



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference:	EA/2013/0240
Appellant:	Jessica Bailey
Respondent:	The Information Commissioner
Judge:	NJ Warren
Member:	H Fitzhugh
Member:	P de Waal
Hearing Date:	3 February 2014
Decision Date:	14 February 2014
Promulgation Date:	17 February 2014

DECISION NOTICE

1. It is common for planning authorities to give “preplanning advice” to developers before an application for planning permission is actually made. Sometimes, in consequence of the advice, no application is made at all. The Local Government Association recommends that any such advice should be recorded and made publically available.
2. East Devon District Council (East Devon) has decided to publish such advice on its website only after any application is made.
3. On 7 March 2013 Ms Bailey asked East Devon for information concerning a pre-application consultation in respect of a plot of land near her home. East Devon refused the request and Ms Bailey complained unsuccessfully to the Information Commissioner (ICO). She now appeals from the ICO decision to the Tribunal.
4. In the meantime East Devon has published all the requested information in accordance with its usual policy. Ms Bailey has asked for the appeal to continue so that the Tribunal can decide the general question of the time from which planning authorities should make such information available to the public.
5. Both parties now consent to us deciding the appeal without a hearing and we are satisfied that we can do so.

Appellant: Jessica Bailey**Date of decision: 14 February 2014**

6. Whilst we understand Ms Bailey's concerns, the Tribunal's powers do not extend to giving rulings binding in future cases on the ICO or on East Devon.
7. The information requested by Ms Bailey has now been released to the public. There is therefore nothing left for the parties to argue about. It is in this sense that the appeal has become "academic" and Tribunals should not decide academic questions.
8. Another analysis would be that the public release of the information effectively changes the decision which the ICO was considering and the appeal to the Tribunal lapses. In similar circumstances the Upper Tribunal in Dorset Healthcare NHS Foundation Trust v MH (2009) UKUT 4 (AAC) decided to give no decision.
9. For these reasons we give no decision on this appeal.

NJ Warren

Chamber President

Dated 14 February 2014