

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 December 2024

Public Authority: Ockbrook and Barrowash Parish Council

Address: Parish Hall
Church Street
Ockbrook
Derby
DE72 3SL

Decision (including any steps ordered)

1. The complainant has requested information held by Ockbrook and Barrowash Parish Council (the parish council) in relation to the reclassification of greenbelt land at specific locations.
2. Whilst the Commissioner has found that the request is for environmental information, he is satisfied that, on the balance of probabilities, the requested information is not held and that the parish council is entitled to rely on regulation 12(4)(a) of the EIR as its basis for refusing the complainant's request.
3. The Commissioner does not require any steps.

Request and response

4. On 31 March 2024, the complainant made the following request for information:

"I now ask under the FOI Act, that the parish council of Ockbrook and Borrowash provides all details concerning the change of Greenbelt regarding the two specific sites in [redacted].

As regards details, I require all documentation that would have been provided to the parish council by Erewash BC concerning the change of Greenbelt designation at these two sites. To include all internal, external letters, all internal, external emails, all minuted meetings. This includes all correspondence [sic] whether that be internal/external/emails/ letters/meetings/telephone conversations between Ockbrook and Borrowash Councillors themselves, other councillors within the Erewash Borough and also to include Erewash Borough Council employed officials, concerning the two aforementioned sites."

5. The parish council responded on 8 April 2024, stating that it did not hold information falling within the scope of the request. However, the parish council did provide meeting minutes from 2012 to 2019 that mentioned the complainant's property.
6. The complainant responded on the same day, confirming receipt of the meeting minutes, but reiterated that they wanted the information they had requested.
7. Following further correspondence between the complainant and the parish council, on 26 April 2024, the complainant requested that the parish council carry out an internal review.
8. On the 8 May 2024 the parish council provided its internal review response, confirming that the information requested by the complainant is not held.

Scope of the case

9. The complainant contacted the Commissioner on 28 May 2024, to complain that the parish council has not provided the information requested.
10. The scope of the case is for the Commissioner to determine whether the parish council holds information falling within the scope of the complainant's request.

Reasons for decision

Is the request for environmental information?

11. Regulation 2(1) of the EIR defines environmental information as being information 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)...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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

12. The Commissioner considers that the request relates to information on measures, in (c) above, affecting (a) the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(a) – information held/ not held

13. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
14. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. In this case, the parish council has stated that it does not hold the requested information.
17. The Commissioner's understanding is that the information requested in this case, if held, would date back to around 2013. The parish council has explained that the current clerk took over the role in November 2018, and that at that time they were provided with a new parish council clerk email address.
18. The parish council has told the Commissioner that it has been unable to access the previous clerk's emails. It has also said that attempts to contact the previous clerk to establish whether the information was ever held have been unsuccessful.
19. The parish council has advised the Commissioner that it has searched all four of its filing cabinets for any paper copies of relevant information. The parish council has also confirmed that, other than the clerk of the council, no other individuals would hold the relevant information; the parish council has also advised that there are no current councillors who held positions during the time period that is of relevance to the request.
20. The council has told the Commissioner that it has checked its computer system and that no relevant information has been found. It has explained that when the clerk started in 2018, there was very little information held on its system, and it was reorganised at that time in order to make information easier to find.

21. The council has advised the Commissioner it is unsure as to whether the information was held and later destroyed as the previous clerk did not appear to have had a paperwork disposal book (the parish council has confirmed that this is a process that the current clerk has implemented).
22. The council has told the Commissioner it has a document retention policy with a section on planning. The policy states applications must be held for a year, appeals should also be held for a year unless there is significant development, and local development plans must be retained for as long as they are in force. The parish council has said that this policy was introduced by the current clerk in 2019, and that it has been unable to establish whether a similar policy was in place at the time of the previous clerk.
23. The complainant's position is that the parish council would have had to adhere to statutory and regulatory policy requirements and therefore the requested information should be held. The complainant has therefore questioned why, if the information is not held, the reasons for this have not been documented by the parish council.
24. The parish council has told the Commissioner that it is informed of planning applications / amendments by Erewash Borough Council, and that when this occurs, it is only able to either appeal or agree to them. The parish council states that if this is what had occurred in this case, then it should have been noted within the minutes which the complainant has already had sight of.
25. The parish council has also said that as the matter to which the request relates is an ongoing issue, it would have expected to have retained any planning information and its response(s), it holds about the issue. However, the parish council has said that whilst it considers that the requested information is not currently held, it is unable to say with any certainty what was held in the past, or what actions may have been taken by any previous councillors and clerks.
26. Whilst the parish council has suggested that there is a possibility that Erewash Borough Council may hold the information the complainant is requesting, the Commissioner understands that the complainant's efforts to obtain the information via that public authority have already been unsuccessful.

The Commissioner's conclusion

27. The Commissioner appreciates why the complainant believes that the parish council should hold the requested information. However, the Commissioner cannot investigate whether information should be held or why it is not, he can only investigate whether it is held.
28. The Commissioner has taken into account the parish council's explanations regarding the difficulty it has encountered in trying to identify whether the requested information was ever held. This includes a complete change in personnel at the parish council since 2013, and what also appears to have been inadequate records management practices prior to the appointment of the current clerk.
29. The Commissioner considers that the searches which have been described by the parish council in order to identify whether the requested information was held at the time of the complainant's request are adequate and proportionate.
30. As there is no contradictory evidence available to the Commissioner that would indicate that the council's position is wrong, based on the current information available he concludes that, on the balance of probabilities, the requested information is not held.
31. In light of the above, the Commissioner finds that the parish council is entitled to rely on regulation 12(4)(a) of the EIR as its basis for refusing the complainant's request.

Right of appeal

32. 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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Suzanne McKay
Senior Case Officer
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Wycliffe House
Water Lane
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