

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 March 2023

Public Authority: Kingsley Parish Council
Address: The Boardroom, Kingsley Cemetery
Hollow Lane
Kingsley
Cheshire
WA6 8EF

Decision (including any steps ordered)

1. The complainant has requested information relating to planning applications. Kingsley Parish Council (the Council) provided some information and said that no further information was held.
2. The Commissioner is satisfied, on the balance of probabilities, that the Council does not hold any further information relevant to the request.
3. The Commissioner does not require further steps.

Request and response

4. On 8 November 2021, the complainant wrote to the Council and requested information in the following terms:

"Please can you provide all communications (including, but not limited to, notes on phone calls, emails, faxes, letters, advice notes and meetings, etc.) relating to the planning applications (on the same site in Dark Lane, Kingsley): 19/04448/FUL and 18/01294/FUL.

This includes any communication relating to these applications, such as those between any Parish Councillors and/or the Proper Officer/Parish Clerk (current or past), the local Ward Councillor, the applicants, the agent and architect (Beeston Aspinall Architecture), Chester West and Cheshire Council and all consultees (e.g. the PROW officers, the Biodiversity Team, the Conservation Officers, Local Lead Flood Authority, United Utilities, the Highways Team, all public commentators and any other interested parties)."

5. On 6 April 2022, the Council responded to the request under FOIA. It confirmed that some of the requested information is available within minutes of Parish Council meetings via the Council's website. It also provided copies of various emails.
6. The complainant did not receive a response to their request for an internal review, and complained to the Commissioner.
7. On 18 July 2022, the Commissioner issued decision notice [IC-160871-C4T5](#). This identified that the request should have been considered under EIR, and that the Council was required to conduct an internal review.
8. The Council's internal review, issued on 29 September 2022, confirmed that all recorded information had been provided.

Reasons for decision

9. This analysis will determine if the Council holds further information within scope of the request.

Regulation 5(1) – duty to make environmental information available on request.

10. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
11. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided to the complainant, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of on the balance of probabilities.

12. The complainant believes that the Council has not disclosed all the recorded information it holds. In particular, they have argued that a four page objection to planning application 18/01294/FUL could not have been produced without communication between Council members, and that there must be recorded information held about this.
13. The Council has confirmed that searches were undertaken using search terms '19/04448/FUL' and '18/01294/FUL' (the planning applications in question) in order to locate any information that may be held that is relevant to the request. All communications that were then identified were provided to the complainant.
14. The Council confirmed that, whilst it does retain minutes of meetings and financial documentation in line with various legislation, it does not have a statutory duty to hold any paper records of historic planning applications; therefore such information is not held
15. It further stated that it "... does not generally hold historic emails relating to planning applications."
16. With regard to the objection to planning application 18/01294/FUL. The Council confirmed that, at the time of this application, a small planning working group (consisting of two Members) reviewed planning applications and put forward recommendations to the Council for approval. The Commissioner understands that this process did not involve wider communication within the Council.
17. The Commissioner is satisfied that the Council's approach to identifying the information which it holds within the scope of the request was appropriate and proportionate. The Council has stated that it has carried out what it believed were adequate and appropriate searches of its records in order to locate any relevant information which it holds falling within the scope of the request. The Council also stated that, where it has located relevant information, it has disclosed this to the complainant. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
18. Having considered all of the available information. the Commissioner is satisfied that, on the balance of probabilities, the council has provided all the information that it holds that is relevant to the request.

Right of appeal

19. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Ben Tomes
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF