|  |  |  |
| --- | --- | --- |
|  | Date: | 19 May 2020 |
| Our Ref: | ECC8763607 04 20 |
|  |  |
|  |  |

|  |  |
| --- | --- |
|  |  |
|  |  |

Dear Matt Parkyn

**Freedom of Information Act 2000**

**Environmental Information Regulations 2004**

Thank you for your communication of 07th April 2020 asking for a review of the handling of your request for information.

This is the Council’s response to that review.

**Your original request**

You request was received by us on 24th February 2020 was:

Cherrydown East - road layout project and reconfiguration: Please provide me with the following documents for this project:

Question 1 - Detailed layout plans

Question 2 - Designer's road safety risk assessment for the new road

Question 3 - Layout projected traffic flow analysis including buses entering and exiting the depot

Question 4 - Environmental impact assessment

**Our initial response to your request**

The County Council responded to your request on 31st May 2020. We provided the information you requested that we were possession of and according to our interpretation of your questions.

Subsequently on 5th April, you asked for additional clarifications arising from our initial response to your request. The County Council responded on 7th April to your questions. For completeness this information is shown below:

Question 1 - (Question 2 of initial request): The Stage 1 Road Safety Audit report you've disclosed was written in 2018 and is still in draft. Please provide the current, and final, Stage 1 Road Safety Audit report for this project.

Answer provided by Essex County Council: This is the only version that we are in possession of, however the document is signed off.

Requestor: Furthermore, you don't appear to have responded to the last two points of my request:

Question 2 - (Question 3 of initial request): Projected traffic flow analysis including buses entering send exiting the depot

Answer provided by Essex County Council: We do not possess this as stated in the response.  The Public Consultation report provided is information which we are in possession, which includes the road nearest to the site at Cherrydown East.  In any case it would not be appropriate for the County Council to provide information relating to someone’s private business if such data was available.

Question 3 - (Question 4 of initial request): Environmental impact assessment

Answer provided by Essex County Council: All environmental work was undertaken by Basildon Borough Council as part of their early Masterplan work, we are merely following on from that.  The Public Consultation report provided encompasses some elements found in an EIA in any case.  As is required for an EIR, we have provided the information that we are in possession of.

**Your request for a review**

We received your request for a review on 7th April 2020. You requested a review on the following grounds:

Point 1: Your reply on the 7th April 2020 states that the draft RSA Stage 1 report from 2018 is the only version ECC hold but the report has been signed off. This is surprising because there is no evidence of the report being signed off by ECC or that the matters for further consideration during detailed design phase have been addressed.

This suggests that further, more up to date, plans and reports exist. Could these please be disclosed as per my original request?

Point 2: I requested details of the traffic flow analysis and modelling completed for this scheme but there appears to have been a misunderstanding regarding what I am requesting.

The scheme in question will convert Cherrydown East and the associated junctions from one-way traffic to two-way traffic. Traffic from other roads changed by the scheme will now use this road and the number of vehicles using Cherrydown East will increase.

Traffic flow modelling should have been undertaken during the design phase to ensure that the increased traffic and new layout on this road could be safely accommodated. Would AECOM not have needed this data and modelling when conducting the RSA for this scheme?

Please disclose the reports/findings of the traffic flow analysis and modelling for this scheme as per my original request.

Point 3: In your reply to my request for the EIA for this scheme you replied:

‘All environmental work was undertaken by Basildon Borough Council as part of their early Masterplan work, we are merely following on from that. The Public Consultation report provided encompasses some elements found in an EIA in any case. As is required for an EIR, we have provided the information that we are in possession of.’

As the environmental work conducted by Basildon Borough Council was relied upon by ECC when planning this scheme, the information should be in your possession. Please provide the Basildon Borough Council Masterplan environmental work that ECC considered when planning and designing this scheme.

Please also provide the Public Consultation report you refer to, as this was not disclosed by you to date.

**Our response to your request for a review:**

When we responded to you, we provided you with all of the information that we are in possession of that you requested. This was for those documentswhich represented an Essex County Council held document, and according to our interpretation of your request. Where the documents requested were not Essex County Council documents, you were signposted to the relevant authority to obtain such documents.

There appears to be some ambiguity in interpretation between those questions asked by the requestor pertaining to the status, terminology and meaning of those documents, and at what point they are finalised and able to be provided. Whilst efforts were made by the County Council to provide the information sought, there appears to remain some confusion and it is hoped that this review will further clarify matters.

For legibility, the County Council’s response is categorised below into subject headings. This is intended to consolidate the previous correspondences irrespective of sequence and reflect the actual document being sought by the requestor.

**1: Road Safety Audit**

This was initially referred by the requestor as “Designer's road safety risk assessment for the new road”.

In common with other schemes of this nature, there are three levels of Road Safety Audit (RSA). This includes a preliminary design audit (RSA 1), a detailed design audit (RSA 2), and a post construction audit (RSA 3).

In this case a RSA 1 was produced for the scheme. This document was provided to you in the initial response and the version provided was that which we are in possession of.  By definition, “signed off” in this context was used to mean that the RSA 1 document was complete and can be used for its intended purpose.  This did not mean that the elements identified had necessarily been resolved, because these will be considered in RSA 2, which will be available once all design packages are complete as per our initial response to you.  RSA 2 is the opportunity for the issues raised in RSA 1 to be evaluated and resolved. There appears to be some confusion in the terminology used where we use the words “signed-off”, what we mean is “finalised / complete.”

As a result of your request, we have sought out and received the final version of RSA 1 without the “draft” watermark.  Accordingly, please find this attached.

As you may be aware, RSA 2 is undertaken during the detailed design phase and is not completed until all design packages have technical approval. It is evident that officers responding to your request believed you were seeking RSA 1. However further correspondence from you has indicated that you might also be seeking RSA 2. Essex County Council is not in possession of this draft document as it is produced by an external independent consultancy. In due course we will receive a definitive version of RSA 2, which may be available upon request.

**2: Traffic Flow Modelling**

This was initially referred to by the requestor as “layout projected traffic flow analysis including buses entering and exiting the depot”. The information sought therefore was interpreted as being traffic flow analysis undertaken for the scheme which affected access and egress at the bus depot. As the County Council does not possess specific traffic movements into and out of the bus depot, this information does not exist and so was not provided.

However, modelling carried out as part of the scheme which could affect traffic in Cherrydown East, the road at which the depot access is situated on, was enclosed in the form of a Public Consultation report. The link to the website which contains the Public Consultation report was duly provided, because this considered movements directly on Cherrydown East that could impact on the bus depot. The Public Consultation report was enclosed because despite not possessing information regarding access and egress to the bus depot itself, the modelling shown in the report provided an overview of traffic flows in the vicinity. This rationale was explained as shown above in the County Council’s response to your subsequent enquiries raised by you on 5th April 2020.

On 7th April when seeking an Internal Review of your request, you provided additional commentary relating to the information being sought. This included specifically “please disclose the reports/findings of the traffic flow analysis and modelling for this scheme as per my original request.” This clarification provided by you has changed the scope of your request as initially interpreted by officers, the focus of which it was thought was to seek traffic flow modelling pertaining to access and egress at the bus depot and of Cherrydown East itself. Based on the latest commentary provided, this includes specifically the suggestion that you are seeking modelling reports in a wider sense, which includes roads in the vicinity in addition to Cherrydown East.

As a result of the clarification provided by you, please find attached the 2017 Vissim and Local Model Validation Report (LMVR). These reports could be regarded as “parent” documents to the Pubic Consultation report, and the information contained within those reports fed directly into the Public Consultation report. Some personal information has been withheld due to an exception in the Environmental Information Regulations.

The exception applicable to the information is:

**EIR Regulation 12(3) & Regulation 13 - Personal data of third parties is exempt if disclosure would breach the principles of the Data Protection Act 2018.** **We believe that providing you with the information would breach the following Data Protection principles:**

* Data shall be fairly, lawfully and transparently processed
* Data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes

We are applying this exemption because

a)  we do not have the consent of the person who is the subject of the information to disclose it to you,

b)  disclosure does not meet any of the Article 6 or 9 conditions that would make it “necessary”, and

c)  disclosure of the information to you would not be connected to the purpose for which we have collected and are holding the information.

We further believe that the release of the requested information would cause unwarranted interference to the rights and freedoms and legitimate interests of the data subject(s). Such a disclosure would in our view constitute a breach of Article 8 in the Human Rights Act (the right to privacy and family life).

In such circumstances this is an absolute exception.  In accordance with the Regulations this letter acts as a refusal notice.

Accordingly, it is suggested that you contact the County Council again should you be seeking other information which has not already been provided, and officers will respond to your request.

**3: Environmental Impact Assessment**

In common with other town centre Masterplans, Essex County Council as Highway Authority developed the highway elements of this scheme once funding was in place, and planning elements approved.  Sequentially and as stated previously, Basildon Borough Council would have undertaken an Environmental Impact Assessment (EIA) during development of their own town centre 2012 Masterplan.

The overall planning and preparation process for schemes from concept to completion can take a number of years to achieve. In this case despite the Basildon Town Centre Masterplan being approved by Basildon Borough Council Members in 2012, it was some years later that funding was allocated by Essex County Council for the Highways elements of the town centre Masterplan. Essex County Council’s interest in this context is pertaining to the highway elements of a wider scheme / Masterplan. If an EIA exists this would have been produced and distributed by the promoting authority, in this case Basildon Borough Council. As holder of this information you need to contact Basildon Borough Council directly to request this information, as was signposted to you in the County Council’s initial response to your request.

Clarification received from you on 7th April could suggest that the County Council would be responsible to provide information on somebody else’s scheme. The responses provided to you within this request are limited to the highway elements of a wider scheme, or plan for the Basildon Town Centre. Essex County Council’s involvement was to consult on the highway proposals that were selected to take forward into construction, based on the concepts considered within the 2012 Basildon Town Centre Masterplan. The Public Consultation report produced in 2019 considers the rationale for the highway elements of the town centre Masterplan intended to be taken forward, and evaluates the environmental issues as sought by you. The Public Consultation report is available on the Essex County Council website, and you were signposted to this in our initial response to you.

Having considered your additional commentary received on 7th April, the County Council is in possession of the 2012 Basildon Town Centre Masterplan which was undertaken by Basildon Borough Council. Accordingly, please also find attached the 2012 Basildon Town Centre Masterplan documents that were used by Essex County Council officers to help inform the scheme.  Please can I also signpost you to clauses 3.1.11 to 3.1.13 of the Basildon Town Centre Masterplan which provides the rationale as to how the EIA elements were considered.

**4: Basildon Town Centre Highway Improvements Public Consultation Report**

The Public Consultation report you seek is available on the Essex County Council website. The link to the webpage was provided twice in the County Council’s initial response to you, for convenience the link is <https://www.essexhighways.org/uploads/docs/basildon-tc-consultation-report.pdf>.

**Next Steps**

I enclose the information requested that I have now decided to release for the reasons set out above:

* Basildon Town Centre Highway Improvements Scheme: Stage 1 Road Safety Audit without “draft” watermark.
* 2017 Basildon Town Centre VISSIM Forecasting Report
* 2017 Basildon Town Centre: Vissim Local Model Validation Report
* 2012 Basildon Town Centre Masterplan

The Council maintains that it correctly handled your initial request, but has reconsidered its position on certain questions in light of your further clarification and has provided the additional information for the reasons set out above. If you remain dissatisfied, you can now ask the Information Commissioner to review your request. You can do this by email to [casework@ico.org.uk](mailto:casework@ico.org.uk) or by post to Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow SK9 5AF.

Yours sincerely

**Your Right to Know**

Democracy and Transparency

Essex County Council

Telephone: 033301 38989

Email: [YourRight.ToKnow@essex.gov.uk](mailto:YourRight.ToKnow@essex.gov.uk) | [www.essex.gov.uk](http://www.essex.gov.uk)