

DISCLOSURE OF DOCUMENTS
SIX56 INQUIRY

1. This note summarises the Council's position in respect of a request for disclosure of any documents served in relation to a challenge to the Council's recently adopted Local Plan. The request has been made by the Applicant and Rule 6 Party in the Six56 inquiry. This note is provided to assist the Inspector in understanding the Council's position well in advance of the next Case Management Conference, and so that there is ample time for other parties to take further steps in respect of this matter, if so advised.
2. It will be recalled that at the last sitting of the inquiry, the Applicant indicated that it had received information indicating that a legal challenge was to be made to the Council's decision to adopt its local plan. The Applicant stated that it had the permission of the (proposed) Claimant to disclose this fact to the inquiry. As confirmed at the inquiry on behalf of the Council, the Council had not received, and was not party, to any such communication, and nor has it received any such communication subsequently.
3. The Applicant then sought an adjournment on the basis that a challenge was proposed, and that this could be relevant to its case. The Rule 6 Party supported that application, indicating that this information might also be relevant to its case.
4. In response, the Council noted that there is a presumption of regularity in respect of the Local Plan that applies unless and until the Local Plan is quashed. In addition, the Council noted that the merits or otherwise of any challenge to the Local Plan was a matter to be determined by those separate proceedings.
5. The Inspector allowed the Applicant's request for an adjournment. At the request of the Applicant, the Inspector also indicated that any relevant Court papers should be published on the Council's website if possible.

6. The Council sought to facilitate the Inspector's request by writing to the Claimant. However, the Claimant has refused permission for any claim documents to be produced on either the Council's website or the inquiry website.

7. Where a legal challenge is made against a decision of the Council, the Council is required to comply with the Civil Procedure Rules in respect of those proceedings. Rule 31.22 of the Civil Procedure Rules requires that:

31.22

(1) A party to whom a document has been disclosed **may use the document only for the purpose of the proceedings in which it is disclosed**, except where –

- (a) the document has been read to or by the court, or referred to, at a hearing which has been held in public;
- (b) the court gives permission; or
- (c) the party who disclosed the document and the person to whom the document belongs agree.

(Emphasis added).

8. Where a legal challenge is made to a decision of the Council, documents disclosed to the Council in respect of the claim are subject to these provisions. Accordingly, pursuant to CPR31.22, those documents may only be “used” for the purpose of those proceedings, unless one of the exceptions applies. None of the exceptions apply here.

9. In the case of *Lakatamia Shipping company limited and others v Nobu su* [2020] EWHC 3201, at paragraphs 50 – 59, the Court confirmed that:

- (a) The fact that documents have been produced in one set of proceedings does not mean that they are disclosable in another set of proceedings (paragraph 50); and
- (b) What constitutes the “use” of a document is “*very broad – perhaps more so than most litigators might think*”; and

*The word “use” in CPR r31.22 extends to use by that party or **allowing the document or a copy to be used for any collateral or ulterior purpose or allowing***

any third party to have access to the documents for such a purpose. The “use” of documents encompasses for example reading it, copying it and showing it to somebody else...” (paragraph 58) (emphasis added).

10. Therefore, whilst the Council wishes to assist the inquiry, the Council cannot copy, upload to its website or the inquiry website, or provide or show to others, documents disclosed to it during the course of other litigation.
11. Further, and with respect, the Council considers that the Applicant’s Mr. Piatt is wrong to state that the “*full court papers*” are in the public domain as a simple consequence of proceedings being issued against the Council. This is for the reasons set out above, but also because CPR5.4C indicates that there is a specific procedure that should be followed where third parties wish to obtain Court documents. This procedure restricts both the time at which certain documents can be supplied to third parties, and the type of documents that can be supplied to third parties, without the further permission of the Court. The procedure therefore demonstrates that there is not an unrestricted public right of access to those documents, as Mr. Piatt has suggested.
12. The procedure referred to under CPR5.4C allows third parties to obtain from the Court Records a statement of case, or a judgment or Order given or made in public (whether made at a hearing or without a hearing) from the Court Records providing that any proceedings have reached the stage set out in CPR5.4 (3) (“the relevant stage”¹).

¹ CPR 5.4C (3) sets out that a non – party may obtain a copy of a statement of case or judgment or order under paragraph (1) only if –

- (a) where there is one defendant, the defendant has filed an acknowledgment of service or a defence;
- (b) where there is more than one defendant, either –
 - (i) all the defendants have filed an acknowledgment of service or a defence;
 - (ii) at least one defendant has filed an acknowledgment of service or a defence, and the court gives permission;
- (c) the claim has been listed for a hearing; or
- (d) judgment has been entered in the claim.

13. However, whilst a statement of case can be obtained from the Court Records at the relevant stage, third parties are expressly not permitted to obtain *“any documents filed with or attached to the statement of case or intended by the party whose statement it is to be served with it”* unless the permission of the Court is obtained (CPR 5.4C (1) and (2)).
14. The Council notes that the Inspector has indicated that he *“finds the failure to disclose information that is patently in the public interest disappointing and notes that whilst this may lead to further delays, wasted expense, and undermine the operation of an efficient planning system he is nevertheless bound by the Rules”*.
15. The Council is of course very keen to assist the Inspector and the inquiry in any way it is able. It is, however, also subject to the Rules set out above.
16. However, the Council would note that it is open to either the Applicant or the Rule 6 Party to make an application to the Court for the supply of any documents they consider relevant, in accordance with the procedure set out above. If either party wished to confirm that they could use those documents for the purposes of the inquiry proceedings, and that these documents should also be uploaded to the inquiry website, an application for permission to the Court could also be made. It is the Council’s position that it is the Applicant and/or the Rule 6 Party that should make any such application, because it is those parties that say there is documentation that is relevant to their case. They are, therefore, the parties that can specify what documents are required and why, how these are to be used, and to particularise the justification for any such application for permission. Further, the Inspector will recall that it is the Applicant that sought the adjournment, supported by the Rule 6 Party.
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17. Since the next CMC is listed for April, and the deadline for an update to inquiry evidence has been set as 14th May, it would seem to the Council that there is ample time for any such application to be made, if those parties wish to do so.
18. To assist the inquiry, the Council confirms that it would not resist any reasonable application.

1st February 2024

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