

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

Decision notice

Date: 15 November 2012

Public Authority: Arun District Council
Address: Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN1 5LF

Decision (including any steps ordered)

1. The complainant has requested information regarding a planning application. The Commissioner considers that there is one FOIA request and the rest are EIR requests.
2. The Commissioner's decision is that Arun District Council has breached regulations 5, 6 and 11 of the EIR and section 17 of the FOIA. He does not require any steps to be taken.

Background

3. The complainant has issued Judicial Review (JR) proceedings against the Council regarding a planning application to extend an already existing caravan site, by 12 units. The complainant wants the requested information to help him.

Request and response

4. On 3 March 2012, the complainant wrote to Arun District Council (the Council) and requested information about a planning application – please see appendix 1. He also attached a second set of questions to the request and subsequently clarified which questions he wanted answering.
5. The Council responded on 22 March. It stated that a relevant member of staff had left the Council and was not therefore available to confirm some of the points made by the complainant, especially regarding point 1.
6. With regard to points 2 and 3 the Council stated that the complainant would appreciate that it was not its normal procedure to respond to representation letters or questions posed within such letters. It also explained that on this occasion it would attempt to answer the points raised but that after that any further correspondence from him would be accepted and considered by the Council with any responses being put into update reports or verbally presented at Committee.
7. With regard to point 2A) the Council explained that there was no dispute that there was an access road on the land – this was shown on the submitted drawings and was controlled by the site licence. The Council explained that the planning application was principally concerned with the use of the land, with the detailed positioning controlled by the site licence.
8. With regard to point 2B) the Council explained that the bases had been placed closer to the dwellings than shown on the indicative approved plan. In order to protect the neighbour amenity, the applicant had been asked to move bases 10, 11 and 12 back to their original positions as shown on the indicative plan.
9. With regard to point 3A) the Council said it was unsure as to the purpose of this point regarding the positioning of the access. It explained that the access had been changed from that previously approved hence the need for the current planning application. The Council also explained that it had to consider what was before it at the time and whether or not it was acceptable.
10. The Council confirmed that it considered that the new access provided a better arrangement allowing vehicles to pull off the road to avoid any disruption. It also explained that the proposed position of the gates was approximately 20 metres from the boundary with Myddleton Terrace.

11. With regard to point 3B) the Council confirmed that it noted the complainant's comments and explained that in a countryside location soft landscaping was generally preferred to hard landscaping. It explained that the intention was that if the planning application was permitted, a condition would be attached requiring the submission of boundary landscaping details so that officers could ensure that the correct type of planting was placed along the boundary.
12. Regarding point 3C) the Council explained that as in point 3B) a landscaping condition would be proposed and officers would seek the correct form of boundary landscaping.
13. The Council acknowledged that the complainant had asked for his request to be seen as a complaint. It explained that he should have allowed the planning application process to be completed before making a complaint. The Council also explained that it had not registered his email of 3 March 2012 as a complaint.
14. The complainant complained to the Commissioner about the fact that the Council had not carried out an internal review. The Commissioner contacted the complainant to find out what other outstanding issues there were.
15. The complainant explained that he had complained to Council about its response initially. The Council had explained to him that it was going to reconsider its initial response.
16. The Commissioner contacted the Council and asked it to carry out an internal review. However, during the course of the Commissioner's investigation the complainant stated that he did not want the Commissioner to go through everything with a fine toothcomb, listing each bit of information but nor did he want to let the Council off the hook so that it supplied this information alone.
17. The Commissioner contacted the Council.
18. On 29 June the Council confirmed that it had reconsidered the complaint's request and provided more information. With regard to point 4 it explained that the land in question had previously been part of a farm organisation but was not now. This had been confirmed by a change of use application.
19. In relation to point 5 the Council explained that its Economic Regeneration Team had been consulted on the original application on which the market needs assessment had been submitted, but they had not responded.

20. In relation to point 6 the Council explained that the complainant was referring to the policy consideration section. It explained that on the refused applications, there was a conflict of policy for the reasons given, as all decisions must accord with the relevant national and local policies. Therefore on the approved application the proposal did accord with the policies as shown in the report as the applicant had overcome the previous Inspectors' objections.
21. In relation to point 7 the Council explained that the justification for the site was that it was an extension to an existing site and not a completely new site of Greenfield land. It also explained that the nature of caravan sites was that they were usually located outside a built-up area. Further, it explained that the site in question was fully supported by Tourism South East who stated that this type of accommodation was required in the area.
22. In relation to point 12 the Council explained that its original response, it had explained that the layout of the site was indicative only as it is controlled by the Site License, including an access road.
23. The complainant was not satisfied and the Commissioner contacted him again to find out what the outstanding issues were. During a telephone conversation the complainant informed the Commissioner that all he really wanted to know was the status of some land – whether it was Grade 1 or 2.
24. The Commissioner emailed the complainant to confirm this and the complainant responded stating that he wanted questions answered in the attachment to his request as follows:

'Point 4: As you know, the officer when determining BE/42/10 wasn't aware of the designations as something other than Grade 1 or 2 as she discussed the protected status of Grade1/2 land. I would appreciate a map properly referenced that shows what the land is classified as, clarity on when the change occurred, on whose instigation and whose agreement. I would also like to know when Arun DC became aware of the change. I would be grateful for any research that the council has to support its view that the land is unlikely to be used for agricultural purposes and clarity on when the land has been offered for sale as agricultural land since 1988.'

Point 6: [These questions related to a particular quote].

Please tell me which part of this quote is not included in BE/42/10

Please tell me which part of, this quote is incorrect.

*Point 7: [These questions relate to an Inspector's Decision]:
Please tell me if you disagree whether the officer declined to respond or whether you believe the complaint letters did not state that economic development officers were not consulted and I can then provide the documentary evidence.*

Please can you identify for me the text that shows the essential addresses the inspector's point on there being no evidence that there are no sites within the built-up area (I have amended this sentence from the original letter – quoting the inspector rather than paraphrasing).

Point 9: [These questions relate to a previously approved plan]:

Please identify how much further you believe the caravan is from the tree.

Again please explain why this is not true.

Again, explain why this would not be possible or sensible.

Point 12: [This statement relates to an indication location plan]:

In fact the plan doesn't even show the extent of the new south eastern pad. The most eastern pad is still located some way out of the indicated area. This plan seems to be BE/42/10. Please compare your plan with the applicant's own latest plan (19 Jan) which shows the eastern border starting significantly nearer the stable and going in a south easterly direction NOT a south westerly direction as your plan indicate. Neither plan acknowledges the built road.'

25. The Commissioner contacted the Council and asked it to look at these points. He also explained that he considered:

points 4 and 5 to be environmental requests;

the first part of point 6 to be a request for information under the Freedom of Information Act 2000, but the second point to be a general question rather than a request for recorded information;

the first point in point 7 was not a request for recorded information as it was asking the Council whether it disagreed with something, however the second part was a request for information under the EIR;

point 12 to be a statement rather than a request for recorded information.

26. He also informed the complainant of this.
27. On 4 July the complainant confirmed that he accepted that point 5 had been answered and was also not pursuing point 12 any further, but remained unhappy about the other responses. In particular he pointed out that the Council had not answered point 9.
28. On 12 July the complainant confirmed that he accepted that part of point 4 i.e. '*I would be grateful for any research that the council has to support its view that the land is unlikely to be used for agricultural purposes ...*' had been answered.
29. On 18 July the Council provided responses. With regard to point 4 it explained that there were land classification maps in their office and the complainant could see them but they were not up-to-date. It also explained that the land was no longer considered as being farmed by a local farm organisation as it had been segregated from the rest of the farmland and it had therefore concluded that the land was unlikely to be used for farming, particularly as farming was now large scale and intensive in the main.
30. With regard to point 6 the Council considered that the complainant was not asking a question and was therefore unable to ascertain what information he required. It explained that if the point referred to policy consideration, this had been raised as a matter of JR by the complainant and therefore it was unable to answer this matter pending the JR.
31. With regard to point 7 the Council explained that Economic Development Officers were consulted and did not respond. The Council explained that the point about no land being available within the built-up boundary was irrelevant as the application was for an extension to an existing site and was part of the JR.
32. With regard to point 9 the distance was clearly shown on the approved plan which was available on its website.

Scope of the case

33. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He specifically complained about the fact that he was not offered an internal review, the Council having stated that he could not ask for information until after the planning application had been considered. He also queried whether the Council was correct to state that it would not provide the information but would only investigate if it should have provided it and whether it

was reasonable for the Council not to provide a response, nine weeks after it was complained to by the complainant.

34. The Commissioner will consider the Council's handling of the complainant's request and the lack of an internal review initially.

Reasons for decision

35. Regulation 2(1) of the EIR states that environmental information is:

'...any information in written, visual, aural, electronic or any other material form on –

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites...biological diversity and its components...and the interaction among those elements;

(b) factors, such as substances, energy, noise, radiation or waste...emissions...and other releases into the environment, likely to affect the elements 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...'

36. The Commissioner considers that most of the requested information is environmental information in that it falls within the definition of environmental information provided in Regulation 2. He considers that it relates to an element of the environment as defined in regulation 2(1)(a) namely "land and landscape" and also relates to measures (including administrative measures) and activities as defined in regulation 2(1)(c) affecting or likely to affect the elements of the environment, in this case the application plans.
37. The Commissioner interprets environmental information in a broad way. He considers that information such as planning applications can be defined as environmental information if they relate to a measure or activity that has an effect on the environment. It can be argued that the planning application in this case would have an effect on the environment. The Commissioner considers that the definitions found at regulation 2(1)(c) apply.
38. The Commissioner notes that in its response to the complainant of 22 March 2012, the Council explained that it was not its normal procedure to respond to representation letters or questions within such letters. It also explained that while it would attempt to answer the points raised by

the complainant, after that any other correspondence from him would be accepted and considered by the Council with any responses being put into update reports or verbally presented at Committee.

39. Regulation 5 of the EIR states that if a public authority holds requested information it should be made available to an applicant within 20 working days of receipt. A public authority cannot refuse to disclose information to a complainant because it does not usually do so. If a public authority does wish to withhold information it must let the complainant know within 20 working days, explaining which exception(s) apply and explain its consideration of the public interest.
40. With regard to the FOIA request, under section 17 of FOIA, when a public authority receives a request for information it must respond within 20 working days, confirming whether it with holds the information or not. If it is going to withhold any information, it must state which exemption(s) it is applying and when necessary explain its consideration of the public interest.
41. The Commissioner notes that the Council explained to the complainant that it did not normally answer requests until after the planning application process had been completed. However, under the EIR and FOIA, as explained in paragraphs 39 and 40, a public authority must respond to requests for information within 20 working days after the date of receipt, confirming whether it holds the information and if it does, to either disclose the information or apply exception(s) under the EIR or exemption(s) under FOIA, if it is not going to disclose the information.
42. The Commissioner also notes that the Council stated in relation to point 6 of the request, that it was being raised as a matter of JR and therefore it would have been unable to answer the point. As discussed above the Council should have applied exceptions or exemptions as appropriate.
43. The Commissioner also notes that the complainant complained to the Council about its initial response. He further notes that the complainant had not been informed about his right to an internal review.
44. Under regulation 11 of the EIR, an applicant may make representations to a public authority if he considers that the public authority has failed to comply with the EIR. The applicant has 40 working days after the date on which he believes the public authority failed to comply with any requirement to make his representations.
45. In its response of 22 March 2012, the Council did not inform the complainant of his right to complain about its handling of his request, or

right to appeal. Therefore the Commissioner considers that the Council has breached regulation 6 under the EIR and section 17 under FOIA.

46. The Council also informed the complainant that any further correspondence from him would be accepted and considered by the Council, with any responses in update reports or verbally presented at Committee.
47. As discussed above, under both the EIR and FOIA, when a public authority receives a request for information it must respond to the complainant within 20 working days after the date of receipt. The public authority must inform the complainant whether it holds the requested information and either disclose it or explain which exception(s) or exemptions(s) it is applying and its consideration of the public interest where necessary.

Other matters

48. The Commissioner notes the complainant's complaint about the fact that he was not offered an internal review. Under FOIA, there is no requirement to carry out an internal review. However, under section 45 (Code of Practice) of FOIA, it is considered good practice to offer an internal review, if a public authority already has a complaints procedure in place. The Commissioner would expect any such review to take place within 20 working days, after receipt of a request either specifically requesting a public authority carry out an internal review or expressing dissatisfaction with the initial outcome.
49. The complainant also complained about the fact that the Council explained to him that it would not provide the information but would only investigate if it should have provided it.
50. The Commissioner cannot comment on this as it would be a matter for the Council if it wanted to launch its own investigation as to how it dealt with the complainant's request.

Right of appeal

51. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

52. 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.
53. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1

'[Named member of Council staff] presented BE/151/11 at the recent development control committee however I am sending this letter to you on the basis that you are the officer responsible for the application. There were a number of statements that she made that concerned me greatly and I would appreciate your views on the following points. I would be grateful if you could respond at least a week prior to the next development control committee so that I can put your views (and my comments) to the committee so that they can make their decision with all the relevant information.

1. [Named member of Council staff] stated that officers "*don't accept the assertions in the letter which was not sent to us but which we have had sight of.*"

Please can you confirm whether this was my letter and if so, please can you state why you don't accept each of the 12 assertions stated. I have highlighted (in blue) on the letter attached, where there are particular issues I hope your response will cover.

2. The officer was also asked about differences between BE/42/10 and this application. She stated that "*the applicant has extant permission for the original plan. He has extended the site to the dogleg at the bottom of the plan and moved the pads away (from the neighbouring houses) compared with the original application. In our view this is an improvement.*"

a) the point that I made in my original objection (which I note was not even mentioned in the officer's summary of representations received) is that the road does not stop level with the 'dogleg' it extends significantly further – right across the next field. I would like your comments as to why the officers do not accept the existence of the road despite it being plainly obvious. I attach a photo for your information.

b) the applicant has not moved the pads away compared with the original application. Pads 1, 2, 3, 4, 5 are roughly the same distance. Pad 6 is some **40m** closer to the neighbouring properties. It is difficult to tell whether pads 7 and 8 are closer or not due the poor plans but they are similar distances. Pad 9 (now closest to the neighbouring properties) is slightly closer compared to the original and pads 10, 11 and 12 are about the same. Please state which pads you believe have moved away from adjoining properties to the south of the site.

3. The officer also stated in her first presentation describing the main differences between BE/42/10 and BE/151/11 that there was an "*improved entrance*", that the "*new access is not considered harmful*" and "*native hedgerows and greater screening*".

a) Please can confirm for me whether the new access starts 0m from No 4 Myddleton Terrace and whether the original access started approximately 13m from No 4, with the gate itself some 18m from No 4.

b) Regarding the western boundary screening please could you confirm for me whether BE/42/10 proposed the retention of a wall to obliterate views onto the site. Could you also confirm whether BE/110/10 proposed a wall with fencing above. And could you confirm whether the officer, in refusing permission stated that "*walling or flint walling would be welcomed, with or without planting.*" Could you explain why planting is now considered to be 'greater screening' than walling.

c) On the southern side, given the development has now annexed the next field, please explain why the native hedging which has not been extended to obscure the new caravan pad and new road is better than that proposed in BE/110/10 and the original BE/151/11.

I am copying this letter to the Chair of the Development Control Committee, the Vice Chair, the Councillor I believe to be the site visit Chair and my local councillors for their information.'