

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

**Date:** 31 March 2020

**Public Authority:** Arun District Council  
**Address:** Arun Civic Centre  
Maltravers Road  
Littlehampton  
West Sussex  
BN17 5LF

**Decision (including any steps ordered)**

---

1. The complainant has requested the publication details for two 'Article 13' planning application notices.
2. The Commissioner's decision is that on the balance of probabilities, Arun District Council has located all the information held in scope of the request.
3. The Commissioner does not require any steps.

## Request and response

---

4. On 24 April 2019 the complainant wrote to Arun District Council ('the council') and requested information in the following terms:

*"[1] We would like to know the name and date of the publication in which Article 13 notices were advertised for Planning Applications AL/116/18/PL and AL/117/18/PL ['the Planning Applications'].*

*The law requires these notices to be advertised for 21 days prior to a decision being made.*

*The notices on your web site were present for 16 days and 11 days respectively and were only for the land which belonged to someone else and had to be crossed to ENTER the site.*

*Since the Planning Application against which they were being aligned (AL/136/17/PL) was a ONE WAY SYSTEM, both applicants would therefore have to cross the others' land on the way out.*

*None of these exit notices can be seen on your web site. Please provide the name and date of the publication in which they were advertised for the required 21 days. ie. [name redacted] notification to [name redacted] and [name redacted], and [name redacted] notification to [name redacted].*

*[2] We would also like to know why these decisions were made under 'delegated powers when Aldingbourne Parish Council had sent an email to [name redacted], questioning the applications. The applications were decided rather hastily immediately afterwards, when they were chased by [name and role redacted], for Chichester District Council.*

*[3] We would also like to know how Environmental Health and Planning Enforcement Notices are advertised to the public and why they the ones on this site have not been identified in any of the 14 Planning Applications made so far.*

5. On 21 May 2019 the council responded. In relation to each question the council:

*[1] Stated that "no article 13 notices appeared in a "publication"". It advised that this is not a requirement of the "Town and Country Planning (Development Management Procedure)(England) Order 2015." However, it advised that they are published on its website and provided a link to the planning application.*

*[2] Advised: "The decisions were made under delegated powers, as confirmed in the Council's Constitution at Part 4, Section 3, paragraph*

*3.1.2. This was because Aldingbourne Parish Council withdrew their objections in an email of 01 March 2019 thus removing the requirement to take the applications to the Development Control Committee." It also provided a link stating "You can review their email confirming this against the application at [link]:"*

[3] Stated that Planning Enforcement Notices are kept on a register and not advertised. It advised "A *planning enforcement notice would only be mentioned in a report on a planning application where it is considered relevant to that application.*" Regarding the Environmental Health (EH) it advised that it does not advertise enforcement notices and that "*no EH notices were served at the time of the planning applications referred to here.*"

6. The complainant requested an internal review on 28 May 2019 on the following grounds:

[1] The notices advised as published do not align with the requirements of the Planning Applications which the complainant stated involve "*a ONE WAY SYSTEM, both applicants would have to cross the others' land on the way out.*"

[2] Disputing the response given.

[3] Disputing the response given.

7. The council sent the outcome of an internal review on 26 June 2019. In summary regarding each request item it:

[1] Upheld the response, and directed the complainant, by way of a link, to its website where further planning documents are held.

[2], [3] Upheld its position.

## **Scope of the case**

---

8. The complainant contacted the Commissioner 28 August 2019 to complain about the way their request for information had been handled. Following correspondence with the Commissioner they agreed that the council had responded to [2] and [3]. However, they dispute the response given by the council to [1].
9. The Commissioner confirmed the purpose of the information access legislation with the complainant, which is to ensure access to information held by public authorities. The Commissioner cannot decide whether an authority holds the necessary records for a specific purpose nor the correctness of any records held. The complainant confirmed that

they required a further investigation of [1] on the grounds that the council should hold further information that addresses the requirements of the planning application process, specifically in regards of 'article 13 notices'.

10. The Commissioner therefore considers that the scope to investigate whether, on the balance of probabilities, that the council holds further information in regard of question [1].

## Reasons for decision

---

11. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request." This is subject to any exceptions that may apply.
12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the 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.
13. The Commissioner is mindful of the Tribunal's decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that "*there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority's records*". It clarified that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner applies in this case.
14. In discussing the application of the balance of probabilities test, the Tribunal stated that, "*We think that its application requires us to consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.*" The Commissioner has therefore taken the above factors into

account in determining whether or not further information is held, on the balance of probabilities.

### *The Complainants view*

15. The complainant contends that the council is obliged by law to hold the requested information, as detailed in planning legislation:
- The complainant referred the Commissioner to a document<sup>1</sup>, on the North Somerset Council website, providing details of ownership certificates which are a requirement of the Town & Country Planning Procedure Order 2015<sup>2</sup>. The document explains that an article 13 certificate confirms either that the planning applicant is the sole owner of the land or that an appropriate notice has been served on any person who is owner or tenant of land impacted by an application.
  - The document explains that some article 13 certificates, where such an owner is unknown, require that the application be advertised in the local press.
16. It is therefore the complainant's position that the council should, by law, hold the requested information. That being, the name and date of the publication in which article 13 notices were advertised for the Planning Applications.

### *The Council's response*

17. The Commissioner asked what searches had been carried out for the information. The council explained it had provided the complainant with details of where the article 13 notices for the Planning Applications could be viewed on its website. It had informed the complainant that there was no requirement that they be advertised elsewhere, therefore there is no such information to provide to the complainant.
18. The council reasoned that further searches were not necessary, because at the crux of the complainant's request was a question about the planning application process, and how certain items are advertised to the public. Having provided the location of the notices, along with an explanation of the council's planning application process, it did not need

---

<sup>1</sup> <https://www.n-somerset.gov.uk/wp-content/uploads/2016/11/ownership-certificates-detailed-advice-for-planning-professionals.pdf>

<sup>2</sup> <https://www.legislation.gov.uk/ukxi/2015/595/contents>

to carry out any further searches in order to respond to the complainant's request. Furthermore, with this point in mind, the council confirmed to the Commissioner that no information had been destroyed in scope of the request.

19. The council reasoned that there was no business purpose, nor statutory requirement to hold the requested information. It also outlined the council's general policy regarding the retention of information submitted about a planning application, which is kept indefinitely, forming part of the planning history relating to a property of a piece of land.
20. The council maintains it has "*endeavoured to answer the complainant questions and provide valid reasons why the information is not held.*"

#### *The Commissioner's Conclusion*

21. The Commissioner is mindful of the purpose of the EIR, being that it gives the public the right of access to recorded information that is held by a public authority. It is not concerned with what information a public authority 'should' hold, only those records that 'are' held. The Commissioner must therefore conclude whether the council is likely to be holding further recorded relevant information beyond that which has already been disclosed.
22. In coming to her conclusion, the Commissioner has considered the argument raised by the complainant, and their view regarding why further information should be held by the council. The Commissioner has also considered the responses provided by the council directly to the complainant and during the course of the investigation.
23. The Commissioner agrees that request [1] is essentially a question about the council's execution of its planning application process, in adherence with planning legislation. The council have answered the question by stating that no article 13 notices appeared in a publication and providing a justification for that response.
24. The Commissioner understands the basis of the complainant's argument, being that, by law, certain actions should have been undertaken prior to approval of the Planning Applications. However, it is not within the Commissioner's role to adjudicate upon whether or not correct process has been followed in this respect.
25. In any case, the question here is whether further information is likely to be held. The Commissioner is satisfied that the council have given a coherent explanation regarding why no further information is held, and that it has therefore undertaken adequate actions in responding to the request.

26. Taking all of the above into account the Commissioner is satisfied that, on the balance of probabilities, no further information within the scope of the request is held by the council.

## Right of appeal

---

27. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.

29. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**