

From: Norman, Bill
Sent: 18 December 2014 08:55
To: Bowen, Sebastian (Cllr); Durkin, Barry (Cllr); Atkinson, Andrew (Cllr); Attwood, Carl (Cllr); Blackshaw, Adrian (Cllr); Chappell, Chris (Cllr); Greenow, Dave (Cllr); Harvey, Liz (Cllr); James, Terry (Cllr); Jarvis, John (Cllr); Mayo, Richard (Cllr); McCaull, Peter (Cllr); Powers, Anthony (cllr); Seldon, Alan (Cllr); Wilcox, Brian (Cllr)
Cc: Johnson, Anthony (Cllr); Matthews, Bob (Cllr); Norman, Felicity (Cllr); Hughes, Geoff; Baugh, Ben; Brookes, Annie; Pearce, Mark; Proctor, Ben
Subject: GOSC - Call-in - Marches LEP Joint Executive Committee - Marches Enterprise Zone (Decision 11 December 2014) - 'Background Papers'
Attachments: Hereford Enterprise Zone Travelling Draft 10 - REDACTED.DOCX

Dear Members of GOSC

You will all be aware that this decision has been called in by three Members of GOSC and you should all have received a copy of the Call-in Notice.

The Call-in Notice notes that:

‘A report or reports which have been relied upon by officers to inform their opinion and recommendations to decision-makers have been referenced in the report but not listed and made available as background papers. These include, but are not limited to, ‘the DTZ report’

The relevant law on background papers is set out in section 1 of the Local Government (Access to Information) Act 1985 (‘the 1985 Act’), which adds a number of additional sections to the Local Government Act 1972 (‘the 1972 Act’) (after section 100 in that Act, as section 100a, 100b, etc.). It is section 100d of the 1972 Act that relates to background papers. A copy of section 1 of the 1985 Act can be seen via the following link: <http://www.legislation.gov.uk/ukpga/1985/43>

Section 100d(5) of the 1972 Act states that:

(5)For the purposes of this section the background papers for a report are those documents relating to the subject matter of the report which —

(a)disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of the report is based, and

(b)have, in his opinion, been relied on to a material extent in preparing the report,

but do not include any published works.

Subject to what I say below, ‘the DTZ report’ would be a background paper, as it is referred to on a number of occasions in the officer report on the Marches Enterprise Zone. In other words, the DTZ report **was** relied upon to a material degree by the report author. However, Appendix C to the DTZ report sets out individual company names for completed sales but, more importantly, contains company names for sales which are under negotiation or where interest has been registered. This is commercially sensitive information - and the future reputation and success of the Enterprise Zone (and the council) depends on it remaining so. As such, it is Exempt Information under the 1985 Act (and, for that matter, under the Freedom of Information Act 2000). Section 100d(4)(a) of the 1972 Act therefore applies. That states that:

‘(4) Nothing in this section —

(a) requires any document which discloses exempt information to be included in the list referred to in subsection (1) above’

In other words, if a document which is relied upon by a report author contains exempt information, that document is not required to be included in the list of background papers. Accordingly, the DTZ report was not legally required to be listed as a background paper. The council's Constitution also adopts this approach – see paragraph 4.2.9.1 of the Constitution, which expressly excludes from the definition of background papers documents which contain Exempt Information.

Whilst the above provides a legal explanation as to the application of a 1985 statute, I do not consider that it is an approach which accords with the spirit of modern thinking on the desirability of openness and transparency in public life. In my opinion, a better approach would have been to have listed the DTZ report as a background paper, but to make clear that it is a document containing some exempt information. An appropriately redacted version could then be supplied to any member of the public who desired to see it. In saying this I am making no criticisms of colleagues who have acted in line with our Constitution.

In light of the above, I am attaching to this email a copy of the DTZ report for your information. This version has Appendix C redacted; but the summary information from that appendix is included in the main body of the report, so its removal does not affect the flow and conclusions of the narrative in any way. However, if any Member considers that they 'need to know' the redacted details, please tell me and I will consider such a request. I have also asked that the redacted version of the DTZ report is made available on the council's website and as a Marches LEP Joint Executive Committee document.

Once you have had the opportunity to consider the DTZ report, please let Ben Baugh and me know if there are any matters on which you would like further information from officers. If this is done well before the Call-in meeting (which is likely to be held on 14 January 2015) this should ensure that the Committee will have all relevant information before it when it meets.

Regards

Bill



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