

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

### **Decision notice**

**Date:** 16 November 2022

**Public Authority:** Medway Council

**Address:** Gun Wharf  
Dock Road  
Chatham  
Kent  
ME4 4TR

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

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1. The complainant has requested information regarding environmental and ecological surveys undertaken by the Council for the Hoo Peninsula and Medway. The above public authority ("the Council") relied on regulation 12(4)(d) of the EIR (material in the course of completion, unfinished documents, and incomplete data) to withhold the information.
2. The Commissioner's decision is that:
  - The information being withheld under regulation 12(4)(d) of the EIR engages that exception, and the public interest favours maintaining the exception.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

## **Request and response**

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4. On 19 April 2022, the complainant wrote to the Council and requested information in the following terms:

“Habitat sustainability/species survey/ecology survey for Hoo Peninsula and the rest of Medway pertaining to Local Plan development evidence.”

5. The Council refused to provide the information and relied on regulation 12(4)(d) of the EIR as its basis for doing so. The Council upheld its original position at internal review.

## **Reasons for decision**

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6. The following analysis sets out why the Commissioner has concluded that the Council was entitled to rely on regulation 12(4)(d) of the EIR in this particular case.
7. Regulation 12(4)(d) of the EIR allows a public authority to withhold information which is in the course of completion, unfinished documents, or incomplete data.
8. The Commissioner is satisfied that the withheld information can be categorised as material in the course of completion. He accepts that the draft in question forms part of the process of assessing a Local Plan. That process is not yet settled, and no final decision has been made. As such, the Commissioner has decided the Council was entitled to apply regulation 12(4)(d) of the EIR to the information it is withholding. He has therefore gone on to consider the associated public interest test.

## **Public Interest Test**

9. The Council has recognised that there is a great deal of local public interest in transparency, openness, and accountability, as well as the environmental impact and assessment of any major new housing development. However, they argue that the Local Plan is incomplete and not approved, therefore sharing this may cause a long-term detrimental effect on the local population.
10. The Council believes that disclosing unfinished or incomplete information would hinder and distract its officers from completing the work of which

the unfinished or incomplete information is a part, as they would need to answer queries from the public regarding any inaccurate information.

11. The Council considers the public interest in maintaining this exception lies in the fact that the information is incomplete and would create a misleading or inaccurate impression. The Council said it would mean that the advice, remarks, and concerns raised that are contained in the CEIA would be released whilst the project is in progress, and the Council's considerations in policies and allocations were still ongoing. This would restrict future advice and information available in formulating the CEIA as the Council's Local Plan progresses and make it difficult to bring the process to a proper conclusion.
12. Although there is an inherent public interest in transparency, the Council argued: "To release information regarding incomplete and unfinished document that has not yet been approved would be misleading to the public and would therefore not add to public understanding. It would also interfere with our ability to undertake future consultation in a practicable way. We do not believe that providing information that is a work in progress and therefore incomplete would be in the public interest. The premature release of the information is likely to cause significant confusion and challenge, in the absence of wider work, namely the policy responses and wider assessments. This could therefore be considered as a risk to the preparation of the draft local plan. The full Cumulative Ecological Impact Assessment will be published and available at the formal consultation stage together with the draft local plan."
13. The complainant argues that the draft Local Plan sets out the case for the project, so it's essential that interested parties have the opportunity to comment, and potentially help to avoid the commitment of the project based on potentially flawed conclusions. They also say that the public authority seems to want a plethora of planning applications which would appear to be punitive to the Hoo Peninsula.
14. They go on to argue that: "there are or could be applications in Medway which could benefit members of the public to know should they wish to object to a planning application, on important environmental grounds. Also, the Leader of the council has admitted that he has given advice to landowners on the Peninsula to "do your worst" and has speculated in a newspaper interview that many planning applications will be brought forward."

15. And "The reason I want the council to release the results of their habitat and environmental impact assessment is because there are applications coming forward which need that sort of information in order for sound decisions to be made".
16. The Commissioner notes that projects such as this would already generate a large amount of information which is made publicly available. He understands that it would create confusion if the Council disclosed draft documents at each stage of the project.
17. The Commissioner is also mindful that there is an inbuilt public interest in enabling public participation in decision-making in environmental matters. However, public interest considerations should always be relevant to the exception being relied upon, to the specific nature of withheld information and to the context at the time of the request. In this instance, the Commissioner considers the Council has demonstrated that the information relates to and informs a decision-making process which is incomplete, and its disclosure would, by misinforming public debate, impede the decision-making process that it supports.

### **The Commissioner's conclusion**

18. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.
19. The Commissioner has reviewed both the complainant's requests and the Council's responses, and on the evidence presented to him in this case, the Commissioner is persuaded that the Council would not be able to place the specific information in context which in turn may cause confusion and further unfounded speculative debate.
20. The Commissioner's view is the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(d) of the EIR was applied correctly.

## Right of appeal

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21. 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](mailto:grc@justice.gov.uk)

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

22. 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.
23. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**