

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 12 October 2011

**Public Authority:** Bradford Metropolitan District Council

**Address:** City Hall  
Bradford  
BD1 1HY

**Decision (including any steps ordered)**

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1. The complainant requested information from Bradford Metropolitan District Council (Bradford MDC) about planning permission for three plots on a development near his residence.
2. The Information Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR in that it did not apply the correct legislation when handling the request.
3. He therefore requires Bradford MDC either to provide the information requested in compliance with regulation 5(1) or issue a valid refusal notice that complies with regulation 14 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the high court (or the court of session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

**Request and response**

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5. On 11 December 2010 the complainant wrote to Bradford MDC with two multi-part requests, one about plot 1 and the other about plots 2 and 3 of the development. Both requests are lengthy and the full text can be found at Annex A of this notice.
6. Bradford MDC responded on 17 January 2011 advising the complainant that most of his queries were largely challenging or requesting justification of the Council's decisions relating to these plots, as opposed

to being requests for recorded information. Bradford MDC noted that the complainant's requests mirrored those posed by his solicitor which were being dealt with by its legal team, and referred to previous correspondence exchanged between some of its employees and the complainant. Bradford MDC offered the complainant an internal review.

7. Following an internal review which the complainant requested on 23 February 2011, the public authority wrote to the complainant on 1 April 2011 upholding the original decision.

## Scope of the case

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8. On 11 April 2011 the complainant contacted the Information Commissioner to complain about the way his requests for information had been handled. He raised the following issues with the Information Commissioner:
  - that Bradford MDC's response to his requests was "evasive" and that his solicitor was only retained in connection with plots 2 and 3, not plot 1;
  - the public authority's response of 17 January 2011 suggested that the answers to his requests had been provided in earlier correspondence referred to by Bradford MDC and that this was not the case;
  - at no time did Bradford MDC comply with its duty to assist an applicant.
9. Although the complainant did not complain about which regime had been used to handle his requests, due to the nature of the information the Information Commissioner has considered whether some, most or all of the information is governed by the Environmental Regulations 2004 (EIR).

## Reasons for decision

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10. Bradford MDC originally processed the complainant's requests for information under FOIA and considered that it had provided responses in earlier correspondence, and that the requests were not valid requests for recorded information under the FOIA. However, the Information Commissioner has considered whether the requested information in this case constitutes environmental information and that the correct access regime is, therefore, the EIR.
11. Environmental information is defined in regulation 2 of the EIR as:

*"any information in written, visual, aural, electronic or any other material form **on** ...": -*

- the state of the elements of the environment, such as air, water, soil, land;
  - emissions and discharges, noise, energy, radiation, waste and other such substances; and
  - measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.
12. The Information Commissioner's approach is to interpret "*any information... on*" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
13. Having considered the nature and context of the requests the Information Commissioner has concluded that they constitute environmental information as defined by regulation 2(1)(c) of the EIR. This is because the information in this case relates to information on a measure or activity and the measure or activity in question affects, or is likely to affect, the environment or is designed to protect it.
14. Although the Information Commissioner requested and received copies of the correspondence which Bradford MDC sought to rely on in not responding to the requests, and has been advised by the public authority that the information it holds relevant to the requests is publicly available on specific planning files, the Information Commissioner requires Bradford MDC to reconsider the requests under the correct regime and advise the applicant accordingly.

## **Other matters**

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15. The provision of advice and assistance is a wide-ranging duty, and has the potential to be relevant to most, if not all, stages of the request process. Advice and assistance can simply be seen as the means by which a public authority engages with an applicant in order to establish what it is that the applicant wants and, where possible, assists them in obtaining this. In effect, it provides for good customer service.
16. The Information Commissioner is therefore disappointed to note that Bradford MDC failed to advise the complainant how he might reframe his requests such that they constitute valid requests for recorded

information. The Information Commissioner would remind public authorities of their duties under section 16 of FOIA and regulation 9(1) of the EIR to provide advice and assistance to applicants.

17. The complainant also drew the Information Commissioner's attention to the delay in Bradford MDC carrying out the internal review. Given that Bradford MDC handled the requests under the FOIA, it should have provided its response to the internal review within 20 working days of receipt; however, under the EIR, public authorities have 40 working days in which to respond to any request for an internal review. The Information Commissioner would remind Bradford MDC to ensure that it handles internal reviews within the recommended timescales.

## Right of appeal

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18. Either party has the right to appeal against this decision notice to the first-tier tribunal (information rights). Information about the appeals process may be obtained from:

First-tier tribunal (information rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

19. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the information tribunal website.
20. Any Notice of Appeal should be served on the tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex A

The requests which serve as the basis of this decision notice are both dated 11 December 2010 as follows (please note the layout and punctuation is set out as in the requests):

### Application 10/05571/C LP – Plot 1 Stubham Lodge

"I wish to request the following information under the above Act. Will you please acknowledge safe receipt of this letter and advise when to expect a reply. I am sorry that it is lengthy but the true facts have to be established. To save repeat enquiries please ensure that each enquiry is fully answered. Most enquiries can be answered "YES" or "NO"

1. Please state the name of the person who granted the above application.
2. Prior to granting the application did any Planning Officer consult with the applicant and give advice as to what evidence he required. There is an email on the file addressed to the applicant which states "Together with our knowledge of what [name redacted] inspected **this would go a long way towards demonstrating" on the balance of probabilities" that the concrete cap is indeed a foundation trench appertaining to the approved development and not just a concrete path**
3. You have on numerous occasions advised me that the onus of proof lies with the Applicant. Please explain why the planning officer made and relied upon his own enquiries of the Building Inspector [name redacted].
4. What was the advice given to MB by [name redacted]? Please supply copies of the file notes made by MB of this conversation. How was this information conveyed to the determining officer?
5. Does the Planning Officer who made this decision accept that the approved relevant drawing is No.1735.4C and that such Drawing specifies that the trench was to be dug in the flower bed
6. Please explain how the planning officer arrived at his decision that on the balance of probabilities the trench which he knew to be dug beneath the garden path to the greenhouse was intended to be the trench specified on the Drawing as being part of the foundation beneath the flowerbed.
7. Did the planning Officer refer to such Drawing before reaching his patently erroneous decision

8. Please supply in respect of the dug trench the following evidence
  - Details of the concrete mix
  - Whether the concrete was reinforced and if so the specification
  - A plan to show how the foundation was to be part of the structure
  - A copy of the building inspectors report
  - A copy of the soil tests
  - A copy of the calculation to show that the foundation as constructed was capable of supporting the building
  - A plan with measurements identifying the position of the trench and evidence that the trench is in the position specified on the approved drawings and would be an integral part of the foundations of the approved development without requiring to be dug up or repositioned
  - What evidence you have that the Applicant dug the trench with any intention to build the house on Plot3 as approved given that this plot now forms part of the garden of [address redacted] and this is not in the ownership of VD or the applicant [name redacted]
  
9. I refer to Footnote 4 on your decision notice dated 23 November 2010. Am I correct in my understanding of this foot note [sic] that the decision was arrived at without any proof by the applicant that the concrete in the trench was capable of supporting the proposed building.
  
10. This case was under the management of [name redacted]. At the time of my email of the 16 September 2010 he was in negotiation jointly with MB with the applicant. In that email I asked him to assure me that the Council would refer to my correspondence by way of objection to another application. In his reply he was non committal. This correspondence included my objection 9 May 2010 to the application.
  - 10.1 Please state whether my letter of the 9 May 2010 was referred to in arriving at the present approval
  - 10.2 Please state why he did not tell me that a new application was imminent
  - 10.3 As my objection was still on file why it was not referred to particularly as it drew attention to the position of the trench on the plan
  - 10.4 I inspected the file at Jacob's Well in the morning of the 23 November and after my visit the Certificate was immediately granted (within a fortnight of the application) Was this done to prevent me making further representations?

11. Please supply copies of the evidence that the conditions precedent were complied with before the trench was dug  
These conditions are Conditions 9 and 14
- 12.1 As to Condition 9 there was no evidence on the file that the fences had been notified in writing by the Applicant and approved in writing by the Council. Please supply copies of those notifications if they exist
- 12.2 As to Condition 14 to my personal knowledge none of the works specified were carried out nor was the works containment fences erected specified in drawing 1735.4C
- 12.3 Were the conditions precedent considered by the granting officer?  
MB's email to Pearce referred to in para.2 above indicates that no such consideration took place
  - 12.3.1 If not why not?
  - 12.3.2 If they were considered what evidence was produced to show that they were and
  - 12.3.2 Please supply copies of the evidence referred to

### **Generally**

1. Does the Council agree that before any operational works can be lawfully commenced the conditions precedent have to be complied with (Whitley Case) and that it is no excuse that the breach is minor (R(Hammerton) v London Underground)?  
If not please explain your reasons
- 2.1 Is the Council aware of The Good Practice Guide to Enforcing Planning Control 1997 published in conjunction with Circular 10/97-Enforcing Planning Control?
- 2.2 Does the Council purport to follow its guidelines?
- 2.3 If so please supply a copy of the complete documentary record of all investigations of my complaints which is stated therein to be essential
3. Finally what action do you propose to take to resolve your disastrous mistakes?"

### **Planning Permission 04/01779/FUL - Plots 2 and 3 Stubham Lodge**

"I wish to request the following information under the above Act. Will you please acknowledge safe receipt of this letter and advise when to expect a reply. I am sorry that it is lengthy but the true facts have to be established.



To save repeat enquiries please ensure that each enquiry is fully answered. Most enquiries can be answered "YES" or "NO"

1. With regard to the discharge of Condition3
  - 1.1 Who was present at the meeting between Dobsons and the Planning officers on the 27 July 2010
  - 1.2 Please supply a copy of the notes of the meeting prepared by the Planning Officers present at the meeting
  - 1.3 Did the Planning Officers take any measurements on site to ensure that the lay out of the proposed dwelling was in accordance with the approved plan and if so please supply details
  - 1.4 I refer to the email dated 27 August 2010 (just before he went on holiday from [name redacted] MB to Vincent Dobsons (VD) requesting confirmation that the position of the dwelling, and the proposed levels, of floor and roof inspected by MB on the 27 July were the same as are represented on the approved drawing 1735.3.F.

Is it correct to deduce from this request that MB had not checked these for himself either at the meeting or in the month following it?
  - 1.5 I refer further to the email from VD dated the 31 August 2010 in reply in which VD confirmed that the items in question were identical with the approved drawing. Is it correct to deduce from this that MB issued the Council's approval to Condition3 solely in reliance upon the word of VD?
2. I refer to the lat paragraph of page 2 of MB's letter to me of the 24 September 2010 Is it correct that MB is stating that Condition 3 does not empower the Council to approve any alteration to the location of the approved dwelling and that such dwelling has to be built in the approved permission pursuant to Condition 2.
3. I refer to my email of the 6 October 2010 to [name redacted] CE and MB in which I drew their attention to the fact that the NW marker post approved under Condition 3 was in the wrong position
  - 3.1 Why did neither officer acknowledge my letter?
  - 3.2 What steps did these officers take to check my letter?
  - 3.3 If no steps were taken to check my complaint why was this not done?
  - 3.4 If steps were taken please give details and state the dates of inspection and supply copy correspondence and file notes
4. I refer to my email to CE and MB dated 25 October 2010 in which I expressed my disappointment at not receiving a reply to my complaint of the 6<sup>th</sup> October 2010 and drew his attention to the fact that the SW corner of the dwelling as then constructed was not in

accordance with the approved drawings. In addition VD had cut some of the roots of the protected trees and covered them with soil thereby burying them to a greater depth which is likely to cause their death

- 4.1 What steps did MB take to check the incorrect location of the dwelling?
  - 4.2 If no steps were taken why was this not done?
  - 4.3 If steps were taken please give details and state the dates and supply copy correspondence and notes
  - 4.4 Please state what action has been taken to investigate my complaint concerning damage to the listed tree roots and if none state the reason why not
  - 4.5 The canopies of the protected trees overhang the building development. Why has this been allowed to happen contrary to British Standards?
5. The approved plans specified the retention of most of the Cupressus trees along the western boundary. These have been cut down by VD
- 5.1 Please state which Planning Officer authorised this?
  - 5.2 Please supply copies of all relevant Documentation authorising this Action
  - 5.3 If no authorisation was given why has no action been taken against VD
  - 5.4 Please quote your legal authority for allowing this to happen
6. None of the requirements of Condition 13 relating to the Construction Plan have been complied with resulting in workmens' cars and VD's vans being parked upon the pavement, delivery vehicles reversing across the pavement, plant and machinery being parked in [address redacted] and at time partly on the pavement and the gate to the site being left open totally obstructing the pavement. (See photograph herewith) All this has taken place near a blind bend not only in contravention of the law but also causing considerable danger to other road users and impending pedestrians
- This complaint was drawn to the attention of CE and MB on the 25 October
- 6.1 Why has no action been taken to enforce this condition when its reckless abuse puts lives at risk
  - 6.2 If action has been taken please supply details together with copy documentation, dates and file notes
7. With regard to [name redacted] letter of the 2 December 2010
- 7.1 Was this read by a senior Planning Officer as promised to Cllr [name redacted] before it was issued and if so by whom?
  - 7.2 In arriving at his conclusion that a lawful start was made on the site did FS confuse this site with Plot1 as appears to be the case as the trench was dug on Plot3 on the 30 October

2009 and not in November (as stated by FS) which was when site works were carried out on Plot 1

- 7.3 FS makes no mention in his letter of giving consideration to the conditions precedent. DWF in their letter of the 6 September 2010 detail breaches of Conditions 11, 13, and 15 and supplied evidence of non compliance. Please supply fully reasoned explanation of why FS considers that there were no breaches of these conditions.
- 7.4 Does FS accept that the rules in the Whitley case require him to first ascertain whether or not the conditions precedent have been complied with and only if they have that he then needs to consider whether relevant operational works were carried out
- 7.5 With regard to the operational works carried out on Plot 3 on the 30 October 2009 did the Council decide that such works commenced the development of both Plots 2 and 3. If so please quote the statutory authority or case law for such decision
- 7.6 With regard to these operational works please detail what evidence was considered to enable FS to apply the test of "balance of probability" and how he applied it and in particular
- Details of the concrete mix
  - Whether the concrete was reinforced and if so the specification
  - A plan to show how the foundation was to be part of the structure
  - A copy of the building inspectors report
  - A copy of the soil tests
  - A copy of the calculation to show that the foundation as constructed was capable of supporting the building
  - A plan with measurements identifying the position of the trench and evidence that the trench is in the position specified on the approved drawings and would be an integral part of the foundations of the approved development without requiring to be dug up or repositioned
  - What evidence you have that the Applicant dug the trench with any intention to build the house on Plot3 as approved given that this plot now forms part of the garden of [address redacted] and this is not in the ownership of VD or the applicant [name redacted]
- 7.6 Please state why there was a 3 month delay before FS replied to DWF's letter of the 6th September 2010

- 8.1 I refer to p3 of FS letter to DWF dated 2 December 2010. Please supply a sketch plan identifying where the measurements referred to in paras 2 and 3 on that page were taken together with the distances not just to the trees (there are 5 protected trees not stated by FS) which do not belong to VD but also and more importantly the southern boundary fence of the building plot
- 8.2 Please specify details of the permitted tolerances referred to in Para.3 of this page of FS's letter together with you [sic] authority therefore.

Do these tolerances vary given the fact that this site is scarcely big enough for the development?

9. With regard to the Conditions precedent Conditions 11, 13 and 15 are Conditions precedent which have not been complied with

9.1 As to condition 11 I enclose copy email from [name redacted] clearly asserting that this is a condition precedent that has to be complied with

9.1.1 Is it correct that the only inspection of the protective fencing was that undertaken by [name redacted](EW)

9.1.2 Please supply a copy of EW's notes as to what he saw and the date of visit

9.1.3. Please confirm that the approved details of the protective fencing were those approved on Drawing 1735.1A

9.1.4 Does EW agree that this drawing specified that tree protection fences to BS 5837 should be erected on the north, east and southern boundaries of Plot 2 and on the west south and eastern boundaries of Plot 3 and in addition to the east of the proposed dwelling on Plot 3 such fence should be constructed on 2.4 metres high scaffold tubes +sterling board panels

9.1.5 Does EW agree that the BS5837 specification is Harras mesh fencing 2.4 metres high

9.1.6 Does EW agree that the northern fencing specified by Condition 4 of the Planning Permission specifies wooden panelled fencing and consequently Conditions 11 and 14 are inconsistent

9.1.7 Does EW agree that the fencing erected on the northern boundary was wooden panelled and erected within 1 metre of the beech hedge and in places touching it?

9.1.8 Does EW agree that such a fence in close proximity to the hedge would deprive it of light and water and as such be detrimental to its life particularly if kept in place

for the duration of the construction works on Plot 2 as specified in Condition 4?

9.1.9 Did EW notice that 1735.1A specified a works containment fence

9.1.10 Did EW notice that the following fences did not comply with 1735.1a namely

The northern fence of Plot 2 was not a Harass mesh fence

The northern fence stopped some 3 to 4 metres short of [address redacted] and was not erected for the full length of the boundary

None of the Harass mesh fences were 2.4 metres high

The fence to the east of Plot3 was not erected with panel boarding as specified

The work containment fence was not erected

9.1.11 Will EW please explain why he signed a VD letterhead dated 28 October 2009 prepared by Dobson containing an untrue statement that the fences specified in Drawing 1735.1A had been erected to his satisfaction when he knew or should have known had he done his job properly that some of the fences as specified had not been erected

9.1.12 MB emailed VD at 9.30 am on the 29 October a copy of his letter of approval of the fencing. Not until 2.20 pm on the 29 October did EW email MB to say that he had agreed to allow the northern fence of Plot 2 to remain incomplete and be built later. Do you agree therefore that MB's letter of approval was based on misinformation and that no attempt to correct it was made by MB following receipt of EW's email?

9.2 Condition 13 requires the implementation of the construction plan details before any development is begun and that such is kept in place at all times until the development has been completed. Please state in detail how this condition has been complied with

9.2.1 before the operational works on Plot 3 were carried out

9.2.2 since building works on Plot 2 were commenced

9.3 Condition 15 stipulates that prior to any form of development commencing on Plot 3 trapped road gullies with delineated kerbs had to be installed. [Name redacted] confirmed in his letter to me of the 21 June 2010 that this was a condition precedent (copy herewith)

9.3.1 Please confirm that Drawing 1735.1A details the approval of these gullies

9.3.2 please confirm that this drawing specifies 2 gullies and specifies "2 no gullies installed on Plot 3 driveway prior to commencement of foundation works" I enclose a photograph which clearly shows that only one such gully was installed and that this does not comply with the specification on the drawing and is of different shape

Please state how this Condition precedent was complied with

10.1 Does the Council agree that before any operational works can be lawfully commenced the conditions precedent have to be complied with (Whitley case) and that it is no excuse that the breach is minor (R(Hammerton) v London Underground)?

If not please explain your reasons

11.1 Is the Council aware of The Good Practice Guide to Enforcing Planning Control 1997 published in conjunction with Circular 10/97-Enforcing Planning Control?

11.2 Does the Council purport to follow its guidelines?

11.3 If so please supply a copy of the complete documentary record of all investigations of my complaints which is stated therein to be essential

### **Generally**

1. Does the Council agree that before any operational works can be lawfully commenced the conditions precedent have to be complied with (Whitley Case) and that it is no excuse that the breach is minor (R(Hammerton) v London Underground)?

If not please explain your reasons

2.1 Is the Council aware of The Good Practice Guide to Enforcing Planning Control 1997 published in conjunction with Circular 10/97-Enforcing Planning Control?

2.2 Does the Council purport to follow its guidelines?

2.3 If so please supply a copy of the complete documentary record of all investigations of my complaints which is stated therein to be essential"