

Dyddiad/Date: 14 July 2022

Annwyl/Dear

Complaint in respect of Request for Information – reference ATISN 16342

Further to your request for information and subsequent request for an internal review of the response. I have conducted an internal review of the matter and my findings are set out below.

Firstly, I must advise that this Internal Review can only look at Q3 of your complaint. The remaining points are not about whether or not our response complied with the Environmental Information Regulations (EIRs) but rather are about the content of the response and as such fall outside the scope of an EIR internal review. Nevertheless, I have provided some additional commentary on the points raised for the sake of clarity.

With regard to Q3 you have asked to appeal the decision on the notes of the Inspector being exempt. You have sought the methodology used to forbid these notes being released and seek a copy of the relevant case law here. You have asked us to explain how withholding the notes protects the residents and elected councillors' space in terms of openness and transparency.

In considering your request and as part of the internal review I have considered this under the Environmental Information Regulations. It is clear that the information requested relates to information on administrative measures that are likely to affect the state of the elements of the environment. The consideration being the granting, or denial, of planning permission for the building of houses on greenfield land will affect the local landscape and natural sites and is therefore environmental information, as defined in Regulation 2(1) of the EIR.

Your initial request to view the Inspector's notes was considered to fall within the exception under EIR 12(3)(e) as the request involves the disclosure of internal communications. This is consistent with similar cases considered by the Information Commissioner's Office (see <https://www.bailii.org/uk/cases/UKICO/2006/FER0070181.pdf> and <https://www.bailii.org/uk/cases/UKICO/2006/FER0071457.pdf>). An 'internal' communication is a communication within one public authority (all central government departments are deemed to be one public authority for these purposes). I am satisfied that the Inspector's notes in this case can reasonably be defined as an 'internal' communication, being prepared to aid them in their report writing following the site visit. They therefore benefit from the exception.

However, I recognise that even in the case where the exception applies Reg 12(2) states "A public authority shall apply a presumption in favour of disclosure" and this has to be

addressed. In this consideration, public interest arguments should be focussed on protecting the public authority's private thinking space. The initial response to your request advised that withholding the notes at this stage protects the Inspector's private thinking space. It also noted that the Inspectors notes will be available for release once the Welsh Ministers decision (along with the Inspectors report) have been issued.

This accords with the advice given in the ICO's Guidance 'Internal communications (regulation 12(4)(e)) Environmental Information Regulations'. The underlying rationale behind the exception is that public authorities should have the necessary space to think in private. The explanatory memorandum to the original European Commission proposal for the Directive COM(2000)0402 explained the rationale as follows: "It should also be acknowledged that public authorities should have the necessary space to think in private. To this end, public authorities will be entitled to refuse access if the request concerns [...] internal communications." The Information Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. This may carry significant weight in some cases. The need for a safe space will be strongest when the issue is still live. Once a public authority has made a decision, a safe space for deliberation will no longer be required and the argument will carry little weight. Therefore, I consider the earlier stance to be reasonable in the context of this live case.

In addition to the above, I consider that release of the Inspector's notes in advance of a decision could be detrimental to the public interest by prolonging and frustrating the decision-making process at this stage. In planning applications and appeals that are with Planning and Environment Decisions Wales (PEDW) to consider and report on behalf of the Welsh Ministers, the public interest is served by the ability publicly to debate and question planning decisions; this mechanism exists during the process of considering a planning application / appeal and once a decision has been taken. In this case, representations have been invited and considered at earlier stages. The release of the Inspector's notes at this stage may result in additional representations upon which other parties would need to be given the opportunity to comment and that these further rounds of representations, and the continuing uncertainty as to whether or not the planning appeal had been successful, would not be in the public interest.

The system for dealing with planning applications and appeals that have been 'called in' for consideration by the Welsh Ministers is well-established. The statutory arrangements for this are set out in legislation. During the process the various interested parties have an opportunity to make representations. There are opportunities to make written submissions, and there are statutory requirements to ensure that there is community involvement in the planning process. Once a public consultation period has ended, the Inspector will produce a report which will be submitted to the Welsh Minister for consideration. Once a decision has been made the resultant report will be provided to certain interested parties and will be made available to anyone who wants a copy.

At some point, the Welsh Minister has to 'close the book' on public consultation and make their decision. It is not in the public interest to have further public debate, and submissions considered, in the period between evidence being called in and the planning decision being taken. This would lead to delay and uncertainty in the planning process, which would be likely to have a detrimental effect on the area affected by the planning decisions. If the information is released at this stage, it would be difficult to see what benefit this would have for those affected by the ultimate decision, or for society more generally. The public interest is served by there being a planning process that works properly, that involves the

public and that results in a planning decision being taken. In the present case, the release of the Inspector's notes at this time, without the benefit of the Inspector's Report (which is also covered by the exception) or the Minister's Decision, may generate further uncertainty for no practical reason and may further prolong the planning process.

Having undertaken a review of the request, I am therefore satisfied that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Turning to the other matters raised in your correspondence, I can confirm that the appointed Inspector is sufficiently qualified and experienced to fully assess the relevant planning issues in this case and will have undertaken a robust and appropriate site visit in order to assess the evidence. In due course you will be able to recognise this in the analysis set out in the Inspector's Report.

With regard to your request that Residents and Elected Councillors be allowed to have a discussion with the Inspector on site, I believe this has already been addressed in previous correspondence. I would confirm that the purpose of a site visit is for the Inspector to assess the site and its context only having regard to the relevant planning issues at hand. This part of the process is not an opportunity for any party (including appellants, local planning authorities or interested persons) to discuss the merits of the case with the Inspector. To allow such an approach, where verbal representations were made in an informal arena without all parties present, would undermine principles of openness and fairness. To ensure fairness and openness in the process, representations are invited from all parties in a consistent manner and all representations made will be given careful consideration in the assessment and consideration of the case.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745

Fax: 01625 524 510

Email: casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ

Telephone: 0845 6010987 (local rate)

Email: ask@ombudsman-wales.org.uk

Yours sincerely

Victoria Robinson

Prif Arolygydd Cynllunio/ Chief Planning Inspector

Penderfyniadau Cynllunio ac Amgylchedd Cymru/ Planning and Environment

Decisions Wales.