

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 December 2018

Public Authority: The Planning Inspectorate

Address: 3G Hawk Wing
Temple Quay House
2 The Square
Bristol, BS1 6PN

Decision (including any steps ordered)

1. The complainant has requested information relating to the outcome of an appeal submitted to the Planning Inspectorate (the Inspectorate).
2. The Commissioner's decision is that, on the balance of probabilities, the information that the complainant is requesting is not held by the Inspectorate.
3. The Commissioner does not require the Inspectorate to take any steps to ensure compliance with the legislation.

Background

4. The complainant's wife submitted a planning application to the appropriate local authority for permission to redevelop land and property which she jointly owns with the complainant.
5. The planning application was refused and the complainant's wife then submitted an appeal to the Inspectorate.
6. On 6 July 2016 the Inspectorate dismissed the appeal.

Request and response

7. The Planning Inspectorate is an executive agency which is sponsored by the Ministry of Housing, Communities and Local Government (MCHLG) and the Welsh Government. It is not a public authority in its own right

for the purposes of the Freedom of Information Act 2000 (FOIA) and the EIR.

8. However, as the information that has been requested in this case is solely held by the Inspectorate and relates to its actions, it has confirmed that it views the distinction to be academic and has responded to both the complainant, and the Commissioner, on all matters relating to the request under consideration.
9. Given this, for the purposes of this decision, and for consistency, the Commissioner has referred to the Inspectorate rather than the MHCLG throughout this notice.
10. On 10 September 2017 the complainant made three separate requests for information to the Inspectorate as follows:

Request 1

'Please may I have a copy of the evidence the Inspector relied on to determine the appeal site is isolated and that the future occupiers of the development would have limited access to goods, services and public transport links.'

Request 2

'Please may I have a copy of the evidence the Inspector used to determine that occupiers would not use that facilities such as church, school and pub in Moggerahnger [sic] but would most likely travel to larger settlements to use similar facilities.'

Also please may I have a copy of the evidence the Inspector used to determine that the national cycle path to the north of the site would have little effect on the accessibility of the site in terms of its access to local goods and services.'

Request 3

'Please can you tell me who was the SIT (Seconded Inspector Trainer) was for [name of Inspector redacted] in respect of the above appeal. Also please may I have a copy of his/her comments.'

11. The Inspectorate sent one collective response to all three of the complainant's requests on 3 October 2017.
12. The complainant has not included a copy of Request 3 in his representations to the Commissioner. It is also noted that the First-Tier (Information Rights) Tribunal has already made a decision that is

relevant to this request (paragraphs 9-13, and 30-35, of the Tribunal decision are most pertinent).

13. Given the above, the Commissioner does not intend to consider Request 3 and will not make further reference to the information sent between the two parties in relation to that specific request.
14. The Inspectorate confirmed in its response to the complainant dated 3 October 2017 that it considered Requests 1 and 2 to fall under the FOIA. It advised that whilst some evidence of the appeal was held, the actual appeal file had been destroyed one year after the planning decision was made. The Inspectorate went on to say that the information may be held in archive by that local authority which dealt with the initial planning application.
15. The Inspectorate also advised the complainant that, with regard to the information that it did hold, it would not be able to reference what information related to each separate element of his requests. However, it did say that a copy of all the representations held from the Inspectorate, and third parties, could be provided, if this was required.
16. On 15 October 2017 the complainant contacted the Inspectorate to query its assertion that the appeal file had been destroyed. He also explained that he had concerns about what he regarded to be inconsistency in the decision making process in relation to planning matters, and that it was therefore important that the information requested was released in this instance.
17. On 20 October 2018 the Inspectorate responded to the complainant to confirm that his correspondence of 15 October 2017 had been treated as an internal review request.
18. The Inspectorate advised that it regarded Request 1 and Request 2 to relate to the evidence which was considered by the Inspector in relation to the planning appeal. It went on to say that it had been incorrect to state previously that the planning file had been destroyed and confirmed that it did still hold a copy of the information which had been submitted for the appeal.
19. The Inspectorate explained to the complainant that the 'evidence' which is taken into account by the Inspector when coming to a decision consists of the appeal representations supplied by the appellant, the local authority and interested parties. It stated that the Inspector will consider this information and, through '*exercise of their professional planning judgement*', will reach a decision on the appeal and provide their reasoning for this within the final decision notice.

20. The Inspectorate confirmed that the Inspector is not required to further break down the representations to identify the parts that they relied on in reaching individual conclusions. It went on to say that if any party believed that the Inspector had reached a conclusion which was unreasonable, then there were legal channels available to challenge this.
21. However, the Inspectorate did advise the complainant that when it received his request it should have asked him to clarify what he required. It confirmed if it was the case that he required a copy of the representations that were held on file, and which had already been provided to his wife through her agent, then this could be provided to him.
22. The Inspectorate then confirmed to the complainant that if he was requesting (outside the appeal decision itself) a breakdown of how the evidence was relied upon by the relevant Inspector when reaching his conclusions, then it would respond to say that regulation 12(4)(a) of the EIR is engaged, as this information is not held.
23. Additional correspondence between the two parties followed with the complainant expressing his dissatisfaction with the Inspectorate's response to his request. As far as the Commissioner is aware, this exchange of correspondence concluded on 13 November 2017. The Inspectorate advised the complainant that there was nothing further it could add and if he remained dissatisfied he could raise his concerns with the Commissioner. The Inspectorate also reiterated its previous advice to the complainant that if he was unhappy with the outcome of the planning appeal, then he should consider a legal challenge. In addition, if he had any concerns about potential maladministration, then this could be pursued with the Parliamentary and Health Service Ombudsman.
24. On 5 March 2018 the complainant contacted the Inspectorate again. For ease of reference, this is to be referred to as Request 4 for the purposes of this notice. The complainant advised the Inspectorate that he had still not found evidence of the following:

'The appeal site is isolated and that the future occupiers of the development would have limited access to goods, services and public transport links.

Occupiers would not use the facilities such as church, school and pub in Moggerhanger but would most likely travel to larger settlements to use similar facilities.

The national cycle path to the north of the site would have little effect on the accessibility of the site in terms of its access to local goods and services.'

25. The complainant went on to say that the previous response he had received by the Inspectorate had not been relevant to his request for information.
26. The Inspectorate's response of 6 March 2018 advised the complainant that it viewed Request 4 to be identical to that set out in Request 2 and Request 3. It referred the complainant to its internal review response of 20 October 2017. The Inspectorate once again advised the complainant that it did not hold a further breakdown of the individual conclusions reached by the Inspector, that it was happy to provide him with a copy of the appeal representations should he require this, and that any concerns about the appeal should be pursued using the appropriate legal channels.

Scope of the case

27. The complainant contacted the Commissioner on 23 May 2018 to complain about the way his requests for information had been handled.
28. The Commissioner has firstly considered whether the Inspectorate holds any information which should have been provided in response to Request 1 and 2 submitted by the complainant on 10 September 2017.
29. She has then gone on to consider whether the Inspectorate was correct to have considered the complainant's request of 5 March 2018 to be a repeat of his requests of 10 September 2017.

Reasons for decision

Appropriate legislation

30. The Inspectorate referred to the Freedom of information Act 2000 (FOIA) in its initial response to Request 1 and Request 2. However, at the internal review stage, it cited Regulation 12(4)(a) of the EIR as being relevant to the requests.
31. Regulation 2¹ of the EIR sets out the definition of environmental information. As the requests under consideration are for information

¹ <http://www.legislation.gov.uk/ukxi/2004/3391/regulation/2/made>

relating to specified planning applications, the Commissioner considers that the requested information falls squarely within the definition of environmental information at regulation 2(c).

Regulation 5(1): Duty to make environmental information available on request

32. Regulation 5(1) of the EIR states:

'Subject to paragraph (3) and in accordance with paragraphs (2),(4), (5) and (6), and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.'

Regulation 12(4)(a) of the EIR

33. By virtue of regulation 12(4)(a), a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.

34. In scenarios where there is some dispute between the amount of information that has been located and/or provided by a public authority and the amount of information that a complainant believes might be held, the Commissioner, in accordance with a number of First-Tier Tribunal decisions, will apply the civil standard of the balance of probabilities. In other words, the Commissioner will determine whether, on the balance of probabilities, the public authority holds additional information that falls within the scope of the complainant's request.

35. In making her decision, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely, or unlikely, that information is not held.

36. 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.

The complainant's position

37. The complainant has argued that the Inspectorate has failed to provide the information set out in Request 1 and Request 2. He states that in the Inspector's internal review response it had declined to provide the requested information. He goes on to say that despite writing to the Inspectorate again on the 5 March 2018 to advise that he could not find

the evidence he had previously requested anywhere, it had again failed to provide the information he had requested.

38. The complainant has advised that the Inspectorate has consistently refused to provide the information requested and *'tried to deflect the question.'* He has argued that *'Planning Appeals are an evidence based system and a decision should flow from the evidence.'*
39. The complainant states that he is requesting that the Inspectorate provide the information requested, or confirm that it does not exist.

The Inspectorate's position

40. The Inspectorate has advised the Commissioner that it views the complainant's requests to relate to the conclusions reached by the Inspector in the planning appeal decision. It states that the wording of the requests are considered to be for the *'reasons for the reasons'* provided by the Inspector in his decision.
41. The Inspectorate states that a copy of all the representations which have been exchanged on the appeal have already been provided to the complainant's wife (through her agent) and it has been explained to the complainant that this is the information which will have been considered by the Inspector when making their decision.
42. The Inspectorate has offered to provide the complainant with a copy of all the information that has previously been supplied to his wife, should he require this.
43. The Inspectorate has confirmed that it does not hold additional information or 'evidence' as referred to by the complainant that was used by the Inspector to reach each individual conclusion set out in his appeal decision. It goes on to say that, *'importantly, that should not be taken to mean that the Inspector's decision was not reached on proper consideration of the representations provided to him.'*
44. The Inspectorate states that, in its view, the complainant, and his wife, do not consider that the Inspector could reasonably have reached the decision they did on the basis of the exchanged representations. It goes on to say that it has already responded to significant complaint correspondence from the complainant, and his wife, on matters relating to the planning appeal.
45. The Inspectorate has confirmed that the Inspector's decision, and reasoning, are solely included in their appeal decision. It states that whilst theoretically it could attempt an exercise to break down and categorise these representations, it believes such an activity is considered to require interpretation that is beyond the scope of the EIR.

In addition, it may not actually replicate the Inspector's own consideration of the appeal evidence. Given this, the Inspectorate states it has formed the view that it does not hold the information that has been requested.

The Commissioner's view

46. The content of the complainant's correspondence indicates that he has concerns that the Inspectorate has not taken a consistent approach when it considered a number of planning appeals. It would also appear that he believes that the Inspectorate has formed certain conclusions relating to the planning application that do not take proper account of the full evidence that was available, in particular that provided by the appellant (the complainant's wife) in support of the appeal.
47. The Commissioner understands that the refusal to grant planning permission for the proposed redevelopment is likely to have had a significant impact on the complainant and his wife. She also appreciates that the complainant may have concerns about the outcome of the planning appeal and the weight that the Inspector may, or may not, have placed on each of the various factors and evidence presented by all the relevant parties.
48. However, the Commissioner, having considered the matter carefully, has found some difficulty in understanding what more the complainant believes is still held by the Inspectorate (in addition to that which has already been provided to his wife).
49. The Commissioner agrees with the Inspectorate that it is not required to separately justify the decisions that were made by the Inspector by way of a response to an information request. She is of the view that the phrasing of the requests indicate that this is possibly what the complainant is asking the Inspectorate to do.
50. As the Inspectorate has explained to the complainant on more than one occasion, if he remains dissatisfied with the planning appeal decision that has been made, or believes that the process which has been followed is flawed, then the appropriate step would be to pursue the matter using the legal channels available as part of the planning process.
51. The Commissioner disagrees with the complainant's assertion that the Inspectorate has failed to provide the evidence that he has requested, or confirmation that it is not held. She is satisfied that the Inspectorate could not have been more explicit in its responses to the complainant. It has confirmed what information was considered by the Inspector when making their decision. In addition, the Inspectorate has stated that,

aside from the details set out within appeal decision notice, no further breakdown of the decision made by the Inspector is held.

52. The EIR is not intended to be a mechanism for individuals to use to 'interrogate' a public authority about a decision that has been made, or to obtain further justification for that decision. As the Inspectorate has clearly pointed out, there are separate avenues to follow in this regard.
53. Aside from that information already provided to the complainant's wife, the Commissioner is satisfied that, on the balance of probabilities, the Inspectorate does not hold any further information which could be reasonably regarded to fall under the scope of Request 1 and 2.
54. The Commissioner also regards the terms of Request 4 to be sufficiently similar to Request 1 and Request 2 to be deemed a repeat request.
55. Given this, the Commissioner does not regard it to have been unreasonable for the Inspectorate, upon receipt of Request 4, to have referred the complainant back to its internal response of 20 October 2018 and taken no further action.
56. To conclude, the Commissioner is satisfied that, on the balance of probabilities, the Inspectorate does not hold any information (in addition to that which has already provided to the complainant's wife) that would fall under the scope of Request 1, 2 and 4.

Right of appeal

57. 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

58. 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.
59. 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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