

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

Decision notice

Date: 31 October 2022

Public Authority: Basingstoke and Dean Borough Council
Address: Civic Offices
London Road
Basingstoke
RG21 4AH

Decision (including any steps ordered)

1. The complainant has requested information regarding sports or community facility provision in Evingar Ward.
2. Basingstoke and Dean Borough Council provided some information, but denied that further information was held.
3. The Commissioner's decision is that on the balance of probabilities, the council does not hold any further information, and therefore it complied with the requirements of Regulation 5(1) of the EIR.
4. He has, however, decided that the council did not comply with the requirements of Regulation 5(2) of the EIR because it did not respond to the request within 20 working days.
5. The Commissioner does not require the council to take any steps.

Request and response

6. On 26 July 2021 the complainant wrote to Basingstoke and Dean Borough Council ("the council") and requested information in the following terms:

"This is a formal request for information from Basingstoke and Deane Borough Council (the Council) under the Freedom of Information Act 2000 for the disclosure in electronic form of documents/information on plans for new, expanded, relocated, redeveloped or merged sports or community facility provision in the area covered by Evingar Ward.

a) In particular:

- i. since January 2017 on facilities for football including for Woolton Hill Argyle Football Club (WHAFC) and its lease with Hampshire County Council (HCC) for land at Woolton Hill Junior School (WHJS) and any consideration of the termination of that lease at the end of the term, the operation of the break clause by either party or the lease's renewal in 2027.
- ii. since January 2017 complaints on WHAFC 's use of land at WHJS (for example but not limited to parking, noise, generator powered floodlights, lighting and floodlighting generally);
- iii. since January 2017 any proposals by the Council or by third parties using the support of the council to acquire new facilities or land for new facilities for WHAFC alone or in conjunction with other sports clubs;
- iv. since January 2017 any proposals or discussions of the use of land at Woolton Hill Sports Club, Woolton Hill Junior School, or East Woodhay Cricket Club for housing.
- v. since January 2018 any discussion of a need for new sports or community facilities in the area covered by Evingar Ward, including but not limited to any proposals to expand, extend, develop or re-develop, re-locate or provide additional facilities in Evingar Ward generally or specifically in the Parishes of East Woodhay, St. Mary Bourne, Highclere and Burghclere. To limit the request, it is intended to cover sports facilities such as Woolton Hill Sports Club, St Mary Bourne cricket pitch/recreation ground, Burghclere cricket/football pitch, Woolton Hill Argyle Football Club, Highclere Park cricket pitch and East Woodhay cricket pitch, but excludes existing community provision at Woolton Hill Church Hall, East Woodhay Village

Hall, Portal Hall in Burghclere, Highclere Village Hall, St Mary Bourne Village Hall.

- vi. since June 2019 any information on proposals for the Council to acquire or to support third parties to acquire land within the East End conservation area, Newbury, in particular but not limited to for community benefit.

b) since January 2018 information relating to East Woodhay Neighbourhood Plan (EWNP) including minutes of meetings of the East Woodhay Parish Council (EWPC)'s Neighbourhood Plan Steering Group.

c) since August 2020 information relating to former Ward Cllr Sanders involvement in the re-draft of EWNP between September 2020 and June 2021, including the draft before his direct involvement in September 2020 and that at the end of his involvement.

Please contact me if I can be of assistance. The request is based on issues raised by the emerging EWNP, EWPC's Sports Statement June 2021 and EWNP policies on the relocation, expansion, redevelopment of community facilities including such as CF1, 9.7-9.9 on page 47."

- 7. The council responded on 27 October 2021. It stated that it does not hold any information within the scope of the request. The council also advised the following, in relation to particular request questions:
 - a. [i] and [ii] The authority responsible for this function is Hampshire County Council. The request should be made to that authority, a link was provided.
 - b. Stated that this information is likely to be held by the parish council.
- 8. The complainant requested an internal review on 27 October 2021.
- 9. The council wrote to the complainant with the outcome of an internal review on 9 December 2021 and upheld the original position. It confirmed that the council does not hold any information within the scope of the request.
- 10. Following a further review on 19 October 2022, the council released some information. In relation to specific request questions the information was:
 - b) four drafts of the East Woodhay Neighbourhood Plan.
 - c) two emails exchanged between the Planning Policy Manager and Councillor Saunders.

Scope of the case

11. The complainant contacted the Commissioner on 6 October 2021 to complain about the way his request for information had been handled, initially regarding the time to respond. Following the internal review response, the complainant confirmed that they remained dissatisfied. The complainant considers that the council holds information in scope of the request which it has not disclosed.
12. The information requested in this case is about plans that will impact the use of land. These are measures likely to affect the elements of the environment as defined at regulations 2(1)(a) and 2(1)(b). The Commissioner therefore considers that the information falls within the definition of environmental information at regulation 2(1)(c).
13. The scope of this case and of the following analysis is whether the council is likely, on the balance of probabilities, to hold any further information in scope of the request.

Reasons for decision

Regulation 12(4)(a) –Information not held

14. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
15. Regulation 12(4)(a) of the EIR says that 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.
16. In scenarios where there is some dispute between whether the public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The complainants position

18. The council undertook actions to make an assessment of leisure and recreational needs for the local plan update. Therefore there should be at least a draft report or some survey results.

19. The complainant states that the sports infrastructure surveys from 2021, would have been sent to the parish council, who would have provided a response. They state that neither body has disclosed any information in this respect. Nor has any information been provided about the decisions taken, regarding whether or not to undertake site visits.
20. Relating to ai), iii), and v) the complainant states information should have been created as part of the "annual sports audit."
21. Regarding aii) the complainant states that they have some redacted evidence of a letter between Basingstoke Council and Hampshire County strongly objecting to floodlighting, which was disclosed in response to a Freedom of Information Request.
22. In relation to b), the complainant provided evidence from some parish council minutes that drafts of the neighbourhood plan had been sent by the parish council to the council. During the investigation, the council subsequently found and provided the complainant with copies of the draft documents, therefore this point is addressed.
23. In relation to c), the complainant gave evidence of correspondence between a planning officer at the council and Councillor Saunders. The complainant stated that "it seems likely" that further information would be held. During the investigation the council found two emails between the planning manager and the councillor and provided these to the complainant.

The council's position

24. In reference to particular request questions the council stated:
 - ai) The lease arrangement is between the football club and the County Council, therefore the council does not hold this information.
 - aii) The Health Team has confirmed that no complaints have been received therefore the council does not hold any information.
 - aiii) A search carried out by the Connected Communities Team and the Sports Infrastructure Team, identified no information in scope of this question.
 - aiv) The team responsible for the local plan is the Planning Policy Team who confirmed that no information is held within the scope of this question.
 - av) The Sports Infrastructure Team carried out searches (described in more detail below) on the file containing information for the Evingar

Ward, team inboxes and local drives and no information was found within scope of this question.

avi) Checks were made with the Connected Communities Team, the Planning Policies Team and the Property Team and no information was found within scope of this question.

b) During the Commissioner's Investigation the council identified four draft documents relating to the East Woodhay Neighborhood Plan. It stated that following the complainants further clarification on the matter it was able to identify the input of the Planning Policy Team and ask specific questions. The information was released. The council stated that any further information would be held by the parish council.

c) During the Commissioner's investigation the council identified two emails between the Planning Policy Manager and Councillor Saunders. It stated that these had not been found in a general search, but were able to be located by the date. The council advised that the Councillor had left the council some time ago and his emails had been deleted. No other emails were found in the Planning Policy Manager's email system.

25. The council advised that it will not be issued with any information relating to survey responses until the Leisure and Recreational Needs Assessment is finalised.

26. In response to the Commissioner's general questions regarding the searches undertaken, the council advised:

- Searches of relevant personal email accounts, team drives, and specific files were carried out. The council advised that these are all the possible places that information in scope of the request would be stored.
- The specific files searched were found in Community Facilities, Evingar and Community Place Shaping, Woolton Hill, and the local plan account.
- The email accounts searched were of those officers within Sports Infrastructure, Connected Communities, Planning Policy, and the Environmental Health teams. The officers involved in searching for the information were the Sports Infrastructure Officer, Connected Communities Manager, Health Communities Manager, Planning Policy Manager, Planning Policy Team Leader.
- The search terms used were Woolton Hill, East Woodhay and Evingar, as these relate to areas within the borough. A search term was also performed in relation to the area called East End. Searches were undertaken on the sports clubs mentioned, being Woolton Hill

Sports Club, St Mary Bourne Cricket Pitch / Recreation Ground, Burghclere Cricket / Football Pitch, Woolton Hill Argyle Football Club, Highclere Park Cricket Pitch and East Woodhay Cricket Pitch.

- The Health Team's complaints system was searched in relation to complaints at Woolton Hill Argyle Football Club.
- The Property Team were consulted regarding the question of land acquisition within the East End Conservation Area. They confirmed that they would not be involved in such work.
- The council advised that if it held any information in scope of the request, then it would be in electronic format. The extensive searches described did not locate any information.
- The council confirmed that no information, which was in scope of the request, had been deleted.
- The council stated that it only had a statutory requirement to hold information in relation to the local plan.

The Commissioner's conclusion

27. The Commissioner has considered the council's position, in conjunction with the request.
28. The Commissioner is sympathetic to the complainants concerns that further information is held, especially as information for disclosure was located during the investigation.
29. However, the council has confirmed to the Commissioner that it has carried out adequate and appropriate searches of its records, but it has not been able to locate any further information falling within the scope of the complainant's request. It has also provided reasoning why certain information is not held.
30. There is no contradictory evidence available to the Commissioner that indicates that the council's position is wrong.
31. On this basis the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council.

Regulation 12(1)(b) – the public interest test

32. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exceptions set out under regulation 12 of the EIR.

33. However, as no information has been found to be held, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no further information to disclose.

Regulation 5(2) of the EIR - Time for compliance

34. Regulation 5(2) of the EIR states that "information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
35. In this case, the complainant made his request on 26 July 2021 and the council did not provide the information it held until 19 October 2022.
36. This is outside the required 20 working days and therefore the Commissioner finds that the council breached regulation 5(2) of the EIR.
37. As the council has since provided the information it does hold, the Commissioner does not require it to take any steps

Right of appeal

38. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

39. 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.
40. 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

Janet Wilson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF