

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 28 November 2018

Public Authority: Brighton and Hove City Council

Address: Kings House
Grand Avenue
Hove
BN3 2LS

Decision (including any steps ordered)

1. The complainant requested information from Brighton and Hove City Council ("the Council") relating to the development of a site at the former St Aubyn's School, Rottingdean. The Council provided some of the information that was requested to the complainant, but withheld some viability reports and associated information under the exceptions at regulation 12(4)(d) – information in the course of completion – and regulation 12(5)(e) of the EIR as it considered that disclosure would have an adverse effect on the confidentiality of commercial information.
2. The Commissioner's view is that the information withheld under regulation 12(4)(d) is outside the scope of the request and so she has not considered it in this notice. She has also determined that the Council correctly withheld the majority of the viability reports and associated information under regulation 12(5)(e) of the EIR, and that the balance of the public interest lies in the exception being maintained. However, with regard to the document described at paragraphs 52 - 59 of this notice, her decision is that the exception is only engaged with regard to part of the document.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Disclose the document described at paragraphs 52 - 59 of this notice to the complainant, subject to paragraph 95 below.
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 November 2017, the complainant wrote to the Council and requested information in the following terms:

1) *"What meetings, discussions or agreements involving B&HCC officers (both internally between themselves and with potential or actual applicants, land owners and related advisors and the District Valuers Service) have taken place involving current or historical applications relating to St Aubyns School since its closure as a school, relating to the benchmark / threshold land value of the St Aubyns site (such as the acceptable means of such benchmark calculations for use in viability reports and assessments)?*

Please provide copies of all related documentation (including but not limited to Emails, meeting notes and letters).

2) *Brighton & Hove Combined Policy Viability Study Update ADL/SWF/131400/September 2014 was approved by the Policy & Resources Committee (Item 56) on 16/10/2014*

Part of the City Plan 1 supporting documentation

Extract:

Viability benchmark

3.7 In light of the weaknesses in the market value approach, the Local Housing Delivery Group guidance recommends that benchmark land value 'is based on a premium over current use values' with the 'precise figure that should be used as an appropriate premium above current use value [being] determined locally'. The guidance considers that this approach 'is in line with reference in the NPPF to take account of a "competitive return" to a willing land owner'.

Please provide copies of any documentation showing that the above Local Housing Delivery Group guidance recommendation was advised to potential or actual applicants, land owners and related advisors and the District Valuers Service in relation to the current applications relating to St Aubyns School since its closure

as a school or confirm that no such information/guidance was provided.

- 3) *Please provide the benchmark land valuation figures calculated by both the applicants and the DVS in each of the viability studies and related reports (providing separate values for the campus and the playing field if available). As these are market value/current use plus there should not be any commercially sensitive information. Even if there is a conclusion that there is some level of commercially sensitive information, I request there be a formal review (as required under FoI and EIR regulations) of whether the public benefit outweighs commercially sensitive information in this specific instance and that the rationale for any such decision be documented and made available to the public.*

If there is a decision not to provide the requested information, please provide at the least a confirmation from the DVS that the benchmark land value has been calculated in accordance with either or both B&HCC City Plan 1 guidance (as above) and RICS guidance.

- 4) *Please provide copies of all correspondence between B&HCC, the Cothill Educational Trust and the DVS relating to all applications relating to St Aubyns School submitted since the school closed.*
- 5) *Please confirm that there is no written record (confidential or otherwise) of any B&HCC officer indicating to the Cothill Educational Trust that there was a possibility of approval for development on the St Aubyns playing field. If there is such a record, please provide a copy."*

6. On 19 January 2018, the Council responded. It explained to the complainant that it would respond to him separately with a determination on the information it held which it considered may be confidential, and it enclosed some information which it considered to be non-confidential. Specifically, with regard to the numbered requests:
- Request 1 – the Council provided, with some redactions, various email correspondence and personal notes. It stated that the redactions were due to third party personal data. It explained that a letter dated 28/1/16 was being withheld in its entirety as it was "confidential"; it also explained that there had been no meetings, discussions or agreements on the site's benchmark/threshold land value in relation to the relevant applications.
 - Request 2 – the Council confirmed that guidance had not been provided and therefore nothing was held.

- Request 3 – the Council confirmed that it was still considering the disclosure of this information.
 - Request 4 – the Council provided some email correspondence, but withheld a letter attached to an email of 14/1/16.
 - Request 5 – the Council provided an extract from minutes of a meeting held on 16/6/15.
7. On 24 January 2018, the complainant wrote to the Council and commented that the Council's response to Request 4 may not have considered correspondence which related to 2015 applications. A further exchange of emails between him and the Council followed.
 8. On 29 January 2018, the Council issued a further response. It confirmed that it held no direct correspondence with the Cothill Educational Trust with regard to the 2015 applications (Request 4) and therefore held no further information in relation to this request.
 9. It also provided its detailed determination regarding the disclosure of "*viability data*" and "*benchmark land valuation figures*" (Request 3). The Council explained that it was withholding this information under regulation 12(5)(e) of the EIR, which provides an exception to the duty to disclose environmental information where disclosure would adversely affect the confidentiality of commercial/industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
 10. The complainant requested an internal review on 9 February 2018, stating that he considered the response to Request 4 was still incomplete, and disagreeing with the application of regulation 12(5)(e) with regard to Request 3.
 11. On 5 March 2018, the Council clarified its response to Request 4 to the complainant, and also stated that an internal review had taken place. Following a subsequent query from the ICO regarding the outcome of any internal review, the Council confirmed to the ICO that it considered that a review had been carried out and that it wished to maintain its application of the exception at regulation 12(5)(e) to the information requested in Request 3.

Scope of the case

12. The complainant contacted the Commissioner on 16 April 2018 to complain about the way his request for information had been handled.

Specifically, he wished to challenge the decision to withhold some information.

13. The Commissioner wrote to the Council to ask for its detailed explanations as to why the information held in respect of Request 3 had been withheld under regulation 12(5)(e), and also asked for clarification regarding the two letters which had been withheld in relation to Request 1 and Request 4.
14. The Council provided the withheld information to the Commissioner for consideration, including the letters withheld in respect of Requests 1 and 4 respectively, which the Council confirmed were being withheld under regulation 12(5)(e). The letter withheld under Request 1 also forms an annex to a report held in relation to Request 3.
15. The information provided to the Commissioner also included two documents in draft form which the Council stated it had located and wished to withhold under regulation 12(4)(d) – information in the course of completion. However, the Commissioner notes that these two documents post-date the request and therefore fall outside its scope. She has not considered these two draft documents in this notice.
16. The scope of this case has been to investigate whether the withheld information falling within the scope of the request (specifically, relating to Requests 1, 3 and 4) has been correctly withheld under regulation 12(5)(e) of the EIR.

Reasons for decision

Is the information environmental?

17. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...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 including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases

into the environment, affecting or likely to affect the elements of the environment 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;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);”

18. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
19. The Commissioner has produced guidance¹ to assist public authorities and applicants in identifying environmental information. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
20. The Commissioner notes that the withheld information comprises various reports, costings and letters relating to proposed development at a former school site in Rottingdean, Brighton.
21. The Council has stated that it considered that the information fell within the definition at regulation 2(1)(e) of the EIR, above. This is because it

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https://ico.org.uk/media/fororganisations/documents/1146/eir_what_is_environmental_information.pdf

considered that the withheld information either comprises, or relates to, "*measures... affecting or likely to affect*" the environment within the definition at regulation 2(1)(c).

22. The Commissioner has considered the information in light of the definition at regulation 2(1).
23. She considers that the interpretation of the phrase "*any information... on*" will usually include information concerning, about, or relating to the measure, activity or factor in question. It is not necessary for the information itself to have a direct effect on the elements of the environment in order to be environmental.
24. The Commissioner is satisfied that the withheld information relates to planned development at Rottingdean and that this is a measure likely to affect the elements of the environment. She agrees that the reports, costings and correspondence which have been withheld are information "*on*" this measure. The information therefore falls within the definition of environmental information at regulation 2(1)(e) of the EIR, and the Commissioner is satisfied that the Council considered the request under the correct access regime.

Regulation 12(5)(e) – adversely affect the confidentiality of commercial or industrial information

25. Regulation 12(5)(e) states that a public authority may refuse to disclose environmental information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information, where such confidentiality is provided by law to protect a legitimate economic interest. If engaged, regulation 12(5)(e) is subject to the public interest test.
26. The Commissioner has published guidance² on the application of the exception at regulation 12(5)(e). As the guidance explains, she considers that in order for this exception to be applicable, there are a number of conditions that need to be met. She has considered how each of the following conditions apply to the facts of this case:
 - Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?

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https://ico.org.uk/media/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

- Is the confidentiality provided to protect a legitimate economic interest?
- Would the confidentiality be adversely affected by disclosure?

Is the information commercial or industrial in nature?

27. The Commissioner's guidance advises that, for information to be commercial in nature, it will need to relate to a commercial activity, either of the public authority or a third party. The essence of commerce is trade, and a commercial activity will generally involve the sale or purchase of goods or services, usually for profit. Not all financial information is necessarily commercial information.
28. The withheld documents in this case relate to the Council's consideration of two planning applications, submitted by the same planning applicant in 2015 and 2017 respectively. The information has evidently been provided to the Council in order to aid its consideration of the planning applications.
29. The information relates to the viability for development and profitability of a specific site at Rottingdean, Brighton, and includes detailed analysis and costings.
30. Having reviewed the withheld information, the Commissioner is satisfied that the information is commercial in nature.

Is the information subject to confidentiality provided by law?

31. The Council has explained that it considers that the information is subject to a duty of confidence at common law. In these circumstances, the Commissioner will consider whether the information has the necessary quality of confidence, and whether it has been shared in circumstances creating an obligation of confidence.
32. In assessing whether the information has the necessary quality of confidence, as is explained in the guidance, the Commissioner will consider whether the information is more than trivial, and whether or not it is in the public domain.
33. The Commissioner is satisfied that the information is not trivial. It comprises detailed viability data and costings relating to the proposed development of several houses on the site, prepared in relation to the two planning applications.
34. The Commissioner, having reviewed the publicly-available information about the relevant planning applications, is also satisfied that the information is not currently in the public domain.

35. Regarding whether the information was shared in circumstances creating an obligation of confidence, the Commissioner notes that much of the withheld information is marked "*confidential*", or otherwise states that it is provided on a confidential basis, which clearly indicates that the party submitting it to the Council had an expectation that the Council would not make the documentation public.
36. While not all of the withheld information is marked "*confidential*", the Commissioner's guidance on the exception at regulation 12(5)(e), referenced previously, sets out that the circumstances creating an obligation of confidence can be explicit or implied, and may depend on the nature of the information itself, the relationship between the parties, and any previous or standard practice regarding the status of information. The guidance also states that a useful test is to consider whether a reasonable person in the place of the recipient would have considered that the information had been provided to them in confidence.
37. The Council has explained that, under its planning processes at the time, an expectation of confidence was clearly established by and with the applicants.
38. To support this, the Council has drawn a distinction with the way that it now operates its planning procedures and has explained that, earlier this year, it altered its rules to require developers to provide "*unredacted open-book viability reports*" in certain cases. However, at the time when the relevant documents were provided to the Council and indeed at the date of the request, the Council states that this was not the case.
39. By way of evidence, the Council has provided the Commissioner with email correspondence to demonstrate that there was an expectation of confidentiality between the parties. The correspondence specifically points out when certain documents are to be published; the Council argues that this shows that circumstances existed in which an expectation of confidentiality had been set.
40. Having reviewed the correspondence, the Commissioner agrees that the parties had an expectation of confidentiality unless specific documents were described as being intended for publication.
41. The Commissioner is satisfied that the information is subject to a duty of confidentiality at common law.

Is the confidentiality provided to protect a legitimate economic interest?

42. The Information Rights Tribunal confirmed in *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd* (EA/2010/0106, 4 January 2011) ("Elmbridge") that, to satisfy this element of the

exception, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect.

43. The Commissioner has first considered whether a legitimate economic interest has been identified.
44. The Council explained that in its view, two legitimate economic interests of the planning applicant would be adversely affected if the information were disclosed.
45. It described these economic interests as "*the applicant's negotiating position with suppliers in the event of development of the site*", and "*the ability to maximise profitability in the event of the site being sold*".
46. The Council expanded on this by explaining that if the current applicant obtained planning permission and developed the site, certain of the withheld information would undermine its negotiating position with suppliers, who would be able to tailor their tender responses in light of the known financial assessment of the site.
47. In addition, the Council argued that if planning permission were secured, the applicant may wish to sell the site with any added value that would come with planning approval, in which case, the disclosure of certain of the withheld information would weigh against the ability of the supplier to obtain maximum value for the land.
48. The Commissioner has therefore investigated whether the withheld information relates to the identified economic interests of the planning applicant.
49. The withheld information comprises an extract from a 2013 valuation report commissioned on behalf of the site owners, viability reports for the planning applicant dated 2015, a letter addressed to the site owners dated January 2016, a viability report for the planning applicant dated 2017 and various detailed costings and forecasts prepared for the planning applicant, also dated 2017.
50. With regard to the 2017 report, costings and forecasts, the Commissioner is satisfied that the information is highly relevant to the economic interests of the planning applicant since it explores the viability and profitability of the proposed development under consideration at the date of the request.
51. With regard to the 2015 reports and the 2016 letter - which relates to one of the 2015 reports - the Commissioner considers that they also relate to the planning applicant's economic interests since they were prepared in relation to the applicant's previous planning application.

52. The Commissioner has also considered the 2013 report extract. She notes that the report was prepared for an educational trust. It relates to the trust's portfolio, which does not just include the site in question, and it apparently pre-dates the economic interests of the planning applicant which have been identified. The Commissioner has therefore considered whether the extract has any bearing on the economic interests of the planning applicant since, if not, regulation 12(5)(e) would not be engaged with regard to this document.
53. Most of the information in the extract relates to a description of the site and to local planning policy.
54. On page 2 of the extract (marked as "*page 4 of 22*"), paragraph 1.6.1 refers to a separate site and would therefore fall outside the scope of the request. The Commissioner also notes that paragraph 22.1 of the extract is outside the scope of the request since it also concerns a different property. These paragraphs would not need to be disclosed in relation to the request under consideration, and therefore she has not considered these paragraphs within the scope of this notice.
55. She notes that on page 2 of the extract ("*page 4 of 22*"), paragraph 1.6.2 provides two valuations for the Rottingdean site, expressed as *Market Value 1* and *Market Value 2*.
56. The Commissioner considers that the two valuations are relevant to the economic interests of the planning applicant, since they are used as the basis for a subsequent valuation in the 2017 report.
57. However, she does not consider that the remainder of the report extract relates to the identified economic interests in this case; that is, those of the planning applicant.
58. The Commissioner therefore considers that for the 2013 report extract, this condition, which is necessary for the exception at regulation 12(5)(e) to be engaged, is met only with regard to the valuations in paragraph 1.6.2.
59. She does not consider that the exception is engaged with regard to the remainder of the information in the extract, and has therefore ordered the disclosure of the remaining extract in paragraph 3 above, subject to paragraph 95, below.
60. Having determined that the viability report and costings from 2017, the 2016 letter, the viability reports from 2015 and the valuation figures from the 2013 extract do relate to the planning applicant's economic interests, the Commissioner has considered whether there would be an adverse effect on these interests if this information were disclosed,

which is the second requirement of this condition following the decision in *Elmbridge*.

61. When citing regulation 12(5)(e), as the Commissioner's guidance explains, public authorities will need to consider the sensitivity of the information at the date of the request.
62. Specifically, the guidance states that the timing of the request and whether the commercial information is still current are likely to be key factors. This is in part due to the provisions of European Directive 2003/4/EC³, which are implemented by the EIR, and which establish a duty to interpret the wording of the exception narrowly. The exception applies "*where such confidentiality is provided by law*" (rather than "*was*" provided). In the Commissioner's view, this indicates that the confidentiality of the withheld information must be objectively required at the time of the request. This point is considered further, below.
63. In addition, it is the Commissioner's view that it is not enough that some harm might be caused by disclosure. The Commissioner considers that it is necessary to establish on the balance of probabilities that some harm *would* be caused by the disclosure.
64. The Commissioner has been assisted by the Tribunal in determining how 'would' should be interpreted. She accepts that 'would' means *more probable than not*. In support of this approach, the Commissioner notes the interpretation guide for the Aarhus Convention, on which the European Directive on access to environmental information is based. This gives the following guidance on legitimate economic interests:

"Determine harm. Legitimate economic interest also implies that the exception may be invoked only if disclosure would significantly damage the interest in question and assist its competitors".
65. The Commissioner has therefore considered the Council's arguments in light of the timing of the request, and in light of the requirement to demonstrate that harm would be caused to the planning applicant's economic interests if the information were disclosed. The Commissioner asked the Council to explain how disclosure of the withheld information would adversely affect the particular economic interests that had been identified, and to ensure that this explanation demonstrated a clear link between disclosure of the withheld information and any adverse effect.

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>

66. The Council, as explained previously, has argued that the disclosure of the information would adversely affect the planning applicant's ability to make a success of the development. It argued specifically to the complainant that:

"Disclosure of gross development value, private sales value, affordable housing value, build costs and developer anticipated return would place parties with whom the applicant is yet to compete or conduct negotiations at an unfair advantage in commercial negotiations; disclosure of information relating to land valuation, cost projections and budgets could allow those negotiating with the applicant to exploit that information in negotiations, giving them an unfair advantage; disclosure of projected values would cause harm in the future in marketing the dwellings; disclosure of projected construction costs and professional fees would improve the negotiating position of those with whom the applicant will need to contract; commercial competitors would be provided with sensitive information about the applicant's approach to development and profit generation; disclosure would affect and distort the market".

67. The Council also explained that the documents which pertain to the 2015 planning application *"form part of the evidence base for the 2017 applications"* and therefore it considered that the same considerations applied.
68. The Commissioner agrees that the disclosure of the withheld information, which comprises detailed analyses of the viability, costings and forecasts for the site, including those relating to the earlier planning application, would harm the planning applicant's ability to make a success of the development.
69. The Commissioner therefore considers that the Council has been able to demonstrate a causal link between the disclosure of the withheld information and the specific adverse effects to the economic interests which it has identified.
70. With regard to the timing of the request, the Commissioner notes that the request, which was dated 30 November 2017, was made during the public consultation period. In other words, it was made during the period after the planning application had been submitted and while the Council was considering whether to approve the application. A decision had not yet been made as to whether to approve the scheme, but the name of the planning applicant was in the public domain and it had a 'live' interest in the application.
71. On the basis of the arguments provided, the Commissioner is persuaded that disclosure of the withheld information (except that information

identified in paragraphs 52 - 59 above, which may be disclosed since it is either outside the scope of the request or else not relevant to the planning applicant's economic interests) would harm the legitimate economic interests of the planning applicant.

72. She is therefore satisfied that the third criterion is met.

Would the confidentiality be adversely affected by disclosure?

73. The Commissioner's guidance on regulation 12(5)(e), referenced previously, indicates that once the first three criteria are established, the Commissioner considers it is inevitable that this fourth element will be satisfied. As the guidance states: "*Disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publicly available, and would also harm the legitimate economic interests that have already been identified*".

74. Citing *Bristol City Council v Information Commissioner and Portland and Brunswick Squares Association* (EA/2010/0012, 24 May 2010), the guidance sets out the Tribunal's findings that since, in that case, it had found that the information was subject to confidentiality provided by law and that the confidentiality was provided to protect a legitimate economic interest: "*it must follow that disclosure... would adversely affect confidentiality provided by law to protect a legitimate economic interest*".

75. The Commissioner has therefore determined that the exception at regulation 12(5)(e) is engaged in respect of this information, and has gone on to consider the public interest test.

Public interest arguments

The complainant's view

76. The complainant has sent detailed background information and arguments to the Commissioner. He is concerned that the Council has not given due consideration to the possibility of developing only the school campus rather than the playing field, which he considers should be maintained as an open space in accordance with the stated objectives of the local City Plan.

77. He considers that the planning applicants are using viability as a reason to reduce their section 106 contributions by not providing any affordable housing within the scheme, and to justify both the development of houses on the former school field and carrying out an expensive listed building conversion. In this regard, he considers that the benchmark land values for the site should be in the public domain.

78. The complainant argues that *"the public interest is sufficiently strong for full disclosure, not just relying on openness and transparency but also in part because the viability report is being used to overturn existing national and local policies and can have an environmental impact on current and future generations"*.
79. The complainant's view is that if the proposed scheme has been found not to be viable without overturning local agreed policy, current housing needs would not create *"an imperative"* that the scheme should be made viable at any cost.
80. He is also concerned as to whether the withheld viability reports have been compiled in accordance with agreed planning policy.
81. He therefore considers that the public interest in the disclosure of the information outweighs the interest in the exception being maintained.

The Council's view

82. The Council has explained that it is aware of the need for openness and transparency in the way in which it conducts its business, and in *"transparent planning approval arrangements which enable the local community to be involved in planning decisions and hold the Council to account"*. It therefore considers that some factors lend weight in favour of the information being disclosed.
83. As mentioned previously, the Council has explained that it has changed its procedures during 2018 and now requires developers to provide unredacted, open book viability reports in certain cases; however, this did not apply to the information in this case due to the date of the planning application, and the Council considers that the balance of the public interest lies in the exception being maintained.
84. The Council has set out its main argument as follows:

"The Council has an obligation to work with local business to develop housing capacity within the city. With this in mind, it is important that the Council be trusted by private sector planning applicants with information which is sensitive to business models and profitability. Disclosure of information provided in confidence and which is genuinely commercially sensitive would be likely to have a chilling effect on the planning process and may impact on the Council's ability to meet its requirements for new housing to support a growing population".
85. The Council has also explained that it considers that robust measures are already in place to ensure that planning applications are assessed independently. In this case, the viability reports for both the 2015 and 2017 applications have been independently assessed and, in the case of

the 2017 application, a *Summary of the Final Position on Financial Viability* has been published on the Council's website. The Council considers that this accords with the national Planning Practice Guidance.

The Commissioner's decision

86. The Commissioner considers that there is considerable public interest in favour of the information being disclosed in this case.
87. There is likely to be widespread interest in the location of the proposed new housing, especially where this is proposed to take place in part on what is currently a green open space, and affects a listed building. It is a matter of genuine public interest where there is a change of use for a relatively large site, which may bring significant change to the local area.
88. This interest is likely to extend beyond Brighton and Hove, since a large number of local authorities are currently considering similar issues in relation to the formulation and execution of Local Plans.
89. In addition, having viewed the withheld information, the Commissioner considers that there is some public interest in the contents.
90. However, the Commissioner has weighed against this the fact that there is a well-established planning procedure in place which is designed to provide the public with information and the opportunity to present their views. She considers that the disclosure, at the date of the request, of the withheld documents in this case, which were provided to the Council in confidence as part of this procedure, would have disrupted the planning process. This would be contrary to the public interest.
91. The Commissioner is not significantly concerned with the Council's view that there would be a chilling effect on the planning process, since in her view there will always be interest from developers in participating in the planning process and that they are not likely to be deterred from doing so as a result of disclosure in this case. However, she does accept that it is necessary for some aspects of the planning process to be carried out in a confidential manner, in order for the planning process to proceed effectively and efficiently. This is so in this case.
92. The Commissioner considers that there is a very weighty public interest in the Council being able to conduct the planning process effectively, and considers that, in this case, this would be disrupted if the identified adverse effect on the commercial interests of the planning applicant was allowed to occur.
93. Although it may appear to be contrary to the public interest to allow parts of the planning process to proceed in a confidential manner,

mitigating against this is the number of documents which are made available for the public, and the frequent opportunities for the public to be able to comment on aspects of the process. The Council is well-informed as to public views and/or opposition to planning applications. Indeed even after a decision is made by the Council, this would not be the 'end of the road' for the public since there are well-established procedures for appeals to be brought by some parties.

94. Having considered the above matters, the Commissioner's decision in this case is that although there is a significant public interest in the disclosure of the information, the balance of the public interest lies, by a narrow margin, in maintaining the exception.
95. As explained in paragraphs 52 - 59, above, the Commissioner determined that regulation 12(5)(e) is not engaged with regard to the extract from the 2013 report, save for the site valuation amounts which are expressed in words and figures in paragraph 1.6.2 of the extract. She therefore orders that this document should be disclosed with these valuation amounts redacted; paragraphs 1.6.1 and 22.1 of the extract should also be redacted since they refer to a different site and therefore fall outside the scope of the request.
96. The Commissioner is satisfied that the remainder of the withheld information has been correctly withheld under regulation 12(5)(e) and should not be disclosed.

Right of appeal

97. 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

98. 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.
99. 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
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