

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 20 January 2014

**Public Authority:** Wealden District Council  
**Address:** Council Offices  
Pine Grove  
Crowborough  
East Sussex  
TN6 1DH

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from Wealden District Council ("the council") about any planning proposal that may impact on a specified property. This request was made through a Con29R form, which is a standardised application document for the 'Local Enquiries Search' element of what is commonly referred to as a 'Property Search'. The council provided held information in response to this request. The complainant subsequently contested that information about future modifications to a specific planning proposal had not been provided.
2. The Commissioner's decision is that the council provided the planning proposal as it existed at the date of request, and therefore complied with its obligations under the Environmental Information Regulations ("the EIR").
3. The Commissioner does not require any steps to be taken.

#### **Request and response**

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4. On 26 September 2011, the complainant submitted a request to the council. This request was made by submitting a Con29R form for a Local Enquiries Search. The Con29R form constitutes a request for varied contextual information about a property.
5. The council responded on 28 September 2011. Included in this response under subsection 1.2 (which incorporates information about planning

designations and proposals) was information about the drafting of the 'Core Strategy Development Plan Document' ("the draft core strategy") for the council's 'Local Development Framework', and a referral to the council's webpages to view the most recent status of this.

6. Following changes made to the draft core strategy during 2012, the complainant contested that he had not been provided information about these changes as part of his information request. The council wrote to the complainant on 2 April 2013 and provided what the Commissioner considers to be an internal review. The council stated that it had disclosed the draft core strategy as it existed on the date of the request.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 9 May 2013 to contest that information about future modifications to the draft core strategy had not been provided to him in response to his request.
8. The Commissioner considers that the scope of this case is the determination of whether the council fulfilled its obligations under regulation 5(1) of the Environmental Information Regulations 2004 ("the EIR") by disclosing the draft core strategy that was current at the time of the request.

### **Circumstances of the case**

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#### *Background*

9. The council is responsible under the Planning and Compulsory Purchase Act 2004 to produce a spatial planning strategy for its administrative area. In response, the council has produced a Local Development Framework. As part of this, the council has worked on drafting a Core Strategy Development Plan Document (which is referred to in this Decision Notice as "the draft core strategy") since 2007 with the aim of creating a spatial development strategy for 15 to 20 years. On 3 August 2011 this draft core strategy was submitted to the Planning Inspectorate, an executive agency under the Department for Communities and Local Government ("the DCLG"), to be assessed for compliance with the law. After applying modifications advised by the Planning Inspectorate on 5 March 2012, and those required by introduction of the National Planning Policy Framework by the DCLG on 27 March 2012, the council then adopted the approach represented within the draft core strategy during April 2012. The Commissioner understands that the approach contained within this draft core strategy

imposed limitations on property development within the local area. The draft core strategy was then formally adopted by the council on 28 November 2012 following the issue of the Planning Inspectorate's final report on 30 October 2012.

*Property Searches and the EIR*

10. The complainant has sought to develop a property within the local area. As part of his preparation, he has submitted a request to the council for a Property Search (also commonly known as a 'Local Search' or a 'Local Authority Search') for the property in question. Such requests are composed of two elements:
  - A Land Charges Search made of the Local Land Charges Register. This is requested through a LCC1 form.
  - A Local Enquiries Search made for mixed local environmental information that relates to the property. This is requested through a Con29R form.
11. These two searches are defined by the DCLG in its good practice guide for Property Searches. This document, which provides information about the basis of Property Searches, can be accessed at:  
  
<https://www.gov.uk/government/publications/personal-searches-of-the-local-land-charges-register-and-other-records-held-by-local-authorities>
12. The information requested through a Local Enquiries Search is specified within Schedule 7 of the Home Regulation Pack (No. 2) Regulations 2007. This document can be accessed at:  
  
[http://www.legislation.gov.uk/ukxi/2007/1667/pdfs/ukxi\\_20071667\\_en.pdf](http://www.legislation.gov.uk/ukxi/2007/1667/pdfs/ukxi_20071667_en.pdf)
13. The Commissioner's policy on Property Searches states that where requested information can be defined as 'environmental' under the guidance contained within the EIR, then that information must be provided by a public authority under the terms of the EIR. The Commissioner's policy on Property Searches can be accessed at:  
  
[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Practical\\_application/FEP116\\_PROPERTY\\_SEARCHES\\_AND\\_EIR\\_V1.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/FEP116_PROPERTY_SEARCHES_AND_EIR_V1.ashx)

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**Reasons for decision**

**Is the information environmental?**

14. The council's response to the complainant was made in the form of a reply to a Property Search, and therefore did not specifically cite the EIR. However, the Commissioner has identified that this complaint refers to information that is environmental in nature, and therefore the request itself must be considered under the EIR.
15. Information is "environmental" if it meets the definition set out in regulation 2 of the EIR. Environmental information must be considered for disclosure under the terms of the EIR. Under regulation 2(1)(c), any information on policies affecting or likely to affect the elements of the environment listed in regulation 2(1)(a) will be environmental information. One of the elements listed is the landscape. The contested information relates to a planning proposal that is partly designed to limit development. This issue can be identified as affecting the landscape. The Commissioner therefore considers that the request should be dealt with under the EIR.

### **Regulation 5(1) – Duty to make information available on request**

16. Regulation 5(1) of the EIR states that any person making a request for information is entitled to have that information communicated to them. This is subject to any exceptions or exclusions that may apply.
17. The EIR provides a right of access to information in recorded form, and only that which exists at the time of the information request. The EIR does not require a public authority to generate new information, such as in the form of an explanation or opinion, in order to respond to a request.

#### *The Commissioner's investigation*

18. On 21 November 2013 the Commissioner wrote to the council to request evidence about the status of the draft core strategy at the time of the request. The council subsequently provided a response which outlined the council's position at the time of the complainant's request.

#### *What information was requested?*

19. The request for information was made through a Con29R form, which was submitted by the complainant's solicitors. The Commissioner has considered this form and notes that it does not contain the level of detail that is present in the council's own version of the Con29R form, which outlines the information that the form requests. Having considered the council's own Con29R form, it is apparent to the Commissioner that the Con29R form contains a request under subsection 1.2 for "*Planning Designations and Proposals*". The Commissioner understands that this is based on the requirements of Schedule 7, Part 2 of the Home Information Pack (No. 2) Regulations 2007, which requires that a public

authority provides information that answers the question: "*What designation of land use for the property or of the area, and what specific proposals for the property, are contained in any existing or proposed development?*".

20. The Commissioner, having considered the request against this background, has concluded that for the council to conform with the request, it was therefore required to provide information about any existing or proposed development, as defined above. Having considered the circumstances of this case, the Commissioner has logically assumed that the draft core strategy that forms the basis of this complaint, would fall under the description of 'proposed development'.

*What information was provided?*

21. It is evident from the submissions that have been provided to the Commissioner by both parties that the draft core strategy existed as a document at the time of the information request. The council has stated that this document was made publically available on its webpages during August 2011. The Commissioner has consulted the 'Core Strategy Library of Documents and Evidence Base' that is available on the council's webpages and has identified that this document, entitled "*Core Strategy Submission Document*" and dated August 2011, is present in PDF format. Additionally, the prior version of the draft core strategy, entitled "*Proposed Submission Core Strategy*" and dated February 2011 is also available in PDF format.
22. The Commissioner has observed that the council's response under subsection 1.2 refers the requester to consult a statement that is provided on page 6. This statement, dated March 2010, provides a brief description of the draft core strategy, and advises "*prospective purchasers*" to consult draft core strategy documents provided on the council's webpages to confirm the most current status of this.
23. The complainant, in his submissions to the Commissioner, has stated that he believes that consideration about the modifications made in 2012 to the draft core strategy had already taken place within the council at the time of his information request. While the Commissioner has noted this concern, it is apparent to the Commissioner from the evidence available that the core draft strategy was submitted to the Planning Inspectorate for assessment on 3 August 2011, and that the interim report and recommended modifications were not released by that public authority until 5 March 2012. This evidence therefore suggests to the Commissioner that the draft core strategy, as published on the council's webpages in August 2011, was the only formal representation of the councils proposed core strategy as it existed at the

time of the complainant's request, and could not be modified while assessment by the Planning Inspectorate was still ongoing.

*Conclusion*

24. In reaching a conclusion on this case, the Commissioner has needed to consider, on the balance of probabilities, whether the draft core strategy that was disclosed in response to the complainant's information request was likely to be held in another form, namely that which was adopted by the council in the following year.
25. In reaching this decision, the Commissioner has principally considered the date of the complainant's request and the known status of the draft core strategy. The request was made on 26 September 2011, at a time when the draft core strategy existed as a public document that had been submitted to the Planning Inspectorate for assessment, and of which a copy had been provided through the council's webpages. No interim report on the draft core strategy had yet been provided by the Planning Inspectorate to the council. Having appraised the circumstances present on the date of the Complainant's request, and the submissions provided by both parties, the Commissioner has concluded that the draft core strategy was the only formal version of the planning proposal that existed, and therefore represented the information that was requested by the complainant's Con29R form.

## Right of appeal

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26. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.
28. 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 .....**

**Andrew White**  
**Group Manger**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**