

TRIANGLE RESIDENTS' GROUP



Dear Sir/Madam,

Statement of Community Involvement (SCI) 2024 consultation in respect of the proposals that:

- ***When commenting on a planning application, names and addresses of people making comments will not be published on the website***
- ***Printed paper copies of the Local Plan documents will no longer be displayed in local libraries.***

The TRG responses to your questions and the reasons that inform them are as follows:

Q1. Do we agree with the proposal to redact names and addresses on submitted comments to planning applications on the Council's website?

No. The main justifications put forward are that:

- 1. The correspondence requires redaction and checking to ensure compliance with the DPA and the GDPR. The level of resource required to reduce the risk of failure to comply with the DPA and GDPR is at an unsustainable level.*
- 2. Unfortunately, there have been examples where comments received have been upsetting to others or have resulted in disputes and anti-social behaviour. In addition, we receive regular complaints that comments are defamatory.*

These justifications are unconvincing and lack a sound evidence base. A number of serious concerns are detailed below.

Transparency & Accountability

- 1. Weakening transparency and accountability:* The role of both officials and elected representatives is to use their skills, experience and powers on behalf of the community they serve. To ensure accountability to that community who depend on them it is vital to retain confidence through maintaining transparency and openness wherever possible. The facility to see who is commenting on applications, where they are located and what evidence and arguments are being presented provide an important means of understanding whether support or opposition to an application is from residents in the near vicinity, further afield in the borough or from outside it (sometimes from locations many miles distant and apparently unconnected).

TRIANGLE RESIDENTS' GROUP



Potential legal threat

2. The advice given by officials suggest that legal and statutory requirements, notably the Environmental Information Regulations (EIR) and the General Data Protection Regulation (GDPR) in effect required the new approach. This requires careful scrutiny against current policy, an assessment of the actual risks of legal challenge and the precedents cited.

3. *Current openness:* Published EBC guidance could not be clearer that individuals submitting objections should do so with an understanding both that some personal details would need to be disclosed, that they needed to be circumspect in the use of language and that comments should be restricted to defined topics. A list of excluded topics that would not be considered is also included. The following quotations from three separate paragraphs in online guidance are worth repeating at length:

“... any comments you make about a planning application will be published on our website, including your name and address.” [TRG underlining]

[Because comments might be viewable] “It is therefore your sole responsibility to ensure you do not include any offensive, defamatory or discriminatory language in your comments as you could be held legally responsible for this in the future.”

“All comments received in relation to a planning application is public information and will therefore be available for public inspection. Your comments will also be published on our website and will include your name and address.” [TRG underlining]

In view of these caveats, potential objectors should be in no doubt about the potential availability of their identifiers or the need to be circumspect in any comments that they might make.

6. *Absence of legal and financial proper risk assessment:* Given the current guidance provided for those wishing to comment, the actual risks of fines, presumably from the Information Commission, appears to be low. There is no indication that EBC has faced the risk of fines in the past in this area or actually had to pay any. There is no evidence of widespread challenges elsewhere in the country or under what specific circumstances any fines might have been levied, if at all. There is no definitive legal advice set out in material presented to the Council. It is therefore not clear why and on what basis such a fundamental change to well-established and tested procedures is required now.

TRIANGLE RESIDENTS' GROUP



7. *EIR and GDPR requirements*: The legislative requirements in this area are complex and need to be interpreted in specific individual cases. However, it would be perverse to use separate legislation designed to encourage openness and to protect the personal details from misuse to overturn well-established and accepted arrangements for disclosing fully representations on planning matters. The EIR have a general presumption in favour of disclosure and the GDPR require a judgement to be made as to whether the public interest in not disclosing outweighs the public interest in disclosure.

8. The only case presented to support this change of approach relates to Torfaen County Borough Council (TCBC). The decision by the Information Commissioner on 11 February 2020 that TCBC was entitled to withhold information under regulation 13(1) of the Environmental Information Regulations 2004 (EIR) was particular to the circumstances of that specific case. It did not set an overarching precedent applicable in all planning circumstances and to all Councils. In particular:

- *Disclosure policy*: The Torfaen decision related to a request from an individual applicant to identify the personal details (namely the name and address) of the single objector. TCBC's established policy was not to disclose online any personal details such as names and addresses online and that disclosing summarised comments with generic information on the location of commentators was sufficient to reflect any public concerns or support. This approach is a world away from EBC's openness, and that of other Councils, in disclosing comments in full and identifying the objectors.
- *Legitimate expectation*: The Information Commissioner judged that in view of TCBC's clear policy of non-disclosure, an objector would have a legitimate expectation that personal details enabling them to be identified would not be published online. In contrast, the legitimate expectation of those submitting objections to EBC that the material, including name and address, would be published online. The individual chooses to whether or not to submit a response in these circumstances. No firm evidence has been produced to show that this approach has been an inhibiting factor on people's willingness to submit objections.
- *The public interest*: The EBC proposal to cease publishing names and addresses of respondents runs counter to legitimate public interest. The Commissioner accepted that this can relate to broad general principles of accountability and transparency as well as case-specific interests. Those interests, especially in the case of planning applications, can include the impact of the proposal not only on immediate neighbours but also on other third parties. It is difficult to see how a fair balance can be struck between the interests of applicants and objectors if the latter are denied the opportunity to see what issues are being raised by whom to contribute evidence or

TRIANGLE RESIDENTS' GROUP



arguments for or against that might need to be taken into account and ultimately to assess whether the weighting applied by officials properly reflects the issues they have raised.

Practical implications

9. The proposal should not be viewed in isolation. It continues the progressive weakening of the scope for public engagement introduced by the last set of changes. There is no real evaluation of how effective those changes have been in practice and how they have benefitted residents.

Practical considerations include the following:

- *Resource implications:* The argument presented does not quantify the resource savings arising from the new regime, nor did it indicate how non-publication of names and addresses will lead to any qualitative improvement in decision making.
- The suggestion that removing names and addresses of respondents will somehow eliminate defamatory comments is not supported by any evidence. Indeed, one could equally conjecture that the cloak of public anonymity will encourage those making responses to planning applications to be more bold in their comments, even to the point of being defamatory.
- *Residents' Associations:* The new approach does not appear to make an exception of residents' associations and the assumption is that that, under the proposal, their names will also be left off the website. They do, however, provide a collective voice reflecting area concerns and often provide detailed argument and evidence to act as a counterweight to the case made by developers. The arguments made in relation to GDPR, EIR and defamatory comments would not normally apply in their case.

Q2 Hard copies of Local Plan consultation documents will no longer be delivered to all public libraries. Library users will need to use the library computers to view the documents online. Do you agree?

No.

TRIANGLE RESIDENTS' GROUP



It is not clear in the absence of any published cost benefit analysis what this restriction is meant to achieve. Our aim in the interests of accountability and transparency should be to widen not restrict opportunities to access planning documentation. Many individuals particularly though not exclusively older members of the community, those uncomfortable with using the technology, those with sight problems more comfortable with handling the printed page than having to depend on screens. Even people comfortable with and used to computers will often prefer to leaf backwards and forwards through a large document.

Yours,

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