

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

### **Decision notice**

**Date:** 7 November 2018

**Public Authority:** Ards & North Down Borough Council

**Address:** Aaron.Jamison@ardsandnorthdown.gov.uk

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

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1. The complainant has requested information from Ards & North Down Borough Council ("the Council") regarding planning applications. The Council provided the complainant with some information in relation to his request and stated that it does not hold any further recorded information within the scope of the complainant's request.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold any additional information relevant to the complainant's request.
3. Therefore the Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 17 November 2017, the complainant wrote to the Council and requested information in the following terms:

Concrete Works, Kirkistown, Clough

You kindly sent me the attached email with the decision notices for the various planning applications at the Concrete Works.

Could I please also have the application forms and the certificates of ownership for the following:-

- A - Housing Development X/440/1974
- B - Housing Development X/1977/0079
- C - Sign X/1977/0141
- D - Warehousing complex X/1980/020

5. The Council responded to the complainant on 30 November 2017, stating that it had previously informed him that it does not have an application/land ownership register for planning applications pre-dating 1991, therefore it does not hold the requested information.

6. The complainant responded to the Council on the same date, stating that it should hold a register of applications.

### **Scope of the case**

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- 7. The complainant contacted the Commissioner on 6 December 2017 to complain about the way his request for information had been handled.
- 8. The Commissioner wrote to the Council seeking its detailed submissions on 26 July 2018. The Council responded to the Commissioner on 16 August 2018, providing its submissions as to it not holding any recorded information within the scope of the complainant's request.
- 9. The Commissioner has considered whether the Council has complied with regulation 5 (1) of the EIR.

### **Reasons for decision**

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#### **Regulation 5 – duty to provide environmental information**

- 10. Under regulation 5(1) of the EIR public authorities have a general duty to make environmental information available when it is requested. When the information is not held, public authorities should issue a refusal notice, in accordance with regulation 14 that cites the exception under regulation 12(4)(a) of the EIR. This exception applies when information is not held.

11. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held; she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
12. The Commissioner wrote to the Council for its explanation of the efforts made by it to locate information falling within the scope of the complainant's requests. The Commissioner's questions were focused on the Council's searches conducted in relation to the complainant's request, and whether any of the information falling within the scope of the requests was held at one time but either deleted or destroyed.
13. The Council informed the Commissioner that it holds a record of applications from 1991 to present. It does not however have in its physical possession a Register of Applications for pre -1991 applications. This has not transferred from the Department for Infrastructure (DfI).
14. The Council has undertaken a manual check of the physical files which transferred from DfI in April 2015 when the planning function transferred from DoE to Councils as part of Local Government Reform. The Council has asked DfI to check its files and records for the Register and also contacted other Councils to see whether the register could have been sent to them by mistake. In addition the Council has also contacted PRONI and Newry, Mourne and Down to determine if this documentation was transferred to it as part of the local government reform programme. The Council is required to keep such planning applications under Section 242 of the Planning Act (Northern Ireland) 2011.

15. The Council has informed the Commissioner that it has been in touch with the DfI following the complainant's information request. The DfI confirmed that the requested information has been marked for permanent preservation in its Retention & Disposal Schedule but is unable to provide information to the Council on the whereabouts of that information. The Council has asked the DfI to formally confirm that it has lost the files, however it has not yet received formal confirmation. As stated to the complainant, the Council does not, nor has ever, held the requested information and cannot provide it to him. The Council cannot review this position because it is a definitive one. In the event, however, that the DfI is ever able to locate and transfer these files to the Council, then the Council will review these for release to the complainant. The Council will continue to follow up this matter with the Department for Infrastructure.
15. Whilst the Commissioner recognises that the complainant does not consider that the Council has fulfilled the request, the Council has provided a clear explanation of the searches that underlay its response. No evidence is available to the Commissioner which would indicate that the Council's searches were insufficient, or that it holds recorded information falling within the scope of the requests.
16. In light of the above, the Commissioner is, on the balance of probabilities, satisfied that the Council identified all information it holds that falls within the scope of the complainant's request. The Commissioner's decision is, therefore, that the Council has complied with regulation 5(1) of the EIR.

## **Right of appeal**

17. 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)

18. 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.
19. 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 .....**

**Deirdre Collins**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**