

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

### **Decision notice**

**Date:** 31 July 2017

**Public Authority:** Darlington Borough Council  
**Address:** Town Hall  
Darlington  
County Durham  
DL1 5QT

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

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1. The complainant has requested information from Darlington Borough Council ("the Council") about the status of conditions attached to a planning application. The Council refused the request under regulation 6(1)(b) of the Environmental Information Regulations ("the EIR"). The complainant contested the Council's application of regulation 6(1)(b), and whether any further recorded information was held by the Council.
2. The Commissioner's decision is that the Council has correctly applied regulation 6(1)(b), and that no further recorded information was held. However, the Council breached the requirement of regulation 5(2).
3. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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4. On 3 October 2016, the complainant wrote to the Council and requested information in the following terms:

*I make a FOI request for all documentation and information on the following:*

- 1. The current status of the conditions attached to the planning application 15/00251/FUL.*
  - 2. The modifications, alterations, changes to the conditions that have been agreed or in discussions and all related correspondence.*
  - 3. Clarification of the conditions and their progress as communicated with the applicant and other organisations.*
5. The Council responded on 1 November 2016. It stated that the recorded information it held was publicly available through the Council's webpages, and applied regulation 6(1)(b).
  6. Following an internal review the Council wrote to the complainant on 3 January 2017. It stated that it maintained its original position, but disclosed further information that had come to be held after the time for compliance.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 30 December 2016 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to the determination of whether the Council has complied with regulation 6(1)(b), regulation 5(1), and regulation 5(2).

## **Reasons for decision**

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### **Regulation 6(1)(b) – Information that is publicly available**

9. Regulation 6(1)(b) states that a public authority does not need to make information available in response to a request, if that information is already publicly available and easily accessible to the requestor in another form or format.
10. The complainant has informed the Commissioner that he does not consider that regulation 6(1)(b) was correctly applied. The reason for this is that he does not consider that the Council held any relevant recorded information until a substantially later date.
11. The Council has informed the Commissioner that it considers recorded information was held that fell within the parameters of the request. This

information was the conditions attached to the specific planning application that the request related to. However, this information was publicly available through the Council's webpages, and the Council therefore applied regulation 6(1)(b) to this information and directed the complainant how to access it.

*The Commissioner's conclusion*

12. In the circumstances of this case the Council has informed the Commissioner that it considers relevant recorded information was held during the time for compliance that would fall within the parameters of the request. This information was the conditions attached to a planning application.
13. Although the Commissioner notes that this information did not correspond to the complainant's expectations (i.e. that no recent correspondence had been made to modify or clarify the conditions), the terms of the EIR only require a public authority to consider the recorded information that is held during the time for compliance and which would fall within the parameters of the request.
14. Having considered the above information, the evidence available to the Commissioner indicates that relevant recorded information was held during the time for compliance that was both publicly available and easily accessible to the requestor. On this basis the Commissioner therefore finds that regulation 6(1)(b) was correctly applied to this information.

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

15. Regulation 5(1) states that any person making a request for information is entitled to have that information made available to them. This is subject to any exceptions that may apply.
16. The Council has confirmed to the Commissioner that during the time for compliance it held recorded information that fell within the parameters of the request. This information was withheld under regulation 6(1)(b).
17. The Council has explained that the business purpose for which this information is held is the granting of planning permission subject to conditions. The Council has also confirmed that there is a statutory requirement to retain this information under the terms of the Town and Country Planning (Development Management Procedure) (England) Order 2015/595.
18. To ensure that no further relevant information was held during the time for compliance, the Council has consulted with Planning Development

Manager, Case Officer, and Planning Enforcement Officer who have been involved in the planning application. The Council has also confirmed that no information is known to have been previously held but destroyed, due to the statutory obligation to retain it as part of the planning application process.

19. The Council has further confirmed that, by the date of the internal review, further relevant information about the status of the conditions had come to be held. To assist the complainant this was voluntarily disclosed as part of the internal review outcome.

*The Commissioner's conclusion*

20. In the circumstances of this case, the Commissioner has already found that regulation 6(1)(b) was correctly applied to that recorded information which was held.
21. The Commissioner must therefore decide on the balance of probabilities whether further recorded information was held by the Council (within the time for compliance) that was not already publicly available.
22. The Council has provided a clear explanation of the checks it had undertaken to ensure that no further information about the conditions was held, and the Commissioner has noted that there is a statutory obligation upon the Council to retain such information, which must be made publicly available.
23. The Commissioner also notes that relevant recorded information came to be held after the time for compliance, and having considered the complainant's comments, this information appears to be that which he originally expected to be held upon making the request. Notwithstanding this, the Commissioner's determination in this case must be limited to the circumstances present within the time for compliance.
24. Having considered the above factors, there is no evidence available to the Commissioner that indicates that the Council held further recorded information besides that withheld under regulation 6(1)(b).

**Regulation 5(2) – Time for compliance**

25. Regulation 5(2) states that an information request should be responded to no later than twenty working days after the date of receipt. In this case the Council did not respond to the request within the time for compliance.
26. On this basis the Commissioner must find a breach of regulation 5(2).

## Right of appeal

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

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

28. 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.
29. 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**