

**GDPR?**  
**But we're planning;**  
**nothing to do with us ....**

Michelle Sacks  
Corporate Director  
Boston Borough Council



# GDPR?



**Genuine Developers Plan Responsibly**

**Government Directors Punch Roommates**

**Giant Dumplings - Plate Rocks**

**Great Doctors Pool Resources**

**Gassy Drinks Produce Rumbles**



# **General Data Protection Regulations**

**or**

## **Draft Data Protection Bill 2018**



# GOOD DATA PRIVACY RULES



Basildon Borough Council v  
Information Commissioner  
[2018] UKFIT 2017



# BACKGROUND

- LPA received an app in June 2015 - variation of conditions for permission in Green Belt
- Planning Statement set out reasons why variation sought
- Included details about applicant's family:-
  - Disability requirements
  - Mental Health
  - Names of Family Members
  - Ages



This information was uploaded on  
16 July 2015

This information was taken down on 4  
September





Self referred to the ICO.

Several consequences,  
including £150,000 fine



ICO found the error occurred because of inadequacies in Basildon's procedures for ensuring that planning documentation was uploaded in line with the established Data Protection Policy



# Specific Findings



Basildon had no adequate procedure in place governing the redaction of statements by planning technicians.

For example, the importance of identifying and redacting sensitive personal data does not appear to have been conveyed through Basildon's procedures.



Basildon did not provide any (or any  
adequate) training to  
planning technicians on the redaction  
of statements



Basildon had no guidance or procedures in place for a second planning technician or senior officer to check statements for unredacted data (and specifically sensitive personal data) before they were returned to the administrator to be uploaded to the online planning portal.



Basildon had no guidance in place for the administrator to check statements for unredacted data before they were uploaded to the online planning portal.



# Contravention of DPP7

The Commissioner decided that those inadequacies constituted a contravention of DPP 7 and further decided that the statutory conditions for issuing a monetary penalty under section 55A DPA were satisfied.

Data Protection Principle 7 provides that appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.





# Basildon Appealed

- LPA was required by statute to make all personal data available for public inspection
- Although DP policy not followed, irrelevant because had to publish
- There was a statement saying may be published



*“Please note that the information provided on this application form and in supporting documents may be published on the Authority’s website. If you require any further clarification, please contact the Authority’s planning department”*



- That on a previous appeal, the Planning Inspector had published much of this data
- The information published would not have caused damage or distress



Basildon argued reliance on Article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 - register must contain a copy of each application.

However, Data Protection enshrined in EU Directive 95/46/E - Member states shall protect the fundamental rights and freedoms of natural persons, and in particular, the right to privacy with respect to processing personal data.



# Tribunal's Findings

Settled domestic law that if there was a conflict with the 2015 Order (publish in full) and the Directive (do not process unfairly), it is the Directive which prevails....



Basildon did have a procedure in place, they just failed to use it

The failure was evidence of lack of adequate measures

Compounded by lack of training

No checking process in place



- The Planning Inspector's case was over a decade old – not relevant as different facts and sensitive personal data
- Only spoke to 1 of the 17 affected so could not properly have assessed damage and distress
- The breach is not has caused damage and distress but likely to cause



# PARSOL

The Tribunal noted published in 2006,  
poorly drafted and needs urgent  
attention.

“The guidance is clearly ambiguous, if  
not misleading”.





# Conclusions

Information that flows into the Council's system by way of planning applications, including third party objectors must be considered in light of the Data Protection legislation.

Systems must be reviewed to ensure compliance – not just with existing 1998 Data Protection but also the new Data Protection Bill



The new legislation is creating more requirements on how organisations manage data

Register of Processing Activities

Lawful use

Right to erasure



# Questions?

