

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

### **Decision notice**

**Date:** 18 June 2018

**Public Authority:** East Riding of Yorkshire Council

**Address:** County Hall  
Beverley  
HU17 9BA

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

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1. The complainant has submitted two requests for information to East Riding of Yorkshire Council ("the Council") about the status and application of the Local Plan. The Council disclosed information in response. The complainant contests that further information is held.
2. The Commissioner's decision is that the Council has complied with request 1 and request 2 (parts A and C). However, the Commissioner has found that the Council has not responded to request 2 (part B) in accordance with the EIR. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
  - Issue a fresh response to request 2 (part B) that complies with the terms of the EIR.
3. The public authority must take these steps 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

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4. On 8 September 2017 the complainant wrote to the Council and made request 1:

*It would seem to a lay person that until a new Local Plan is formally and finally adopted, the previously adopted plan remains active, subject to any formal amendments (made in open session, Minuted Council meetings) that may have been formally adopted.*

*I realise that ERYC may well have proceeded in a non-formal, improvised way, or at non-Minuted meetings involving local plan matters, with no reporter or member of the public able attend. I take it that that would be improper. But did that ever happen?*

*I find no evidence in ERYC's Council Minutes that any formal amendments were made to the plan ERYC inherited and adopted from the previous administration at County Hall.*

*Can I assume therefore that the plan inherited and adopted from the previous administration remains in place until all discussion of the pending plan is over, and the new plan is formally adopted?*

*I have to seek your personal help in understanding this, because ERYC has so far persistently been unable or unwilling to answer other questions about planning matters in the East Riding.*

5. The Council responded on 16 September 2017 disclosing some information.
6. On 17 October 2017 the complainant wrote to the Council and made request 2:

*I have not been able to trace any record of any public discussion and agreement that the pre-2016 plan could be amended, disregarded in any way, or departed from, between the plan's adoption, and 2016 when it was replaced.*

*The pre-2016 plan makes it plain that open land development in the East Riding, particularly on the periphery of settlements like Beverley, was inappropriate.*

*Did Council officers ever warn Council of any development being non-compliant with the Local Plan?*

*Concern was expressed strongly in the plan that Beverley has experienced a disproportionate share, of development in recent years.*

*The environmental quality of (the East Riding's) open countryside, its general amenity and character and the identity of some settlements is seriously threatened. In order to tackle this threat and assist urban regeneration on initiatives in the City of Hull which might otherwise be undermined a degree of development restraint is necessary in the area of Beverley. ERYC must work with Hull to protect Beverley's open countryside for its beauty, diversity of landscape and its ecological and recreational value, to maintain the separate identity and individuality of Beverley, and to preserve, protect and enhance Beverley as an historic town of national importance. There is a conflict between the development pressures in Beverley and other considerations such as the town's environment, settlement identity and urban regeneration initiatives in the City of Hull. It is important therefore that development proposals on non-allocated sites do not, amongst other things, adversely affect the open countryside or the open areas between settlements which prevent coalescence nor lead to peripheral development which would adversely affect the character or appearance of settlements. An extremely important element of Beverley's character, especially as perceived by its residents, is the separate identity and individuality of its settlements. Development limits have been drawn to prevent inappropriate peripheral development.*

*In view of this clear policy statement, and bearing in mind the public significance and importance of an officially and legally adopted Local Plan, it is important to ask*

*a) if ERYC can produce any record of any public discussion and agreement that this plan could be disregarded or departed from in any way, and*

*b) what, if any, exceptional circumstances (eg. in council minutes or similar records) were adduced in public, and recorded, to justify the planning consents that were granted for building and other developments on open land on the periphery of settlements like Beverley between the inauguration of ERYC and 2016.*

*Is there any pre- 2016 record of any discussion of the commitment (see above) to work with Hull? What do records say?*

*Is there any record, from the time of Mr D Stephenson to 2016, of a Council officer warning Council that any open land development proposals were not compliant with the then existing Local Plan?*

7. The Council responded on 26 October 2017. It directed the complainant to where some of the requested information was publicly accessible, and advised that the remainder had been previously disclosed to him in 2014.

8. On 27 October 2017 the complainant wrote to the Council to define (and widen) what information was sought by request 2. In this the complainant separated the request into three parts labelled A, B and C:

A. *Please will you send me copies of any documents on Council files that make it clear that the Council did indeed take account of the Local Plan adopted by ERYC from the previous administration and in force from then until 2016, and decide - and for what reasons? - to disregard the clear provisions of that plan, and to grant planning consents on the periphery of the town in - spite of the open land protection that the Local Plan afforded. Did council officers ever issue formal warning that those planning consents issued were not compliant with the Local Plan? Is there a record of any such warning?*

*If no such documents exist, then I am afraid the FOI rules require you to tell me that.*

B. *Equally, in the documents you asked me to look at, I find, no evidence that ERYC established the full and continuing working relationship with Hull CC that government requires*

*a) in cooperating with Hull, for example in dealing with the problem of population migration out of Hull that is clearly identified in the pre-2016 Local Plan*

*and*

*b) in preparing the Local Plan ERYC adopted in 2016.*

*Our correspondence in 2014 established that ERYC met Hull CC planners relatively few times, and that the continuing working relationship between the two councils required by Government was not created in any effective, continuing, or substantive way.*

*If there are documents that will shed further light on these questions that I missed, or that you did not send, will you please re-send or send them?*

*And again if no such documents exist, you are obliged to tell me that.*

C. *The Civic Society Summer 2017 Newsletter reports reports Mr Menzies as using the phrase 'Government policy' when talking in particular about planning in Beverley.. What document validates his particular association of 'Government policy' and Beverley? Please may I see it?*

*Again, if there is no such document you must say so.*

9. The Council responded on 30 October 2017. In respect of parts A and B it confirmed that it had fully responded in its previous response of 26 October 2017. In respect of part C it disclosed information.
10. On 31 October 2017 the complainant wrote to the Council to dispute that its responses were incorrect.
11. The Council responded on 1 November 2017. It maintained that its earlier responses were correct.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 1 November 2017 to complain about the Council's responses to the requests.
13. The Commissioner considers the scope of the case to be the determination of whether the Council has complied with regulation 5(1).

### **Reasons for decision**

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#### **Is the information environmental?**

14. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any measures that will affect, or be likely to affect, the elements referred to in 2(1)(a), will be environmental information. The requested information relates to planning policy and planning applications. The Commissioner therefore considers that the request should be dealt with under the terms of the EIR.

#### **Regulation 5(1) – Duty to make information available on request**

15. Regulation 5(1) states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions that may apply.
16. Where there is a dispute between the information located by a public authority, and the information a complainant believes should be held, the Commissioner follows the lead of a number of First-tier Tribunal (Information Rights) decisions in applying the civil standard of the balance of probabilities.

17. In the circumstances of this case the Commissioner will determine whether, on the balance of probabilities, the Council has complied with the requests by disclosing all relevant held information.

### Context

18. The requests relate to how successive Local Plans have affected the borough of Beverley.
19. The Commissioner understands that between 1996 and 2016, Beverley was subject to the 'Beverley Borough Local Plan' ("the Borough Plan"). Any applications for planning permission had to be in accordance with the policies of the Borough Plan, unless there were material considerations that indicated otherwise. One such material consideration would be the policies of the emerging East Riding of Yorkshire Local Plan ("the County Plan").
20. From 2012 the County Plan had reached a stage in its development where its policies had sufficient weight to override those in the Borough Plan.
21. From 2013-2014 onwards, the Council began granting planning permission for housing development on 'green field' sites around Beverley. Whilst such permissions would not have been allowed under the policies of the Borough Plan, they were allowed under the overriding policies of the County Plan.

### The complainant's position

22. The complainant considers that the Council has disregarded the Borough Plan in order to grant planning permissions, and has displayed a lack of transparency about its decisions by failing to record, or otherwise disseminate, information about the process.

### The Council's position

23. The Council has emphasised that there is significant background to the requests, as the complainant has been in ongoing communication with the Council for several years in relation to his concerns about development in and around Beverley. This has included various complaints to which the Council has repeatedly sought to explain the basis for its actions. This background, and the complainant's continuing dissatisfaction with the Council's actions, has meant that the requests are not simple to address, as the wording is based on the complainant's own interpretation of the matter. This has meant that the Council has needed to 'translate' them into actionable requests for recorded information under the EIR.

*Request 1*

24. The Council understands that request 1 seeks any information which shows that amendments to the Local Plan were approved at open meetings of the Council.
25. In response, the Council has disclosed the minutes of the meetings which relate to the adoption and implementation of the County Plan. The Council retrieved this information from the database used to store the official minutes of all Council meetings. This search would have retrieved all relevant information because any decision to adopt the County Plan would have to be made by the Council, and it is usual practise for such a decision to be made on the recommendation of the Cabinet. Such records are held indefinitely as a record of decisions by the Council, and no relevant records will therefore have been previously destroyed.

*Request 2*

26. The Council understands that request 2 (as defined and widened by the complainant on 27 October 2017) seeks:
  - A. Any information that shows that officers informed the Council of any development being non-compliant with the Borough Plan.
  - B. Any information about the commitment to work with Hull City Council.
  - C. Any information about government policy in relation to planning in Beverley
27. In respect of part A, the Council considers this to seek information about situations where a planning application for the outskirts of Beverley was found to not be compliant with the Borough Plan; the Council understands that such information is sought for 2012-2016, when the County Plan started to override the Borough Plan. The Council has confirmed that any such information would be contained in a report to the Planning Committee as part of the planning application process. Such reports are publically accessible through the searchable planning application database on the Council's webpages. The Council has provided the complainant with the URL of this database, and has provided an example report to him.
28. In respect of part B, the Council considers this to seek information about its cooperation with Hull City Council, which is a neighbouring planning authority. The Council has clarified that it has a duty to cooperate with a neighbouring planning authority about matters than affect both areas, and therefore communicated with Hull City Council in the lead up to the examination in public of the then draft County Plan. The Council

considers that the complainant has previously received all held information about this matter in response the following two requests that he made in 2014:

- *"...any documentary evidence you may have that ERYC met regularly and consulted with neighbouring authorities, especially Hull, as to any agreement they may jointly have made concerning any demonstrated need to build on so far undeveloped land in the Hull/Beverley area."* [26 May 2014]
- *"Minutes of all meetings held between ERYC and Hull City Council during the period when ERYC's current proposals were being constructed..."* [8 July 2014]

29. In response to these two requests the Council either disclosed held information to him, or directed where the information could be publically accessed. These responses were provided to the complainant by the relevant planning team, who would have been directly involved in the cooperation with Hull City Council, and who would have had access to, and control over, the information relating to it.
30. In respect of part C, the Council considers this to seek the policy on which planning matters in Beverley are considered. In response to this the Council has provided a copy of the National Planning Policy Framework, which sets out the Government's planning policies for England and how these are expected to be applied by local authorities. Whilst this information is already publicly accessible on the gov.uk website, the Council has provided a copy of this to assist the complainant. The Council does not consider that there is any further information that it can provide that would address this part of the request, and in any event, notes that government planning policy is published as a matter of course.

### The Commissioner's conclusion

#### *Request 1*

31. In respect of request 1, the Council has provided a cogent explanation of what information is held that would fall within the parameters of the request. Whilst this information is publically accessible, the Council has provided electronic copies directly to the complainant. There is no indication that further information is held by the Council, and it is noted that the complainant himself appears to concede that the information he's requested is already publicly accessible (due to it deriving from open meetings).

#### *Request 2*



32. In respect of request 2 (parts A and C) the Council has likewise provided a cogent explanation of what information is held that would fall within the parameters of the request. This information is already publicly accessible, and the Council has either provided a copy of the information or has directed the complainant to where it can be publicly accessed.
33. It is relevant to note that the complainant has not provided any specific basis on which he disputes the completeness of the Council's disclosure (e.g. that further specific documents must be held). Instead, the comments made by the complainant indicate that the focus of his concern is that the Council has failed to record accurate information, or otherwise demonstrate certain actions in respect of implementing the Borough and County Plan. The Commissioner emphasises that the EIR relate only to the provision of recorded information, and do not impose any obligations on a public authority to create specific information as part of its activities.
34. In respect of request 2 (part B), the Council has indicated that it has previously disclosed information (or otherwise directed the complainant to where it can be publicly accessed) in 2014.
35. Whilst the Council's position has been noted, the Commissioner must consider the following issues in reaching a conclusion:
  - The previous requests were submitted, and responded to, over three years previously. In responding to the current request, the Council has only referred the complaint to the previous requests, and additionally, does not appear to have considered whether any additional information is now held. In such a context, the Commissioner must conclude that the Council has failed to comply with regulation 5(1), under which a public authority is required to disclose all held information that falls within the parameters of a request, unless a valid exception has been applied.
  - The wording of the current request also indicates that the complainant may expect to receive further copies of that information which was disclosed to his previous requests in 2014. However the Council does not appear to have addressed this, or otherwise sought clarification from the requestor as part of its duty to provide advice and assistance under regulation 9.
36. Having considered these issues, and the content of the Council's response to the complainant, the Commissioner does not consider it likely that the Council has given full consideration to the scope of the current request, or has responded appropriately under the terms of the EIR.

## Right of appeal

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

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

38. 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.
39. 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 Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**