



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(INFORMATION RIGHTS)**

**Appeal No: EA/2014/0132**

**ON APPEAL FROM:**

**The Information Commissioner's Decision Notice No: FER0515647  
Dated: 30 April 2014**

**Appellant: Paul Gadd**

**Respondent: The Information Commissioner**

**2nd Respondent: Uttlesford District Council**

**Heard at: Cambridge**

**Date of Hearing: 29 October 2014**

**Before**

**Chris Hughes**

**Judge**

**and**

**Henry Fitzhugh and Jean Nelson**

**Tribunal Members**

**Date of Decision: 19 January 2015**

**Attendances:**

For the Appellant: in person

For the Respondent: did not attend

For the 2<sup>nd</sup> Respondent: Michael Perry (Solicitor for the Council)

**Subject matter:**

Environmental Information Regulations 2004

**Cases:**

## **REASONS FOR DECISION**

### **Introduction**

1. Mr Gadd, the Appellant in these proceedings, has for some time been interested in the activities of his local council, Uttlesford District Council (“the Council”) as a planning authority. On 2 August 2013 he made a request of the Council for:-

*“ 1 Details of the proposed start and end dates of the local plan to which the Council is currently working, regardless of whether or not a formal decision to adopt or approve a local plan based on such date has been taken by the Council or any part thereof;*

*2 Details of the number of new homes to be planned for during that time period to which the Council is currently working; inasmuch details as you can reasonably provide- including the total number of houses and their proposed locations and any expectations or understandings you may have as to the possible dates of construction and availability of the houses;*

*3 Assuming that the Council is currently working on the basis of a local plan which starts in 2011 and expires in 2026, as the Council has publicly stated:*

- a) the date (or dates where relevant) when the Council ( or any part of it) decided to stop, and the date or dates when the Council (or any part of it) doctor, working on the basis of a local plan which would expire in 2028 (as proposed in the June/July 2012 public consultation) and started working on the basis of a 2026 end dates;*
- b) the person or persons and/or the committee who recommended and made such a decision, and that what levels the decision to work on a local plan with an end date of 2026 was approved within the Council;*
- c) details of the reason or reasons wider Council moved from working on a local plan with a proposed end date of 2028 to working on a local plan with a proposed end date of 2026;*

*4 Copies of all e-mails, letters, documents, file notes and other correspondence or information of any nature whatsoever sent or prepared by or received by any of the following members are vital to district Council (being any of the councillors who are members of the UDC cabinet, [redacted names] or their secretaries which contain,*

*discuss or relate to the reason or reasons for the change referred to in paragraph 3 above.”*

2. The Council replied succinctly on 16 August. With respect to the start and end dates; *“15 years from the date of adoption”*; details of the numbers of new homes, *“the information requested is publicly available, and can be accessed from the council’s website”*; assuming that the Council is currently working ...: *“the council has not resolved to work on a local plan which starts in 2011 and expires 2026”*; internal e-mails dealing with the decision assumed in question, *“no such information exists”*. At this stage therefore the Council had confirmed that the plan would run for 15 years from when it was adopted and that information on the number of houses in the plan period was on the website. Questions 3 and 4 were based on an incorrect assumption.
3. On 19 August Mr Gadd responded challenging the responses, the authority of the person making them and asserting a consistent refusal on the part of the council to answer questions. He set out his speculations as to the start date, stated with respect to housing numbers that, *“I have searched the website and cannot find it”*. With respect to the third question (the question beginning – “assuming...”) he stated *“I already know that the Council has not made such a resolution, which is why I ask such a question, and I can see no other conclusion that the response was given in bad faith. Can you please supply me with the information requested by the question rather than answering a completely different question.”* He reiterated the request for an answer to 4 *“on the basis that question 3 was properly asked”* (bundle pages 132-3).
4. The Assistant Chief Executive responded on 5 September. With respect to question one he commented he confirmed that dates were not fixed, the plan would run for 15 years and continued:

*“As speculated by you in your letter, it is probable that adoption will be in 2014 and on that basis the plan will expire in 2029 but no further information can be given.”*

In response to the question on housing numbers:-

*“Information regarding progress on the Local Plan is available on the council’s website in the minutes of meetings of the Local Plan Working Group. These are readily available on the council’s website. As you will see from the minutes of the 9*

*August the issue of housing numbers and site allocations is to be considered when further information is available. This information is publicly available and easily accessible...*”

With respect to questions 3 and 4 he reaffirmed the position set out previously.

5. Mr Gadd was dissatisfied and complained to the First Respondent in these proceedings (“the ICO”) on 7 October. The letter is five pages long and sets out in detail the background to the request in terms of housing policy and the requirement on the Council to plan for a significant number of new homes; the number in the plan being a function of the time period of the plan. It explained that he is a member of a group which is opposed to the Council’s housing strategy. It asserted that the Council’s response was incorrect and repeatedly asserted that answers given by the Council’s Chief Executive (page 139,140) were not true; he alleged that the Council was acting unlawfully with respect to planning policy. The 45 pages of background documents accompanying the s50 complaint to the ICO included: a letter of complaint alleging misconduct by councillors (one councillor in particular) and the Council’s responses, correspondence from Mr Gadd to the planning inspectorate, correspondence relating to a challenge to the Council’s accounts on the basis that its planning process was unlawful together with the Council’s response to this, and a detailed request for information on 2 September concluding *“please treat paragraphs 1 to 22 above as separate requests...”* to which the Council had responded by stating that it was manifestly unreasonable.
6. The ICO conducted an investigation. He concluded that in giving the information that the Local Plan would have a term of 15 years post adoption Mr Gadd *“has received all the information that falls under scope of this request”*. With respect to housing numbers the ICO concluded that the Council should have provided Mr Gadd with a specific link to information on its website but had now done so and concluded on the balance of probabilities that Mr Gadd had been provided *“with all the information within the scope of this request at the time the request was made.”* With respect to request three the ICO set out an explanation from the Council stating that the possible date of the Local Plan had been considered by the Council’s Cabinet in noting (rather than approving) a position statement on 26 March 2013. Mr Gadd had complained that the minutes of the meeting did not provide any information on when the Council ceased working on a plan ending in 2028, the Council further explained the iterative

nature of the planning process and that “*Until officers had gone some way through this work there was nothing to take to members.*” The Council provided further information relevant to its decision-making process which the ICO considered fell within request 3(b). He concluded that “*the Council has now provided the complainant with all the information it holds with respect to request 3.*” With respect to request 4 the ICO gave details of searches that the Council had made and concluded that the Council held no information within scope of the request.

#### The appeal to the Tribunal

7. In his appeal Mr Gadd sought disclosure of documents and other information in response to parts 1-3 of his request, an explanation of why the responses of the Council were at variance with their responses in the decision notice and criticism of the Council for failing to disclose the information. He repeated considerable factual information as to the background. With respect to the start date of the plan he stated that he had never heard of a plan without a start date, he criticised the different start dates he had been informed off and he repeatedly asserted that identified council officers had been untruthful. With respect to housing numbers he protested during the hearing that he still did not know the answer to his question and cast doubt on the integrity of the chief executive and the assistant chief executive. With respect to the third part of the request he asserted (bundle page 20/21) that he an unlawful decision had been made and covered up.

#### The question for the Tribunal

8. The question for the Tribunal is whether all the information falling within the scope of the requests has been disclosed.

#### Consideration

9. Mr Gadd is profoundly irate with the Council and its officers. During the course of the hearing he displayed his mistrust and hostility inappropriately. He displayed a very concrete approach to his requests for information. He believed that an unambiguous and clearly documented answer to each and every query he raised must exist and that where the Council was unable to provide such a response there was clear evidence of dishonesty, misconduct and concealment on an individual and a corporate level. He has failed to understand the complex nature of decision-making

and policy formation in respect of the formulation of a Local Plan. The position is encapsulated in the decision notice where the ICO quoted the Council's description of the iterative processes adopted. The effect of this is that at any time the various officers involved will have a range of ideas as to the way forward and there will not be a settled decision and there will not be a specific position recorded. A request for information elicits from a public body recorded information; but if there is no recorded information there is nothing which is disclosable under EIR.

10. The reality of the situation is that Mr Gadd has had considerable access to the Council's information through the website and through repeated correspondence with the Council. He has also been provided with the information that the Council holds through direct answers; even if it is not recorded or does not fall strictly within the scope of his requests. The plan period, at the time of his request, was understood to be 15 years but the start date was unfixed. The number of houses was uncertain, ideas were being developed and those ideas were available on the Council's website.
11. It is important to recognise that requests for information of public bodies should be responded to within the terms that they are asked - as requests for information which the body holds. The request is given the normal meaning of the words used. A public body is under no obligation to create information in response to a request, or to speculate or hypothesise. This is particularly pertinent to part 3 (and therefore to part 4 of the request). This asks: "Assuming that the Council is currently [i.e on 2 August 2013] working on the basis of a Local Plan which starts in 2011 and expires in 2026" This assumption determines how part 3 of the request should be answered. If indeed at 2 August 2013 the Council is working on this basis, then the three sub-paragraphs of part 3 seek information on a correct factual basis. If however at 2 August the Council was not working on that basis then it is logically impossible for the Council to hold information which falls within the scope of this request. The request embodies a hypothesis and can only be meaningfully answered if the hypothesis is true.
12. The underlying factual position was summarised at paragraphs 23-27 of the decision notice. The end date of 2026 was never approved by the Council, merely noted at a meeting on 26 March 2013. Although the Council provided information in response to this request to the ICO in 2014 (bundle page 243) this was background or related

information to assist Mr Gadd in understanding the position – there was no information which met the description since the assumption was false.

Conclusion and remedy

13. The Tribunal is therefore satisfied that Mr Gadd's appeal is wholly without merit. He has failed to understand the process of EIR and allowed his suspicion and hostility to cloud his judgement and conduct. The factual position as set out in the ICO's decision notice is robust and Mr Gadd has raised no grounds in law to set it aside. His appeal is dismissed.

14. Our decision is unanimous

Judge Hughes

[Signed on original]

Date: 19 January 2014