

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 July 2020

Public Authority: Milton Keynes Council
Address: Civic Offices
1 Saxon Gate East
Central Milton Keynes
MK9 3EJ

Decision (including any steps ordered)

1. The complainant requested information relating to a planning application, held by Building Control, from Milton Keynes Council ("the Council"). The Council initially responded under the Freedom of Information Act 2000 ("the FOIA") and provided some information, but withheld other information under various exemptions. After reconsidering the request under the EIR, the Council's position was that the information it had withheld was exempt from disclosure under regulation 13 – personal information. It also stated that some information about concerns raised by Building Control was not held.
2. The Commissioner's decision is that because the Council initially failed to consider the request under the correct access regime, it breached the requirements of regulation 5(2) of the EIR.
3. Regarding the information requested about concerns raised by Building Control, she has determined that on the balance of probabilities, it is not held.
4. Regarding the withheld information, the Commissioner is satisfied that it comprises third party personal data. However, she has determined that some of this data may lawfully be disclosed, for the reasons set out in

this notice. She has determined that the remainder of the third party personal data was correctly withheld under regulation 13.

5. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Disclose the information described in paragraph 71 of this notice.
6. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

7. On 8 August 2019, the complainant wrote to the Council to request information in the following terms:

"I am writing to you under the Freedom of Information Act 2000 to request information from the Building Control Department at Milton Keynes Council about the application for the 'Demolition of bungalow and construction of 2-storey detached dwelling with attic space' (17/15969/DOM) at 42 Portland Drive, Willen, Milton Keynes MK15 9JP:

I would be grateful if you could provide the following information in electronic format:

- 1) Copies of all plans submitted by the applicant/agents*
 - 2) Dates of any site visits*
 - 3) Copies of any notes or photographs taken from site visits*
 - 4) Details of the complaints or reports made to Planning Enforcement, including any emails or other electronic records*
 - 5) Copies of communication between Building Control Officers and the applicant/agents in relation to this property*
 - 6) Copies of communication and notes between Building Control Officers in relation to this property".*
8. On 4 September 2019, the Council responded and stated that it required more time to consider the public interest test. The complainant questioned this and on 5 September 2019 the Council confirmed that it was considering applying a qualified exemption.

9. On 10 September 2019, prior to issuing a full response, the Council issued a refusal notice. It stated that the following sections of the FOIA were being applied:
 - Section 40(2) – personal data,
 - Section 41(1) – information provided in confidence, and
 - Section 43(2) - commercial interests.
10. It stated that it was still considering the public interest test as regards section 43(2), and would disclose redacted information if it was possible to do so.
11. On 3 October 2019, the Council issued its full response. It provided a bundle of information. It explained that some information had been redacted or withheld, and stated that it was relying on sections 40(2), 41(1) and 43(2); it had also redacted two pages which contained information that fell outside the scope of the request.
12. Specifically, the Council stated it had redacted personal identifiers of third parties (email addresses and names) under section 40(2). It explained it had withheld building regulation compliance assessments provided by third parties, architect drawings, structural calculations and designs by third parties, and electrical installation certificates, under section 41(1) and/or section 43(2). It considered that interior photographs were exempt under section 40(2).
13. The complainant requested an internal review on 3 October 2019. He did not query the redaction of names and contact details. However, regarding the remainder of his request, he questioned whether the exemptions had been correctly applied to the withheld information, and commented on the public interest in the development. He also commented that he could not see any response to point 4 of his request: he stated that he was aware that: *"a complaint was filed on an electronic system by Building Control to Planning Enforcement some time in early/mid 2018... I am looking for what was reported and when this happened"*.
14. Following an internal review, the Council wrote to the complainant on 7 November 2019. It stated that no further information was held with regard to point 4, and upheld its position regarding the exemptions which had been applied.

Scope of the case

15. The complainant contacted the Commissioner on 10 September 2019 to complain about the way his request for information had been handled. Following the internal review outcome on 7 November 2019, he confirmed that he wished the Commissioner to investigate whether some information had been correctly withheld. He questioned whether the Council held the complaints data he had requested at point 4 of his request. He also questioned the time taken by the Council in dealing with his request.
16. During the course of the investigation, at the suggestion of the Commissioner, the Council issued a fresh response to the complainant, on 18 March 2020, which reconsidered the request under the EIR.
17. Regarding the withheld information, the Council stated in its fresh response that it was exempt under regulation 13 of the EIR – personal information. It did not apply further exceptions.
18. It also stated that the information requested in point 4 (details of complaints or reports made to Planning Enforcement) had been "*provided in the original disclosure*". Subsequently, during the course of the investigation, the Council clarified that the Council's position regarding this information was that it was not held in recorded form, and the Council apologised for the confusion caused by its statement in its fresh response.
19. This notice covers whether the withheld information is exempt from disclosure under regulation 13, and whether the Council holds any information relating to point 4 of the request. It also covers the Council's compliance with procedural matters.

Reasons for decision

Regulation 2(1) – is the requested information environmental?

20. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its

components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements..."

21. It is important to ensure that requests for information are handled under the correct access regime. This is particularly important when refusing to provide information, since the reasons why information can be withheld under FOIA (the exemptions) are different from the reasons why information can be withheld under the EIR (the exceptions). In addition, there are some procedural differences affecting how requests should be handled.
22. The Commissioner's well-established view is that public authorities should adopt a broad interpretation of environmental information, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact.
23. The Commissioner notes that the requested information comprises information about the development of a specific property. It is her well-established approach that planning and development matters affect the element and factors of the environment. In view of the fact that the requested information is information "on" planning measures relating to a specific development, she is satisfied that the information being requested would fall within the definition at regulation 2(1)(c).
24. The Commissioner is satisfied that the request fell to be considered under the EIR. She has first considered the withheld information in this case.

Regulation 13 – personal data

25. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the

requester, and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.

26. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ("the DP principles"), as set out in Article 5 of the General Data Protection Regulation ("GDPR").
27. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ("DPA"). If it is not personal data, then regulation 13 of the EIR cannot apply.
28. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

29. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

30. The two main elements of personal data are that the information must relate to a living person, and that the person must be identifiable.
31. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
32. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
33. In this case, the information relates to a specific property which has been identified in the request. The withheld information comprises:
 - four photographs of the interior of the property;

¹ As amended by Schedule 19 Paragraph 307(3) DPA.

- approximately 20 architects' plans/drawings (interior and exterior);
 - structural engineers' plans showing interior layout, with 353 pages of detailed structural calculations and plans;
 - plans/drawings done by specialist manufacturers relating to a staircase;
 - a bill for interior doors;
 - a SAP (Standard Assessment Procedure) energy rating; and
 - an electrical installation certificate.
34. The Commissioner considered whether the above information falls within the definition of personal data at section 3(2) of the DPA. It is her well-established approach that information of the type listed above, when it relates to a specific identifiable property, indirectly identifies those individuals who live in and/or own the relevant property.
35. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the owner of the property and his family. She is satisfied that this information both relates to and indirectly identifies them. This information is therefore the "personal data" of the owner and his family.
36. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles, which are listed in Article 5(1) of the GDPR. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

37. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

38. In the case of an EIR request, the personal data is "processed" when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

Lawful processing – Article 6(1) of the GDPR

39. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

40. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the lawful bases for processing listed in the Article applies"*.
41. The Commissioner considers that the lawful basis most applicable in determining whether to disclose personal data in response to a request under the FOIA or EIR is basis 6(1)(f), which states:
- "[the] processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"*².
42. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is therefore necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information, and if so;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question, and if so;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subjects.
43. The Commissioner considers that the test of "necessity" under stage ii) must be met before the balancing test under stage iii) is applied.

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

Legitimate interests

44. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
45. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
46. In this case, the Commissioner is aware that there is much information about the relevant property in the public domain, both published by the Council on its planning portal and also in both local and national media.
47. The information in this case relates to a house which was built on the site of a former bungalow. The owner had planning permission to demolish the bungalow and build a house, but it is a matter of public knowledge that the house which was constructed on the site exceeded in scope the permitted redevelopment.
48. The owner applied for retrospective permission, which was refused by the Council. By the date of the request (August 2019), the Council was in the process of taking enforcement action against the property owner, and local councillors were on record as expressing frustration that the Council's actions in respect of the apparent breaches were not more effective.
49. Specifically, an enforcement notice was served on the owner of the property in April 2019, requiring changes to the roof and ground floor extension. The owner appealed against both the refusal of retrospective permission and against the enforcement notice.
50. The Commissioner is also aware that subsequently, and after its handling of the date of the request under consideration in this notice, the Council served a further, more detailed enforcement notice. At the date of writing this notice, as has been widely reported, the property owner is awaiting the outcome of appeals against both the enforcement notice, and the refusal of retrospective permission.
51. In this case, the Commissioner is satisfied that there are a range of legitimate interests in the disclosure of the information. She considers that both local and wider communities have a general interest in any council's approach to an appeal process such as this, including what information about the property is being considered.

52. She also considers that there is local, and wider, legitimate interest in disclosure in this case due to the specific property itself, and the effect that its construction has had on the area, and its having attracted wider attention.

Is disclosure necessary?

53. "Necessary" means more than desirable, but less than indispensable or of absolute necessity. Accordingly, the test is one of reasonable necessity, and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
54. In this case, the Commissioner is not aware of any evidence that the information identified by the Council as falling within the scope of the request, was accessible at the date of the request. She is, therefore, satisfied that disclosure under the EIR would be the least intrusive means of meeting the legitimate interests identified above.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

55. It is necessary to balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subjects would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
56. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
57. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information

relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

58. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
59. In summary it is the Commissioner's role to determine whether there is sufficient legitimate interest in disclosure, to outweigh the data subjects' rights and freedoms.
60. In this case, she has first considered the impact of disclosure on the data subjects; that is, the owner and his family.
61. She notes that he has been identified in the national press as the owner of the property, and that he has publicly stated that he and his family are distressed by the level of attention focused on the property. He has also stated that he has been the target of abuse.
62. The Council approached him in this case, to ask about disclosing the information requested by the complainant. He stated that this would be intrusive, and cause him distress.
63. The Commissioner has considered the bundle of withheld information provided to her by the Council, in detail. The bundle consists of 42 documents, numbered by the Council from 1-42³.
64. In the Commissioner's view, much information relating to an individual's residence is highly personal to that individual, and particularly information relating to the interior and use of the property. She considers that data subjects – even while going through the process of a planning appeal – would not expect details of the inside of their home to be made public.
65. In this case, she considers that the disclosure of the four interior photographs would be highly intrusive to the data subjects. The Commissioner also considers that the bill for the interior doors is highly personal to the data subjects (and arguably falls outside the scope of the request in any event).
66. She also considers that the disclosure of plans, drawing and other information which provide details about the way in which the interior of

³ Documents 21 and 33 are both duplicates of document 14, 22 is a duplicate of 5, and 35 is a duplicate of 1. In addition, document 42 comprises a bundle of the plans submitted by the architects, and therefore duplicates approximately 20 of the previously-numbered individual documents.

the property is to be used would be intrusive to the owner and his family. Despite being partly structural in nature, some plans provide information such as the size and purpose of individual rooms. The Commissioner considers that the disclosure of this type of information would be intrusive, and likely to cause distress.

67. However, the Commissioner considers that the disclosure of plans which relate only to the exterior of the building would be significantly less intrusive. While this is still personal to the owner and his family, she considers that this, and some other information which is entirely technical, while still personal to the owner and his family, is inherently less intimate in nature.
68. Taking all relevant factors into consideration, the Commissioner has determined that some of the information withheld by the Council may lawfully be disclosed, on the basis that the considerable legitimate interests in disclosure that she has identified in this case, outweigh the rights and freedoms of the data subjects. She has identified this information further on in this notice.
69. However, she has also determined that other information should not be disclosed. Even in the unusual circumstances of this high-profile case, she is satisfied that the rights and freedoms of the data subjects, regarding the interior detail and design of their property, outweigh the legitimate interests in disclosure, and there is, therefore, no lawful basis for processing this information.

Information that may lawfully be disclosed

70. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest in the disclosure of the following information, since it does not provide intimate information about the use of the property as a home, to outweigh the data subjects' fundamental rights and freedoms. That is, there is an Article 6 basis for processing this information, and the disclosure is lawful.
71. Specifically, she has determined there is a lawful basis for processing (disclosing in response to the request) the following information, as numbered by the Council: documents 2, 4, 7, 8, 9, 10, 11, 14, 26, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, and 41.
72. In the case item 32 (the SAP calculation) and item 41 (the electrical installation certificate) the name and contact details of the individual surveyors should be redacted prior to disclosure.
73. Even though it has been demonstrated that disclosure of the above information under the EIR would be lawful, it is still necessary to show that disclosure would be fair and transparent under principle (a).

Fairness and transparency

74. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
75. The requirement for transparency is met because, as a public authority, the Council is subject to the EIR.

Decision

76. In summary, the Council has failed to demonstrate that the exception at Regulation 13(1) was engaged in respect of the information described in paragraph 71. She orders the Council to disclose this information.

Information that was correctly withheld under regulation 13(1)

77. The Commissioner has determined that regulation 13(1) of the EIR is engaged in respect of the remainder of the withheld information. She is satisfied that it should not be disclosed, on the basis that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. There is, therefore, no Article 6 basis for processing that information, and so the disclosure of the information would not be lawful.
78. Given the above conclusion that disclosure would be unlawful, the Commissioner does not need to go on to separately consider whether disclosure would be fair or transparent.
79. The Commissioner has therefore decided that the Council was entitled to withhold the remainder of the information under regulation 13(1), by way of regulation 13(2A)(a).

Regulation 12(4)(a) – information not held by a public authority

80. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
81. In this case, the complainant considered that the Council would hold information relating to "*complaints or reports made to Planning Enforcement, including any emails or other electronic records*" (point 4 of his request).
82. Some confusion was caused by the Council initially stating that this information was not held, and then, in its fresh response to the complainant under the EIR, appearing to suggest that he had been provided with it previously. Having clarified that the Council's position is

that it does not hold this information in recorded form (it stated that it intended to indicate only that he had been previously provided with a response), the complainant asked the Commissioner to make a determination.

83. In bringing his complaint, the complainant explained that it was his understanding that Building Control, following one or more site visits, expressed concerns to the Planning Enforcement team, at an early stage of development, that the house being constructed did not comply with planning permission. It is his understanding that these concerns were reported to/noted by the Council's Planning Enforcement team in an electronic format, but were not acted on.
84. Specifically, the complainant attended a public meeting on 6 February 2019 and recalls that a senior enforcement officer, who had joined the Council mid-way through the construction of the property, referred to a breach having been reported by Building Control at an earlier stage. Notes from the meeting, provided to the complainant by a councillor on 10 February 2019, state that "*Planning Enforcement Building Control has visited the site as the building progressed and did report the breach from planning consent*".
85. The Commissioner notes that the complainant remembers this as specifically relating to a report of a breach having been made at an early stage, and in recorded form. This was evidently a surprising revelation; he sent an email to a councillor the day after the meeting, which illustrates his understanding of the officer's comments. The email explains that, whereas he had previously been informed by the Council that Planning Enforcement were unaware of Building Control's concerns until October 2018, he now understood, from the officer's comments, that they had been notified earlier on, and had failed to act.
86. In addition, the complainant recalls that, at a subsequent meeting on 20 February 2019 attended by a councillor and a Council director, the same officer stated that he had checked the Council's electronic records and there was a report from Building Control about a breach of planning control, which had not been acted on.
87. The complainant therefore expected to be provided with a copy of this electronic record.
88. In cases where there is a dispute over whether information is held, the Commissioner applies the civil test of the balance of probabilities in making her determination. This test 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.

89. The Commissioner will consider the complainant's evidence and arguments. She will also consider the actions taken by the public authority to check whether the information is held, and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is held.
90. The Commissioner therefore asked the Council to explain its position that the information was not held.
91. The Council's position is that any such report about site concerns by Building Control to Planning Enforcement would have been verbal. It stated to the Commissioner: *"it is standard practice for our Building Control and Planning Enforcement teams to share information on a verbal basis, because of their close physical and operational proximity. This reduces the need to request formal responses and this particular case was not exceptional in that regard."*
92. The Commissioner notes that this differs from the expectations of the complainant, who states that Building Control are meticulous when it comes to record-keeping, which he has himself been able to evidence by obtaining some notes made from site visits.
93. The Council also stated that: *"the Officer privy to these exchanges is no longer with the Council, however he previously advised that the initial contact regarding the site was on a verbal basis and this would not be uncommon."* This clearly differs from the complainant's recollection of the officer's comments, at the meeting of 20 February 2019.
94. The Commissioner asked the Council to comment on the complainant's understanding of the situation. The Council stated that, while it agreed that it had been conveyed at the meeting on 6 February 2019 (which was attended by planning officers) that *"the initial 'report' had been raised by Building Control"*, the mode of communication had not been specified. Had this been required at the meeting, the Council would have confirmed that it had been a verbal report.
95. The Commissioner asked the Council what searches it had carried out for the requested information. The Council stated it had confirmed its position electronically by searching the Uniform Data Base and email accounts. It used search terms relating to Building Control, the names of the Officers at the time and the site address. It did not locate the requested information.
96. As previously stated, the Commissioner will decide on the balance of probabilities whether the requested information is held. In this case, the complainant had a clear expectation that the concerns noted by the

Building Control team would have been passed on in recorded form to Planning Enforcement, and indeed this is his recollection of how the relevant officer described events (that the concerns had been noted electronically). However, she accepts that the Council has a different understanding of how the concerns were conveyed to Planning Enforcement, and considers that it has carried out appropriately-targeted searches which would have been likely to retrieve relevant information.

97. The Commissioner has no reason to doubt the complainant's recollections of the planning officer's explanations. However, in the absence of clear evidence that the information is held, the Commissioner is satisfied, on the balance of probabilities, that it is not, and does not require the Council to take any steps regarding this part of the request.

Regulation 5 - Duty to make available environmental information on request

98. Regulation 5(2) of the EIR states that environmental information "*shall be made available... as soon as possible and no later than 20 working days after the date of receipt of the request*".
99. In this case, the complainant is dissatisfied because the Council, in initially considering his request under the FOIA and, in particular, relying on section 10(3) of the FOIA to extend the time it could lawfully take in responding to the request, as set out in the *Request and response* section of this notice, did not provide him with a response which complied with the requirements of regulation 5(2).
100. The Commissioner has determined that, in failing to provide a response under the EIR within 20 working days, the Council breached regulation 5(2).
101. Since a response has now been provided, she does not require the Council to take any steps in respect of this.

Other matters

102. In this case, the Commissioner is aware that since the date of the request and response, as matters relating to the relevant planning case have continued to develop, the Council has published further information relating to the property at 42 Portland Drive on its planning portal, including architects' and structural engineers' plans.
103. If it is the case that any information that was correctly withheld in response to the request, as determined in this notice, has in fact

subsequently been published, she suggests that the Council should offer assistance to the complainant by drawing his attention to this.

104. The Commissioner is also concerned at the delays in this case that were caused by the Council initially handling the request under the FOIA. She suggests that it is now well established that requests for information relating to planning matters should generally be handled under the EIR, and expects the Council to be aware of this.

Right of appeal

105. 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

106. 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.

107. 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

**Ben Tomes
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Wilmslow
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SK9 5AF**