



Mr J Allison

Office of the General Counsel

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Phone: 03000 416979
Ask for: Denise Burring
Email: denise.burring@kent.gov.uk
Ref: FOI/17/2070
Date: 31 January 2018

Dear Mr Allison,

ENVIRONMENTAL INFORMATION REGULATIONS 2004
FOI/17/2070 – Information Sharing with Stone Hill Park Ltd – Internal Review

I have undertaken a review of Kent County Council's ("the Council") response to your request for information made on 30th November 2017, as follows:

Please provide details of all communication between Kent County Council and Stone Hill Park Ltd (or its agents, including GVA and Pillory Barn Ltd) relating to the proposed "masterplan" to build around 4,000 houses on Manston Airport.

Also, can you specifically confirm whether or not KCC (or Invicta Law, on its behalf) has been asked to provide land interest information to Stone Hill Park Ltd (or its agents), and if so, whether such information was provided without protest as to costs.

The Council responded to your request on 2nd January 2018 and you requested a review of this response on 3rd January 2018 by email to the Council stating

Your justification for withholding the majority of information requested is based on outdated and flawed information. The Planning Policy Statement you have quoted is not only not legally-binding, but vastly out of date, having been replaced by the National Planning Policy Framework in 2012. It is concerning that a County Council is not aware of this fact.

Furthermore, my request has been made under FOIA2000, not EIR2004. I have not requested Environmental Information; I have requested details of communications between KCC and the parties interested in the Manston Airport site.

The fact that you have provided the SHP presentation file suggests that there have been communications between KCC and SHP. I should remind you that such communications can extend to emails, and this includes personal email accounts (<https://ico.org.uk/media/for->

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[organisations/documents/1147/official information held in private email accounts.pdf](#).

I have reviewed the response provided and your additional comments and find the following. I will answer each of your questions in turn.

1. Please provide details of all communication between Kent County Council and Stone Hill Park Ltd (or its agents, including GVA and Pillory Barn Ltd) relating to the proposed "masterplan" to build around 4,000 houses on Manston Airport

I note your comments in relation to the fact that you were previously provided with the SHP presentation file yet no emails in relation to the planning of the meeting were disclosed. I uphold your complaint in respect of this information and found that the Council erred in not confirming that it held relevant information in relation to the arrangements. Please find attached the emails in relation to arranging the presentation to the Growth, Economic Development and Communities Cabinet Committee on 21st November 2017.

In your initial response you were informed that pre-application discussions have taken place with the prospective developers and that pre-planning application information falls under the scope of the Environmental Information Regulations 2004(EIR). The Information Commissioner has confirmed that pre-planning application discussions fall under the definition of environmental information given in Regulation 2(1) EIR. I agree that this is the most appropriate legislation to apply and do not uphold your complaint that your request should be considered under FOIA 2000.

The Council is aware that under regulation 12(2) EIR it states that public authorities should apply the presumption in favour of disclosure.

Please therefore find attached some information that the Council is willing to release in relation to the pre-planning information. The attachment "Stone Hill Park's enhanced masterplan moving ahead" is publically available via the web link https://issuu.com/pillorybarncreative/docs/8156_20shp_20manston_20newsletter_2.

I seek withhold the redacted information under regulation 12(3) and regulation 13 EIR – the information is the personal data of a person other than the applicant. This information is the name of a third party who is not an employee of the Council, its contractors, the Planning Authority, SHP or their agents. This third party has not been approached about whether they consent to their name being disclosed but I assume that they would not want any level of intrusion into their private lives as this may cause some level of distress. The third party would expect their personal data to be processed fairly. I believe that it is not in the wider public interest to disclose the name of the third party and therefore apply regulations 12(3) and 13 EIR to this personal information.

The Council withheld the remaining information initially under regulation 12(5)(e) – confidentiality of commercial or industrial information.

For regulation 12(5)(e) to be engaged the following conditions must be satisfied:

- The information is commercial or industrial in nature.
- The information is subject to confidentiality provided by law.
- The confidentiality is provided by law to protect a legitimate economic interest
- Disclosure would adversely affect the confidentiality

The withheld information is commercial in nature as it relates to pre-application discussions in consideration of the development proposed by a developer working in a commercial sphere for the purposes of profit.

When pre-application discussions are commenced with the Council, the requester pays for the service. This information was shared in circumstances imparting an obligation of confidence. It is not trivial, it relates to a development proposal and it is not in the public domain.

The confidentiality is designed to protect the legitimate economic interest of the Council, the Planning Authority, the developer and its agents. The information is commercially sensitive owing to negotiations being at an early stage.

I need to consider whether it is in the public interest to disclose the information and weigh this up against the harm that disclosure would cause to the developer, the Council and the Planning Authority.

There will be an element of public interest in maintaining commercial confidences. Third parties would be discouraged from confiding in public authorities if they did not have some assurance that confidences would be respected. These discussions are being held with the developer or its agents so that they can judge independently what needs to be completed in relation to any future development on their land. To disclose the communications would undermine both the Council's, the developers and the Planning Authority's commercial bargaining positions should competitors gain access to their enquiries. The harm to economic interests would be in the form of third parties having knowledge of the development plans, and using this to their advantage in negotiations about third party interests, land transactions/ valuations or in tender procedures for works or services contracts.

Paragraphs 188 – 191 of the National Planning Policy Framework 2012 provide that effective pre-application discussions will lead to all parties being better informed as to the important information about the economic, social and environmental impacts of a scheme. Although non- statutory guidance, the Department of Communities and Local Government in preparing the resource expect local authorities to follow it as best practice. Within the discussions mitigating measures can be considered and ways could be discussed in which the project may support wider strategic or local objectives. Without the free flow of information to the statutory authority within the pre-application stage the whole planning process will become less smooth, delays are likely to be incurred as the Council, during the statutory consultation, will still have to gather all relevant evidence and iron out any issues with parties before going back to the Planning Authority. This could then lead to the Planning Authority missing its targets and the whole system will suffer.

I accept that there is public interest in disclosure to promote transparency and accountability, greater public awareness and understanding of environmental matters. It could also allow for more effective public participation in any environmental decision which could ultimately affect them. However, this matter has not yet reached the application stage. It may be that the discussions that have taken place bear no resemblance to the actual proposal put for application by the developer in the future. As far as the Council is aware no formal planning application by Stone Hill Park in relation to the "masterplan" has yet been made.

In weighing up the public interest arguments I note that currently the Planning Authority is reconsidering its local plan. If a formal planning application is made for this particular site then the Planning Authority as part of its statutory consultation will consult with the general public as to their views, where they will be able to air their concerns as to the development. I therefore consider that the public interest falls in maintaining the exception.

I therefore partially uphold your complaint and find that the Council was correct to withhold some information under Regulation 12(5)(e) EIR.

I also seek to apply the exception 12(5)(f) - the interests of the person who provided the information to the public authority to some correspondence.

For regulation 12(5)(f) to be engaged it must be shown that the information provider:

- i) Was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
- ii) Did not supply it in circumstances such that that or any other public authority is entitled apart from the EIR to disclose it; and
- iii) Has not consented to its disclosure.

I am of the view that all three of these tests are met.

I have considered whether disclosure of the information would adversely affect the interests of the person who provided the information. The focus of the withheld information details the process of how the Planning Authority and Stone Hill Park Ltd (or their agents) will carry out pre-application discussions. Disclosure of this information would affect the interests of both the Planning Authority and Stone Hill Park Ltd as it would inhibit their ability to enter into free and frank discussions which would in turn inhibit discussions around their plan. The parties need to be able to come together following policy and procedure without interference from outside bodies.

I need to consider whether it is in the public interest to disclose the information and weigh this up against the harm that disclosure would cause to the developer and the Planning Authority. Applying the same arguments as previously stated for regulation 12(5)(e) I consider that the public interest falls in maintaining the exception. To breach the confidentiality of Stone Hill Park Ltd and its agents would undermine the free flow of information to the Planning Authority within the pre-application stage; the whole planning process will become less smooth. As a result extra costs may be incurred by the developer and the Planning Authority's ability to carry out its statutory functions would be impacted.

2. Can you specifically confirm whether or not KCC (or Invicta Law, on its behalf) has been asked to provide land interest information to Stone Hill Park Ltd (or its agents), and if so, whether such information was provided without protest as to costs.

I apologise that this question was overlooked in the initial response. I can confirm that neither the Kent County Council (nor Invicta Law, on its behalf) have been asked to provide land interest information to Stone Hill Park Ltd (or its agents).

If you believe that KCC has breached the FOIA/EIR, you can appeal to the Information Commissioner, who oversees compliance with the Act/Regulations. Details of what you need to do, should you wish to pursue this course of action, are available from the

Information Commissioner's website <http://ico.org.uk/concerns>, or you can phone the ICO Helpline on 0303 123 1113.

Yours Sincerely,

A handwritten signature in black ink that reads "D J Burring". The signature is written in a cursive style with a horizontal line under the name.

Denise Burring
Solicitor
Office of the General Counsel