

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 26 February 2014

**Public Authority:** Broadland District Council

**Address:** Thorpe lodge  
1 Yarmouth Road  
Thorpe St Andrew  
Norwich  
NR7 0DU

#### **Decision (including any steps ordered)**

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1. The complainant has made two information requests with regards to specific planning matters that took place between 1995 and 2000. Broadland District Council (the council) provided the complainant with the information it holds, but the complainant is not satisfied that all the information has been provided.
2. The Commissioner's decision is that the council has provided all the information it holds within the scope of the requests.
3. The Commissioner does not require the council to take any steps.

#### **Request and response**

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4. On 19 July 2012, the complainant wrote to the council and requested information in the following terms:

*"...in respect of land at Station New Road in Brundall. In 1995 the council sought to implement an environmental designation on the site, which was rejected by a planning inspector following a public hearing. I am seeking details of any meetings held by the council to consider this ruling and internal or external communications concerning it."*

5. The council responded on 25 July 2012. It advised that as the information requested dates back to almost 20 years, the council does not hold details of meetings or communications about the ruling.

6. On 3 October 2012 the complainant then made an information request for:

*"... the allegations I am referring to were raised by council officers at the planning hearing in 2000. The council also wrote to the Planning Inspectorate before the appeal decision was reached and I would like to see copies of this correspondence please."*

7. The council responded to this request on the 5 October 2012 stating that no paper records of correspondence from this time have been kept. It advised that the only records available may be found at [www.broadland.gov.uk/plans](http://www.broadland.gov.uk/plans) using reference number 991296.
8. On 20 July 2013 and 30 July 2013 the complainant requested an internal review. The council provided its internal review response on 27 August 2013. It confirmed that it had provided all the information it held in its original responses and maintained that it held no further information

### **Scope of the case**

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9. The complainant contacted the Commissioner as he is not satisfied that the council has provided all the information it holds within the scope of the requests.
10. The Commissioner notes that there was a considerable time frame between the council's response to the requests and the complainant requesting an internal review.
11. However, as the council has conducted an internal review, the Commissioner considers that he can go on to consider the scope of the case as being to determine whether the council has provided all the information it holds within the scope of the requests.

### **Reasons for decision**

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12. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request.
13. 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, applies the civil standard of the balance of probabilities. The Commissioner must decide whether, on 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).

14. On reviewing the submissions from both the council and the complainant, it appears to the Commissioner that the information sought dates from 1995 to 2000.
15. The complainant has advised the Commissioner that the local plan was determined following a public hearing which included legal representation and a significant amount of documentary material submitted by the council. Following his requests, the council has not been able to access any information about this matter.
16. The complainant states that although the council has advised him that this is because of the historical nature of the information, dating back to 1996, he believes that this is a significant issue in the planning history of the site and that the council should retain records.
17. The complainant says that the council has also been unable to provide details of investigations of illegal tree felling on the site, claiming there was no evidence of wrongdoing without having the information as to how they determined this.
18. It is clear to the Commissioner that the complainant has justified reasons as to why he considers more information should be held than what the council has on its planning website.
19. On this the Commissioner wrote to the council to determine if there is any further information outstanding. As part of his enquiries he asked the council to explain the types of searches it has carried out and its retention policies around planning matter that date back to this time.
20. The council has told the Commissioner that it has discussed this case at length with the senior officer who was involved with this matter at the time. From this it explained that in 1995 the complainant objected to the council's suggested change to the Local Plan, which proposed the application of an environmental designation on the land (Policy ENV8). There were numerous representations on this, and it was debated at a Public Local Enquiry before an inspector, appointed by the Planning Inspectorate.
21. The Local Plan Inspector recommended that Policy ENV8 should not apply to this site and the council accepted this recommendation.
22. The council advised the Commissioner that in 1999 the complainant then submitted a planning application to the council which was refused and appealed to the Planning Inspectorate. This appeal was heard in 2000 and dismissed.

23. The council has told the Commissioner that in both cases the matters were not considered contentious as the council was happy to accept the Planning Inspectorates decisions and so it is unlikely that and particular meetings or communication would have followed the appeals.
24. If any information was held, regarding any such meetings or communication, the council say it would have considered paragraph 28.5 of the council's Data Retention Policy. That being paper copies would have been destroyed and key documents retained electronically. Internal meetings would not have been retained.
25. The council has confirmed to the Commissioner that any information it holds relating to the requests would be held on its online Planning Explorer system and using the relevant planning application numbers, you can access the information the council holds.
26. The council explained that an electronic search was carried out by the senior officer that referred to above, as he is familiar with the matters in question. No further information was found.
27. The council state that paper records are held only for recent planning applications, and so no manual file is held for this case.
28. The council is unable to confirm if any documents other than what it holds were destroyed and when they would have been destroyed due to the length of time that has passed.
29. The council has told the Commissioner that the information it would hold on this case is held in one central location.
30. The Commissioner has viewed paragraph 28.5 of the council's retention policy which states that the retention policy for electronic information is permanent and the retention of paper documents is 5 years, for this type of information.
31. As the information requests were made in 2012, and the information sought was between 1995-2000, then it seems likely to the Commissioner that any paper records would no longer be held by the council.
32. The Commissioner has considered the complainant's reasons as to why he believes that further information should be held and understands his rationale behind this. However, there is sometimes a difference in what a person believes a public authority should hold to what it actually holds.
33. After considering the council's explanations and response to the searches it has conducted and how it holds information. The

Commissioner is satisfied that, on the balance of probabilities, the council holds no further information within the scope of the requests.

## Right of appeal

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34. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

35. 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.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
**Group Manger**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**