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POWYS Branches of the Campaign to Protect Rural Wales Brecon & Radnor and Montgomery Branches

7th November 2019

Powys County Council decision to stop publishing third party comments on planning applications on the Planning web-site

*decided December 2018
review due December 2019*

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SUMMARY OF ISSUE: Powys review of the decision not to publish third party comments due Dec.2019

In December 2018, Powys County Council decided to stop publishing third party comments on the planning applications website. Officers said Powys had already been reprimanded by the Information Commissioner and the risk of data-protection breaches outweighed the public interest in data-access. There have been many complaints about this hugely unpopular decision

On 11th July 2019 a public question to a Full Council Meeting asked if it would be better to improve staff training to avoid data breaches rather than withhold public comments. The (then) Portfolio-holder answered with the risk of breaching data-protection regulations and lack of staff. He cited the fines of over 90 million pounds imposed on BA and Marriott Hotels. In these cases, millions of customers had identity details, including bank details, stolen. The scale and nature of these risks bear no relation to the small risks for Powys Planning which could be mostly avoided by better training.

A Freedom of information request to Powys revealed there had been 8 incidents between June 2014 & Nov.2018, of which 3 were website disclosures reported to the ICO. Residents' data was revealed about (1) holiday dates, (2) personal family information and (3) email addresses. The ICO concluded that the data should have been redacted but no harm was done. Advice was given but no fine was imposed. The severe reprimand from the ICO has been exaggerated.

PCC claimed that they have insufficient staff to redact public comments for web-site viewing and that ceasing publication helped "mitigate" the loss of one full-time equivalent temporary staff member. There is no clear evidence about staff roles and work loads to support this.

Powys said that it is possible to view planning files at Powys County Hall in Llandrindod Wells (or Neuadd Maldwyn in Newtown which is closed). Recently, when people have asked to see a planning application file, they have been denied a viewing and sent emails containing redacted public comments from which some public comments have been missing. Besides, anyone wanting to see all public comments for a particular application would have to ask repeatedly until the application is determined.

The FOI request showed that Powys Planning has no protocols addressing the handling of documents in a paper-free or paper-lite environment. A Powys website search also drew a blank.

All the large rural Local planning authorities surrounding Powys: Monmouthshire, Carmarthenshire, Ceredigion, Gwynedd, Denbighshire, Shropshire and Herefordshire publish public comments freely with names and addresses. Some LPAs publish a sensible warning notice to the public that their comments on planning applications will be published unless there is a specific request to the contrary.

Powys is by far the largest LPA in Wales. We have poor public transport and residents living up to 65 miles from County Hall. Yet Powys has unilaterally decided to deprive the public of internet access to the high volume of public comments on planning applications **without any consultation with the public.**

These comments require a huge investment of research and effort from the public and well respected environmental organisations. They contain detailed knowledge of local factors and the kinds of evidence which must be taken into account in planning decisions and yet they do not see the light of day. Nor can they be easily accessed by Planning Committee Members. The brief summaries in Planning Officer's Reports rarely do justice to the concerns expressed.

The Powys public deserves the right to participate in a fair and transparent planning system. The Powys Branches of the Campaign for the Protection of Rural Wales have started a petition to ask Powys to reverse their hugely unpopular decision and to reinstate third party comments on planning applications on the Powys planning portal. SEE: http://www.brecon-and-radnor-cprw.wales/?page_id=1840

REPORT AUTHOR: County Councillor Martin Weale, Portfolio Holder for Economy and Planning

SUBJECT: Question from Dr Christine Hugh-Jones

The Planning Department is apparently operating new “paperless” procedures for handling incoming documents from applicants, statutory consultees, stakeholder groups and members of the public.

At the same time representations from the public and stakeholder organisations are not included on the planning portal as they are for many other local authorities.

The current procedures effectively conceal information, which is material to planning decisions, from the public view. This raises serious concerns about public accountability and public participation in the planning process

What urgent action does the Council intend to take to ensure that all relevant planning documents, including public responses to planning consultations, are available for public view on the planning portal and how will the Council engage with the public in achieving this?

Response

Following a data breach which was reported to and investigated by the Information Commissioner, the Council reviewed its procedures for managing personal data to prevent and avoid further breaches in relation to the processing of planning applications and the high volume of correspondence received from third parties. This review found that the authority faces significant continued risk of breaching the data protection regulations if it were to continue to publish third party representations on its website. In order to remove this significant risk, further staff resource would be required in order to read through and redact all personal data before publishing any third party correspondence. Unfortunately this staff resource is not available within the financial climate that the authority currently operates within. Whilst third party correspondence is not available on the Council's website, this information is available for inspection at either Powys County Hall or Neuadd Maldwyn by appointment only. An appointment is necessary because staff time has to be allowed to fully prepare the information by redacting all sensitive data.

One-minute supplementary question at Full Council Meeting 11th July 2019

Councillor Weale does not realise that Powys residents live up to 60 miles from here and the Welshpool office is sold off. Local Councillors and others have made round journeys of over 100 miles - to inconvenient appointments - only to find that key planning responses weren't available. Effectively, you need a car, time and money to spare, and no full-time job to get to the Gwalia anyway. This is hardly democratic.

Instead of stepping up to new data protection legislation, Powys made the cowardly decision to **increase secrecy** and **decrease public accountability of planning**. Would the Council agree that the right way to manage the Commissioner's reprimand about significant risk is to **improve Powys Council** procedures and educate officers and staff in professional and competent management of personal data?

Other councils manage this. It is fairer, cheaper **and safer and more sustainable** in the long run.

Appendix B: Christine Hugh-Jones (Powys resident): Summary of FOI response

FOI QUESTIONS

QUESTION 1. The Original Complaint to the ICO (about personal data protection)

Series of incidents (rather than one) are listed:

<i>PCC only involved</i>		<i>ICO complaints</i>	<i>nature of ICO case.</i>
April 2016	email address unredacted: complaint	June 2014	sensitive family data published on w/s
August 2016	email address unredacted: complaint	Oct 2015	not web disclosures
Jan 2018	personal data on w/s	June 2017	resident's holiday dates published
Nov 2018	personal data on w/s in contravention of notice	March 2018	2 residents complained: email addresses on paper file & website

QUESTION 2 The IC's communications to the Council and the Council's replies to all the IC's communications on this matter until its conclusion.

See attached docs 1-14 (numbered in order received) redacted as appropriate under DPRs:

DOC	Case	DATE	
9	PCC to ICO RFA0550730	24.9.14	case management, apology made. Complaint 2.6.14
1	ICO to PCC as in 9	6.10.14	ICO to PCC: PCC must redact W/S info
13	PCC to ICO	19.7.17	Inf. Gov. Mgr with further info. complaint re publishing holiday dates
5	ICO to PCC as in 13	8.8.17	closure: no harm done: no enforcement
6	ICO to PCC	27.4.18	email address on paper file: human error: no enforcement
7	ICO to PCC as in 6	4.5.18	email addresses on paper files & website & wrongly filed docs. Need response.
8	PCC to ICO as in 6 & 7? RFA0736283	(2018) redacted	PCC to ICO: no staff to redact paper files. Rethinking policy.
11	PCC Internal	16/5/18	GD to KY: report (re RFA0736283?): email address published on website. ("ICO aware")
3	PCC Internal	17.9.18	GD to MW: MW agreed to stop 3PRs on W/S
14	duplicate of 3		
4	PCC Internal	5.12.18	GD to KY : MW agreed to stop "last night"
10	PCC Internal	no date	GD: impact assessment of stopping 3PRs on W/S
12	PCC Internal	6.12.18	MW to Councillors: Policy change: stopping 3PRs on W/S
2	PCC to resident	6.6.19	PCC Inf. Compliance: complaint Nov.18

I discovered a similar FOI request to Powys on the "What Do They Know" website.

[https://www.whatdotheyknow.com/request/procedures_for_managing_personal - incoming-1421329](https://www.whatdotheyknow.com/request/procedures_for_managing_personal_-_incoming-1421329)

It asked for "*full details of the review referred to in the Council's written answer*" quoting the written answer as in my own request. Fourteen documents were provided. These did not include **12** above but did include two documents not sent to me.

HP 1	16.5.18 GD to PCC Managers	Report on Data protection breach in paper file. Refers to a different breach from no 11
HP 2	18.6.18 GD to PCC Managers	Impact Assessment Development Management: Reduction in administration staffing levels by one FTE.

QUESTION 3 The final IC conclusion as reported back to Powys Council

RESPONSE 3 No info. held because many incidents, no final conclusion

QUESTION 4 all written documents with dates (including internal and external emails, letters, written notes, meeting records) relevant to the Council's "review of its procedures" and conclusions.

RESPONSE 4 All in RESPONSE 2

QUESTION 5 all written documents with dates, as above, concerning Development Management's implementation of the decision to withhold third party representations from the website.

RESPONSE 5 All in RESPONSE 2

QUESTION 6 Development Management protocol (with date and signature) for adding or excluding documents from planning application case folders on the public Powys Planning Portal.

RESPONSE 6 There is no development management protocol, only doc 12 (of 6/12/18)

QUESTION 7 Development Management protocol (with date and signature) for viewing of Planning Application case files at the Gwalia including what information the public can expect to see.

RESPONSE 7 There is no development management protocol, only doc 12 (of 6/12/18)

APPENDIX C. COMMENTS ON POWYS DECISION to STOP POSTING THIRD PARTY REPRESENTATIONS ON THE PLANNING WEBSITE.

The information about the 8 incidents resulted in no ICO enforcement and, although they are breaches, there is no evidence of harm resulting from them. They do not include any evidence of intimidation by neighbors. They result from poor training and human error, which can be partly eliminated by better training.

Training & workload

There has never been a specific PCC policy for safe redaction and upload of documents (19.9.17). No protocol about redaction is described although **Doc 13** says the “Basildon case” is used in training. There is mention of Parasol guidance (**Doc 2**) and PORSOL guidance (**Doc 9**) in PCC communications to ICO which rather suggests the **Doc 9** author is not sure what this is. It probably comes from a recruitment consultancy:

<https://www.parasolgroup.co.uk/help-me-decide/guides/gdpr-recruiters/>

PCC (**Doc 9**) says a 5-person planning technician team examine an average of 20 documents/day although at worst this is 100 documents. It seems the daily average is 4 per person (but the text is unclear: this could mean 20/person).

Change in policy

In **Doc 1** The ICO advised:

“it may be appropriate to introduce a process whereby the council gains consent from the individual to disclose their personal data in this manner. I understand that you currently provide individuals with fair processing information (in your acknowledgement emails) telling them the letter may be placed online. In order to strengthen this, the council could ask individuals to ‘signify’ their agreement with a positive action (such as ticking a box). This would then allow the council to rely on consent as a condition to process the individual’s personal data by placing it on its online portal. Should the individual not wish for their personal data to be used in this way you could explain in your fair processing notice that the letter may still be placed online but with all personal data redacted.”

There is no evidence this was considered although the public also raised this option in a meeting with the Head of Planning (25/4/19).

Doc 9 In September 2014, PCC was already considering options of:

1. Additional specific training
2. Change of process in relation to determining which documents should be placed on the planning portal e.g. only placing responses from statutory or non-statutory consultees.
3. Moving away from the Planning portal completely.

Doc 8 (2018), says PCC was considering revision of processes and “ *the balancing of placing information in the public domain to support transparency and involving the wider public in planning applications and consultations*”

GD wrote to KY on 5/12/18 saying MW agreed “last night” (4.12.18) to removing 3rd party responses from the w/s (option 2 above). This was not strictly true because GD had written to MW confirming that MW had “*reluctantly agreed*” to this three months earlier on 17/9/18 (**Doc.3**). An Impact Assessment was also completed on 5/12/18 and the policy was implemented on 6.12.18 (**Doc 12**).

The Powys impact assessment (Doc 10)

The **Impact Assessment** states that the measure to “***stop publishing third party correspondence in relation to planning on the Powys Council public website***”:

- will mitigate the impact of staff reductions identified in the 2019/20 savings proposals
- no consultation is required
- DM will still make the information available via requests to see paper files or requests for electronic copies
- The impact on the Council Priority to “*support our residents and communities*” is **neutral**: residents will lose access to 3PRs on the council website but this is offset by a reduced risk of data protection breaches and chances of intimidation by neighbors.
- Impact on all well-being goals is **minimal**, including on a “*more equal Wales*” described as “*A society that enables people to fulfill their potential no matter what their background or circumstances (including their socio-economic background and circumstances)*”
- Impact on ways of working are **negligible**. These include “*Involvement (including Communication and Engagement)*”
- The **medium** risk to “*the capacity of DM to communicate with residents and customers*” is reduced by mitigation of “*appointments to see hard copies or requests to be sent electronic information*” to a **low** residual risk.
- No additional evidence and data has informed the development of the proposal

The “***integrated approach to support effective decision making***” concludes:

- *The risk posed by publishing the information is considered to be too great (risk of publishing sensitive and personal information).*
- *The cessation of the publication is considered to reduce the potential for intimidation of authors of third part correspondence.*
- *The cessation of the publication will help mitigate the impact of staff reductions due to budget cuts.*

Feedback received from interested parties is to be reviewed in 12 months time.

The boxes for “*decision to be made by*” and “*date required*” are empty.

APPENDIX D: THE CASE FOR REVISING THE DECISION

- NOT TO PUBLISH THIRD PARTY REPRESENTATIONS ON PLANNING APPLICATIONS

THE POWYS DECISION

In assessing the change in procedure, Powys CC did not properly consider the Council Priority to support Residents and Communities and did not consider the Well-being Goal of a more equal Wales or the WGFGA “way of working” which requires Involvement/Communication/Engagement. The Impact assessment is biased against the public interest. It balances the very considerable loss in transparency and public participation against the risk of data-protection breaches, which can and should be remedied by any efficient publicly accountable Council.

The issue of intimidation by neighbors is a red-herring. Intimidation could be largely avoided by implementing the ICO advice in **Doc 1**. A member of the public can consider options when responding. Serious intimidation is a matter for the Police and not a matter for Powys to decide on our behalf.

The dangers have been wildly overstated. Martin Weale, then Planning portfolio-holder, in his answer to the second question to the Council said the risk was too great, citing the recent cases of ICO fines imposed on British Airways and Marriott Hotels. Earlier this year, the ICO intended to fine Marriott £99.2 million after personal data, including credit card details, passport numbers and dates of birth of 339 million people were stolen. The ICO intended to fine BA £190 million after credit card numbers, expiry dates and the three-digit CVV code were stolen, involving 380,000 transactions. The whole population of Powys is roughly 132,000. The data breaches revealed by this FOI involved a handful of people and resulted in no significant harm.

Powys is the largest and most rural LPA in Wales with very poor public transport and Powys residents live up to 65 miles from Llandrindod Wells. The current system of requiring people to come to the Llandrindod Wells to see planning files is unfair and penalises residents. It is costly for residents and it is only possible for those with cars and the time and money to arrive in working hours. When electronic solutions are available, this cannot be considered an environmentally sustainable solution.

The admitted “*high volume*” of public responses to planning applications, given by the Portfolio-holder as an excuse for not publishing them, demonstrates that the public do want to participate in the Powys planning system and do want to protect their environment and living conditions.

This was not a fair balancing exercise because it seriously undervalued the public interest and did not take the characteristics of Powys into account.

THE ALTERNATIVE TO PUBLISHING 3RD PARTY REPRESENTATIONS

It is not even clear to what extent Powys Planning Department actually keeps paper planning files or whether original hard-copy documents are scanned in then discarded. Nor is it clear what documents DM considers the public can see. The FOI questions 6 and 7 failed to clarify this because there are no protocols.

There is no data about the work-load of putting third party representations on the web-site. Since there is no clear information about division of labour between staff, document handling or filing available and not even any certainty that paper files are kept, there can be no conclusions about this. Protocols and training could certainly reduce mistakes and streamline processes.

Powys planning department has a poor record of responding to emails and telephone calls and of acknowledging requests or receipt of planning representations.

The paper-file viewing system is not working: residents report difficulty, delays and wasted journeys in actually viewing paper files and, even then, have no confidence that that they are complete. In recent months the “paper files” seem to be files made up specifically for the viewing occasion by printing and redacting copies from an IT data store into which paper documents have been scanned or IT documents transferred from emails.

The alternative of requesting electronic files does not work either. In the examples known to me only a selection of third party responses are sent. By contrast, people can easily verify if their responses have been posted on a web-site.

The further problem with either solution is that a member of the public does not know when new responses are made and does not know when an application will be determined so there is never a sure way of seeing all the relevant documents no matter how many requests or journeys are made.

For instance, there was an extreme case of a large housing application (103 houses: RAD/2004/0572) made in 2004 which did not go to Committee until 2017 and did not have a decision issued until 2019. How could an interested member of the public be expected to keep up journeys to view a paper file or repeated requests for electronic copies of any new additions to the file over 13 or more years?

In common with the general public, Planning Committee members cannot readily see resident and stakeholder representations. They have to rely on a very brief summary from the Case Officer which does not always do justice to the merits of the objector’s or supporter’s case.

REDACTION

There is apparently no protocol for redaction

It appears there is no protocol about redaction although Doc 13 says the “Basildon case” is used in training.

There is mention of Parasol guidance (doc 2) and PORSOL guidance (doc 9) in PCC communications to ICO which rather suggests the doc 9 author is not sure what this is. It could come from a recruitment consultancy:

There are some exceedingly poor examples of redaction in the documents received. The worst case is Doc 1 where the items to be redacted appear on the FOI author’s screen with sensitive personal details highlighted in red boxes rather than blocked out. Personal details of the complainant are clear to see but will be kept confidential. This is an example of how the supposedly redacted information appears (with just the top of a redaction box containing the name showing):

6 October 2014

Case Reference Number RFA0550730

Dear **Ms Dolman,**

Thank you for your recent email in relation to the concern we received about Powys County Council (the council) and the way it handles personal information from **Mr**

This is not an isolated example of redaction failure. Since the decision to suppress third party representations on the Planning Website, there was an email letter posted with the author’s email

address and those of four other Powys residents, together with their names. The odd thing about this was that the author apparently addressed this email exclusively to the 4 others and not to anyone in PCC and yet it was sent by the Case Officer to "Planning representations" and then posted on the website on 7/6/19 and not removed for a week. We can supply clear proof of this. We do not know if the author made a complaint but this example, which must have been known to the Planning Department who removed it, was not included in the FOI response.

These 2 examples prove that data protection mistakes are **not** eliminated by the decision to stop posting third party representations on the Planning Website. These 2 mistakes apparently involve more senior officers than the data-handling staff. Doc 1 shows that although Powys is now relying heavily on IT data management, officers apparently do not know how IT documents appear to recipients. The other example shows that the Planning Department somehow forwarded an email which was not addressed to the Planning Department to a web-site operator.

Redaction is not consistent

In Docs 1 & 8, the case reference numbers are not redacted whereas in Docs 7, 9, &13, they are.

Most PCC staff members' names, except for senior management etc., are redacted but Doc 2 has a planning officer's christian name which identifies her. Helen Dolman's name is sometimes redacted and sometimes not.

Doc 8, alone, has the date of the document redacted but why is this necessary?

POWYS COMPARED WITH LOCAL PLANNING AUTHORITIES

The Information Compliance Officer is a UK Government post and therefore we reviewed the policies of the larger rural authorities immediately surrounding Powys.

These are Monmouthshire, Carmarthenshire, Ceredigion, Gwynedd, Denbighshire, Shropshire and Herefordshire.

All these LPAs publish third party representations on their planning websites with the addresses of the authors fully displayed.

The Powys public planning website gives the following message to anyone wishing to comment on a planning application on-line:

Make a Comment:

In the light of recent data protection incidents, it is considered that the risk resulting from publishing third party correspondence is too great. Therefore, it has been regrettably agreed that only planning applications and associated supporting information and consultee responses will be published on the Councils website.

We have been unable to find any further policy information in a web-site search or in the most recent version of the Powys Constitution or the Planning Protocol Document.

We understand that, since December 2018, there have been many requests to reverse the policy not to publish third party comments. These have come from Powys residents, from non-governmental organisations, from local Powys Councils and from One Voice Wales. All have met with determined resistance.

APPENDIX E: THE PETITION to Powys County Council

Powys people, environmental organisations and other governmental & non-governmental organisations deserve a fair and transparent planning system. Please put public comments on Planning Applications back on your website. THANK YOU.

In December 2018, Powys stopped publishing comments from “third parties” on their planning website, **with a review in December 2019.**

“Third parties” are local people and other Powys residents and environmental or other stakeholder organisations. They often have important evidence for or against planning applications which should be taken into account. Third party comments show us the extent and reasons for public concern.

They should be available on the internet for EVERYONE, including Planning Committee Members, to see. The poor alternatives of viewing files in Llandrindod Wells or asking for public comments by email penalise the public and are simply not working.

There was no public consultation about this.

Monmouthshire, Carmarthenshire, Ceredigion, Gwynedd, Denbighshire, Shropshire and Herefordshire all publish public comments with names and addresses. They all manage the administration and data protection laws. Why can't Powys?

POWYS PEOPLE DESERVE A FAIR, TRANSPARENT PLANNING SYSTEM. PLEASE PUT PUBLIC COMMENTS BACK ON THE WEBSITE.....signed:

<i>Date</i>	<i>NAME</i>	<i>ADDRESS 1(in POWYS)</i>	<i>ADDRESS 2 (in POWYS)</i>	<i>Post Code</i>	<i>SIGNATURE OR EMAIL ADDRESS (optional)</i>

Please send completed sheets to: secretary@brecon-and-radnor-cprw.wales or post to:-
Cooks House, Norton, Powys LD8 2HA **by 30th November 2019**

We will forward them to Powys County Council. You can also write directly to:-
Gwilym Davies (Head of Planning) gwilym.davies@powys.gov.uk,
& **Heulwyn Davies** (Planning Portfolio) cllr.heulwen.hulme@powys.gov.uk.
Powys County Hall, Spa Road East, Llandrindod Wells, Powys LD1 5LG

You can also sign the petition at http://www.brecon-and-radnor-cprw.wales/?page_id=1840