

Internal Review

Environmental Information Regulations – FOI Request 4618

Introduction

This review concerns the Council's provision of information relating to a Viability Assessment with regard to Planning Application RR/2018/1787/P.

Initial Request

A request was received from Mr Hurrell to the Council on 13 August 2018 under the Environmental Information Regulations 2004 regarding a letter and viability assessment with regard to the site at.

Initial request 13/8/18 (via email)

Dear Rother District Council,

Changes to the NPPF now make it necessary that viability statements for affordable housing provision are to be made publicly available.

The previous outline application for this site allowed for affordable housing provision.

The current planning application RR/2018/1787/P for "Erection of 30 market dwellings together with access, parking, open space and recreational land. Location Strand Meadow - Land to the south west of, Burwash TN19 7BS" claims that affordable housing is not viable.

No viability statement has been posted on the public web site to support the claim that affordable housing is unviable. This is in conflict with the requirements of paragraph 57 of the NPPF, which states "all viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available".

I request a copy of the viability statement provided by the developer for this application. I also request that the viability statement is published on the planning web site.

Yours faithfully,

Chris Hurrell

Rother's Response of 16 August 2018

Dear Mr Hurrell

ENVIRONMENTAL INFORMATION REGULATIONS 2004

With reference to your request received on 13 August 2018 about Viability Statement re application RR/2018/1787/P, the full viability assessment is part of the application currently under consideration and is therefore exempt from disclosure under Regulation 12(4)(d). However, an Executive Summary of the Viability Assessment is available on the website under the planning application documents titled Major – Supporting Information – Executive Summary Viability Statement.

If you are dissatisfied with the handling of the request please contact us within 60 calendar days of this response, if you wish to request an internal review. If you are still dissatisfied

with the outcome of the internal review you have the right to make a complaint to the Information Commissioner. Their details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
Tel. 01625 545700
www.ico.org.uk

Please note that the information provided by Rother District Council is intended for your personal use. If it is your intention to re-use the information for commercial gain, you will need to apply to the Council for a license to re-use it, under the Re-Use of Public Sector Information Regulations 2005.

Freedom of Information Manager

Request for Internal Review

A request was received from Mr Hurrell on 19 August 2018:

Dear Rother District Council,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Rother District Council's handling of my EIR request 'Affordable Housing Viability statement for PLG development Burwash RR/2018/1787/P'.

The grounds for refusal under EIA regulation 12(4)(d) does not apply. 12(4)(d) states "Material in the course of completion, unfinished documents and incomplete data".

The viability statement has been submitted as part of the planning application and will be used by the planning department to make a decision on whether affordable housing contributions are viable. The viability statement cannot therefore be considered to be a document in the course of completion or an unfinished document or incomplete data.

The viability statement is now part of a planning application and should be in the public domain as clearly stated by NPPF paragraph 57:

"all viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available".

The refusal decision is in conflict with NPPF Paragraph 57. The whole point of NPPF Paragraph 57 is so that public scrutiny can occur before the planning decision is made. If the statement can be held back as incomplete then when do the public get to see it? After the application has been decided? If this is the case then viability statements remain secret until after the decision is made. This is clearly not the intention of the new NPPF.

The viability statement submitted with the planning application may be at the plan making stage but the NPPF states that this too must be publicly available.

If the viability statement was indeed incomplete, unfinished or with incomplete data then it should not have been accepted as consideration for this planning application. The planning application should not have passed validation until the viability statement was completed.

The executive summary posted two days after I submitted my EIR request is derived from the viability statement. If the viability statement is still incomplete then the executive summary itself must also be considered incomplete.

The refusal decision is also in conflict with the new NPPF guidelines on viability statements.

Paragraph 021 of <https://www.gov.uk/guidance/viability> says that :

“Any viability assessment should be prepared on the basis that it will be made publicly available other than in exceptional circumstances”.

Your reason for refusal has not demonstrated any exceptional circumstances and therefore the refusal reason is invalid.

Paragraph 021 of <https://www.gov.uk/guidance/viability> says that commercial sensitivity covers ongoing negotiations over land purchase, and information relating to compensation that may be due to individuals, such as right to light compensation.

None of these apply. EIA regulation 12(4)(d) is not about commercial sensitivity and therefore does not apply.

The 35% Campaign in Southwark says that EIR/FOI requests for viability assessments may be legitimately made as soon as a planning application is known about and before the viability assessment is complete so that there is time for the EIR/FOI process to complete before the decision is made. Therefore EIA regulation 12(4)(d) does not apply.

I request that this EIR request is reviewed and that I am provided with a copy of the viability statement and that the viability statement is also posted on the planning website.

A full history of my EIR request and all correspondence is available on the Internet at this address: https://www.whatdotheyknow.com/request/affordable_housing_viability_sta

Yours faithfully,

Chris Hurrell

Internal Review Consideration

On reviewing this request I understand the basis for review to be straightforward. The applicant wishes to know why this information has not been released.

The information on any application is, as part of the normal course of planning applications, available on the Council's web site. The issue here is that in the determination of the planning application should a viability assessment be made publically available. As previously commented the executive summary accompanying the viability assessment is published on the Council's website.

The Council's position is that a planning application submitted has to be given a degree of confidentiality, in order for the Council to have the chance to properly explore and form its recommendation. The submission is subject to consideration by others qualified to review the viability assessment (e.g. the District Valuation Office). Following their consideration it may be subject to alteration, qualification, and/or require additional information and therefore at this stage the report cannot be considered complete.

This position I believe is supported by ICO cases, specifically made around the City of York's planning process (FER0601649). I can confirm the Council will be publishing a redacted as required version of the viability assessment in accordance with national guidance (<https://www.gov.uk/guidance/viability>) once it has completed its work as outlined above. I will ask that you are notified once it is published.

The Council considers that Regulation 12(4)(d) was correctly applied as the planning application has not been determined.

Conclusion

On reviewing this request I consider the Reg 12(4)(d) exemption used to be appropriate at the time the decision was made.

Decision

I am of the view that the Council's initial response and use of an exemption was correct.

If you are dissatisfied with this response, you have the right of appeal to the Information Commissioner's Office. The Office can be contacted by email at casework@ico.org.uk or by post at:

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

Signed:



Robin Vennard
Assistant Director – Resources

Dated 18 April 2018