

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

### **Decision notice**

**Date:** 29 November 2012

**Public Authority:** Melton Borough Council  
**Address:** Parkside  
Station Approach  
Burton Street  
Leicestershire  
LE13 1GH

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

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1. The complainant has requested information considered by the Melton Local Development Framework (MLDF) Task Group on 31 August 2011. Melton Borough Council (the council) refused to disclose the documents relying on regulation 12(4)(e) as the information constituted internal communications and the public interest was in favour of maintaining the exception. The council also relied on regulation 12(5)(e) as the information was commercially sensitive.
2. The Commissioner's decision is that the council has engaged the exception at 12(4)(e) and that it was correct to conclude that the public interest is in favour of withholding the information.

#### **Background**

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3. The council is in the process of replacing its planning framework for the Borough with the Melton Local Development Framework. This will cover the period up to 2026 and includes the Sustainable Urban Extension (SUE) Area Action Plan which proposes approximately 1000 new homes and supporting facilities.
4. The process involves the drafting of various documents including the Core Strategy Development Plan Document to which the requested documents relate. At the time of the request, the document was

undergoing a 6 week public consultation, and is currently being considered by the Planning Inspectorate for approval.

5. The council set up the Melton Local Development Framework Task Group (the MLDF Task Group) to assist in the creation of the MLDF. The council's constitution states that task groups will be set up on an ad-hoc basis by policy committees to carry out specified tasks, and a report shall be submitted to the relevant committee at the completion of the task. Task groups may be open to the press and public or may be closed. The MLDF Task Group is closed and has not yet completed its task as a decision about the Core Strategy Development Plan Document has not yet been reached.

### **Request and response**

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6. On 29 February 2012, the complainant wrote to the council and requested information in the following terms:

*"I would be grateful if you could supply me with some documents that are held by the council. They are*

*1) The Strategic Development Appraisal supplied to the MLDF TG of 31<sup>st</sup> August 2011*

*2) The Draft Infrastructure Schedule supplied to the MLDF TG of 31<sup>st</sup> August 2011*

*3) The briefing document, assumptions and information that was supplied to LCC to enable the LLITM report to be produced."*

7. The council responded 23 March 2012. It stated that the documents at points 1 and 2 were excepted from disclosure by virtue of regulation 12(4)(e) as they were internal communications. It provided the information requested at point 3.
8. Following an internal review the council wrote to the complainant on 30 March 2012. It stated that it was satisfied that the information requested at points 1 and 2 were internal communications and that the public interest was in favour of maintaining the exception to permit the exchange of ideas in an unconstrained setting free from the inhibition that would occur with the absence of confidentiality.

## Scope of the case

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9. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular he asked the Commissioner to consider the council's response to points 1 and 2 of his request.
10. With regard to request 2 for the Draft Infrastructure Schedule, the council has accepted that it is not materially different to the final published version, and therefore agrees that it can be released as it will not contain anything that had not already been made public at the time of the request. The Commissioner therefore considers that the council has withdrawn its reliance on an exception to withhold this information.
11. Consequently, the Commissioner considers the scope of his investigation to be to determine whether the council was correct to rely on regulation 12(4)(e) to withhold the Strategic Development Appraisal.

## Reasons for decision

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12. The council has decided that the information requested by the complainant represents environmental information and therefore the appropriate access-regime is the EIR rather than the FOIA.
13. The complainant has not voiced any disagreement with the council's decision to process the requests under the EIR. Similarly, the Commissioner is satisfied that the EIR applies, considering that the requested information is on a measure, namely the proposal to develop land, which will ultimately affect the state of the elements of the environment. As such, it would fall within the definition of environmental information set out at regulation 2(1)(c) of the EIR.
14. The Commissioner has therefore gone on to consider the council's application of regulation 12(4)(e) of the EIR.

## Regulation 12(4)(e) – internal communications

15. Regulation 12(4)(e) states –

*"For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that...*

*(e) the request involves the disclosure of internal communications."*

16. The Commissioner has had sight of the withheld information and notes that the document and associated appendices were drafts provided to

the MLDF Task Group for discussion. In line with the Commissioner's guidance on Regulation 12(4)(e), documents which are circulated so that they are available to others within the organisation are internal communications. Clearly the information in question were circulated for the consideration of the MLDF Task Group and its members. The Commissioner is therefore content that that the exception is engaged.

17. The next step for the Commissioner is to assess the public interest test attached to the exception.

*Public interest arguments in favour of disclosure*

18. The Commissioner recognises that there is an express presumption in favour of disclosure under the EIR. This emphasis reflects the potential importance of environmental information to the public. Further, the Commissioner will always attach some weight to the general principle of transparency. Ultimately, transparency should equate to accountability and may help the public to trust and participate in the decisions taken by a public authority.
19. In addition to the public interest in the general principle of transparency, in this case there is also a particular public interest in the withheld information because of the subject matter of the request.
20. The Commissioner recognises that the MLDF, particularly the SUE plans, has courted some controversy. Action groups have been set up to voice residents' concerns about issues which affect them. For example, problems of accommodating the extra traffic that would be created by the development and the loss of green space. The council has stated that it appreciates that some residents are concerned about the impact of the SUE on their housing development. It has also acknowledged that they may have a sense of grievance about the change to the environment of the land adjacent to their homes.
21. However, the council does not consider these concerns to be a broad public interest in disclosure, but rather sees them as the private interests of a number of individuals due to the impact the SUE may have on them personally. The council has said that it considers that whilst these concerns are the motive behind the requests, they are not relevant to the broad public interest and the likely effects of making the information available to the world at large.
22. The Commissioner understands that the development of green spaces into large residential areas is a contentious issue, and one which has been the subject of much debate both in the context of this development in Melton and those in other urban areas. The SUE, as part of the Core Strategy Development Plan Document which is central to the

MLDF, has been through a number of consultation stages with various stakeholders including the complainant. As explained in paragraph 6, at the time of the request, the Core Strategy Development Plan Document was undergoing a 6 week consultation period. The complainant stated in his request that as he only had 6 weeks, he wanted the information as soon as possible.

23. The Commissioner accepts that there is a broader public interest in being kept informed of the progress of the proposed development of Melton as it is clear that the SUE will have an impact on the whole Borough. He considers that this goes beyond the private interests of the individuals who believe that the SUE affects them personally.
24. Disclosure of the requested documents in this case could allow the public to better understand how the council was approaching and managing the SUE development. Disclosure could therefore have the effect of either assuaging a member of the public's anxiety about the proposal or stimulate further debate on the plans for the site, both of which have an inherent value.
25. The Commissioner realises that underpinning the public interest arguments in favour of disclosure is the knowledge that when a proposal to develop large areas of green space is put forward, it is normally on the premise that the redevelopment will better serve the local area. This issue will grow in importance as the pressure on local authorities to provide adequate housing and amenities increases.
26. It is obvious that there will not be a clear consensus between the competing interests on the use of green spaces. Some will clearly favour the preservation of green spaces as demand for houses and urbanisation in general increases, whereas others will advocate the development of such areas to ensure that towns and cities can accommodate a growing population.
27. The Commissioner therefore accepts that, as far as possible, a public authority should be open about what discussions were taking place in respect of projected plans that could influence or shape the Local Development Framework process. Irrespective of whether such openness will placate the various interests, the Commissioner considers that it will help demonstrate that the public authority is seeking to involve the local community in matters that could have a real impact on them.

*Public interest arguments in favour of withholding*

28. Inherent in the exception provided by regulation 12(4)(e) is the argument which says that a public authority should be afforded private

space for staff in which issues can be considered and debated away from the hindrance of outside external comment and interference.

29. While recognising the importance of protecting a public authority's thinking space, the Commissioner has previously adopted the approach that the public interest will sway more towards disclosure once a decision has been made and, accordingly, the need for space in which to operate is no longer required by a public authority.
30. In this case, at the time of the request the Core Strategy Development Plan Document was undergoing a six week public consultation. In addition to this, the council has argued that the work of the MLDF Task Group is still not completed. The development plan is with the planning inspector for approval and as such, a decision has not yet been made and the matter is still considered to be sensitive.
31. The council has explained that the Strategic Development Appraisal is a "high level strategic assessment" to allow for broad conclusions about the anticipated scale of contributions to the SUE. The decision on the location of the SUE has not yet been decided, and this in turn will have an impact on the numbers of houses proposed, the proportion of affordable housing required and therefore the costs of delivering the plans. The council maintains that once a decision has been made both in terms of a site for the SUE and the wider masterplan for the council, the information in the Strategic Development Appraisal is likely to change. The Commissioner therefore recognises that the withheld information is a working document that is being used by the MLDF Task Group as a guide in their discussion and policy implementation.
32. The council has explained that the task group phase of policy creation is formative and is not agreed council policy. It has argued that the release of the Strategic Development Appraisal at this time when the work of the Task Group is not yet complete would have a chilling effect on the further development of the planning proposals. The council has said that elected members are at risk of accusations of planning bias, particularly in relation to such a large and locally contentious planning matter. The council considers that the release of the document is likely to result in press coverage which can have a damaging effect on the fairness of the planning consultation process in general, and also on the uninhibited decision making of individual elected members.
33. Essentially, the council considers that public questions about the fairness of the process and possible accusations of bias towards a particular outcome against individual members will have a much wider impact on the inherent fairness of the process as a whole which will therefore hinder the process. In relation to this, the council has stated that it has concerns that disclosure of the information will lead to a focus on the

process, rather than on the matter at issue which in turn risks the distraction of the public debate. The council has explained that it is focused on upholding the integrity of the consultation and planning process and considers that the confidentiality of documents considered in the closed MLDF Task Group is integral to this in order to give the council a safe space to formulate planning policy and make what are often considered by many to be controversial planning decisions.

34. The council recognises the public interest in a planning and consultation process that is fair to all consultees. It has also considered the extent to which the withheld information could assist consultees in the preparation of their counter-arguments for consideration by the planning inspector but has argued that the availability of the final version of the data created for public consumption in the Core Strategy Development Plan Document weakens the argument for disclosure as withheld information is not necessary for the public to engage in the planning process.
35. The Commissioner accepts that the Strategic Development Appraisal is a document which was created for the purpose of informing the MLDF Task Group's internal debate and discussion surrounding the drafting of the Core Strategy Development Plan Document. He also accepts that the Task Group is closed to enable its members to discuss sensitive and sometimes controversial issues that inevitably result in planning consultations on such large scale development plans which will evidently impact a large number of individuals, without the risk of distraction.

#### *Balance of the public interest arguments*

36. The Commissioner understands that the issues at the heart of the case are important, not least because they reflect an increasingly common situation in many urban areas.
37. In respect of the SUE in Melton, the Commissioner recognises that there is a movement to protect the space, which will add weight to the public interest arguments in favour of disclosure. Ultimately, the SUE will have a significant effect on the local community and, as the location, scale and other variables have yet to be decided, the degree to which various sections of the community will be affected is not yet known. The release of the Strategic Development Appraisal could potentially help the public understand how the council was managing the development process generally and the consultation process more specifically. It could assure the public that the council is undertaking the process fairly and that all the relevant facts have been considered.
38. However, the Commissioner is conscious of the need for a public authority to have space in which to debate what is in essence, a 'live' issue. The Core Strategy Development Plan Document has not yet been

formally accepted by the planning inspector, and once it receives approval, the MLDF Task Group will still be required to make decisions and provided advice about the proposed siting of the SUE as well as the numbers of houses and the proportion of affordable homes. It is therefore clear that the planning and decision making process in relation to the SUE is not yet complete.

39. To disclose evidence of a public authority's internal thinking on a proposal while it was still in the course of completion, and therefore subject to change, may result in adverse reactions from the public. This could then in turn result in the MLDF Task Group not considering all the options because of an adverse reaction generated by the disclosure of information before the completion of the whole process. This may well mean that better options or ways of refining the proposal will not be considered, and the planning process will therefore suffer.
40. Moreover, the Commissioner has borne in mind that a considerable amount of information about the planning process and the decisions that have already been, or are likely to be, taken is in the Core Strategy Development Plan Document. He has also considered that the council has acknowledged that regulation 12(4)(e) is a time dependent quality to withholding the information and agrees that the public interest will sway more towards disclosure once the process has come to an end and the final decision has been made. However, it has stated that as the consultation was ongoing at the time of the request and since the planning inspector has not yet reached a decision, it considers that the matter is still very much live and sensitive.
41. Taking into account these factors, and the weight attached to the various arguments, the Commissioner has found that the public interest favours maintaining the exception in relation to the Strategic Development Appraisal.
42. As the Commissioner considers that regulation 12(4)(e) has been correctly applied to the withheld information, he has not gone on to consider the council's application of regulation 12(5)(e).



## Right of appeal

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43. 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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

44. 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.
45. 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**  
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