

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 November 2021

Public Authority: Maker with Rame Parish Council
Address: Fore Street
Kingsand
Torpoint
Cornwall PL10 1NB

Decision (including any steps ordered)

1. The complainant requested information from Maker with Rame Parish Council ("the Council") about its decision-making processes, with regard to a planning application.
2. The Commissioner's decision is that request fell to be considered under the EIR. The Council failed to respond to the requests within 20 working days, and was therefore in breach of regulation 5(2) of the EIR.
3. As a response has now been issued, the Commissioner does not require any steps to be taken.

Requests and response

4. Request 1: On 4 September 2020, the complainant wrote to the Council, raising 20 questions. He followed this up with a further six questions on 7 September 2020. These 26 questions are attached at the end of this notice, as an annexe, and comprise Request 1.
5. Request 2: On 5 September 2020, he wrote to the Council to request information of the following description:

"Under the Freedom of Information Act 2000 can I request from the Parish Council the following: can I get sight of ALL correspondence - digital or otherwise - in relation to application PA20/03747. This included - but is not limited to - all correspondence before the sub-

committee meeting of the 22nd of May, agenda(s?) shared, all emails/deliberations of the sub-committee of the meeting on the 22nd of May – and possibly thereafter. All correspondence with any 3rd parties in relation to this application. All with a clear time stamp, clear sequence/string of discussions etc.)”

6. Request 3: On 11 September 2020, he wrote to the Council again and requested:

“As the PC recorded last night’s meeting could you send me either a link to it, or if that doesn’t exist can you send me a copy of the actual digital file”.

7. Request 4: On 26 September 2020, he wrote and requested as follows:

“I am referring to the last Parish Council Zoom meeting dated 10 September 2020:

1 – at agenda point 6 the Council adopted an ‘Unreasonable Customer Behaviour Policy’ with immediate effect. As I still can’t find the said document on the MWR PC website, can you forward me a copy and/or direct me where I can find this policy document online.

2 – at agenda point 12 the Clerk stated (and a subsequent email dated 17 September 2020 confirmed): ‘The parish council followed all relevant guidance issued by Cornwall Council and the government during the Covid-19 pandemic, in meeting its obligations during lockdown.’

Can I get sight of ALL correspondence - digital or otherwise - in relation to this guidance issued. This included - but is not limited to - all emails and other forms of communication sent and received, before and after 22nd of May. All with a clear time stamp, clear sequence/string of discussions etc.”

8. On 30 September 2020, the Council responded and provided him with some information in respect of the Request 2, which comprised some redacted email correspondence.
9. Request 5: On 5 October 2020, he requested the agenda for that Thursday’s meeting. On 8 October 2020 the Council told him that this did not exist, since no meeting had been called.
10. Request 6: On 8 October 2020, he asked *“Have the minutes of last month’s meeting been produced? If yes, can I receive a copy?”* The Council replied later on the same day and said the minutes had not been completed.

11. Request 7: On 15 October 2020 he requested information as follows:

"Under the Freedom of Information Act 2000 can I request from the Parish Council the following: can I get sight of ALL correspondence - digital or otherwise - in relation to the two applications below. This included - but is not limited to - all correspondence before a possible sub-committee meeting, agenda(s?) shared, all emails/deliberations of the sub-committee - and minutes. All correspondence with any 3rd parties in relation to this application. All with a clear time stamp, clear sequence/string of discussions etc.).

PA20/02482 | Single storey infill extension and internal associated works. [address redacted]

PA20/01759 | Householder application for planning permission for replacement of downstairs windows. [address redacted]"

12. He requested an internal review into the handling of the requests on 15 November 2020. He commented that some of the requests (17, 22 and 26 September) had been ignored, and raised several questions about the email correspondence he had received, including whether more was held. On 17 November 2020, he wrote again and added that he had also had no response to the request dated 15 October 2020, and referred to four councillors whose correspondence he had expected to see.
13. On 25 November 2020, the Council wrote to him and stated it had forwarded his correspondence to *"the single point of contact"* at Cornwall Council. On 17 December 2020, following a query from the complainant, the Council explained to him that he had been deemed a *"persistent complainer"* and that it would be passing his correspondence to a single point of contact at Cornwall Council to deal with.
14. A further response, covering these requests, was provided to the complainant on 27 October 2021, following the involvement of the Commissioner. The details of this are described in the next section of this notice.

Scope of the case and background

15. The complainant contacted the Commissioner on 20 October 2020 to complain about the way his requests for information had been handled. During the investigation, he advised that he did not require any further response to Requests 5 and 6.

16. Concurrently with this investigation, the Commissioner also investigated the Council's handling of other requests, made by the complainant in December 2020 and March 2021 respectively.
17. On 6 September 2021, the Commissioner wrote to the Council. She explained that the requests under consideration in this notice were likely to fall under the EIR, and that she required further action from the Council, as follows:
 - With regard to Request 2, she advised that the Council should confirm whether all relevant information had been provided.
 - With regard to Requests 1, 3, 4 and 7, she asked the Council to issue an appropriate response under the legislation.
18. She also required the Council to respond to the requests made in December 2020 and March 2021. The Commissioner is issuing decisions regarding the handling of those requests under the reference numbers IC-86576-Z6F4 and IC-127265-R9J5 respectively.
19. As previously referred to, the Council issued a response to the complainant on 27 October 2021. In its response, the Council provided one additional email that had been recovered, falling within the scope of Request 2, to the complainant. It also directed him to certain information which had been published online, and provided some general explanations. It stated that no other relevant information was held by the Council.
20. Since the complainant made his requests, and prior to her investigation commencing, the Commissioner is aware that there has been an almost complete change of personnel at the Council.
21. She is aware that since August 2021, the current Chair and Acting Clerk have carried out extensive searches to see whether any further recorded information is held, falling within the scope of the complainant's requests. This enabled the response to be provided and the additional email to be recovered.
22. However, it was not possible for the current Chair and Acting Clerk to determine conclusively whether, if the council officials who were in post at the time of all of the complainant's requests (that is, between September 2020 and March 2021) had carried out effective searches at that time, further information may have been located.
23. This is highly regrettable, which is acknowledged by the Commissioner, the complainant, and the current Council. However, the complainant accepts that no further recorded information, falling within the scope of the requests under consideration in this notice, is now held, and has

asked the Commissioner to focus on the Council's failure to respond at the correct time.

24. This notice covers whether the Council responded to the requests within the statutory time-frame.

Reasons for decision

Regulation 5 – making environmental information available

25. In this case, the Commissioner considers that all of the requests under consideration in this notice were for "environmental" information and therefore fell to be considered under the EIR. This is because the requests were for information on the Council's decision-making processes about a planning application.
26. It is the Commissioner's well-established position that planning matters are "*measures and activities affecting, or likely to affect, the elements and factors of the environment*", and therefore information on such matters fall within the definition of environmental information at regulation 2(1)(c) of the EIR.
27. Regulation 5(2) of the EIR states that "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
28. Whilst the Council has now provided the complainant with a response, confirming it does not hold the requested information, it did so over a year after the requests were made.
29. This is outside of the statutory 20 working days; therefore the Council breached regulation 5(2) of the EIR.
30. No further action is required, as a response has now been provided

Other matters

31. The Commissioner considers that the initial handling of this request, and of the complainant's other requests as considered in decision notices reference IC-86576-Z6F4 and IC-127265-R9J5 respectively, by the previous officers of the Council, was wholly inadequate. This is highly regrettable.
32. She is also aware that the previous officers may have failed to retain relevant information, which has been investigated separately.

33. The Council must ensure that it considers future information requests in a timely manner, including determining whether they fall to be considered under the DPA (in case where a requester is asking for their own personal data), the FOIA and/or the EIR, and to respond accordingly, as required by the legislation.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

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

Non-confidential Annexe to ICO decision notice ref IC-65675-B5D3

Public authority: Make with Rame Parish Council

Requests for information dated 4 September - 15 October 2020

1 - ... can the council explain why the decision was made (and by who) - to apparently fast-track this application after it was validated by CC on 20 May? A meeting was called on 22 May (during Covid lockdown!), i.e. 2 days later, where it has been normal practice to advertise meetings at least 7 days in advance, and multiple planning applications were normally grouped together? ...

2 - The clerk has stated the minutes were advertised on all the notice boards and the website. However, metadata of the document reveals that the agenda for 22 May as uploaded on PC and CC websites appears to have been created on 22 May. Can the council explain how a document that was created on the day of the meeting was used to advertise the very meeting 'in advance'? ...

3 - The overriding principle for any council is to act first and foremost in the public interest. Can the council explain why (and by who) the decision was made to apparently fast-track this application and in the process denying the public a direct say and proper scrutiny of the process?

4 - What alternatives - if any - to safeguard the inclusion of the public in the process were considered (delaying the meeting, digital meeting, questionnaire, etc.) and why (and by who) were these possible alternatives rejected?

5 - Given that it's unclear what members of the PC constituted the planning sub-committee on 22 May, and given multiple recent resignations from the PC - depleting the overall PC councillor numbers recently to just 6, can the council confirm the planning sub-committee was the same as on the 13 Feb 2020 meeting? ...

6 - The meeting itself may have been unconventional due to Covid, but can the council explain why the usual standard items like proposer and seconder are missing and why (and by who) it was decided to delete the headers 'apologies', 'members present', 'declarations of interest' and 'public forum' from the document? This standard format had been used consistently - more or less- at least since January 2019.

7 - Why (and by who) was it decided NOT to record the fact that the applicant is the Chair of the PC on these 'minutes' under 'declaration of interest' - as had been done in the past? This would have been the obvious

place to address this potentially controversial issue? This omission constitutes a serious mishandling of 'conflict of interest' - specially given that the Chair/applicant are identical. As a direct consequence of this, rumours started to circulate, etc. These had to be subsequently addressed by the Clerk on the CC Portal, at which point it was too late.

8 - As this application apparently wasn't treated different from any other, can the Council explain why at previous minutes at the most a few sentences were recorded to explain the decision, whereas for this application the PC has written 3 paragraphs?

9 - Can the council explain why the first two paragraphs mainly quote from a visual impact assessment as submitted by the applicant/Chair whereas no own rationale of the PC sub-committee deliberations has been presented? Again, it appears the council did not do their utmost to reassure the public they had managed a potential (perceived) 'conflict of interest' properly - especially given the applicant/Chair link was not recorded in these 'minutes'? As a direct consequence more rumours... etc.

10 - Why (and by who) was it decided to include information from another CC consultee (Ramblers Assoc.) in these 'minutes'? Is this standard practice?

11 - At what point was the last paragraph added to the 'minutes'? The comments from the Ramblers Association were written on 22 May and subsequently sent to CC for inclusion on the planning portal - so not available for the meeting on that day?

12 - Can the council explain why (and by who) the usual way of recording a vote (all in favour/unanimous) was changed to 'PC voted in favour'? Does this mean the vote was unanimous? Abstention?

13 - In short: many questions remain: who wrote these paragraphs, how was the content arrived at, how was this voted on, etc. etc?... can the council - in the public interest - put ALL correspondence - digital or otherwise - in relation to this application (and including your answers to the points raised in this letter) in the public domain so it can get scrutinized?

14 - the 'minutes' of the meeting of the 22 May were uploaded on the PC website on 28 May. However, metadata of the document reveals that the minutes appear to have been altered on 2 June and must have been re-uploaded. Who altered these minutes, why, and what got altered? Did the sub-committee approve these alterations?

15 - Can the council explain how on 3 July 2019 "prominent position therefore we have concerns about the appearance of the changes, in

particular, far too much glazing. Not in keeping with the AONB" was a material consideration for refusal; yet it wasn't for this application?

16 - Can the council also explain how similar material planning considerations (size, design, materials used, sensitivity of character of AONB, etc.) were used in 2 recent applications which led to approving (22 May) and to disapprove (2 July) an application?

17 - Given that 'this application wasn't treated any different than any other planning application', why (and by who) was it decided that the vice-chair would speak (in favour) of this application on the 17 August CC meeting? Is this standard practice? How often in the past has this happened?

18 - Can the council explain why the 'close association' between vice-chair and applicant, and the fact that the applicant is the Chair himself, was not disclosed at the CC meeting on 17 August, where both were speakers?

19 - Can the council explain why the vice-chair stated on the 17 August CC meeting that 'the Parish Council overwhelmingly supported this application'? What does 'overwhelmingly' mean? The 'minutes' stated 'the PC supported', and - if I count correctly this - the sub-committee was just 4 (or 5?) people and it's not made clear if the vote was unanimous?

20 - Given the possible 'close association' of the planning sub-committee members to the applicant - and to remove any doubt about the whole process - would it perhaps have been advisable if the whole committee had declared a non-pecuniary interest and advised CC they were on this occasion not in a position to fulfil their duty as consultees? In contrast, Cornwall Councillor [redacted] did just that - see his letter on CC Portal.

21 - Since this is clearly very complicated planning matter, did the council feel they had enough expertise to comment on this part of the application? If yes, what deliberations took place to justify the council's positive recommendation in this regard?

22 - Also, given this application was an 'exception as agricultural dwelling' within an AONB, in what way did the council take the side-business (tourism) of the applicant into consideration? ...

23 - Did any of the sub-committee do a site visit before the meeting on 22 May? If yes, when? If no, why not?

24 - Some CC Councillors stated during their meeting on 17 August they had made a site visit. Were any PC councillors present during this/these site visit/s? If yes, who - and when? And, If yes, is this standard practice?

25 - further to point 20 - and to get more clarity on 'close association' - can those councillors who were part of the planning meeting/vote state 1 - how long they have known the applicant and 2 - how they have known the applicant outside the PC; as friends? through possible groups? etc. etc. ...

26 - Given the lack of an 'in situ' visual impact image... , and given that none of the submitted planning documents appear to mention digging the property in, were the council aware they were potentially approving a development that was approx 1.5 to 2m too high?