the individual on the basis that, following its review, it recognised that the person is deceased.
3. The Commissioner's decision is that the council did not comply with the requirements of Regulation 5(2) of the EIR in that it did not provide the relevant information to the complainant within 20 working days of receiving his request for information. She has also decided that, on a balance of probabilities, the council does not hold any further information falling within the scope of the complainant's request for information.
4. The Commissioner does not require the council to take any steps

Request and response

5. On 5 January 2020, the complainant wrote to council and requested information in the following terms:

I note that [name redacted] granted Planning Permission for Planning Application [planning application reference redacted].

He would have conducted a basic check to establish that the persons who made the Planning Application were the legal owners/tenants of the land and/or the properties.

Please provide me with admissible evidence, in the next 7 days, that [name redacted] was the legal owner/tenant of the land and buildings.

6. On 14 January 2020 the council responded stating that:

Planning Services do not hold records of land ownership, the applicant/agent is required to fill out an application form with the correct ownership details. The declaration section requires the applicant/agent to confirm that the information on the forms are to their knowledge true and accurate.

Please note the council will not disclose third party personal details.

7. On 14 January 2020 the complainant responded again, stating:

You imply that the successive Heads of Planning Services at Huntingdonshire District Council do not conduct even the most basic checks on any Planning or Planning Enforcement Forms.

What are the penalties, if any, for completing, with intent, false and fraudulent Planning Application Forms???

8. On 15 January 2020 the complainant wrote again, stating:

What evidence, if any, did [name of company redacted] provide the District Council to prove that [name redacted] was the legal owner of the land and buildings?

Why did they not Complete Form B instead of Form C or D?

Can you email me copies of Form C and D.

What are the penalties, if any, for completing, with intent, false and fraudulent Planning Application Forms???

9. The council responded on 5 February 2020 stating that *"this is not a matter for the council to consider"*
10. On 25 February 2020 the complainant wrote to the council and stated:
"I regret to inform you that my visit to Pathfinder House was a waste of my time as the "Original Planning Application" was identical to that published on the website..."

Scope of the case

11. The complainant contacted the Commissioner 16 February 2020 to complain about the way his request for information had been handled.
12. During the course of the Commissioner's investigation, following an internal review the council wrote to the complainant on 16 December 2020. It said that having reviewed its position it recognised that Regulation 13(1) was not applicable to the name of the owner on the application form as the individual is deceased. It therefore provided an unredacted copy of certificate A to the complainant. This contained the name of the individual.
13. The complainant believes that further information should be held. He is concerned that if further information is not held, he does not consider that the council is carrying out appropriate checks on planning applications to determine whether the owner declared on the planning application is actually the owner of the land in question.
14. The Commissioner therefore considers that the complaint is that the council has not provided all of the information which it holds in response to the complainant's request for information.

Reasons for decision

Background to the request

15. The planning application form referred to in this request is dated March 2000. The complainant has explained that there is currently a long running case going through the probate courts to determine the ownership of the land. In the interim, he considers that any claim to the land is disputed.
16. He further argues that the land was owned by his father-in-law and was abandoned decades ago. It should be noted that the identity of the

individual which was disclosed on the certificate of ownership was the complainant's mother-in-law.

17. The complainant is seeking to establish how the council established ownership for the purposes of dealing with the planning application.
18. His argument is that the council is under a duty to determine the ownership of the land when accepting a planning application for determination. He has looked into the requirements for planning authorities when considering such applications, and he considers that the council should hold a certificate of ownership on the land – this is the document which has now been disclosed. He further argues that the council should hold information about the checks it carried out on the owner of the land to determine whether the declared owner was actually the owner of the land.
19. The council however states that it relies on planning applicants to truthfully declare their ownership of the land involved. It argues that the certificate of ownership is the evidence it takes when considering planning applications, and that it takes such declarations in good faith. It does not, as a norm, carry out further checks on land ownership.
20. It argues therefore that it holds no further information, beyond the evidence supplied in certificate A, of the details of the ownership of the land in question, and it has now disclosed an unredacted copy of this to the complainant.

Regulation 5(1)

21. Broadly, Regulation 5 requires that a public authority that holds environmental information shall make it available on request. An authority should provide a valid exception in order to exempt itself from providing that information. Where an authority does not hold information at the time that it receives a request for information then authorities should state that that is the case and apply the exception in Regulation 12(4)(a) (information not held).

Regulation 12(4)(a)

22. Regulation 12(4)(a) provides that a public authority may refuse to disclose information to the extent that it does not hold it when an applicant's request is received.
23. The council holds information in the form of the name on certificate A. However, the complainant believes further information should be held as the council should have determined that the owner of the land was correctly stated. As noted, the council states that it does not, as a norm,

carry out further checks of this information. It relies upon the information declared in the form.

24. The Commissioner must therefore consider whether further information is held by the council which has not been disclosed to the complainant in response to his request for information. In this case, this would be any further evidence which the council took into consideration when accepting the identity of the owner was accepted for the purposes of the planning application.
25. In scenarios such as this one, where there is some dispute between the public authority and the complainant about the amount of information that may be held, the Commissioner, following the lead of a number of First Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
26. For clarity, the Commissioner is not expected to prove categorically whether the information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
27. In deciding where the balance of probabilities lies, the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded.
28. She will also consider any other information or explanation offered by the public authority (and/or the complainant) which is relevant to her determination.
29. During the course of her investigation, the Commissioner asked the council to describe the searches it carried out for information falling within the scope of the request, and the search terms used. She also asked other questions, as is her usual practice, relating to how it established whether or not it held further information within the scope of the request.

The complainant's position

30. The complainant's argument is that the council is under a duty to determine the ownership of the land when accepting a planning application for determination. He believes that the council should have carried out background checks to determine whether the individual declaring themselves as the owner of the land does actually have legal ownership.

The council's position

31. Rather than strictly going through the questions asked by the Commissioner, the council provided an explanation as to why it does not hold the information requested by the complainant. In effect, this boils down a misunderstanding or a misplaced belief by the complainant as to the level of checks which the council does on the ownership of land when it receives a planning application.
32. The council clarified that it does not hold any other details of land ownership other than the details provided in the ownership certificate. It clarified that, as long as the owner of the land is informed of the application, a planning applicant is not required to own a site when making an application. All that is required is that the landowner is made aware that an application has been made. It therefore states that it accepts the declaration made within the certificates on face value unless the declaration is disputed.
33. It argues therefore that it holds no further information beyond the certificate regarding the ownership of the land in question. The council stated that:

'Planning Services do not hold records of land ownership, the applicant/agent is required to fill out an application form with the correct ownership details. The declaration section requires the applicant/agent to confirm that the information on the forms are to their knowledge true and accurate. Please note the council will not disclose third party personal details.

... Unless there was a query raised as to the ownership at the time (before the application had been determined) disputing the submitted information relating to this application the LPA would have had no reason to query this'

The Commissioner's conclusions

34. The Commissioner recognises that the complaint, in essence, revolves around a dispute between the parties as to whether the documentation which the council relies upon to state that a plot of land is owned by an individual is an appropriate way of establishing ownership.
35. It is important to note that the complainant is aware of who the people making the claims of ownership are. The Commissioner considers that the complainant's request is, at least partially, based upon the premise of identifying flaws in the approach of the council in determining ownership of the land, and in obtaining evidence of any fraudulent claims relating to the land, and/or other land.

36. The request was for the information which the council used to validate the ownership of the land which the planning application refers to. The council has confirmed that it does not, as a norm, require any further proof than the ownership certificate. The council's argument is that if a certificate of ownership is completed this will determine ownership for the purposes of the planning application insofar as its checks are concerned.
37. The Commissioner has seen no evidence that ownership was disputed with the council at that time.
38. The Commissioner also notes that the application in question for this request dates back to 2000. Therefore, any notes, or any further checks which were carried out would either be held within the planning file, or presumably would have been destroyed as they would be irrelevant to any other purpose. The relevant information would have been obtained 20 years ago.
39. The council has provided that information to the complainant in respect of these questions.
 - It has provided the name of the individual on the ownership certificate. In this case however that individual is now deceased (the form was originally submitted in 2000). It has also disclosed the agent who was responsible for submitting the application form.
 - It has provided a copy of the certificate which was submitted (certificate A), and
 - It has explained that it carries out no further checks on the ownership of the land unless ownership is disputed, and the Commissioner has seen no evidence that it was disputed at that time.
40. The council has therefore disclosed the information which it holds. It is not the Commissioner's role to determine whether the documentation relied upon by the council is legally correct, nor whether it was correct to go ahead with the planning application on the basis of the information it holds. If it relies upon certificate of ownership declaration to demonstrate ownership of the land, then the provision of the same documentation to the complainant will meet its obligations in respect of the EIR.
41. Similarly, if the council has described the checks and balances which it has in place to determine the ownership of land then it has complied with the requirements of the Regulations. All the council was required to do to comply with this part of the request is to describe the approach it takes to verify ownership, and to provide the complainant with any

information it holds in this respect. This, it has done by providing the copy of certificate A, and in stating that it does not make checks on ownership unless the ownership declaration is disputed.

42. If the complainant disagrees that the council's approach to checking ownership details is correct, he is able to take legal advice as to how to challenge the council's position further. The Commissioner has no powers to consider such issues.
43. The questions which the Commissioner must consider are therefore:
 - a) Has the council provided all of the information which it holds which responds to the questions specified by the complainant?
 - b) Has the council demonstrated that it has done appropriate searches and/or has provided a sufficient explanation of its processes in order to state, on a balance of probabilities, that it does not hold any further information which falls within the scope of the request?
44. Although the council has not responded to all of the questions asked of it by the Commissioner in regard to the searches which were carried out to determine whether further information was held, the Commissioner recognises that the explanation provided by the council in this case is sufficient for her to reach her decision on a balance of probabilities.
45. There is no evidence to suggest that any dispute over ownership was highlighted to the council at the time that the application was made. Given that the information was provided 20 years prior to the request for information, if no additional information is held within the planning application file, the Commissioner recognises that it would be unlikely to be held in any other place after this length of time. She has not therefore found it necessary to ask the council to respond further regarding any searches which it carried out. Under the circumstances, a check of the planning file (which is available online) together with a check of the physical file itself, is appropriate for the Commissioner to decide, on a balance of probabilities, that no further information is held.
46. The Commissioner's decision is that, on a balance, the council has therefore complied with the requirements of Regulation 5(1).

Regulation 5(2)

47. Regulation 5(1) provides that '*...a public authority that holds environmental information shall make it available on request.*'
48. Regulation 5(2) provides that information shall be made available under paragraph 5(1) as soon as possible and no later than 20 working days after the date of receipt of the request.
49. The complainant clarified his request for information on 5 January 2020.
50. The council reviewed its decision to redact information and provided the name of the declared owner of the property on the certificate on 16 December 2020.
51. This falls outside of the period of 20 working days required by Regulation 5(2).
52. The Commissioner has therefore decided that the council did not comply with the requirements of Regulation 5(2).

Right of appeal

53. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

54. 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.
55. 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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