

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 July 2014

Public Authority: Uttlesford District Council
Address: London Road
Saffron Walden
Essex
CB11 4ER

Decision (including any steps ordered)

1. The complainant has requested from Uttlesford District Council ("the Council") information concerning a Local Plan to build new houses.
2. The Commissioner's decision is that the Council has correctly applied the exception set out at regulation 12(4)(b).
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 2 September 2013, the complainant wrote to the Council and made a request for information. A copy of the request is attached as Annex A.
5. The Council responded on 5 September 2013. It explained that it considered paragraphs 1-6, 7(a) and b(i); 8(b); 11; 12; 13(a) (c) and (e); 14; 15; 17; 18; 20 and 22 to be repeat requests which it had previously responded to.
6. With regards to the remaining requests, the Council explained that it believed they asked for explanations or expressions of opinion and not information. It subsequently explained that these requests were not covered by the regulations.
7. The Council therefore considered that the request was manifestly unreasonable and sought to rely upon regulation 12(4)(b).

8. Following an internal review the Council on 14 October 2013. It upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 10 October 2013 to complain about the way his request for information had been handled.
10. The Commissioner has had to consider whether the Council were correct to refused requests 1-6, 7(a) and b(i); 8(b); 11; 12; 13(a) (c) and (e); 14; 15; 17; 18; 20 and 22 under regulation 12(4)(b).
11. The Commissioner has also had to consider whether the Council were correct to refuse to comply with requests 7(b)ii; 8(a); 9; 10; 13(b) and (d); 16; 19 and 21 as they sought explanations or expressions of opinion and were therefore not covered by the EIR.

Reasons for decision

Requests for expressions or opinions

12. The Commissioner will first consider whether the Council were correct to refuse to comply with the requests set out at paragraph 11 on the grounds that they sought explanations or expressions of opinions and were therefore not covered by the EIR.
13. The Commissioner informed the Council that if it sought to maintain its position that the requests described at paragraph 11 were not valid for the purposes of the EIR, he was highly likely to disagree.
14. The Council returned to the Commissioner on this point and explained that it respectfully disagreed. The Council cited the case EA/2006/0069¹ which stated:

"The Act therefore only extends to requests for recorded information. It does not require public authorities to answer questions generally; only if they already hold the answers in recorded form. The Act does not extend to requests for information about policies or their implementation, or the merits or demerits of any proposal or action –

¹ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i68/Day.pdf>

unless, of course, the answer to any such request is already held in recorded form"

15. It further relied upon the case EA/2006/0087² to support its position. In this case the Tribunal stated

"It is always possible that the Council may hold recorded information which answers that question: there may have been a report prepared for the Council setting out the pros and cons of different proposals, reaching a reasoned conclusion. However, in most such cases an individual reply will have to be drafted to answer the question... Neither EIR nor FOIA require public authorities to go to such lengths".

16. The Commissioner acknowledged these points and subsequently wrote to the Council to reiterate his position that the requests were valid under the regulations.

17. The Council responded and explained

"All these are requests for reasons, explanations and answers to questions where no recorded information exists (other than that in the public domain) to the extent that the Council does not hold records of these reasons, explanations and answers to the questions..".

18. The Commissioner's position with regards to questions in the form of information requests is that any written question put to a public authority is technically a request for information. In this case although the Commissioner accepts that these requests may have been worded in the form of a question, they could still be interpreted as requests for any recorded information that would answer that question.

19. The Commissioner concludes that the requests identified at paragraph 11 are valid requests for the purposes of the EIR and the Council should have recognised this in its initial handling of the request.

20. As the Commissioner has determined that all the requests are valid, he will now consider whether the Council was correct to apply regulation 12(4)(b) to the request.

Is the request manifestly unreasonable?

21. Regulation 12(4)(b) of the EIR states that a public authority may refuse a request for information where it considers that a request is manifestly unreasonable. The fact that the exception is qualified by the word "manifestly" means, in the Commissioner's opinion, that there must be an obvious or clear quality to the unreasonableness.
22. It is permissible for a public authority to refuse a request under regulation 12(4)(b) on the grounds that it is vexatious. However, the exception is wider in scope than section 14(1) of FOIA, which specifically covers vexatious requests, and contains a formal requirement to carry out a public interest test when deciding whether the exception applies.
23. The approach to the issue of vexatiousness in the context of regulation 12(4)(b) of the EIR will be guided by the findings of the Upper Tribunal in *Information Commissioner vs Devon County Council & Dransfield*.³ This decision established that the concepts of 'proportionality' and 'justification' are fundamental considerations when deciding whether a request can reasonably be classified as manifestly unreasonable. Accordingly, the Commissioner's view is that a crucial question for a public authority is whether the purpose and value of a request justifies the distress, disruption or irritation that would be incurred by complying with the request. Importantly, it is the request and not the requester that must be vexatious. However, a public authority may take into account the history and context of a request when deciding whether the exclusion applies.
24. Although the Upper Tribunal in *Dransfield* stressed that a decision on whether a request is vexatious or manifestly unreasonable should not be reduced to a box-ticking exercise, certain factors are frequently cited as the reason for refusing a request on that basis (as demonstrated by the annex of example Information Tribunal decisions attached to the Commissioner's guidance '[Dealing with vexatious requests](#)'⁴). These include instances where a request: imposes a disproportionate burden; is aiming to reopen issues that have been resolved; is unjustifiably persistent; is harassing in the circumstances; or is vexatious when viewed in context.

The Council's arguments

³ 2012] UKUT 440 (AAC), (28 January 2013)

⁴

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

25. In the Council's submissions to the Commissioner it explained that the majority of information requested has been previously disclosed, or where applicable, it explained that the information was not held. To support this position, the Council provided the Commissioner with a spreadsheet that details the information that has previously been provided to the complainant.
26. The Council also referred to a previous complaint by the complainant and the Commissioner's decision notice on this.⁵ The Council argued that *"there was a great degree of overlap between the information requested in connection with this complaint"* and the previous complaint.
27. In the previous complaint, the Commissioner upheld the Council's position that it had either provided the complainant with all the information it held or where applicable it was not held, or that the information was easily accessible on the Council's website.
28. To strengthen its position that the request is manifestly unreasonable, the Council explained the complainant is a leading member of a local pressure group politically opposed to the local plan.
29. The Council explained that the complainant has made a number of complaints to the monitoring officer at the Council regarding alleged breaches of the Code of Conduct by Councillors. The Council further explained that the complaints appear to be targeted at those Councillors who disagree with the complainant's views. The Council stated that all of these complaints have been dismissed as being without foundation.
30. Adding to this, the Council stated that the complainant has complained to the Ombudsman and he has also challenged the Council's annual accounts with the Council's external auditors alleging unlawful expenditure in the local plan process. The Council confirmed that both of these complaints were unsuccessful.
31. The Council believes that the complainant is *"using all methods at his disposal to disrupt the business of the Council"* and he is *"adept at making the same request in different ways"*.
32. The Council acknowledged that local residents will have a keen interest in the Local Plan process. However it further acknowledged that the complainant's behaviour goes *"over and above what is reasonable and have used an immense amount of the Council's resources"*.

⁵ http://ico.org.uk/~media/documents/decisionnotices/2014/fer_0515647.ashx

33. It subsequently concluded that the request is manifestly unreasonable under regulation 12(4)(b).

The complainant's arguments

34. In his complaint to the Commissioner, the complainant explained that the Council has,

"...essentially avoided answering virtually any of the questions that I have asked, and in each case without providing any valid reason. Virtually every request has been rejected on the basis that it has been asked before, when in each case it either hasn't been asked before, or if it has been asked before UDC have refused to answer it properly or have provided an answer which appears to be untrue".

35. The complainant also provided the Commissioner with arguments in relation to the Council's response to each of his 22 requests. However due to the number of requests the Commissioner has not detailed every argument in this decision notice.
36. He does, however, understand that the complainant strongly disputes that his request is manifestly unreasonable. He also understands that the complaint disputes the Council's claim that he has already received the requested information.

The Commissioner's view

37. The Commissioner does acknowledge that the complainant has a legitimate interest in the information he has requested.
38. However, the Commissioner considers that the complainant is pursuing similar information that he has requested before and it appears he is failing to take into account the previous responses provided by the Council and the information he already has available to him. The Commissioner would also agree with the Council in that it appears the complainant is rewording his requests to seek the same or similar information.
39. In the Commissioner's view, despite whether or not the information requested has previously been disclosed, the key point is that he considers any response provided by the Council will not be satisfactory to the complainant. This is evident from the complainant's previous request⁶ and his follow up request under consideration in this notice.

⁶ http://ico.org.uk/~media/documents/decisionnotices/2014/fer_0515647.ashx

40. He therefore determines that the pattern of correspondence from the complainant and his requests suggests that any response given by the Council will automatically lead to follow up requests.
41. The Commissioner also considers that the burden on the Council is disproportionate and if the Council were to respond it would divert its resources away from its public duties.
42. On this basis and taking into account the arguments put forward by the Council, the Commissioner has decided that regulation 12(4)(b) is engaged and the request is manifestly unreasonable.

Public Interest Test

43. Regulation 12(1)(b) requires that a public interest test is carried out in cases where regulation 12(4)(b) is engaged. The test is whether in all the circumstances of the case the public interest in maintaining the exception overrides the public interest in disclosing the information. When considering his decision the Commissioner must also bear in mind the presumption in favour of disclosure provided by regulation 12(2).
44. The Commissioner does consider that there is an argument for transparency and accountability in the decision making of public authorities and this carries weight when considering whether a request is manifestly unreasonable.
45. However, the Commissioner notes that the Council has a section on its website dedicated to providing the public with information regarding the Local Plan.
46. The Commissioner believes that the information on its website goes a long way to satisfy the public interest in the requested information. The Commissioner also considers that the information on its website provides the public with transparency and accountability when making decisions.
47. Having considered the evidence provided in this matter, the Commissioner concurs with the Council's view and finds that the public interest in openness, transparency and the disclosure of environment information, is outweighed by the public interest in preventing further public resources being diverted to respond to the complainant's request.

Right of appeal

48. 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: GRC@hmcts.gsi.gov.uk

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

49. 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.
50. 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

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

Annex A

1. The date on which the Local Plan to which the Council is currently working is proposed to commence, and the date on which it is proposed to end, regardless of whether or not a formal decision to adopt or approve a Local Plan based on such dates has been taken by the Council or any part thereof, and what is the Council's current best estimate of what these dates will be;

2. Whether the Council (including any of its employees) has at any time since June 2012 worked on the basis of a Local Plan which would expire in any year other than 2028? If not, please go to Question 4 below. If it has, please let me know:

(a) the year of expiry of any such plan not expiring in 2028;

(b) the date (or dates where relevant) when the Council (or any part of it, including any relevant officer) decided to change the date of expiry of the Local Plan being worked on or to work on the basis of a different expiry date;

(c) the date or dates when the Council (or any part of it) stopped working on the basis of a Local Plan which would expire in 2028 (as proposed in the June / July 2012 public consultation), and started working on the basis of any other end date;

(d) the person or persons and/or the committee(s) who
i. recommended; and

ii. made such a decision;

(e) at what levels the decision to work on a Local Plan with any other end date than 2028 was approved within the Council; and

(f) details of the reason or reasons why the Council moved from working on a Local Plan with a proposed end date of 2028 to working on a Local Plan with any other end date, and the weight attached to each such reason.

3. If the proposed end date of the Local Plan on which the Council has been working at any time since June 2012 has changed more than once since June 2012, please provide the following information in relation to each such change:

(a) the date (or dates where relevant) when the Council (or any part of it) decided to make such change, and the date or dates when such change took effect;

(b) the person or persons and/or the committee(s) who
i. recommended; and

ii. made such a decision,

(c) at what levels the decision to work on such a Local Plan was approved within the Council; and

(d) details of the reason or reasons why such change was proposed or made.

4. If the Council has not at any time since June 2012 worked on the basis of a local plan which would expire in any year other than 2028, please explain:

(a) why the draft Statement of Community Involvement dated February 2013 and issued for consultation on 25 March 2013 said that it was then working on a plan covering the period 2011-2026;

(b) why the document entitled "Assessment of Uttlesford District's Local Plan on Air Quality in Saffron Walden", which is as far as I am aware in draft form with the latest draft being dated 15 March 2013, and commissioned by Essex County Council assesses air quality as at 2026 rather than 2028 or any other date after 2018?

(c) whether any documents prepared by or commissioned by the Council since June 2026 in connection with the Local Plan or intended to form any part of the evidence base for all or a majority of the proposed Local Plan forward-looking period cover a period expiring in 2026 or in any year other than 2028? If there are any such documents, please specify what they are and the reasons for the chosen period they cover, and provide copies of them.

5. Paragraph 4.1 of the draft Statement of Community Involvement dated February 2013 and issued for consultation on 25 March 2013 states: "*In January 2005 the Uttlesford Local Plan was adopted. The Council is now preparing a new Local Plan for the District covering the period 2011-2026*". In June 2012, the Council issued a draft local plan for the period 2013-2028. On what date following June 2012 did the Council change from preparing a local plan for the period 2013-2028 and start working on the basis of preparing a Local Plan for the District covering the period 2011-2026? Who authorized the statement in the draft Statement of Community Involvement set out in this paragraph?

6. In your response to my letter of request for information of 2 August 2013, you said that the Council is now working on a Local Plan with a proposed end date of 15 years from the date of adoption. As you do not state the proposed date of adoption, it is not clear from your response what the proposed end date of the Local Plan on which the Council is currently working is. Is it 2026 or is it a different date? If it is a different date,

(a) what is it?

(b) when did it change from the 2026 end date stated in the draft Statement of Community Involvement?

(c) what were the reasons for such change?

7. In your response to my letter of request of 2 August 2013, you said that the Council is now working on a Local Plan with a proposed end date of 15 years from the date of adoption. It is not clear from your response what the

proposed start date of the Local Plan on which the Council is currently working is:

(a) what is the proposed start date and what is your best estimate of the likely date of adoption?

(b) if the proposed start date is different from the 2011 start date referred to in the draft Statement of Community Involvement and the 13 December 2012 Cabinet paper referred to below:

i. when did the Council start working on the basis of the non-2011 start date? and

ii. What was the reason for the change?

8. In the Position Statement issued by the Council in March 2013, there were set out a list of "*amendments officers are minded to recommend having considered all the representations received, national planning guidance, the results of the sustainability appraisal work and other available evidence.*" The first of the proposed amendments is to change the end date of the Plan to 2026. Please:

(a) explain fully the reasons why officers were minded to recommend these amendments; and

(b) specify what was the evidence that informed their proposed amendments, and what was the basis on which they came to such a decision?

9. Are officers still minded to recommend any of the amendments? If not,

(a) why not? and

(b) what is the Council's best estimate of the likely end date of the Plan?

10. If officers are not still minded to recommend any such amendments, what are the reasons for their no longer being so minded?

11. Please provide copies of all correspondence, written or in e-mail form, between officers or councilors (or any of either) which set out or contain any discussion relating to, approval of or reasons for such a recommendation or such a change.

12. Which person or persons within the Council approved the March 2013 Position Statement and authorized its release? Please provide copies of all correspondence, written or in e-mail form, between officers and councilors (or any of either) which relate to the contents of the Position Statement, the reasons for its issue, and the authorization of its release;

13. At the Cabinet meeting on 13 December 2012, a paper was tabled titled "Report into Greater Essex Demographic Forecasts Phase 3". Paragraphs 23-25 of that paper refer to a proposal to move the Local Plan period from

2013-2028 to 2011-2026. Those paragraphs set out a justification for moving the start date to 2011. Please tell me

(a) when it was first proposed by the Council and by whom to move the plan period from 2013-2028 to 2011-2026;

(b) how such a proposal was influenced by the Greater Essex Demographic Forecasts Phase 3 report, with which the Cabinet report was concerned;

(c) what document was the Demographic Forecasts Report referring to in paragraphs 23-25 when mentioning the proposal to move the Local Plan period from 2013-2028 to 2011-2026;

(d) whether there was any reason for proposing to move the end date of the Local Plan from 2028 to 2026 other than to reduce the number of new homes the Council would be obliged to plan for in the Local Plan. If there was any such reason, please state all such reasons and what weight was given to each and why;

(e) was there any specific evidence other than the Greater Essex Demographic Forecast Phase 3 which was a material influence in such a proposal? If so, please explain what it was, and which document it is contained in and where such document might be found;

14. The Greater Essex Demographic Forecasts Phase 3 forecast an annual need for 415 new homes to be built in Uttlesford under the "economic scenario" which was stated in the June 2012 draft Local Plan as the Council's preferred scenario. Does the economic scenario remain the Council's preferred scenario? If not, what is the Council's now preferred scenario?

15. Is the Local Plan which the Council is currently working on based on an annual requirement of 415 new homes per year over the plan period? If not, what is the annual new homes requirement for the Local Plan on which the Council is currently working? If it is not possible to provide a precise figure please specify the reasonable range within which the Council is working.

16. If the annual new homes requirement for the Local Plan on which the Council is currently working is different from the 415 new homes requirement referred to in the Greater Essex Demographic Forecasts Phase 3 report, what is the Council's reason for not using the annual requirement of 415 new homes set out in the Phase 3 Demographics Report?

17. What is the total number of new homes to be planned for during the Plan Period to which the Council is currently working, including the total number of houses and their proposed locations and any expectations or understandings you may have as to the possible dates of construction and availability of the houses? If it is not possible to provide a precise figure please specify the reasonable range within which the Council is working.

18. How many new housing allocations are proposed under the Local Plan on which the Council is currently working? If this number differs from the 3,314 new homes to be allocated under the June 2012 draft Local Plan, what are the locations in which it is currently proposed that the new homes would be situated (and for this purpose, please state the Council's currently preferred locations, regardless of whether or not any firm decision has been made)?

19. If the proposed new homes allocation is the same as in the June 2012 draft, why has there been no change, notwithstanding the receipt of the Phase 3 demographic forecasts?

20. What was the annual new homes requirement on which the suggested amendments to the Local Plan set out in the Position Statement of March 2013 were based? Was it the 338 new homes referred to in the June 2012 draft Local Plan or the 415 new homes referred to in the Phase 3 Demographics Study or a different number? If it was a different number, what was it?

21. If the amendments set out in the March 2013 Position Statement were based on a Local Plan new homes requirement of anything other than the 415 annual requirement stated in the Phase 3 Demographics Study, what were the reasons for using the other number and not using the 415 number?

22. Copies of all e-mails, letters, documents, file notes and other correspondence or information of any nature whatsoever sent or prepared by or received by any of the following members of Uttlesford District Council (being any of the councilors who are members of the UDC Cabinet, [redacted names] or their secretaries which contain, discuss or relate to any of the matters referred to above.