

• **Appendix**

**32E**

Mail Message

Report Re LDP.

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Mail

**From:** MEIRION DAVIES

Wednesday - January 21, 2009 3:02 PM

**To:** WILLIAMS, NICHOLAS

**Subject:** Fwd: Re: Names and candidate site register (CSR)

**Attachments:** 059490.doc (54272 bytes) [View] [Open] [Save As]  
061061.doc (32256 bytes) [View] [Open] [Save As]

>>> ROBYN JONES 22/12/2008 11:56 >>>  
Martin,

I can confirm that full Council (on 11.12.08) did resolve that elected members be given access to the names and addresses of proposers of candidate sites for the LDP but on a confidential basis. This was contrary to the recommendation as set out in the report (copy attached).

Huw Pritchard has obtained an independent assessment of the case for non-disclosure as set out in the report. A copy of that view is also attached.

Having discussed the matter with Huw, he will make enquiries with the Information Commissioner's Office to seek their advice as to whether disclosure to elected members on a confidential basis is lawful.

If a member requests this information I cannot see that we can refuse them access to it but feel free to give the requester a copy of this e-mail and its attachment for their information beforehand.

Diolch.

<b>ISLE OF ANGLESEY COUNTY COUNCIL</b>	
<b>COMMITTEE:</b>	FULL COUNCIL
<b>DATE:</b>	11 DECEMBER 2008
<b>TITLE OF REPORT:</b>	ADVICE ON CANDIDATE SITES REGISTER
<b>REPORT BY:</b>	LEGAL SERVICES MANAGER and HEAD OF PLANNING SERVICE
<b>PURPOSE OF REPORT:</b>	TO ADVISE ON ISSUES RELATING TO THE DISCLOSURE OF THE IDENTITY OF THOSE PROPOSING CANDIDATE SITES FOR THE LOCAL DEVELOPMENT PLAN (LDP)

### **Introduction & Background**

At its extraordinary meeting on 30 October 2008, full Council, whilst approving the pre-deposit publication of the Local Development Plan (LDP) for public consultation, resolved to receive a report and advice with regard to identifying those people who had submitted sites for inclusion in the Candidate Sites Register (the Register). This report addresses the issues raised.

### **Extraordinary Meeting of the Full Council on 30 October 2008**

During the extraordinary meeting the matter was raised as to whether the identity of those people who had submitted sites for inclusion in the Register would be disclosed. There appear to have been two principal arguments raised in favour of such disclosure:

- That possession of the information would allow members to assess whether they had interests to disclose under the Code of Conduct.
- The public's knowledge that members possessed the information would strengthen public confidence in the LDP process. It was unclear as to whether members wanted that information published merely to them or be published publicly.

Considerations relating to data protection and freedom of information will be considered below. However and irrespective of such matters, there are strong if not compelling arguments as to why this information need not be known at all.

- The proposer of a site for inclusion in the Register need not be the owner of the site or have any interest in it at all. Knowing the identity of the proposer of a site does not equate with knowing who the owner of that site is.
- The proposer may have retained the services of a professional planning agent and it is he or she who may have proposed the site on behalf of their client. In such cases the identity of that client may not be known in any event.
- The identity of the owner or proposer of a site for inclusion in the Register is immaterial as to whether that site is included in the LDP. Inclusion of a site in the LDP must be based solely upon the relevant planning criteria. Indeed possession of, or even a request for possession of, an immaterial consideration could be seen as working against the aim of engendering public confidence in the process.
- As regards the issue of members declaring interests under the Code of Conduct, members are only required to declare those interests of which they are aware. There is no requirement on members to go on a "fishing expedition" to investigate whether they have an interest. The burden on members is to disclose personal interests "when the interest becomes apparent" (paragraph 11(1) of the Code). Following-on from some of the above points, possession of the information may not make members any better off in determining whether or not they have interests to declare.

The advice is that the above points are of significance. The point as regards this information being immaterial to the decisions to be made is suggested to be of exceptional significance to members when they consider whether this is information they should ask for.

### **Freedom of Information Act / Environmental Information Regulations**

A request for the identity of the proposers of sites for the Register could be made under the Freedom of Information legislation (more specifically the Environmental Information Regulations in this case). Insofar as that would be a request for personal information under the Data Protection Act then there would be an absolute exemption to releasing that information under the freedom of information legislation. Information released under that legislation is released into the public domain.

### **Data Protection Act**

The name and address of the proposer of a site for inclusion in the Register would be personal information insofar as it relates to a living individual. Personal data may only be processed for lawful means. In the case of the submission of sites for the Register the consent of proposers was not obtained to the processing of their personal information by way of its disclosure or dissemination for any purpose. Provision of personal information by way of giving the names

and addresses of these proposers would potentially amount to an unfair processing of the information by the Council and a breach of the first data protection principle.

The Information Commissioner advises that "the elected member should only be given access to the personal information they need to carry out their duties" ("Data Protection Good Practice Note – Advice to Local Authorities on Disclosing Personal Information to elected Members". (Version 2, April 2007)).

For the reasons given earlier in this report it is respectfully submitted that the identity of a proposer of a site for the Register is not information that an elected member requires in order to carry out their duties.

### **Local Government Act 1972**

Section 100F of this Act gives members the right to inspect any document held by the Council and which relates to any business to be transacted by the Council, its Committees or Sub-Committees. However, the section provides that the information ought not to be open to inspection by a member where it contains exempt information.

Exempt information includes "information relating to a particular individual" or "information which is likely to reveal the identity of an individual" (Schedule 12A to the Act). The names and addresses of individual proposers of candidate sites for the Register is information which falls within either or both of these definitions and so is exempt information.

The application of the exempt information test is subject to a public interest test. The test provides that the exemption ought to remain if the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In view of the arguments submitted above – principally: that it is personal information and the way it was collected, that it is not information needed to assess the suitability of a site for inclusion in the LDP and that there is no responsibility on members to go looking for interests to declare under the Code of Conduct – it is respectfully submitted that the public interest test concludes that the information remains exempt information and so not open to inspection under section 100F.

### **The Common Law**

At common law members are, on the face of it, entitled to inspect documents in the possession of the Council. Members are entitled to keep themselves apprised on Council business which relates to their role as elected councillors and which they have a "need to know". However, the right is not absolute and

there is a bar to entitlement where the motive in seeing the document is indirect or ulterior. Members do not have a "roving commission" through Council documents. Even where the business is that of full Council (as in this case) the right of members to inspect documents is not absolute. The decision is that of the full Council. The full Council would be entitled to resolve to refuse members to view the information if they believe that the purpose is indirect or ulterior. The question to answer is: do members have a need to know?

For the reasons mentioned already it is respectfully submitted that the identity of the proposer of a site for the Register is not information that is needed by individual members or by the full Council to assess the suitability of candidate sites for inclusion in the LDP.

Were full Council to resolve that the information be open to inspection by members then it would have to be on the basis that the confidentiality of that information is respected.

### **Conclusions**

- The names and addresses of those proposing sites for the Register is not relevant information in assessing the suitability of the site for inclusion in the LDP. The information is not, therefore, necessary for members to carry out their duties as regards the LDP.
- The names and addresses of those individuals proposing sites is personal data under the Data Protection Act and authority for its publication to members or the public was not obtained.
- The names and addresses of those proposing sites is exempt information under Schedule 12A of the Local Government Act 1972 and no reason is known as to why the public interest test ought not to conclude that the information remains exempt.

### **Recommendation**

That full Council resolves that the names and addresses of the proposers of sites for inclusion in the Candidate Sites Register for the LDP are not open to inspection by members.

### **Background Papers:**

None.

It is understood that the elected members (Councillors) wish to see the names and address of applicants for the candidates' site register relating to development. It is unclear whether the intention is that this detail be published as part of the Local Development Plan or not. The justification given being that it will improve confidence in that members have a full view of any application and that it will assist members when making a declaration of interest.

The first question to be asked is if the information is personal taking regard to Section 1 of the Data Protection Act 1998 (DPA) and subsequent juris prudis such Durrant -v- FSA [2003].

A name on its own does not tell us anything personal about an individual especially if it were a common name, Iphon Davis for example. Name and address may reveal some personal information but only if that address were a private residence. Applications for the register may be from both private addresses or from business addresses. Other information collected would relate to the application and not to the individual and would therefore not be personal.

The second question to be asked is if the data is necessary for the members to conduct their business.

The report prepared already, accurately in my opinion, concludes that such information is not required to enable members to conduct their business successfully.

We must then ask if the applicants were made aware that this information was to be presented to Council and then further to be published. It is my opinion that to release the name and address of the applicant even though such information may not be personal, may have a detrimental effect on that person's business as it could show how that business is intending to expand and develop, information useful to a competitor. The release of such information would be exempt under FOIA Section 43 and if released to members could render the Council liable to a claim for damages if the information proved detrimental to the applicant. It also provides grounds for appeal if the application is unsuccessful as it would be difficult for members to show they had not taken the name into account.

For that information which can be regarded as personal, name and address of an individual, then to release the information to members would be excessive (not needed for the purpose of their duties) ( Principle 3) and unfair as a fair processing notice had not been issued (principles 1 and 2). Continued breaches of the principles could, in the future, make the Council liable under the Criminal

Justice and Immigration Act 2008 for a fine.

It might not be an unwise move to ask other Authorities what they are doing as well but you do not have to copy their view if you do not agree. Forewarned is forearmed!