

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 May 2022

Public Authority: Bidborough Parish Council

Address: bidborough.pc@outlook.com

Decision (including any steps ordered)

1. The complainant submitted two requests for information held by Bidborough Parish Council (the parish council) about matters that relate to the proposed development of a local pavilion.
2. The Commissioner is satisfied that the parish council has, on the balance of probabilities, now provided the complainant with the information held that is relevant to both requests.
3. However, as it took the parish council more than a year to provide all the relevant information to the complainant, the Commissioner has found there to be a breach of regulation 5(2) of the EIR in respect of both requests.
4. Furthermore, the Commissioner has determined that the parish council's failure to complete an internal review in respect of both of the requests is also a breach of regulation 11(4) of the EIR.
5. The Commissioner does not require the parish council to take any steps as a result of this decision notice.

Request and response

6. The complainant has raised concerns about the parish council's handling of two separate information requests. Whilst these two requests are for different sets of information, given their close connection, both in terms of content and the issues to which they relate (that being the proposed development of a local pavilion), the Commissioner has decided that it is appropriate to consider them within one decision notice.

Request 1

7. On 23 November 2020, the complainant wrote to the parish council to request information about a local pavilion, and proposed plans to develop that pavilion. A copy of the request is included within Annex A attached to this decision notice.
8. On 15 December 2020, the parish council provided the complainant with some information. It also confirmed that the request had been sent to the parish councillors for further comments and responses to the questions asked by the complainant. On the same date, the complainant contacted the parish council again, setting out further details of the information that they believed should be released in response to their request.
9. On 19 December 2020, the parish council provided some additional information to the complainant. The complainant remained dissatisfied, and they raised their concerns with the parish council; however, they did not receive a response.

Request 2

10. On 4 January 2021, the complainant made a further request for information to the parish council for information about Sports Clubhouse Ltd, its relationship with the parish council and the proposed redevelopment of the pavilion. This request is included within Annex B attached to this decision notice.
11. On 5 January 2021, the parish council responded, providing some information to the complainant. It then went on to provide further information on, or around 23 January 2021, and 25 January 2021.
12. On 3 February 2021, the complainant contacted the parish council, advising that its responses were not adequate; the complainant then contacted the Commissioner after they failed to receive any further response from the parish council.
13. On 6 April 2021, the Commissioner wrote to the parish council to request that it carry out an internal review within 10 working days.
14. The complainant subsequently contacted the Commissioner to advise that they had not received any further contact from the parish council.

Scope of the case

15. The complainant first contacted the Commissioner on 23 December 2020, to raise concerns about how the parish council had handled Request 1. On 1 March 2021, the complainant contacted the Commissioner again to complain about the parish council's handling of Request 2.
16. Following the Commissioner's intervention, further information was released by the parish council in response to both of the requests.
17. The complainant states that whilst they appreciate that, following the intervention of the Commissioner, the information which had been outstanding was released, they remain concerned that it took over a year for this to occur.
18. The complainant goes on to say that, given the significant amount of time which has now passed since they made their requests, the value of the information which they have now received has diminished. The complainant has therefore requested that the Commissioner make a formal decision about the parish council's general handling of Request 1 and Request 2.
19. The Commissioner will therefore decide whether the parish council has complied with its obligations under the EIR in its handling of Request 1 and Request 2.

Reasons for decision

Regulation 5 – Duty to make environmental information available on request

20. Under regulation 5(1) of the EIR, a public authority that holds environmental information shall make it available on request.
21. Under regulation 5(2), information shall be made available under paragraph (1) as soon as possible, and no later than 20 working days after the date of receipt of the request.
22. In this case, the complainant submitted Request 1 and Request 2 on 23 November 2020, and 4 January 2021, respectively; however, it was then well over a year after this time that the parish council went on to release the final set of information.
23. It is the Commissioner's decision that as the parish council failed to provide all the relevant information held to the complainant within the

required 20 working days, there has been a breach of regulation 5(2) of the EIR in respect of both Request 1 and Request 2.

Regulation 11 – representations and reconsideration

24. Regulation 11(1) of the EIR provides the right for requesters to request a review of the handling of their request.
25. Regulation 11(4) states that once a public authority has received a request for a review, it must respond as soon as possible, and no later than 40 working days after it has received the internal review request.
26. A requester does not have to explicitly state that they require an internal review. Any written response from the requester expressing dissatisfaction with a public authority's response to a request should be treated as an internal review request, and handled in accordance with the authority's review procedure pursuant to regulation 11 of the EIR.
27. The complainant contacted the parish council after receiving a response to both Request 1 and Request 2; in both instances the complainant clearly expressed their dissatisfaction with the way in which the requests had been handled.
28. As the council failed to identify and respond to the complainant's requests for an internal review, both in respect of Request 1 and Request 2, the Commissioner finds that the parish council has failed to comply with the requirements of regulation 11(4) of the EIR in respect of both requests.

Other matters

29. The Commissioner acknowledges that this is a small parish council, with very limited resources, and a lack of experience of dealing with formal information requests. However, this case has highlighted poor record keeping practices, and also a lack of understanding of the parish council's obligations under the EIR. The parish council holds corporate responsibility for these failings, rather than any individual.
30. In this case, the Commissioner found it to be necessary to engage in extensive communications with the parish council over a protracted period of time, before he was satisfied that it was likely that, on the balance of probabilities, all the relevant information had now been released.

31. Whatever wider issues the parish council may have been dealing with, it has a responsibility to ensure that it understands and complies with its obligations in relation to all the information access regimes.
32. The parish council should now ensure that it takes the opportunity to carry out a full review of the current processes that are in place, and to take the necessary action to remedy its poor handling of information requests. A failure to do so, and the receipt of similar complaints in the future, may lead the Commissioner to revisit this matter.

Right of appeal

33. 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@justice.gov.uk

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

34. 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.
35. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Request 1: 23 November 2020

'FREEDOM OF INFORMATION REQUEST

Thank you for all your help so far. I have a number of questions that arise from my study of PC Meeting minutes. I have read everything publically available online, including those on the old PC website as well as currently on Facebook, and those you supplied to me.

The requests all relate to information that does not appear in these minutes, but which it is reasonable to think should exist in Parish Council records. Therefore, if it exists, all this information should be readily and easily accessible from data held online or filed records. Many will be simple statements of dates or votes. Please provide the information the Parish Council possesses, or state if such information does not exist. The non-existence of the information might apply to a number of these, so should be easy to answer. In the event the Parish Council say it is in the minutes, given that I have been unable to find them, please provide the reference, so that I can read myself. I would also be happy to receive on different dates if some is more easily provided than others, provided it is all received by the deadlines.

Please provide the information electronically via e-mail. If only hard copy is available, I am able to offer to copy free of charge at home. Please provide all information within 20 working days, which is Monday 21st December 2020.

1. Lease. What leases exist between Bidborough Parish Council (BPC) and Bidborough Sports Association. What can Bidborough Sports Association do and not do? What ground area is included? Between 27.6.2016 report of a completed 100 year lease (approved 27.7.15) and the claim in the recent Forum response of a 99 year lease there are conflicting entries referencing 25, 99 and 100 years.
2. 25.9.17 BPC Meeting Sports Association report. The BPC raised no objection to re-siting the new Pavilion facility in an alternative position on the ground if this was necessary. Please supply the following:
 - a. The record of the vote for and against on the re-siting or why it did not require a vote.
 - b. The number of votes cast
 - c. Any criteria given to Bidborough Sports Association (BSA) that they should meet with any new proposal.

- d. Record of any consideration by BPC of what impact a new location would have on the lease and legal agreements, the original gift of the Recreation Ground, residents and users.
3. 30.10.17 Sports Association report. 2 possible sites for the new Pavilion were being considered, which included the re-location of the play area to the bottom recreation ground. Please supply the following:
 - a. Record of any authorisation BPC gave to BSA to consider moving the play area
 - b. Record of any discussion or assessment made by BPC of what impact a new location would have on the lease and legal agreements, the original gift of the Recreation Ground, residents and users, equality and inclusiveness.
4. 25.3.18 BPC Parish Newsletter Spring went to the printer. It includes a single proposal for a new Pavilion with official support from BPC. The BPC Chairman reports a long held concern the play area is vulnerable to stray cricket balls. Please provide the following :
 - a. Record of the decisions to officially support and embark on the single project illustrated, about which the Chairman unequivocally states "The proposal is to sit the pavilion on the existing play area facing the cricket square." How many votes were cast, how many for, how many against.
 - b. Record that shows that the BPC ever approved the relocation of the play area, including votes cast for, against and total votes cast.
 - c. Record of the decision to dismiss the previously mentioned second option, and record of any assessments made before this decision was taken.
 - d. Documented record of any incidents in relation to cricket balls entering the play area with the current netting arrangements, including previous mentions in minutes of BPC. (The minutes appear to contain no such record, or any expression of concern)
 - e. Copy of any mention in the annual RoSPA reports that suggest the netting provisions in place represented either an inherent risk or an actual risk. Please include the ratings given for the ball stop netting by RoSPA to these factors for 2016, 2017, 2018, 2019, 2020. (I have been unable to find any reference in the minutes to poor assessments or remedial action required by RoSPA for the play area ball stop netting.)

- f. To meet the Code of Conduct requirement for promoting equality and not discriminating by age, the record of any documented concern or assessment for the safety from cricket balls of all users of the footpath, of the tennis courts, of the bowls green, of the cricket pavilion, of Spring Lane residents and of adjacent gardens.
 - g. Evidence of any consideration given to keeping the current play area site with nets that protect from balls that are hit by any age of cricketer, up to and including Test standard. (Such netting is available.)

5. 30.4.18 Annual Parish Meeting Chairman's Report. The report made an unequivocal statement that the pavilion plan included relocation and replacement of the current play area equipment. It also stated "Very soon there will be architect plans for all to see." The Chairman also requested constructive views. Please provide:
 - a. Record of the date on which the architect's plans were "made available for all to see" and where they were made available.
 - b. Report to the BPC of views received following the Spring 2018 Newsletter proposal.
 - c. Summary of the views received, numbers for and against and number of responses.

6. 21.5.18 BPC Meeting Sports Association report. BPC minutes record that valid concerns on the pavilion project could be addressed. For any date subsequent to this statement, please provide the record of the report of views submitted to BPC, and how they were addressed. (Not to include the October 2020 Zoom Forum results, which I have.)

7. 29.5.18 Site meeting BPC and BSA. Site meeting (on or about this date) Referred to by Cllr Moore during PC meeting 18.11.20. In reference to the play area. The precise words I have noted down were "It was agreed to retain the current facility was no longer an option any longer. That was 29 May 2018. So we have been trying to sort it out for a long time. It is just the pavilion has come up. It has raised its head ...(indecipherable break up) against planning." Attendees were stated as being Cllrs Stevens, Thorne, Moore, Shepherson, Parish Clerk Evelyn Divall and Robin Brown, Chairman BSA. Please

provide :

- a. The grounds for the statement that retaining the current facility was no longer an option.
 - b. A statement of who was representing BPC and who BSA.
 - c. Any supporting evidence from RoSPA reports that showed maintaining the facility was not an option.
 - d. A statement of how this decision was agreed between BSA and BPC given that it had not been approved by the full BPC.
8. 25.6.18 BPC Meeting Sports Association Report. Extensive discussion was minuted. Please provide :
- a. Record that shows that it was agreed to move from the single Spring 2018 Newsletter proposal, to considering 3 options as laid out in the minutes.
 - b. A statement of the ECB requirements and exactly which ones could not be met by each of the 3 options.
 - c. The report from RoSPA or other expert that shows the play area was "not fit for purpose" as BPC acknowledged
 - d. Any evidence that supports the H&S concern about the location on the same ground as cricket matches. Any supporting evidence from RoSPA.
 - e. Given that cricket ball stop netting is designed precisely for the purpose of protecting the public, any evidence that well maintained netting is in any way unsafe.
 - f. Any record that shows BPC analysis of why the play area netting is unsafe, whereas the netting used to protect a Woodland Way garden has not been mentioned.
 - g. The report to BPC of the tabulated results of the referenced survey carried out in early 2018, a copy of the questions asked, and a statement of who issued the survey, who it went to, and the minute that shows BPC authorised or requested such a survey. I can find no record it was previously minuted.
9. 25.6.18 BPC Meeting Sports Association Report. It was stated that "further information relating to the planning application was also available in the public arena ie TWBC planning site – this would have included anything the PC had been required to provide." I believe this statement to be incorrect since pre-planning work with TWBC is not public domain. Please provide:

- a. Instructions on how the public can access to TWBC planning site to see the proposals, given that BPC had reported they had only had pre-planning discussion.
 - b. Copies of the information BPC had been required to provide.
10. 25.2.19 BPC Meeting Sports Association. Cllr Moore said the Planning and Design Access Statement would be passed to ED when available. Please provide the date the Clerk received this document.
11. 30.9.19 BPC Meeting. Sports Association. It was stated that preliminary plans had been forwarded to TWBC. Please provide:
 - a. Exact details of the proposal that BPC approved to be forwarded
 - b. The vote record to approve this specific proposal either at this meeting or an earlier date, giving total votes cast, votes for and against.
 - c. If it was a single design proposal, the record of any decision by BPC to approve this and reject the other two options specified in the 25.6.18 BPC meeting
 - d. If the proposal was different from the 3 options stated 25.6.18 and represented the further option as shown in Autumn 2020 Bidborough Parish Newsletter, the record of any decision to approve and back this specific design. How many votes were cast, how many for and against.
12. Autumn 2020 Parish Newsletter. The Letter to Residents. The Chairman as one of the signatories states that BPC support the proposal shown. It also states that location was primarily decided by access to services. Please provide :
 - a. Record of any decision and discussion by BPC to support this single proposal, including votes cast, votes for and votes against, and consideration given to the views of residents.
 - b. Any record that shows that consideration of access to services was the main factor in deciding the location, since this appears to contradict previous statements
 - c. Copy of any record that BPC made an assessment of how the pavilion will "blend in with the environment", and record of any comparison made of the environment now, and the environment after building.
 - d. Record of any consideration BPC gave to the proposal including the removal and reduction in play area space in assessing it's inclusiveness for all the users of the Recreation Ground, and

assessment of how all users would be treated equally in the future provision of facilities.

13. School usage. Various statements have been made from 25.9.17 BPC Meeting, that Bidborough Primary School usage, and space for this was a design requirement. Please provide:

- a. Copies of any communication on behalf of the School or its Governors that specifies the requirements the School has of any pavilion development, and any request to provide facilities
- b. Copy of any communication received from the School or its Governors that requests provision of an extra classroom facility in the pavilion, and toilets when the children are on the Recreation Ground.
- c. Copy of any communication from the After School Club that requests space in the pavilion, and an intention to move from their current location.

The Parish Council might like to know that as far as I can establish the 2016 Annual Meeting minutes are not published either on Facebook or on the old website.'

Annex B

Request 2: 4 January 2021.

'FREEDOM OF INFORMATION REQUEST

Please supply answers in electronic format by e-mail. I have not been able to find the answers to these questions in the available public domain documents of Bidborough Parish Council. If the documents don't exist then Bidborough Parish Council must say so. In line with Freedom of Information Act requirements, please provide answers by end of business on Friday 29th January.

1. Please provide the date when all Parish Councillors and the Clerk had first sight of the plans as laid out in the Autumn 2020 Bidborough Parish Newsletter.
2. Please provide the record from council minutes of the motion and resolution to apply for planning permission in the Parish Council's name, and the total votes cast for and against.
3. Please provide the record from council minutes of the motion and resolution to appoint Sports Clubhouses Limited as an agent of Bidborough Parish Council.
4. Please provide a copy of the agency agreement between Bidborough Parish Council and Sports Clubhouses Ltd
5. Please state the sum of money that Bidborough Parish Council are paying Sports Clubhouses Ltd for their agency work.
6. Please provide the record from minutes of the resolution to delegate the power to authorise Sports Clubhouse Ltd to submit the Planning Application, now known as Tunbridge Wells application number 20/02971
7. Please provide the dates when the drawings showing the Autumn 2020 design and location were made available to Bidborough Parish Council meetings in 2018, 2019 and 2020, and as stated as being done in Bidborough Cricket Club's submission to the TWBC Planning Portal to application 20/02971

8. The artists impression published in a Parish Newsletter in 2018 showed a pavilion sitting where the Play Area is located. Please provide the Parish Council minute or other document that shows Bidborough Sports Association informed Bidborough Parish Council they were changing the location and detail of the proposed pavilion development to the one shown and published in the Autumn 2020 Parish Newsletter. In the absence of any minute or document, what was that date?
9. The Ownership Certificate submitted on behalf of Bidborough Parish Council by Sports Clubhouses Ltd, states that Sports Clubhouse Ltd informed Bidborough Parish Council on 4.11.20 that the planning application was being submitted. Please provide the record from minutes, and a copy of the notification, as received by any Parish Councillor or the Clerk, of this notification. The notification is known as a Notice under Article 13 of an application for Planning Permission.
10. Please provide the record from minutes that shows that any councillor or Bidborough Sports Association informed Bidborough Parish Council that the Planning Application 20/02971 was being submitted.
11. Sports Clubhouses Ltd, on behalf of Bidborough Parish Council, submitted an application that in Section 26 makes a declaration of truth, that Bidborough Parish Council as the applicant, to the best of their knowledge, have stated any facts truthfully and accurately. There are substantial errors of fact which Bidborough Parish Council know or should reasonably know to be untrue. These include, but are not limited to misleading statements of the gift from Major Nicholson, claims to have outline planning permission, and claims the grass area is **only** used for occasional car parking. Please show the record of any meeting that shows Bidborough Parish Council considered these mis-statements issued in their name, and the action Bidborough Parish Council decided to take.
12. Given the requirements of the Deed of Gift not to discriminate and the requirements of the Equality Act 2010, please provide a copy of the assessment made by Bidborough Parish Council that shows they are not seeking to discriminate by age, and not seeking to confer a disadvantage on different age groups of residents, by supporting and authorising submission of the planning application, which if enacted will remove the Play Area from its current location, to a much smaller and lower quality location, and remove the remaining non-cricket pitch green space.

13. Please provide any assessment by Bidborough Parish Council, before submission of planning application 20/02971, of the applicability of the UN Declaration of Rights of the Child, Articles 3.1 and 31, as ratified into UK Law in 1991.
14. Please provide a copy of Bidborough Parish Council's assessment prior to submission, of how the Planning Application 20/02971 meets the requirements of their duties under the Deed of Gift of 1929
15. The Governing Document for Charity 278976 is stated as being the Deed dated 29 August 1929 and Scheme dated 20 August 1982. Please provide a copy of the Scheme dated 20 August 1982. Bidborough Parish Council are the sole Trustees of this charity.
16. Please provide a copy of Bidborough Parish Council's 2019-2020 Annual Return together with supporting explanatory notes, as submitted to the external auditor.
17. In the 2019 Annual Return, Bidborough Parish Council recorded fixed assets of £125540. Please provide a listing of all the fixed assets included in the amount.
18. Where is the asset value of the Arthur Nicholson Recreation Ground recorded? What is the asset value?
19. Given that, should the Bidborough Sports Association be wound up at any time, and that BSA have stated they will have no liabilities in regard to the building, then all remaining assets, including the pavilion, will revert to Charity 278976 of which Bidborough Parish Council is the sole Trustee, please provide a copy of the Risk Assessment the Parish Council made of the pavilion project before submitting a Planning Application.(Ref BSA Constitution Article 10)
20. Following on from request 21 above, please provide the figures used by Bidborough Parish Council for ongoing maintenance and management costs, or demolition costs, which would become their liability should Bidborough Sports Association be dissolved either voluntarily or by the Charity Commission.'