

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

### **Decision notice**

**Date:** 19 August 2021

**Public Authority:** Huntingdonshire District Council  
**Address:** Pathfinder House  
St Mary's Street  
Huntingdon  
PE29 3TN

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

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1. The complainant has requested information relating to wind turbine noise complainants. Huntingdonshire District Council confirmed that it did not hold the requested information.
2. The Commissioner's decision is that Huntingdonshire District Council correctly confirmed that it does not hold the requested information and that it complied with regulation 5(1) of the EIR.
3. The Commissioner does not require the public authority to take any steps.

## Request and response

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4. On 23 May 2020, the complainant wrote to Huntingdonshire District Council (the "council") and requested the following information:

*"For each complaint of an alleged noise disturbance:*

*1) The complaint received by the LPA*

*2) In line with section B of condition 24, the submission by the LPA to the operator of the date, time and location of the alleged noise disturbance.*

*3) In line with section B of condition 24, the submission by the operator to the LPA of the meteorological and operational conditions prevailing at the time of the alleged noise disturbance.*

*4) In line with section C of Condition 24, the submission by the operator of the proposed noise limits to apply to the location of the alleged noise disturbance.*

*5) In line with section C of Condition 24, the approval by the LPA of the proposed noise limits to apply to the location of the alleged noise disturbance.*

*6) In line with section D of Condition 24, the submission by the operator of the proposed location from where the alleged noise disturbance will be measured.*

*7) In line with section D of Condition 24, the approval by the LPA of the proposed location from where the alleged noise disturbance will be measured.*

*8) In line with section E of Condition 24, the submission by the operator of the proposed range of meteorological and operational conditions in which the alleged noise disturbance will be measured.*

*9) In line with section E of Condition 24, the approval by the LPA of the proposed range of meteorological and operational conditions in which the alleged noise disturbance will be measured.*

*10) In line with sections F and G of condition 24, the assessment submitted by the operator to the LPA, of the noise at the location and in the meteorologia (sic) and operational conditions relating to the alleged noise disturbance."*

5. On 24 May 2020 the complainant wrote to the council and clarified that the request specifically sought information regarding complaints "...of an alleged noise disturbance in relation to the Cotton Farm wind turbine site."
6. The council responded on 26 May 2020 and confirmed that it did not hold any of the requested information, suggesting that the complainant redirect their request to South Cambridgeshire District Council.
7. Following an internal review the council wrote to the complainant on 2 September 2020. This reiterated its earlier response, confirming that the information was not held and directing the complainant to South Cambridgeshire District Council.

### **Scope of the case**

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8. On 17 September 2020 the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner confirmed with the complainant that her investigation would consider whether the council had correctly confirmed that it did not hold the requested information.

### **Reasons for decision**

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#### **Regulation 5(1) – duty to make environmental information available**

10. Regulation 5(1) of the EIR states:  
  
*"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request."*
11. In this case the council has stated that it does not hold the information requested by the complainant. The complainant disputes this and has argued that the information should be held.
12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

13. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. The complainant considers that the council is responsible for logging and investigating noise complaints about the turbines at Cotton Farm and has provided evidence in support of this. The Commissioner asked the council to address the complainant's evidence and clarify its position.
15. The council explained that the request relates to a site at Cotton Farm, which is adjacent to Graveley village, which is close to the boundary between the council and South Cambridgeshire District Council (SCDC). It confirmed that, initially, a planning application to develop the wind farm was refused by the council on the 17 November 2009, and at the time this application was also opposed by SCDC, as the closest residents to the site live in the SCDC area. However, the council explained that, on appeal, permission for the development was given by the Planning Inspector, who established the planning conditions for the development.
16. The council confirmed that, at the time of granting permission, the Planning Inspector noted the difficulty in measuring noise levels associated with wind farms, as there is difficulty in separating the noise of the turbines from the associated background noise (in simple terms, a wind farm requires it to be windy) and there is no accepted standard for measuring wind turbine noise impact (this remains the case). The council explained that, when granting permission, the Planning Inspector set an expectation that the primary vehicle for making complaints about any adverse noise impact should be the statutory noise nuisance legislation and that it would be expected that SCDC would be the primary route for complaints, as the "host" authority for investigating statutory nuisance is the one where the affected residents live.
17. The council explained that, in addition to the statutory nuisance issue, there remains the issue of planning compliance. It confirmed that this element is "hosted" by the council, since the site itself is within council boundaries. Planning breaches, therefore, would be investigated by the council.
18. The council has clarified that there is a fundamental difference between the two sets of legislation in that the investigation of statutory nuisance is a duty, while the investigation of planning issues is discretionary. Also, unlike statutory nuisance where an authority has to prove a nuisance in its investigations, when considering planning issues the onus is on the developer/operator to investigate and prove that they are compliant, not on the council to investigate and prove that they are not.

The council explained that this latter point is critical to the question of this request.

19. The council has confirmed that, since the wind farm obtained permission and started to operate, a small number of residents in the Gravely area have persistently complained about the noise levels associated with the wind farm. It explained that these complaints have come to the council as planning authority, despite the available statutory nuisance route, and to SCDC for investigation as potential statutory nuisance. The council confirmed that SCDC have investigated these reports on many occasions and have never established a statutory nuisance. The council has noted that all residents have declined offers from SCDC to have electronic monitoring equipment installed in their properties to assist with this, so monitoring has been carried out by officers in outdoor locations.
20. The council explained that, given the history of complaints, it contacted the developer/operator (Greencoat Ltd) in 2017 and required Greencoat to produce an analysis of the noise generated by the wind farm in order to demonstrate compliance with their planning conditions. The council confirmed that potential breaches of planning conditions were investigated by specialist noise consultants appointed by the wind farm operator, using a methodology discussed in association with the council and the residents and with results independently scrutinised by an independent specialist appointed by the council. The council confirmed that these reports concluded that the site was compliant with its planning conditions and that there was no reason to revisit this ground as there is no evidence of a material change in circumstances since the time of the investigation.
21. The council has explained that it considers the complainant has misunderstood the process regarding complaints about noise. In essence, the council has argued, the complainant believes that the process runs this: Residents complain to the council about the noise, alleging a breach of planning conditions and the council then investigates and monitors noise and requires the wind farm operator to assess the noise.
22. The council has argued that the complainant's position is based on a flawed assumption because the investigation of planning breaches is a power, not a duty, so there is no immediate obligation for the council to investigate. Further, the council has stated, in the case of an alleged breach the onus is on the operator to prove compliance, not on the council to prove a breach.

23. The council has explained that, following the granting of planning permission by the Planning Inspector and the ongoing complaints from residents, it took a decision to require the operators to prove compliance and, after an extremely lengthy process, this was done to the council's satisfaction. The council explained that this investigation process involved data gathering by Hayes Mackenzie, not by the council. Having taken the position that the wind farm complied with its noise conditions, the council confirmed that no further investigation related to planning complaints has been carried out by the council as it is not aware of any material change of circumstances that would make this necessary and proportionate.
24. The council has explained that it has attempted to be transparent in dealing with the information requests from the complainant and other residents. It confirmed that a local residents' group was provided with the consultants' reports (see above) and all of the underpinning data-essentially everything that the council hold. The council has confirmed that it is willing to provide this information (outside the scope of the request), however, the complainant has not accepted this offer.
25. The Commissioner is mindful that the substantive matter here is of genuine concern to the complainant. However, having considered the available evidence it seems clear that the council is not obliged to investigate noise complaints along the lines which the complainant believes it should. It follows that corresponding information relating to this perceived process would not be held by the council.
26. Both the council and, latterly, the Commissioner have suggested to the complainant that they redirect their queries to the body with direct responsibility for these matters (SCDC). The complainant has maintained their position that they believe the council does hold the requested information.
27. The Commissioner has spent some time considering the complainant's evidence and has approached the council on multiple occasions and asked it to address the points raised. She ensured that the council was made aware of its obligations under the EIR, including its duty to consider whether it held any of the component parts of the information. The council has maintained that it does not hold any elements of the requested information.
28. Taking all these factors into account, the Commissioner is satisfied that, on the balance of probabilities, the council has correctly confirmed that it does not hold the requested information. She has, therefore, concluded that the council complied with regulation 5(1).

## Right of appeal

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29. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.

31. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**