

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 April 2014

Public Authority: Uttlesford District Council
Address: Council Offices
London Road
Saffron Walden
Essex
CB11 4ER

Decision (including any steps ordered)

1. The complainant has requested information broadly concerning a Local Plan to build new houses.
2. The Commissioner's decision is that Uttlesford District Council (the Council) has provided the complainant with all the information it holds that falls within the scope of his requests.
3. The Commissioner requires the public authority to take no steps.

Request and response

4. On 2 August 2013, the complainant wrote to the Council and requested information in the following terms:
 - 1) *"Details of the proposed start and end dates of the Local Plan to which the Council is currently working, regardless of whether or not a formal decision to adopt or approve a Local Plan based on such dates has been taken by the Council or any part thereof;*
 - 2) *Details of the number of new homes to be planned for during the Plan Period to which the Council is currently working, in as much detail as you can reasonably provide - including the total number of houses and their proposed locations and any expectations or understandings you may have as to the possible dates of construction and availability of the houses;*

- 3) *Assuming that the Council is currently working on the basis of a Local Plan which starts in 2011 and expires in 2026, as the Council has publicly stated:*
- a) *the date (or dates where relevant) when the Council (or any part of it) decided to stop, and the date or dates when the Council (or any part of it) stopped, working on the basis of a Local Plan which would expire in 2028 (as proposed in the June / July 2012 public consultation), and started working on the basis of a 2026 end date;*
 - b) *the person or persons and/or the committee who recommended and made such a decision, and at what levels the decision to work on a Local Plan with an end date of 2026 was approved within the Council;*
 - c) *details of the reason or reasons why the Council moved from working on a Local Plan with a proposed end date of 2028 to working on a Local Plan with a proposed end date of 2026;*
- 4) *Copies of all e-mails, letters, documents, file notes and other correspondence or information of any nature whatsoever sent or prepared by or received by any of the following members of Uttlesford District Council (being any of the councillors who are members of the UDC Cabinet, [redacted names] or their secretaries which contain, discuss or relate to the reason or reasons for the change referred to in paragraph 3 above".*
5. The Council responded on 16 August 2013. It provided the complainant with information within the scope of request 1. In response to request 2 it explained that regulation 6(1)(b) applied. With reference to request 3 it explained that the Council had not resolved to work on a Local Plan that starts in 2011 and expires in 2026. In response to the information sought in request 4 the Council confirmed that the information was not held and therefore relied upon regulation 12(4)(a).
6. Following an internal review the Council wrote to the complainant on 5 September 2013. It provided some clarification in relation to the points the complainant had raised in his internal review request. It further provided the complainant with instructions on how to locate the information sought within request 2 on its website. With regards to request 3 the Council explained that it considered the request to be based on an assumption and because the assumption is incorrect it could not be responded to. In relation to request 4 it confirmed that the information was not held and therefore it was correct to rely upon regulation 12(4)(a).

Scope of the case

7. The complainant contacted the Commissioner on 7 October 2013 to complain about the way his request for information had been handled.
8. The Commissioner has had to consider whether the Council has handled this request in accordance with the EIR. Specifically he has had to consider whether the Council holds further information within the scope of request 1, 3 and 4.
9. The complainant also argued that the minutes that the Council directed him to in response to request 2 did not provide him with information within the scope of this request. The Commissioner has therefore also had to consider whether the Council holds further information within the scope of request 2.

Reasons for decision

10. Regulation 12(4)(a) provides that a public authority may refuse to disclose information where it does not hold that information when a request is received.
11. Where there is a difference between the amount of relevant information identified by a public authority and the amount of relevant information that the complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of proof, the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds (or held at the time of the request) any information which falls within the scope of the request.
12. The complainant has argued that the Council holds further information within the scope of all of his requests. The Commissioner will address each of the requests below.

Request 1

13. The Council confirmed that the start date of the Local Plan was 2011. It confirmed that at the time of the request the Cabinet had received and noted a position statement with the start date of 2011 and end date of 2026. The Council explained that this document is published and the complainant has had sight of this.
14. The complainant subsequently questioned the Council's response. Specifically he explained that he had been provided with a number of

different start dates and he was therefore confused as to which one was correct. This Commissioner returned to the Council on this point and it explained:

"The previous plan expired in 2011 and logically therefore that should be the start date for the new plan. The draft plan, amendments thereto and the position statement all reflect this."

15. It further explained that when the Council was looking at a Plan from 2011-2026 (the position statement), it was on the basis that the Plan would need to be 15 years in length. However, it has confirmed that the Plan will now be 15 years post adoption. Therefore the Commissioner understands that the year the Plan is adopted will determine the end date.
16. The Council has confirmed that the complainant has had a copy of the position statement which states the start date of the Local Plan and therefore the Commissioner considers that the complainant has received all the information that falls under the scope of this request.

Request 2

17. The complainant argued that the minutes the Council directed him to do not contain the information he was seeking. After reviewing these minutes, the Commissioner also considered that they do not contain the information sought within the scope of request 2.
18. The Commissioner addressed this matter with the Council. The Council explained the information could be found on its website in Cabinet minutes dated 13 December 2012.
19. The Commissioner provided the complainant with this information. The complainant returned to the Commissioner and explained that those minutes do not contain information on the total number of houses being planned for over the Plan period and it did not contain information on the proposed locations.
20. The Commissioner subsequently returned to the Council. The Council confirmed that it does hold the information on its website.¹ The Commissioner considers that the Council should have provided the complainant with this link when it responded to the request.

¹ <http://www.uttlesford.gov.uk/developinguttlesford>

21. The Council also referred to a document on its website dated 8 April 2014.² This information was not available at the time of the request and therefore it will not be considered under the scope of this case.
22. The Commissioner notes that the Council should have provided the complainant with the link set out at paragraph 19 at the time of the request. However, as this link has now been provided, the Commissioner is satisfied that on the balance of probabilities the Council has provided the complainant with all the information it held within the scope of this request at the time the request was made.

Request 3

23. The Council explained that the matter was first considered by members of the Cabinet when noting the position statement on 26 March 2013. It confirmed that an end date was never approved by the Council; it was only noted by the Cabinet. It also confirmed that the only information it holds that falls within the scope of this request is the report to the Cabinet on 26 March 2013 and the minutes to that meeting.
24. The complainant subsequently argued that the minutes to the meeting of 26 March 2013 only refer to when the Cabinet made a formal decision to change the Plan. He argued that it doesn't provide any information on when the Council made the decision to stop working on a plan that ended in 2028. He also argued that it does not provide information on who within the Council took that decision and the reasons behind such a decision.
25. The Commissioner returned to the Council with these points. The Council explained that the Cabinet meeting was a formal decision. It further explained:

"A Local Plan process is an iterative process and develops as it goes along. It does not move from one formal decision to another and it requires officers to develop thinking and prepare papers before putting them before the Councillors. Officers collectively, following the informal meeting with Inspectors, started to explore the different end dates and what it would mean for housing and employment numbers, open space

2

<http://gis.uttlesford.gov.uk/cm5/Meetings/tabid/73/ctl/ViewMeetingPublic/mid/410/Meeting/6013/Committee/1850/SelectedTab/Documents/Default.aspx>

requirements etc. Until officers had gone some way through this work there was nothing to take to Councillors."

26. The Council also provided the Commissioner with additional information which fell under the scope of request 3(b). This information has been disclosed to the complainant.
27. On the balance of probabilities the Commissioner is satisfied that the Council has now provided the complainant with all the information it holds with respect to request 3.

Request 4

28. The Council explained that it does not hold any information within the scope of this request. It explained that it had carried out searches of the email system under the names mentioned in the request. It also confirmed that most officers keep documents within an email filing system under the heading 'Local Plan' (or similar) and these filing systems were also checked and no information was located. Further to this, electronic folders of Word, Excel and PowerPoint were checked for information but no information was located.
29. On the balance of probabilities, the Commissioner is satisfied that the Council does not hold information within the scope of request 4.

Right of appeal

30. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Rachael Cragg
Group Manager
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SK9 5AF