

7 April 2014



Mrs Jan Giggins
By email

Strategic Support

Council Offices
Market Street Newbury
Berkshire RG14 5LD

Our Ref: FoI/IR/2014/07

Your Ref:

Please ask for: David Lowe

Direct Line: 01635 519817

e-mail:

dlowe@westberks.gov.uk

Dear Mrs Giggins,

Request for a Review: Triangle Field Hungerford - inclusion in SHLAA

You have requested an internal review of the Council's handling of your EIR request 'Triangle Field Hungerford - inclusion in SHLAA'.

In reviewing the handling of your request I have considered the information you have sought, the Council's duties under the Environmental Information Regulations 2004, guidance issued by the Information Commissioner and the information already provided. I have also discussed this request with officers in the Planning service.

In your initial e-mail of 29 January 2014, you asked for:

- 1. All information held regarding the possible sale/acquisition of the Triangle Field.*
- 2. All information held regarding inclusion of the Triangle Field in the SHLAA. I am particularly interested to know who put the field forward (the reference to the "owner" seems a little disingenuous, given that the Field is (or was) owned by West Berkshire Council, and why they believed it would become available for development in 15 years time, given that the current lease to Hungerford Town Council (from West Berkshire Council) has an option for a further 50 years extension.*
- 3. Any proposals for non-housing development on the Field.*

You will be aware that I have made a previous request about the Triangle Field (March 2013) including documents held at that time relating to a purchase enquiry from Hungerford Town Council. Documents were identified but refused due to the ongoing nature of

the discussions. Presumably these can now be released, preferably without redactions, together with any further information generated since.

Sue Broughton provided some information, through a narrative, in response to questions 1 and 2 in her e-mail to you of 26 February 2014. In this e-mail she also advised, setting out the authority's reasoning, that the Council was extending the time to answer the request (as allowed for under Section 17 of the Freedom of Information Act 2000) as it was considering the application of an exemption.

On 5 March 2014 Ms Broughton then provided a substantive response.

For question 1:

- copies of emails exchanges between West Berkshire Council, Hungerford Town Council and Carter-Jonas on the possible acquisition of the Triangle Field.
- the edited minutes of the Asset Management Group meetings held on 12th June 2012, 17th September 2012 and 12th September 2013.

Ms Broughton also advised that the authority was refusing the valuation terms of reference letter sent to Carter-Jonas and the valuation sent in return and a single section of one sentence in the minutes mentioned above (17th September 2012) which also referred to valuation. The refusal was made under the provisions of S43(2) and Ms Broughton set out her reasons for applying the exemption.

For question 2:

- a copy of the edited minutes of the Asset Management Group meeting held on 12th September 2013 at which this property was put forward.

The content of this minute was explained in her email of 26 February 2014.

In requesting a review you have stated that the Council should consider supplying

a) information identified but not provided.

(b) information identified but withheld in reliance on the s43 exemption,

(c) and possibly identifying and supplying further information:

With regard to (a) Colin Broughton's email to David Small of 17th September 2013 refers to a proforma that he has to fill in and pass to Planning Policy. Please could you supply this.

With regard to (b) I have consulted the following ICO guidance

regarding S43. If I am interpreting the guidance correctly it says that the exemption only applies if the possibility of prejudice to commercial interests is 'not trivial' and if there is a significant risk of occurrence.

http://ico.org.uk/for_organisations/guid...

"f) What is the likelihood of the prejudice being caused?"

Deciding whether or not a particular disclosure would be likely to cause prejudice will often require the exercise of judgement. It will be necessary to judge, in other words, what may be the nature of the harm that would be caused and, also, the likelihood of that harm. While the "prejudice" that may be caused by disclosure may not be substantial, nor should it be completely trivial. As for likelihood, while prejudice need not be certain, there must be a significant risk rather than a remote possibility of prejudice."

You have confirmed that there is a 50 year lease between West Berkshire Council and Hungerford Town Council on the Field, dated 10 September 1992, with an option to renew for a further 50 years at a nominal rent. The documents disclosed also make reference to the sub-lease from Hungerford Town Council to the Rugby Club (with 15+ years outstanding). Taken together with the following statements extracted from the SHLAA the likelihood of negotiations with commercial developers arising in the foreseeable future, let alone being adversely affected by release of the information identified and withheld must surely be remote?

"Availability: Owner indicates the site will be available in approximately 15 years."

"Overcoming Constraints: A landscape assessment and heritage impact assessment would be required. The long term lease on the site would prevent the site coming forward in this plan period."

(c) With regard to further information, please could you review:

(i) whether there is any internal (to WBC) correspondence relating to the formal submission of the Field for inclusion in the SHLAA (eg between members of the Asset Management Committee and Planning)

(ii) whether there is any information held about approaches from any other parties regarding purchase of the Field (or part

thereof) eg from community groups/developers/housing associations.

(iii) the response to part (3) of my request which related to proposals for non-housing development on the Field and to which Ms

Broughton has replied "none". I understand that a permitted development permission has been granted for the siting of a container at the entrance to the Field, and that Hungerford Town Council are now seeking to site two further containers there. The following minute refers:

<http://www.hungerford.uk.net/councilmain...>

13 Theatre Company siting of containers – The containers are currently sited on David Liddiard's land under a temporary licence which runs out at the end of February. Cllr Crane proposed that HTC

support the re-siting of the containers on the Triangle Field subject to lease agreement and permission from WBC, seconded by Cllr Benneyworth, 1 abstention, rest in favour.

Please could you supply the permitted development permission/ correspondence.

Finally, there has been a rumour circulating that there are proposals to build a road over the field to improve access to the Eastern edge of Hungerford and relieve congestion on Priors Avenue/Fairview Road and therefore unlock the development potential

of various sites in this area. Does the Council hold any information on this?

I am very conscious that Ms Broughton must already have spent considerable time providing her response, and that identifying, extracting, and publishing further information identified as a result of the clarification provided in this review request might take that time above the time/cost threshold of the FOI Act. If that is likely to be the case I would be grateful for the opportunity to select from a list of documents identified.

My response to each aspect of your request for a review is set out below.

Information identified but not provided. The Council has nothing further to add to the response provided by Ms Broughton in her e-mails to you of 26 February 2014 and 5 March 2014.

Reliance on the Section 43 exemption. I am satisfied that that the Council has appropriately applied the exemption in this case.

Provision of further information. I can advise:

- The proforma referred to in Colin Broughton's e-mail is enclosed.
- The internal correspondence relating to the formal submission of the field is enclosed.
- The matter of permitted development permission and correspondence you have previously raised with Planning Enforcement. You were advised on 15 January 2014 that the Local Planning Authority had determined that due to its size and capacity the siting of the structure for ancillary purposes did not constitute development requiring planning permission. For this reason the Council would not be pursuing the alleged breach of planning control further.

As permission is not required, the Council consequently has no information to provide.


- Information such as that you seek on any proposal for a road to be built over Triangle would, in advance of any formal proposal, have been provided to the Council in confidence. As such the exemption as provided at Section 43(3) of the Freedom of Information Act 2000 would be engaged and therefore the Council will neither confirm nor deny whether any information is held.

I now believe that I have conducted the review you have requested. As you are aware, if you are not content with the outcome you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

www.ico.gov.uk

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. W. Lowe', is centered within a light gray rectangular box.

David Lowe
Scrutiny and Partnerships Manager

Enc.

Proforma and correspondence
Proforma acknowledgement