



## **FOI09705 Request**

**Date received: 31/07/2024**

**Date response due: 30/08/2024**

**Date response provided: 15/08/2024**

### **Request**

In the Summer of 2023, Westcountry Land engaged with Mid Devon District Council as the local planning authority regarding a proposed access to 'Area B' of the Tiverton Eastern Urban Extension [TEUE] (page 2, point '3' of the attached Westcountry Land letter).

Please provide a full copy of all the pre-application engagement you have had with Westcountry Land (and any of their professional representatives) for this proposed access to the TEUE. In your response to the above request, please include all documents provided to the Council, as well as all the advice proffered by the Council (and any representatives engaged on your behalf). We expect the response to this request will include (but will not be limited to):

- All written correspondence;
- Meeting notes;
- Details, information and surveys provided to the Council; and
- Copies of any plans provided to the Council.

We enclose for clarity a plan and email chain (which MDDC was included in) that we understand formed part of this process.

Further, please provide a complete list of pre-application engagement you have received regarding all potential access routes to 'Area B' of the Tiverton Eastern Urban Extension including all documents provided to the Council in association with the pre-application engagement, and a copy of all advice proffered by the Council.

### **Response**

I can confirm that Mid Devon District Council has now considered your request, and that it has been dealt with under the Environmental Information Regulations (EIR) 2004. This is because the information requested falls within the definition of 'Environmental Information' under section 2(1)(c) of that Act.

We can confirm that Mid Devon District Council holds information relevant to your request, and that this response serves as a refusal notice on the grounds that the information requested is exempt under Regulation 12(5)(d) of the EIR, namely that disclosure of the information would adversely affect the confidentiality of the

proceedings of that or any other public authority where such confidentiality is provided by law.

The three conditions required to exempt information under Regulation 12(5)(d) are

- The confidentiality in question must specifically relate to the confidentiality of proceedings;
- This confidentiality must be provided by law;
- It must be demonstrated that disclosure would have an adverse effect on the confidentiality of the proceedings in question.

The pre-application advice service offered by the Council is a formal process, offered by all local authorities, which has been accepted by the Information Commissioner as falling within the definition of a formal 'proceeding' for the purposes of engaging Regulation 12(5)(d), and therefore this information relates to the confidentiality of proceedings.

We consider the information requested meets the threshold for the common law of confidentiality. This is because the information is not trivial and was submitted to the Council as part of a pre-application advice process, which Westcountry Land would consider to be confidential. Whilst the pre-application advice process is not statutory, it is intended to assist developers to identify and address any potential issues early on during the planning process, prior to submitting a planning application. Planning applications and supporting documents are made available for public consumption and consultation in due course, however pre-application advice does not form part of the planning application process or outcome and the applicant may choose to take the advice or not and it is therefore regarded as confidential by both the Council and planning applicants.

Planning applicants have expectations about how their information will be treated. There would likely be significant damage to the relationship between the Council and planning applicants should the Council disclose information that applicants considered to be confidential. If applicants do not feel they can trust the Council, this would significantly undermine the process of providing a confidential pre-application opinion, and would undermine the ability to have full and frank discussions regarding planning proposals.

Whilst the pre-application process provides no guarantee that a subsequent application will be approved, it assists applicants, and the Council, by potentially improving the quality of applications and serves a purpose in avoiding the Council spending time and resources on considering inappropriate and non-compliant planning applications that would result in harm to the interests of the Council, applicants, and to the public purse.

Disclosing the information would discourage full engagement with the pre-application process by the applicant, and by future applicants, for fear that their information would be shared publically and such disclosure would have an adverse effect on the confidentiality of the pre-application process as it would damage the general principle of confidentiality itself.

### **Public interest test**

We are required to consider the public interest of releasing or withholding the information.

### **Public interest arguments favouring disclosing the information**

The Council fully supports the principle of open, transparent and accountable local democracy. Disclosing the information would provide the public with information about potential planning proposals and development schemes in the council area, and an insight into guidance that the Council may share with applicants considering a planning application, demonstrating accountability to local residents.

### **Public interest arguments favouring maintaining the exemption**

Enabling confidential pre-application communication between the Council and applicants promotes opportunity for open and frank exchange, which supports and encourages engagement with the Council's planning officers.

Applicants benefitting from pre-application advice are more likely to submit planning applications that require less overall Council time and resource resulting in less impact on the public purse because potential problems are identified before the formal planning process.

Any advice given is superseded by the subsequent, public, formal planning application process, which follows strict procedures. It is important that the integrity of the formal planning process is maintained.

The formal planning process provides the public with the opportunity to comment on planning proposals prior to the Council's decision on an application. It would be an inefficient use of public resources to disclose pre-application information because it would likely prompt additional public enquiries to the Council on matters that could be very different in the subsequent formal planning application.

Pre-application advice will be reflected in any subsequent planning application – whether or not the advice is taken by the applicant.

### **Balance test**

The Council fully supports the principle of open, transparent and accountable local democracy. On balance, the arguments in favour of maintaining the exemption outweigh the arguments for disclosing the information.