

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

Decision notice

Date: 22 November 2016

Public Authority: Norfolk County Council
Address: County Hall
Martineau Lane
Norwich
NR1 2DH

Decision (including any steps ordered)

1. The complainant has requested information concerning works undertaken by Norfolk County Council on an area of common land in Roydon, Norfolk. It is the complainant's opinion that the works were carried out without consent and are therefore illegal. The Council has informed the complainant that it does not hold recorded information in respect of his request: The Council has explained why it disagrees with the complainant's opinion as to the legality of the works specified in the complainant's request.
2. The Commissioner's decision is that Norfolk County Council does not hold recorded information which answers the complainant's request and therefore it has complied with Regulation 5(1) of the EIR.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 10 February 2016, the complainant wrote to Norfolk County Council and requested information in the following terms:

"Please can you supply me with the following information under this "Freedom of Information Request" all the questions relate to a section of Brewers Green a registered common CL190. Roydon, Norfolk, which is approximately between IP22 5FY to IP22 5QR. Which is 42 metres of tarmac outside Birds Cottage and The Sycamores and 85 metres of new gravel path in between Swamp Lane to Snow Street in Roydon as highlighted on the enclosed map. The period in question is only around when these works were done, which is around 2007.

1. Can you send me full details of the planning Consent which is needed for these works.
 2. Can you send me full details of the Approval of the Planning Inspectorate for these works on registered common CL190.
 3. Can you send me full detail of all plans, correspondence, you have regarding these works?
 4. Can you tell me what notice Roydon Parish Council had with these works?
 5. Can you tell me who authorised these works on Registered Common CL190.
 6. Can you send me copies of any other internal details, correspondence, letters you have regarding these works."
5. The Council responded to the complainant on 22 March 2016. The Council did not disclose any recorded information to the complainant in answer to his 'questions'. Rather, it explained why the 42 metres of tarmac does not extend on to the common land and therefore the works in question did not require consent. The Council provided a plan, entitled 'CL190 Polygon' which illustrates its interpretation of the definitive Legal Register Map which shows the extent of the Common Land.
6. The Council then went on to explain how it retains records regarding highway works and why it is unable to determine when the works to create the gravel path took place. The Council made reference to section 38 of the Commons Act 2006 – for works which were carried out after 1 October 2007, and to section 194 of the Law of Property Act 1925 – for works which were carried out before 1 October 2007.
7. The Council explained that its records were limited and that it was unable to find plans, general correspondence or correspondence with Roydon Parish Council about the works. It therefore suggested that the complainant speaks with Roydon Parish Council directly on that point.
8. Further explanation was provided in respect of the area between Swamp Lane and Snow Street. The Council advised the complainant that this is a highway maintainable at public expense and it provided a plan to illustrate this. Again, the Council pointed out that no authorisation is required for works on an existing highway. The Council referred the

complainant to provisions contained in the Commons Registration Act 1965 which supports its position that the highway and the common land coexisted and that the common land could not have been registered over an area of ancient highway.

9. The complainant wrote to the Council again on 5 April 2016, asserting that the absence of records confirm his belief that the works were carried without consent and are therefore illegal. The complainant referred the Council to a request made to the Secretary of State for all planning records concerning Brewers Green, Roydon. In the complainant's opinion the response he received confirmed that the Council do not have the Secretary of State's consent. He also stressed that the Council had not answered his most important question, namely:

"On the definitive map of Brewers Green CL190 dated 1972, it clearly shows that there is no highway/road from where the end of Swamp Lane joins Brewers Green to Snow Street, when was this area of Brewers Green registered as a highway/road across Brewers Green CL190?"

10. Having received the complainant's email of 5 April, the Council conducted an internal review of its handling of his information request. The Council wrote to him on 26 April to advise him of its final decision.

Scope of the case

11. The complainant contacted the Commissioner on 9 May 2016 to complain about the way his request for information had been handled. The complainant advised the Commissioner that he had "researched thoroughly all of the public records held by Norfolk County Council Records Office into these works on Brewers Green, Roydon... [and had found] no detail of recent works are available to the general public".
12. The Commissioner notes that the complainant disagrees with the Council's position: His complaint is largely one of disputed interpretation of the extent of common land and the failure of the Council to provide recorded information which supports or disproves its position.
13. The Commissioner also notes the Council's position and its reasons why it holds no recorded information falling within the scope of the complainant's request.
14. The Commissioner determined that the focus of her investigation should be to determine the extent to which the Council holds or does not hold recorded information falling within the scope of the complainant's request. She has made clear to the complainant that it is not within the

Commissioner's role or powers to determine the legality of the works referred to in his request.

Relevant background information

15. At the heart of the complainant's request is the registration of the land referred to as Brewers Green (CL190). The application for the registration of Brewers Green was made by the Clerk to Roydon Parish Council and the statutory declaration made in support of the application is dated 3 May 1968. The application bears a receipt stamp which indicates that the Council received it on 7 May 1968.
16. The plan which accompanied the application defines the land to be registered as common and this is coloured red.
17. The land was provisionally registered on 4 July 1968 and the registration was made final on 1 August 1972. No objections were received in respect of the registration of CL190.
18. There are notes which refer to easements which are claimed in respect of access across the common. These date from 1968 to 2000.
19. The Commons Commissioner was satisfied that no person was the owner of the land and therefore it was directed that CL190 should remain subject to protection under section 9 of the Commons Registration Act 1965. There is an entry to this effect dated 20 October 1978.
20. The map of the registered common is based on the Ordnance Survey 1:10,560 map circa 1956. This shows the registered common CL190 defined by a green verge line.
21. In July 2014 the Council conducted extensive and exhaustive research of all of its highway records. The Council's search of its paper-based and micro-filmed records identified Swamp Lane as being a highway maintained at the public expense.
22. The Council's records include the 1929 Handover map, the 1974 Handover map, the Depwade Rural District Council Schedule of Roads and the Highways Parish Files for Roydon. These documents and maps confirmed that Swamp Lane is a highway maintainable at the public expense from Baynards Green to Snow Street and includes the area which is of concern to the complainant.

Reasons for decision

Duty to make environmental information available on request

23. Regulation 5(1) of the EIR states that –

“...a public authority that holds environmental information shall make it available on request.”

24. The Commissioner has sought to determine whether, on the balance of probabilities, the Council holds further information which falls within the scope of the complainant's request. The Commissioner makes this determination by applying the civil test of the balance of probabilities which is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

25. The Commissioner has investigated the complainant's complaint by asking the Council a number of questions about the searches it has made to locate the information which the complainant seeks and questions about its possible deletion/destruction.

The Council's representations

26. The Council has confirmed that any hard copy information it may hold in respect of the scope of the complainant's request would be held in the Commons folder. This is a manual file which holds information regarding the Common. If information was sent by email then the information would have been stored in the Commons section of Visual Files which is the Council's electronic Case Management System. Any information sent electronically would have been printed and filed in the Commons folder as well as stored in Visual Files.

27. The Council likewise confirmed that it searched the Commons folder and also Visual Files found no record regarding the work referred to in the complainant's request.

28. It is the Council's assertion that these searches would be likely to retrieve information because they are the most likely locations where relevant information is held regarding the Common.

29. In addition to the search listed above, the Council also carried out a search for highways maintenance data on the electronic database Scheme Management Information System (SMIS).

30. Any information relating to the Common is stored in Visual Files and not locally on personal laptops or email systems. The Council's procedures

require officers to save all information on the main servers and not on their hard drives.

31. Where searches were made of computer-based systems, the Council used terms associated with Brewers Green – the name of the Common, and also CL190 – the Register Unit Number. The search in SMIS was for all schemes in Roydon parish.
32. The information regarding the Common could have been held manually or in an electronic format depending on whether it was sent electronically or manually. Information held in respect of highway maintenance would have been held electronically.
33. The Council has advised the Commissioner that it has no knowledge of information falling within the scope of the complainant's request ever having been deleted or destroyed. The Council also advised the Commissioner that information relating to the Common would have been retained permanently, and information relating to the highway maintenance would have been retained for 7 years.
34. The Council has assured the Commissioner that it is unable to ascertain whether information falling within the scope of the complainant's request was ever held: There are no records of any relevant documents being destroyed.
35. The Council has a retention and disposal schedule which it has supplied to the Commissioner. Information regarding commons registration is not included in this schedule; however the Council has assured the Commissioner that it will be in the near future. The Council's management of its records is currently done in accordance with the list of council functions setting out the retention and destruction periods for various classes of documents. This working document provides that Commons Registration information should be kept permanently and there is a note which specifies that the files are kept in room 108 in fireproof cabinets.
36. Information concerning highways maintenance would not be kept after the passing of seven years. The Council has no business purpose for retaining these records beyond this period.
37. There is a statutory requirement for the Council to maintain the Registers of Common Land and Village Greens. However, there are no statutory requirements to retain the records regarding the highway maintenance.

The Commissioner's decision

38. In view of the Council's representations and assurances, the Commissioner has decided that, on the balance of probabilities, the Council does not hold any further recorded information other than that which it has used to answer the complainant's requests.
39. The Council's representations are credible: In the absence of any evidence to the contrary, the Commissioner has decided that the Council has complied with Regulation 5(1) of the EIR.

Right of appeal

40. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

41. 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.
42. 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 Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF