

FOI Ref

**8780**

Response sent

**16 April 2021**

**(CCC) Planning Committee Meeting 06/04/2016**

Planning Committee Meeting 06/04/2016  
Report of the Director of Environment to Planning Committee.  
(Planning Permission ref. 15/1591/FUL.)  
Consideration of Revocation of Planning Permission.

Freedom of Information request.

Could you please let me have under the Freedom of Information rules all Council memoranda and minutes of meeting that were applicable to the decision to hold the meeting with Press and Public excluded? This should include all Council emails, notes, minutes and other correspondence, both internal and external, electronic and written, that mention the meeting and the decision to exclude the Public and Press.

Additional request wording to be added:

Could you please let me have under the Freedom of Information rules all Council notes, memoranda, minutes of meeting etc. that mention EXPLICIT consideration of the decision to hold the planning meeting with Press and Public excluded. This should include all Council emails, notes, minutes and other correspondence, both internal and external, electronic and written, that give evidence for EXPLICIT consideration of the decision to exclude the Public and Press from the Planning meeting.

**Response:**

Thank you for your request for information above, which we have dealt with under the principles of access to public information as set out in the Freedom of Information Act 2000 (FOI) and the Environmental Information Regulations 2005 (EIR).

This request asks for the same information you requested in under FOI in 2016, which was also reviewed in the same year. We acknowledge that time has passed since these requests were made and have reconsidered the request following the passage of time.

We have made searches of the committee management systems and e mail of staff involved in this application and committee hearing. These include the assigned planning officer, the Head of the Planning Service, the Head of Legal Service, the council's planning lawyer and the Committee Manager for this session of the Planning Committee.

The Council does hold correspondence relating to the decision to exclude the press and public from the Committee when this agenda item was discussed.

Your request and internal review from 2016 found that the information was to be considered under the Environmental Information Regulations (EIR), and the information was withheld under the exemptions under Reg 12(4)(e) internal communications and 12(5)(b) disclosure would adversely affect the course of justice, as the information was subject to legal advice privilege.

For this request we have once again considered the information held by the council under both FOI and EIR legislation. As the information being considered (the planning application) is an administrative measure which affects the elements of the environment, we consider that the information meets the definition of Environmental Information under regulation 2(1)(c), and have therefore considered these Regulations in the handling of your request.

We consider that the information requested should be withheld under the exemption provided by regulation 12(5)(b), disclosure would adversely affect the course of justice, in respect that the information requested consists of legal advice and therefore attracts legal advice privilege.

Legal privilege protects communications between a lawyer and client in connection with the giving or receiving of legal advice. In order to apply the exemption at reg 12(5)(b) the council must demonstrate that disclosure of the information would have an adverse effect on the course of justice.

In considering this the council has considered the decision of the Upper Tribunal (DCLG v Information Commissioner & WR [2012] UKUT 103 (AAC) (28 March 2012), case number GIA/2545/2011) which defines the wider adverse effect on the efficacy of LPP from disclosure, and not just the effect in a particular case.

Whilst the decision to consider this planning application in closed session is not open to reconsideration, the principle of client and lawyer advice in the circumstances of considering other and future applications in closed session does remain. Disclosure of legally privileged information carries with it the potential for discouraging the seeking or provision of legal advice and removing the 'safe space' for a client and legal representative to give and receive robust advice.

The purpose of the Regulations is to create a greater awareness of environmental matters and more effective participation by the public in environmental decision-making improve transparency around factors affecting the environment. (DIRECTIVE 2003/4/EC of the European Parliament), and therefore all exceptions under the Regulations must also be considered in respect of public interest.

The public interest factors in favour of overriding the exemption would therefore be focused on whether there is a wider public interest in the scrutiny of the council's decision making in making such considerations. Whilst there is an inherent interest in understanding the decision making processes of public bodies, the reasons as to why it was recommended that to hold this agenda item in closed session forms part of the public record, as is the vote by committee members to agree to this. I am also aware that these reasons were more fully explained to

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you in correspondence from the Director of Environment in July 2016.

The factors in favour of maintaining the exemption and withholding the information from public disclosure centres around the principle of legal advice, and whether the wider public interest maintains upholding this principle.

The ICO considers that the general public interest against the disclosure of legal advice will always be strong, due to the importance of the principle behind legal privilege.

Your interest in the legal advice considered in the decision to recommend the planning committee hear this item in closed session may be greater than that of the wider public interest. As a decision made a number of years ago which affected a small number of people the wider public interest in overturning the principle of LPP is low. Disclosure under the Regulations must consider the principle of disclosure to the world at large rather than take the identity of the individual requester into account when responding to requests.

We therefore find that the information requested is withheld from disclosure under the exemption at 12(5)(b) of the EIR, and that the public interest lies in maintaining this exemption.

We aim to provide a high quality service to you and hope that you are satisfied with this response. If you have any questions please do not hesitate to contact us. You have a right to appeal the decision of the council. Internal review requests should be submitted within two months of the date of receipt of the response to your original request

Further queries on this matter should be directed to [foi@cambridge.gov.uk](mailto:foi@cambridge.gov.uk)