# Information is Power:

# Public disclosure of information in the planning decision making process

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**Abstract**

The legitimacy and effectiveness of community engagement in planning lies in the extent to which the public can access the information required for informed decision making. The control of ‘commercially sensitive material’ by local authorities acting as gatekeepers is a therefore a challenging area of information management within the planning application process. Through the analysis of key cases in England, this paper identifies that regulations do provide for ‘commercially sensitive material’ to be released to communities in many cases, but there is a need to achieve better transparency for communities about what information should be available about a development proposal.

**Key Words:** planning decisions; freedom of information; disclosure; community engagement; commercial sensitivity

## Introduction

In the United Kingdom in 1947 development rights were nationalised and a discretionary system emerged based upon plan led decisions informed by “other material considerations”. Planning applications determined through this system are thus not decided by the weight of public support or opposition, but by consideration of the development plan and by weighing these identifiable "material considerations". An application may therefore be approved where significant public opposition exists.

At the time of the emergence of the Post-War system public participation was not viewed as something to be prioritised. To the contrary it was largely discouraged (Ward, S. 2004). Planning was predicated on the assumption that planning professionals were the experts they were best placed deliver what was in the public interest (Cullingworth and Nadin et al. 2014). Key reports, such as the Skeffington Report in 1969, called for engagement of the public in planning and reforms were introduced to improve public participation (Ward, S. 2004). More recently, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011 have placed further emphasis on, and have arguably created greater opportunities for, increased public involvement and empowerment in planning. Communities are now expected to be active participants in the design and delivery of outcomes (Rydin, Y. 1999). However, questions still exist concerning the effectiveness of public participation in planning decision making (Cullingworth and Nadin et al. 2014).

For communities to understand, interpret, analyse, assess and draw conclusions about a proposal it is necessary to have access to the information that supports planning application. However, in some circumstances, it may not be appropriate for all information to be publicly released. For example, financial information can be commercially sensitive and therefore treated as confidential by local planning authorities; financial matters are not always a material consideration, but viability can be an important factor in planning decision making. The planning authority therefore acts as a ‘gatekeeper’ to information, deciding what to allow through the ‘gate’ into the public domain and what to withhold. Those ‘gated’ from the information are therefore required to trust that the planning authority is acting appropriately when withholding information. For this trust to be established a normative view would be that the procedures on which the decision is made need to be transparent so that the decision is perceived and accepted as legitimate (Licht, 2014).

The dichotomy between protecting commercial interests and public disclosure goes to the heart of this paper. When the justification for a proposal is specifically predicated on the grounds of financial viability, can (and should) the public have access to that information? And how should the withholding of information be properly judged and communicated? The answers to these questions are critical if communities are to trust in the planning process and be able to take part in the determining of planning applications in an informed manner.

This paper discusses the arrangements for accessing information pertaining to planning applications in England and considers the requirements for local government as ‘gatekeepers’ to manage access to information. The challenges and limitations associated with planning processes in England are identified and recommendations for improvement are suggested within a theoretical context.

## Public participation in planning

In the English planning system public participation has evolved considerably since the mid twentieth century. Public participation in environmental decision making and access to information are incorporated in the United Nations Economic Commission for Europe’s 1998 Aarhus Convention, including the right of everyone: to receive environmental information that is held by public authorities; to participate in environmental decision-making; and to review procedures to challenge public decisions (Mason, M. (2010), and the European Commission website). In England, this has been supported by a series of legislative changes pertaining to public access of information (such as the Access to Information Act 1985, the Freedom of Information Act 2000 and Environmental Information Regulations 2004). It is argued however that public participation has become ‘loaded with ideological, social, political and methodological meaning, giving rise to a wide range of interpretations’ (Reed, 2008:2419, citing Lawrence, 2006).

There are many definitions of public participation. One such definition focuses on those directly affected by a decision and is therefore significant to this paper: ‘a process where individuals, groups and organisations take an active role in making decisions that affect them’ (Reed, 2008:2418). This paper adapts Reed’s definition to incorporate the wider public interest, noting that some people participate in planning processes from a principled or moral stance regardless of whether it affects them directly or not. Consequently the definition of public participation used in this paper is: ‘The active involvement of individuals, groups and organisations in making decisions’. This definition acknowledges both those directly affected by a particular issue, who have something at ‘stake’ (stakeholders), and also those indirectly affected who may have a wider interest in the outcome (public interest). The notion of ‘active’ involvement is particularly pertinent for this paper as it implies that all parties have a role to play and are not passive bystanders for whom decisions are made without recourse to their views.

The rise in popularity of participation in development processes has resulted in it being idealised as a ‘panacea’ for all planning problems, and whilst participation is a powerful concept, it is one full of ‘ambiguities’ which belies its seemingly obvious meaning (Michener, 1998). There are also ‘conflicting pressures’, for example the development industry’s desire for clarity and speed in decision making and the government seeking to ‘empower’ people to become involved in the process (Ellis, H. 2000:203). Furthermore, the extent to which the system has been ‘opened up’ to meaningful public involvement is limited by the manner in which some forms of information is managed, potentially reducing the extent to which communities can reach informed decisions upon development proposals (Crow, S. 1998). Therefore despite the growth and evolution of public participation and engagement in planning, there are still challenges that call into question the intended purpose of that wider public involvement and ‘what its ultimate objectives and limits might be’ (Ellis, H. 2000:203).

**Knowledge, legitimacy and gatekeeping**

The extent to which communities possess sufficient knowledge to make an informed contribution to planning will have a significant influence over the success of their involvement’ (Curry, 2012:353).

There is a critical difference between possessing information from which greater knowledge can be derived, and having the wider contextual understanding to appropriately put that knowledge into practice. Curry (2012) identifies two ‘knowledge-based tensions’: between expert and lay knowledge; and between technical and local knowledge, noting that whilst some lay people may develop specialist knowledge around a specific subject area this ‘partial’ expertise lacks the wider contextual understanding to make reliable decisions. This is of particular relevance to this paper in that whilst disclosure of information increases knowledge it does not necessarily make for improved decision making.

The legitimacy of decision making and people’s acceptance of those decisions is influenced by the ‘fairness of the procedures’ through which authority is exercised (Tyler, 2006:382) and also the underlying motives of the authority’s decision, noting that ‘there is considerable discretion to implement formal procedures in varying ways’ (Tyler, 2000:122). Consequently it is not only the information that is falling under scrutiny but also the ‘trustworthiness’ of the authority and the perceived fairness of the procedures being applied. In the context of public decision making this is a key matter; people need to have an understanding of what the procedures/processes are and how they have been applied if they are to judge the legitimacy of a given decision. ‘Increasing public perceptions of transparency… could [therefore] be an efficient strategy if decision-makers want to increase public decision acceptance’ (Licht, 2014:324).

Notwithstanding this, Licht’s (2014:325) study found that contrary to some literature people tended not to base their perceptions of fairness on how transparent they perceived the process to be but on other factors such as personal experiences and the credibility of those reporting the outcome. It is therefore the ‘cue’ taken from the person reporting the situation that Licht (2014) considers to be most important, rather than necessarily the actual transparency of the process per se. ‘People tend to trust a statement from a presumably credible source… and do not make an independent evaluation of the information at hand’ (Licht, 2014:325). This can be achieved without recourse to the actual information but instead by the perceived credibility of the source that is stating that a procedure is transparent (Licht, 2014).

Transparency is therefore linked to trust in the sense that third parties need to have confidence in the planning officers when they state that they have made appropriate use of the privileged information in the context of clearly stated disclosure procedures. The intangibility of service delivery, such as the determining of planning applications, as opposed to the production of a defined end product means that trust is further tested. Consequently, borrowing from marketing literature, it is the active participation in the process‘that makes the process as important as the end product’ (Palmer, 2000:578) and ‘how the interaction process is perceived grows in importance’ (Grönroos, 1994:9). The public’s deeper involvement in the *process* (afforded by greater access to information) is paramount to the realisation of ‘people centred’ participation where ‘participation is both a means and an end in itself’ (Michener, 1998:2106). However, people do not know what they do not know, to paraphrase Donald Rumsfeld (2002) and this leads into the concept of ‘gatekeeping’ access to information.

The theory of gatekeeping relates to the control of information by one party exerting power over another (DeIuliis, 2015). The gatekeeper decides what information to allow to pass through the ‘gate’ and what to withhold. When faced with strict deadlines, as for example in the case of determining a planning application within 8 or 13 weeks (as per statutory requirements), the decision as to what information to withhold is likely to be made by recourse to standard operating practices rather than subjective judgement on an individual case by case basis (DeIuliis, 2015 referencing Shoemaker et al, 2001). If this approach reflects the practice in local authorities across England then the notion of gatekeeping is more influenced by internal processes and past experience than by the gatekeeper’s personal views (DeIuliis, 2015). For local authorities, taking a standardised one-size-fits-all approach might be seen as following a secure pathway but, as the case studies below illustrate, such a route way can end in legal challenge by those that are ‘gated’.

## Public access to information about planning applications (disclosure)

The legislation that provides the framework for public participation in planning offers a degree of clarity, but interpretation of the provisions has led to debate in numerous court cases. A planning application itself is a public document, as are the local planning authority officer reports presented to planning committee. However, elements of the supporting information submitted with a planning application (for example, costs of land acquisition or strategic business decisions) may be considered by the planning authority to be ‘commercially sensitive’, and withheld from the public record. To this extent therefore the local authority officers are acting as a ‘gatekeeper’ to information, and thus to the knowledge that could be gained, which holds the key to greater understanding and deeper involvement by interested parties.

The Freedom of Information Act of 2000 (FoIA) and the Environmental Information Regulation of 2004 (EIR) both start with a presumption in favour of disclosure where access to information is requested. This is a significant marker, demonstrating intention by government to support participative planning. The 2004 regulations are very clear about the onus on public disclosure, specifying that that exceptions to this duty to disclose environmental information only exist where ‘the public interest in maintaining the exception outweighs the public interest in disclosing the information’ (EIR, 2004:11). Such a stance highlights that the public interest is paramount.

The process associated with an attempt to access a withheld piece of information begins with a request to whichever public authority is dealing with the matter. Information that will impact upon the environment in its broadest sense, or indeed any piece of information that relates to environmental matters is requested under the EIR; this will therefore include most planning matters.

Once a request is received by the local authority, they make a decision whether or not that information should be released. If the information is withheld there are two courses of appeal available. The first is to launch a challenge through the courts (Judicial Review) concerning the legitimacy of the decision taken on a planning application. The second is a complaint to the Information Commissioner’s Office (ICO). The ICO will review the request and make a decision regarding the release of the requested information. If the decision is still to withhold the information, the final avenue of appeal is through the First Tier Tribunal who will make a final decision regarding the release of the information. An outline of the basic access to information process is shown in Figure 1.

INSERT FIGURE ONE HERE

When considering a request to release information, there are several criteria which specify where information may be withheld. The EIR states that a right to access information may not exist where: (a) the request is unreasonable;, (b) it is too general; (c) the information relates to a ‘work in progress’;(d) there are issues of international relations, defence, national security or public safety; (e) the course of justice may be impacted upon; (f) intellectual property rights are involved; (g) the protection of the environment merits withholding the information rather than releasing it; ; (h) the confidentiality of commercial or industrial information is at stake (where a legitimate economic interest is protected by law); or (i) the person supplying the information is not under any legal obligation to supply the information or did not consent to the release of the information (EIR, 2004:7).

**Case law: scope and justification for access to information**

Although the broad intentions associated with the regulations as presented appear clear, the interpretation is challenging and decisions to either withhold or release have been subject of challenge by parties feeling aggrieved by the initial stance taken. Analysing these cases make it possible to discern greater clarity on the circumstances where information may be held or released, and thereby further understand the situation relating to participation and informed decision making. This is important if the actions of the decision taker are to be perceived as credible.

A review of Court decisions between January 2010 and December 2014 pertaining to disclosure of financial information identified that a key area for consideration in relation to the rights of interested parties to access information concerns financial viability statements. Given the circumstances where information can legitimately be withheld, and recognising the nature of most planning activity, it is reasonable to suggest that financial information and the associated issues of commercial and economic interests are one of the most prominent, contested and potentially useful areas to inform the framework for circumstances where information should be withheld or released. Analysis of case law between the same period, identified seven cases as having significance regarding access to commercially sensitive information (see table 1). The selection of these cases was verified through accounts in law reports, academic papers and legal updates provided by law firms. These cases themselves reference a number of earlier cases and these are noted where appropriate to provide an evidence base upon which to draw conclusions.

INSERT TABLE ONE HERE

The analysis of these case law examples revealed four key areas of consideration that community groups and the public need to be aware of when engaging with planning applications and the information available. The four key issues are:

(1) Public body interest in the proposed scheme – if the public body (usually the local authority) subject to the information request has a direct interest in the application, for example they are a land owner, then there is an increased likelihood that the information will be released;

(2) Conservation issues – applications relating to conservation and historic buildings can also increase the chance of information being released, for instance, if a building is listed then the increased sensitivity of the case increases the potential for release;

(3) Specificity of information – the nature and detail of financial information influences the degree of sensitivity of that information and therefore the likelihood of disclosure. For example, where information is based upon generic financial calculations it is generally considered reasonable that this information should be released. However, where the information is specific to the finances of an individual or an organisation, then it is more likely that this information will be withheld to protect commercial interests; and

(4) Substance of the available information – the consideration of whether or not the general ‘gist’ of the matter can be obtained from material already available to the public (and therefore sufficient for informed decision making by communities) can influence whether requested information is disclosed. This might mean that enough information is made available that people have the gist of the issues, but that some of the specific details are withheld.

Using these four key issue areas as a framework for discussion and analysis, the paper considers the nature of the system as it operated at the time of publishing. The analysis identifies areas of challenge and necessary change based upon the desire to maximise the public’s active participation.

### *Public body interest and conservation issues*

The first two of the four issues identified – that of the public body interest in the proposed development and the conservation factors – are dealt with together as these are seminal issues in the ‘Lakota’ case (Bristol City Council v Portland and Brunswick Squares Association, May 2010). This case is of particular note since it represented a key test of the access to information arrangements in England and, upon decision, was subsequently referenced in other cases.

In the Lakota case, the local authority had an interest in a piece of land that was subject to a development application that included the demolition of a listed building as part of a larger development proposal. The basis for the demolition was presented on the basis of the lack of financial viability of the building for redevelopment to an alternative use. The question of viability was, as is typically the case, assessed by the developer. The viability assessment found that any redevelopment of the building was essentially unviable and concluded that demolition was the only option if the entirety of the scheme was to come forward for development.

The demolition of the Lakota building was presented as part of a submitted planning application, but the detail of the financial information that formed the basis of the judgement of the viability of the building for redevelopment was withheld. A local community planning group requested to view the financial report but was denied access. A challenge was made to this decision, initially via a judicial review, but this decision was held pending the matter being heard by the Information Commissioner’s Office (ICO). The ICO ruled in this instance that the information should have been released; that the public interest in releasing the information was significant and outweighed the need for commercial confidentiality.

Although it was held that the information should be released, the specificity of the information in this case was an important factor, as was the position of the local authority in the matter. Consequently, the decision clearly stated that the ‘decision arises from the circumstances of this particular case and is not designed to set a precedent’ (ICO. 2010, pg.14). The circumstances in question related to the position of the local authority as an interested party by virtue of the ownership of another building (the Coroner’s Court) within the development area, the listed building considerations and the requirements of the then in place Planning Policy Guidance Note 15 (PPG15), and the nature of the financial information used to inform the decision made on viability. Each of these circumstances was significant:

* It was found that it was appropriate to release the information because the Council’s position as an interested party demanded it in the interests of transparency.
* Planning Policy Guidance 15 – Planning and the Historic Environment (PPG15) required that where listed buildings are involved the question of viability should be presented for assessment to enable the decision maker to make a judgement about the potential loss of a building of significance. In the Lakota case the viability report submitted was associated with the requirements of national policy in PPG15 and not a planning obligation. The findings of the ICO are clear that if the viability report was required due to a planning obligation, rather than the requirements of PPG15, the outcome may have been different.
* Most significantly, in this case, was the nature of the information. The disclosed viability report was not formed on the basis of publicly disclosed information, that is to say information which was specific and sensitive to the developer. Instead, it was based upon generalised financial information that is publically available. Were the information to be ‘open-book’, and therefore specific to the project and therefore commercially sensitive, the outcome may have been different.

The requirements of PPG15 are effectively retained in Section 12, and particularly paragraph 133, of the National Planning Policy Framework (NPPF) (Department for Communities and Local Government, 2012) and this is significant given the ICO comments upon the circumstances of the decision. Where a listed building is concerned there continues to be a requirement for such information to be provided, but said information need not be publicly disclosed, thereby protecting the sensitive information specific to the developer.

Elsewhere, outcomes have reinforced the framework for the release of information considered in Lakota further.

### *Timing, format of the financial information and harm*

A case involving Bath and North East Somerset (BaNES) (BANES v Information Commissioner, October 2010) is useful in our developing a framework for understanding the disclosure of financial information. In this £500 million brownfield redevelopment scenario, there are a number of parallels to the Lakota case, for example, the local authority had a land owning interest; the proposed development was in the city-wide UNESCO World Heritage Site; and there were heritage questions associated with the scheme. In this case it was decided by the ICO that the financial information should not be released as the public interest favoured maintaining confidentiality. The key difference was that the viability report related to a planning obligation, a legal agreement relating to securing planning gain, rather than the financial costs relating to the purchase and redevelopment of a listed building and, significantly, here the local authority was granted ‘open-book’ (‘live’ and specific) access to information in relation to the question of viability. The Lakota case was referenced in this case with the hypothetical nature of the viability calculations being highlighted. The Tribunal found the financial information relating to the planning application should not be released to the public in this case because the public interest favoured maintaining confidentiality given the sensitivity of the information. It was found in this case that releasing the information could compromise the willingness of developers to engage in open discussion and negotiation in the future. Therefore, a partial release of financial information was ordered. This allowed the omission of sensitive information but the general essence of the financial circumstances was conveyed to allow the public to make an informed decision. It is suggested that this is a particularly key decision since this is a clear indication that documents should not be withheld if they contain sensitive information, rather only the sensitive materials themselves are protected from disclosure.

The Bath case provides further clarity about the circumstances where information can be withheld, but it also highlights the important point that although information can legitimately be withheld from the public, the presence of such information in a document does not necessarily justify withholding the entire document, only the information considered sensitive. This has been supported in the Heygate Estate decision (EA/2013/0162). This decision related to the provision of affordable housing within the redevelopment proposal for the Heygate Estate in Elephant and Castle. The tribunal decided that the entirety of the financial information should not be released because this could be harmful; in particular, a financial model was considered protected. However other matters relating to known market values should be disclosed. Here again, partial release was therefore the appropriate response. These can be seen as facilitating deeper public participation in the process without providing the full technical information required to make a complete analysis. The notion of public bodies acting as information gatekeepers is therefore particularly apparent in this instance.

The question of economic harm and the likelihood of financial damage occurring as a result of the disclosure of sensitive information is a key factor within this debate. In the case of Elmbridge Borough Council vs the Information Commissioner (January 2011), a development was proposed relating to Hampton Court Station and the ‘Jolly Boatman’ public house. Here an interest group requested information pertaining to a viability report associated with a planning obligation agreement which was withheld. In this case the Tribunal found that the information should be released, a decision based partly on consideration of the timing of when the information was requested, rather than submitted; the Tribunal confirmed that the confidentiality of the information must be objectively required at the time of the request. Significantly, it was also based upon a determination of whether a release of the information would cause harm, rather than might.

A similar result to the Elmbridge outcome was seen in a case involving the Forest of Dean District Council (2011). Here there was a request to view pre-application notes. The question being posed was whether an adverse effect would occur from their release. A further case was referenced here which did not consider planning matters but rather information concerning vehicle information numbers and vehicle registration marks; in Hogan v Oxford City Council and IC (2005) it was found that it must be more probable than not that harm would occur from the release. Forest of Dean District Council was ordered to release the information on the basis that this could not be demonstrated.

Two further parameters can therefore be established from these cases; the confidentiality of the information should be considered in the context of the time of the request, and that it must be demonstrated that harm would occur. The onus is therefore on the interested party to prove that the information would cause harm through independent and objective evidence, rather than speculation.

*Substance of the available information*

An application associated with the development of the National Football Centre at Burton (R (English) v East Staffordshire BC [2010] EWCH 2744) involved financial information pertaining to the justification for associated ‘enabling’ development associated with the proposal. In this case, the enabling development was a housing scheme that would otherwise have been considered unacceptable in planning terms in this location. The full extent of this information was withheld from both the public and the councillors of the planning committee. This withholding of information was challenged but it was found by the judge that the decision to withhold the information was correct. Significantly, it was decided that the information could be withheld because members and members of the public had the ‘gist’ of the information, that is to say, they had enough to make an informed decision. They didn’t have all of precise details but they had the essential idea of the matter.

The legal definition of gist given in the Oxford English Dictionary is ‘the real point of an action’ (Oxford English Dictionary, online). In consideration of this definition, the relevance to the question of withholding information is whether the interested parties are considered to have sufficient information to enable them to see the point and grounding of the matter. While ‘gist’ may be a definable term, there is an inherent intangibility with the concept of gist from the perspective of access to information.

Despite this, the idea of having ‘enough’ information continues to be supported. In R (Perry) v Hackney LBC (2014) EWHC 3499 from October 2014 the High Court determined that it was not unlawful for councillors to base a decision upon only a summary of the financial information relating to the scheme. The Court did not determine whether all the information should have been released, the legality of basing a decision upon only a summary, or the gist of the details, is reinforced.

In Hammersmith and Fulham Council a protocol has been presented which highlights the idea of gist and the fact that members shouldn’t expect access to all information in all instances and neither should the public. This is not unreasonable; if they have a need to know, they can have the information in question, but it is not absolute and they should be satisfied with gist where this is necessary and appropriate. This appears to reinforce Licht’s (2014) findings in that a degree of transparency can be achieved without complete disclosure of the actual information provided that the gatekeeper is perceived as credible. In the advice to members the case of the House of Lords case of Birmingham City Council v. O [1983] is cited and members are advised that although in circumstances where they can establish a “need to know” in order to carry out their functions as a member they can have extensive access to the appropriate information, it is for the council to determine whether such a scenario actually exists. The public interest, the very heart of the matter, is also highlighted in the advice to members, with an emphasis upon the fact that the council has a duty to balance the rights of its members with the rights of any third party who have submitted information in confidence.

## Conclusions

To increase meaningful participation in planning necessitates informed action on the part of the participants. This in turn means ensuring access to information to the greatest extent possible. Clearly, complete access to all information in all cases is neither viable nor appropriate, but ‘perceived transparency… may produce public legitimacy beliefs such as decision acceptance’ (Licht, 2014:310) and therefore a shift in the approach concerning how decisions are taken on release, and by whom, would improve involvement in new aspects of decision making. The decision on whether to release information is held by local government; the opportunity to appeal the decision about the release of information is made to an independent public body and is sponsored by the Ministry of Justice. It is suggested that while this is an appropriate arrangement the fact remains that the community, although having a right to be heard and access to an independent review, ultimately lack power in the disclosure decision making process. This impacts upon their position and participation in the planning decision making process. The Government’s current intentions for locally based decision making include the delegation of power and the participation of the local community in planning decisions affecting them. But in relation to access to information the cases discussed in this paper demonstrate how decisions on the question of whether information should be released or withheld remain challenging and this will impact upon participation.

The way in which information is submitted in the first instance, and then subsequently managed, can contribute to aiding or obfuscating transparency. Information in planning applications, including personal, environmental, military and financial matters should all rightly be withheld from wider release where this is appropriate. However, it is only the particularly sensitive information that is protected, not the entire document. This means that an edited or partial version of the information may be publishable. This appears to be an area of particular challenge given the need to apply a consistent, robust and appropriate approach to ‘edited release’. If the aspirations of a more participative planning system are to be further realised then an alternative approach should be considered for the management of sensitive information and best practice disseminated to ensure that planning authorities are maximising the potential for informed participation. A vital role therefore exists for the local authority in both the management of disclosure and also in ensuring that the format and content of submissions is appropriate. ‘The argument that perceived transparency increases perceived procedural fairness, and in turn legitimacy beliefs such as decision acceptance, should not be controversial in light of the substantial number of studies showing a clear, positive correlation between perceived procedural fairness and willingness to accept a decision’ (Licht, 2014:312).

On the basis of the cases discussed in this paper it is clear that a framework for the disclosure of information does exist. However, despite this purported clarity the question of whether to release or withhold is more complex than the regulations perhaps suggest. The question should therefore not be whether a given document can be released or not, but rather what, if any, specific information within a given document cannot be disclosed. Financial viability can comprise a significant material consideration in determining a planning application. Where the implications of this influence the nature of the proposed scheme then gaining some form of insight into the financial justification is both necessary and appropriate for interested parties to participate and contribute meaningfully in decision making. That said, commercial sensitivities do exist and disclosure procedures need to appropriately protect such interests. It is therefore necessary for the decision making authority, as gatekeeper, to exercise judgement by openly following a clear procedure as to whether to release or withhold the information, or parts thereof, noting that in some instances this may run contrary to previously established internal practice.

Within a free-market economy the confidentially of sensitive commercial information is important, necessary and defensible. On this basis we have concluded that the necessity of: ‘gist’; partial release; theoretical calculations; and the need to demonstrate that harm will occur, can all be accepted. However, the decision making associated with the release and withholding of information requires greater transparency in relation to the procedures that have been followed as this will aid the perceived credibility of those taking such decisions. Opportunities do exist for the current arrangements to be enhanced, for example perhaps increasing the use of confidential planning committee meetings where full disclosure is made to Members only, and requiring the use of an independent economist to report to the planning committee on the question of viability, and these should be explored with further research. As importantly however, it is argued that authorities should do more to enable understanding of their decision making processes and procedures. When people feel that decision-making is carried out transparently there is a greater perception of procedural fairness (Licht, 2014).

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