



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Appeal Reference: EA/2016/0197**

**Heard at Cardiff Civil Justice Centre  
On 27 January 2017**

**Before**

**CHRIS HUGHES**

**GARETH JONES**

**DAVE SIVERS**

**Between**

**MICHELE HILL-PERKINS**

Appellant

**and**

**THE INFORMATION COMMISSIONER**

Respondent

**DECISION AND REASONS**

1. The Appellant in these proceedings has objected to planning proposals relating to a neighbouring property. Local councils have in place arrangements where, for a fee, a potential applicant for planning permission can have the advice of a planning officer on the acceptability of their proposals. Such information is not included in the public planning records of the council, is not binding on the council and the potential applicants are not bound to submit any application to the council in the light of the advice. A

neighbouring property owner sought such advice and received it in a letter from the council on 24 October 2014. The neighbour lodged a planning application on 8 November 2014 and withdrew it on 12 December 2014 before any decision was made. Subsequent planning applications were made. On 31 October 2015 the Appellant requested information from her local council in the following terms:-

*"I should like to see the Pre-Application advice the Local Planning Authority (LPA) offered the Owner of 39 Redan Street, W14 in October 2014; this Pre-Application advice led to Planning Application 2014/5343/FUL.*

*I should also like to see the Case Notes that the LPA Planning Officer who gave this Pre-Application advice made as a consequence of her visit, together with the associated photographs that were taken by the LPA on the day that the Pre-Application advice was given; I have been told by the LPA that these notes were made and that these photographs were taken."*

2. Information was provided, including a redacted version of the pre-planning advice but the Council refused to supply the redacted information relying on regulation 12(5)(f) of the Environmental Information Regulations ("EIR") which provide at 12(5)(f) (the information had been provided to the council by an individual voluntarily and there was no consent to disclosure). The Appellant complained to the Respondent ("the ICO") who investigated whether the redacted information should be disclosed. The ICO concluded that the information was personal information of the individual who had sought advice and considered the request under regulation 13 EIR.
3. By decision notice FER0616171 of 2 August 2016 the ICO concluded that the disclosure would be unfair, a breach of the first data protection principle and therefore the information was protected from disclosure by regulation 13 EIR. The ICO set out why the information was personal data (DN paragraphs 19-20). She explained that the service was a paid for service, there was no requirement to make the advice public and accordingly users had an expectation of confidentiality, this user had indicated an objection to disclosure and in the circumstances disclosure was unfair and would cause distress (DN paragraphs 21-26). The ICO noted that there was a legitimate public interest in planning advice and the Appellant's specific concerns (DN paragraph 27) but concluded that this was an informal preliminary phase and the scrutiny allowed for by formal public process met the legitimate interest in disclosure of information (DN paragraph 28-29). The ICO was not satisfied that disclosure would be beneficial to the wider public and that any legitimate public interest would be outweighed by the distress caused to the individual at the intrusion into their private life.
4. In her appeal the Appellant gave an account of the planning history relating to the adjoining property, her concerns that conservation area and Heritage issues had not been properly considered by the Council. She argued that any personal data issue had been subsumed by the application actually made to

the council and placed in the public domain and her desire was to know whether in its response had said that the proposals were likely to be acceptable. She argued that other councils made their pre-planning advice available. She submitted that removing names and similar material would meet the needs of data protection.

5. In her response the ICO resisted the appeal. She noted that the Appellant agreed that disclosure of names would breach the data protection principle of fairness. With respect to the fairness of disclosing other personal information the ICO distinguished between the pre-planning advice and the formal planning process and submitted that the council's position indicated that the council would consider the concerns of the recipient of pre-planning advice before deciding whether to disclose it in response to a FOIA/EIR request. The disclosure of the information would be an intrusion into the private life of the individual when the individual had a reasonable expectation that it would remain private and confidential. She rejected the argument that there was a legitimate public interest in disclosure given that the subsequent application was withdrawn and the planning issues relating to any subsequent application would be subject to the public scrutiny and opportunity for public participation of the planning process.
6. The ICO submitted that even if the disclosure were fair it would be necessary to demonstrate that one of the DPA Schedule 2 conditions for the disclosure was met. The relevant condition was condition 6(1); however the legitimate interest of the appellant in disclosure was "at best limited", disclosure was not necessary to further legitimate interests in the public scrutiny of the council. The disclosure was therefore unwarranted.

#### Consideration

7. Although the Appellant has drawn attention to different practices of other local councils with respect to pre-planning advice, the position with this council is that it will consider the views of the person receiving the service before disclosing the information. The individual concerned having paid for the advice in such circumstances has a reasonable expectation of the maintenance of the confidentiality of the advice sought as to planning issues concerning an as yet unmade application. Such advice clearly is personal data as it relates to their plans and intentions and the circumstances mean that they have a legitimate expectation that the information would remain confidential. Disclosure would be unfair. Furthermore the tribunal was satisfied that there was no legitimate interest in its disclosure. There was no evidence that the planning system had not functioned properly, the system provided proper opportunity for scrutiny and challenge when an application was made. There was no necessity to disclose the information in support of a legitimate interest – the Appellant's curiosity as to the actual contents of the advice did not disclose any legitimate interest.

8. The decision notice is in accordance with the law and this appeal is dismissed.
9. This decision is unanimous.

Signed Chris Hughes

Judge of the First-tier Tribunal

Date: 24/2/2017

Date Promulgated: 24/2/2017