

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

Decision Notice

Date: 22 September 2011

Public Authority: Durham County Council
Address: County Hall
Durham
DH1 5UF

Decision (including steps ordered)

1. The Commissioner's decision is that the County Council has breached EIR by failing to provide a valid response to the complainant.
2. The Commissioner requires the County Council to take the following steps to ensure compliance with the legislation.
 - To either make the requested information available in accordance with regulation 5(1) (duty to make available environmental information on request), or issue a valid refusal notice compliant with regulation 14(1).
3. The County Council 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.

Background

4. The County Council's policy "BE 20" is concerned with the change of use or conversion of rural buildings¹.

¹ <http://content.durham.gov.uk/PDFRepository/WearValleyLPSavedPolicies.pdf>

Request and response

5. The complainant, on or about 1 March 2011, requested from the County Council the following information-
 - A list of all properties that have been advertised for economic uses since the policy (BE 20) came in to force (March 1997).
 - Planning Applications for Change of Use to residential and the outcomes of these applications which have been submitted on those properties advertised for economic uses.
6. The County Council, in its substantive response on 3 March 2011, refused to disclose the requested information on the basis that to do so would exceed the fees limit set by the Act.
7. The complainant requested (on 3 March 2011) an internal review of the County Council's decision. On 25 March 2011, the County Council informed the complainant that it had completed the internal review and that it upheld the original decision. However, it also advised the complainant that under section 16 of Act it had a duty to offer advice and guidance where possible. It therefore advised the complainant to consider limiting the scope of his request to, for example, a particular year or planning application so that it may be able to reconsider his request dependent on the number of files which would have to be examine manually.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner first considered whether the County Council was correct in using the FOI Act to deal with the request or whether it should have used the EIR.

Reasons for decision

10. The Commissioner considers that the information requested falls within the definition of environmental as per regulation 2(1) (c)²: information

² <http://www.legislation.gov.uk/ukxi/2004/3391/made>

on "measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements".

11. In an earlier decision of the Commissioner (FS50292000), the complainant in that case requested information about properties that had been advertised for employment uses or were the subject of applications for a change of use. The Commissioner found that the requested information, if held, would fall to be considered under the EIR and the decision notice ordered the Council to either provide the requested information or issue a valid refusal notice. Similarly, here, the Commissioner considers the information requested by the complainant to be environmental information. This is because the information relates to the outcomes of planning applications in that the way these properties are or may be used in the future, for example for employment or residential purposes, is likely to have an effect on the factors and elements referred to in regulations 2(1)(a) and / or (b).
12. In correspondence dated 25 August 2011 the County Council acknowledged to the Commissioner that it should have dealt with the matter under the regulations.

Right of appeal

13. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

14. 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.
15. 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

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