

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

Date: 9 June 2020

Public Authority: Lincolnshire County Council
Address: County Offices
Newland
Lincoln
LN1 1YL

Decision (including any steps ordered)

1. The complainant has requested information which was recorded by a contractor during a site visit in June 2017. The information the complainant requires is a record of works which the Council asked Beal Homes to make right before a road could be adopted. The Council has refused to comply with the complainant's request in reliance on Regulation 12(4)(a) of the EIR and thereby the Council considers that it has satisfied the duty to provide environmental information on request under Regulation 5(1).
2. The Commissioner's decision is that Lincolnshire County Council does not hold the information which the complainant has asked for and therefore the Council has satisfied the requirements of Regulations 12(4)(a) and 5(1) of the EIR.
3. No further action is required in this matter.

Request and response

4. The complainant has submitted two requests for information to Lincolnshire County Council.
5. The Council dealt with the complainant's first request under reference 49005454FOI. The request was made on 7 November 2018 and the

terms of that request are:

"I should like to know the status of the road adoption please?

I would like to know the various things that LCC have been telling the builder are wrong, and when these were pointed out please? I note that the verge works seem to stop before the last house on the street and there have been previous rumours that the very end of the road of the street that I live on, including that in front of the last property on the stretch, are not proposed for adoption.

Are you able to also confirm if this is correct, and if not, why the whole of the verge has not been amended in the same way recently and why the changes stop a couple of feet from the end of the road?

I should like to find out what LCC have been determining is wrong with the area/proposed highway over the past 2 years (what you have asked Beal to make right, what , when and where?) and how these defects have affected the road adoption process/speed at which it has occurred?

I should also like to know how close to road adoption we actually are at today's date and when and if residents may expect this to be fully complete?

I should also like to know what effect the state of my drive is currently having on the process and whether this (and/or the ongoing boundary dispute - to include the lamp post) will have an impact on road adoption being approved by LCC.

In view of the legal and boundary disputes, any relevant plans and maps would also be appreciated please."

6. The Council sent its response to the complainant on 7 December 2018. The Council provided the complainant with some information but redacted third party personal data in reliance on section 40(2) of the FOIA.
7. The complainant wrote to the Council on 9 December 2018 to request an internal review.
8. On 4 January 2019, the Council provided the complainant with the results of its internal review. It provided her with drawings 'printed to size' and confirmation that, with respect to the original inspection of 27 June 2017, the developer had not provided the Council with a remedial list, and therefore it is not held by the Council. The review also provided the complainant with answers to those questions which were not requests for recorded information.

9. The Council dealt with the complainant's second request under reference 501777458EIR. The request was made on 4 February 2019 under the provisions of the EIR. The terms of the complainant's second request are:

"I would like a copy of the remedial actions list arising from LCC Highways (Road Adoption) Inspection Meeting between Beal Homes and LCC in June 2017. This relates to the whole of the new estate on which the Hawks Road sits, in Whelton Lincoln. [...] The remedial works list would be a list of what LCC identified to be wrong at the time of inspection, and what would need correcting in order for Road Adoption processes to proceed.

I was told in the last FOI that the builder a list (as he did at the Oct 18 meeting) so that I couldn't have one! However, it would be LCC asking Beal Homes to do works (not the other way round) so I think LCC must have provided the builder with a list of remedial works that needed doing, in order for road adoption to proceed. This is what I would like to see please.

If there are any available maps or drawings to illustrate what was wrong and what needed doing, and also with regard to the general Road Adoption Process on this estate, these would be helpful please.

I would also like to know the current status of Road Adoption and if any works are still outstanding to be completed to enable this. Also when it is envisaged LCC will fully take over responsibilities on this estate."

10. The complainant pointed out that, under a previous disclosure made by the Council, she was still missing the remedial list from the initial inspection from June 2017.
11. The Council responded to the complainant's second request on 22 February 2019. The Council informed the complainant that no list was generated by Lincolnshire County Council and therefore Lincolnshire County Council does not hold this information.
12. The Council also advised the complainant that it had "previously made available [...] the S38 Adoption drawing that clearly indicates the green shaded area in front of the private driveway and before the [carriageway], needs to be constructed to an adoptable standard. The Road adoption process is outlined in the LCC Development Road Specification at www.lincolnshire.gov.uk/DRS"
13. The Council also advised the complainant that her questions under her first and second requests are substantially similar and have been answered and information has been provided.

14. On 22 February 2019, the complainant wrote to the Council. She stated: "I have received your response..." [...] I fail to see how LCC cannot hold this information as they are things they have required of the builder before road adoption can occur, They clearly do know this information and hold it somewhere formally on record otherwise they would equally never know when road adoption could and can occur."

15. On 15 July 2019, the complainant asked the Council to review its handling of her second request. The complainant stated:

"I do not believe that LCC have 'no record of what was wrong, and what they asked Beal to do in June 2017, to 'make right' and thereby enable road adoption'."

The information I require would pertain, not only to my property, but to any necessary works on the estate which required LCC at that time, to enable road adoption. What works are still outstanding and when this is likely to occur?"

Scope of the case

16. The complainant contacted the Commissioner on 14 July 2019 to complain about the way her requests for information had been handled.

17. The Commissioner informed the complainant that the focus of her investigation would be to determine whether Lincolnshire County Council has handled her requests in accordance with the EIR, and specifically, whether the Council holds the information described in the complainant's email of 15 July 2019.

Reasons for decision

18. The Council accepts that it was wrong to respond to the complainant first information request under the Freedom of Information Act. It considers that the information which the complainant seeks, if it was held, satisfies the definition of environmental information provided by Regulation 2 of the EIR.

19. The Commissioner agrees with the Council that the complainant's requests should properly be dealt with under the EIR and therefore the question for the Commissioner to determine is whether the Council has complied with its duty under Regulation 5(1) of the EIR.

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

20. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
21. The Commissioner has sought to determine whether the Council holds information which the complainant asked for in her email of 15 July 2019. To make this determination the Commissioner must consider the facts of the case, as she understands them, against the balance of probabilities. This is the civil test and it accords with the approach taken by the First Tier Tribunal (Information Rights) when it has considered whether information is held in past cases.
22. The Commissioner has investigated this complaint by asking the Council questions about the searches it has made to locate the information which the complainant has asked for. The Commissioner's investigation also included questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

The Council's representations

23. The Council has assured the Commissioner that it has not withheld any information from the complainant within scope of her request. The Council has advised the Commissioner that, in addition to its responses to the complainant under her requests 49005454FOI and 501777458EIR, it has reconsidered the complainant's requests and provided her with a full response dated 10 January 2020.
24. The Council asserts that it does not hold the information which the complainant has asked for and therefore it is entitled to refuse her request in reliance on Regulation 12(4)(a) of the EIR. The Council says it is satisfied that it does not hold information which relates to defect or remedial action lists arising from an inspection which took place in June 2017.
25. The Council has advised the Commissioner that information requests are dealt with by its in-house Customer Information Services (CIS). The CIS has the responsibility to ensure all requests are sent to the relevant service areas within the Council. The service areas are then responsible for ensuring that full searches are carried out and that all relevant officers are consulted.
26. At the time the complainant's original requests were dealt with, this work was being outsourced. The Council assure the Commissioner that the process followed at the time the complainant's requests were dealt with was substantially the same as its current process.

27. In this case, the Council's Development Management Officer, who is the officer responsible for dealing with the relevant development, confirmed to the CIS that the information requested by the complainant is not held and never has been held by the Council.
28. The officer confirmed that he had visited the site with the contractor working on behalf of Beal Homes for the 1st pre-maintenance inspection on 28 June 2017.
29. The officer met with the Contracts Manager, who was employed by the contractor working on behalf of Beal Homes, and he pointed out the remedial actions that were required by the Council.
30. The Council accepts that handwritten notes were made by the Contracts Manager but assures the Commissioner that these notes were not subsequently received the Council's Development Management Officer.
31. The Council explained that it is the contractor who is expected to take notes and then to produce a report/schedule of works which need to be completed. The report/schedule would usually then be sent to the Council for approval.
32. In this case the Council did not receive a report/schedule because the contractor with whom the Contract Manager met ceased working for Beal Homes.
33. The Council assures the Commissioner that the requested information, if it was held, would be held electronically of as an attachment to an email. The Council's Development Management Officer, as the officer responsible for the relevant development, was able to confirm that the information requested by the complainant was not held on his laptop or contained within an email.
34. On the basis that the Council has never held the requested information, the Council is able to give the Commissioner its assurance that no recorded information relevant to the complainant's request has been deleted or destroyed.
35. An inspection of the site took place on 4 October 2018. This followed the appointment of a new contractor by Beal Homes. The Council has informed the Commissioner that it has provided the complainant with a copy of the defect/remedial action list from this second inspection. This was sent to the complainant as an appendix to the Council's letter of 10 January 2020.
36. The Commissioner has considered the representations made to her by the Council in respect of this complaint. The Commissioner finds those representations to be credible and in the absence of any evidence to the

contrary, on the balance of probability, the Commissioner accepts that the Council does not hold the information which the complainant has asked for.

37. The Commissioner's decision is that the Council has complied by Regulation 5(1) of the EIR by informing the complainant that it does not hold the information specified in her email of 15 July 2019.

Right of appeal

38. 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@justice.gov.uk

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

39. 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.
40. 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
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Wycliffe House
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