

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

### **Decision notice**

**Date:** 28 July 2022

**Public Authority:** Ashfield District Council  
**Address:** Urban Road  
Kirkby-in -Ashfield  
Nottingham  
NG17 8DA

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

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1. The complainant requested planning information from Ashfield District Council ("Ashfield DC"). Ashfield DC denied that the requested information was held.
2. The Commissioner's decision is that the Ashfield DC does not hold the requested information.
3. The Commissioner does not require the Ashfield DC to take any steps.

## Request and response

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4. On 18 May 2021 the complainant made the following request for information to Ashfield DC under the EIR for:

"Please supply in accordance with the Environmental Information Regulations 2004 and with respect to the parameters detailed below the following information:

**a)** Ashfield District Council act in a 'shared' legal capacity on behalf of Mansfield District Council, this information request is in relation to Mansfield District Council (The LPA) Planning Applications including Subsequent Planning and Building Control Enforcement issues re said planning applications and constructed residential development. This includes, but is not limited to, 'Public Access Open Space' and the Northern Boarder (The banks of the River Meden) of The Royal Estate at Warsop, also known and historically referred to as 'Kings Park' and Kingswood Park'.

### **The specific development:**

2006/0079/NT | PROPOSED RESIDENTIAL DEVELOPMENT 263 DWELLINGS AND ASSOCIATED WORKS. The Royal Estate Off King Road Warsop Nottinghamshire.

**b)** Communications and comments from the general Public and Consultant Organisations are NOT available on the LPA's Planning Portal in the 'Documents' section as described under the 'Comments' section of 2006/0079/NT | PROPOSED RESIDENTIAL DEVELOPMENT 263 DWELLINGS AND ASSOCIATED WORKS.

These documents have been removed from Public View, as noted by the UK Environment Agency in a recent letter quote: '*Documents were not available on the LPA's Planning Portal*',

This EIR2004 request intends that all subsequent planning application revisions listed on the LPA's Planning Portal, attached document (a) are included in this EIR2004 request and included in Ashfield District Council's search and return. This includes any documents of a general enquiry nature, enforcement nature whether 'threatened', 'implied' or 'implemented', and general administrative documents are also included in the search and return documents from Ashfield District Council.

**c)** All material 'internal' communications between Ashfield District Council and Mansfield District Council (The LPA) and all material communications from the LPA (Mansfield District Council) to Ashfield District Council regarding the above planning applications and residential development and regarding the above and below parameters.

**d)** Any and all 'external' communications from Ashfield District Council, acting on behalf of Mansfield District Council or Material Documents Sent from or by Ashfield District Council but addressed as if sent from Mansfield District Council (The LPA), regarding the above planning applications and residential development up to and including 18<sup>th</sup> May 2021.

**e)** This EIR2004 request intends that all communications From Ashfield District Council to Mansfield District Council (The LPA) and all communications from Mansfield District Council (The LPA) to Ashfield District Council related to 2006/0079/NT and any later revisions as per attachment (a), are included in the search and return, using January 01 2004 to 18th May 2021 as the date parameters.

**f)** This EIR2004 request intends that all 'Internal Communications' within Ashfield District Council acting in a legal capacity to Mansfield District Council (The LPA) which related to 2006/0079/NT and any later revisions as per attachment (a), are included in the search and return and using January 01 2004 to 18th May 2021 as the date parameters.

**g)** This EIR2004 request intends that any External (To the developer Bellway Homes Ltd, Bellway plc and internal (between councils) communications made by Ashfield District Council acting in a legal capacity for Mansfield District Council (The LPA) regarding 2006/0079/NT and any later revisions as per attachment (a), be included in the search and return and using January 01 2004 to 18th May 2021 as the date parameters.

**h)** Any and all 'Material Evidence' held on Ashfield District Councils computer network, email servers or any other storage device, digital or material, supporting [name of officer redacted by ICO]'s comments (The Head of Planning and Regeneration at Mansfield District Council, the LPA) regarding the LPA's 'Enforcement Team' having been involved with (past tense) and continuing to be involved with the 'Royal Estate' at Warsop, otherwise known as Kings Park and Kingswood Park, specifically 'Reef Close NG20 0FL' and the Northern Boarder of the estate (The banks of the River Meden) be included in the search and return, using January 01 2004 to 18th May 2021 as the date parameters.

**i)** This EIR2004 request intends Ashfield District Council include in the search 'Criteria' (Not a definitive list)

- 1) Bellway Homes Ltd
- 2) Bellway plc
- 3) Any and all companies acting (or acted) on behalf of Bellway Homes Ltd or Bellway plc.
- 4) The Royal Estate
- 5) Warsop
- 6) Kings Park
- 7) Kingswood Park
- 8) Reef Close
- 9) NG20 0FL
- 10) The Meden River along the Northern Boundary of The Royal estate at Warsop (Kings Park, Kingswood Park)
- 11) The Northern Boundary of The Royal estate at Warsop (Kings Park, Kingswood Park)
- 12) Site Inspections
- 13) Meetings
- 14) Enforcement Actions (Implied or acted upon).
- 15) S38 agreement for The Royal estate at Warsop (Kings Park, Kingswood Park) as prepared by MDC (ADC legal) on behalf of NCC.
- 16) Any other information pertinent to The Royal estate at Warsop developed by Bellway Homes Ltd(plc) or Kings Park, Kingswood Park not specifically mentioned in the 'guide' listed above

**j)** This EIR2004 request intends that Ashfield District Council search for information is:

- 1)** Dated.
- 2)** The search Parameters are 'evidenced'
- 3)** The search information is 'retained' in case of future ICO/GRC appeals

I would ask that Ashfield District Councils information officer take an objective and broad view of this EIR2004 request. If any of the parameters, or the information being asked for is not clearly understood, please do not attempt to interpret this EIR2004 request. As per EIR2004 regulations, contact myself in order to 'Clarify' exactly what information I am asking for that Ashfield District Council does not understand."

5. Ashfield DC responded on 28 May 2021 and denied holding the requested information. It said that it would be more appropriate for the complainant to make his request to Mansfield District Council ("Mansfield DC"). It stated that it was aware that the complainant had made a separate information request to Mansfield DC.
6. Ashfield DC provided the outcome of an internal review on 24 June 2021 in which it maintained its original position that the requested information was not held by it. It clarified that:

"For the purposes of information requests, Ashfield District Council and Mansfield District Council are separate public authorities."

### **Scope of the case**

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7. The complainant contacted the Commissioner on 29 June 2021 to complain about the way his request for information had been handled.
8. Ashfield DC hosted a shared legal service between itself and Mansfield DC which ended on 30 June 2022. At the time of the request, the service was shared. Ashfield's initial response was that any information it held in regard to legal issues relating to Mansfield DC was information held on behalf of Mansfield DC, not Ashfield DC. It also said that any actions taken by it were solely under the instructions of Mansfield DC, and that Mansfield DC retained ownership of the records. Ashfield DC explained that this is why it suggested to the complainant that he await the response from Mansfield DC for the information he was seeking.
9. The complainant argued that his request specifies actions taken by Ashfield DC as well as Mansfield DC. He therefore considered that Ashfield DC cannot argue that the information is held on its servers solely on behalf of Mansfield DC, and the request should therefore be considered by Ashfield DC.
10. During the course of the Commissioner's investigation, Ashfield DC reviewed its response to the complainant and amended its position slightly. It said that it was now stating that it holds no information falling within the scope of the request (Regulation 12(4)(a)).
11. The following analysis is therefore whether Ashfield DC is likely, on the balance of probabilities, to hold any information falling within the scope of the complainant's request for information

## Reasons for decision

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### Regulation 12(4)(a) – Information not held

12. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exemptions that may apply.
13. Regulation 12(4)(a) of the EIR says 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.
14. 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 First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

### The complainant's position

16. The complainant argues that even if Ashfield DC could be said to be acting on behalf of Mansfield DC in terms of the shared legal service, parts of his request specifically asked for information in relation to Ashfield DC's actions, and therefore some information should be held by it separate to that held under the shared legal service agreement (and therefore by Mansfield DC).

### Ashfield DC's position

17. Ashfield DC argues that following a thorough search of MDC's records, which included a search of ADC's servers for any information held by the shared legal service, it determined that no information is held. A search of the shared legal service's case management system and its servers returned no information relevant to the request.
18. It said that if information were held it would be held electronically. It clarified that corresponding paper files may also have been kept alongside the electronic files, but there would not have been solely paper files with no electronic record of them. As no electronic files or records were found, there were no corresponding paper files to check.

19. It argues that it has carried out searches, using relevant key words, in the legal team's case management system and relevant team member's inboxes as well as the network drive on which the legal team saved documents before the case management system was in place. The search terms used included "The Royal Estate", "Warsop", "Kings Park", "Kingswood Park", "Reef Close", the relevant post code, "Northern Boarder", the relevant planning application number and "River Meden".
20. It said that the key word search of the network and email inboxes would bring up any standalone documents or individual emails that might either have been part of an older, pre-case management system file or not have been part of a formal legal case file, for example brief advice emails. These searches found no files, standalone documents, or emails relevant to the request.
21. It said that there is no record that any relevant information was deleted, and legal files would not be kept in other locations. No relevant legal files were located.
22. It confirmed that information is not stored on local or personal computers. Officers save any individual documents outside of a file on the networked drive in their own, named, file.
23. Ashfield DC also provided a degree of explanation as to why relevant information is not held by it. It said that it believes that the complainant may be under the misapprehension that its legal team hold files following an alleged comment by Mansfield DC's head of planning, that Mansfield DC's enforcement team had been involved with the development. However, it said that the legal team do not undertake enforcement action as that is the responsibility of another department.

"For example the planning department will investigate breaches of planning legislation and serve appropriate notices without reference to the legal department. The matter would only be referred to the legal department for further action such as an injunction to prohibit the planning breach or a prosecution. The fact that enforcement action may have been undertaken (if that is the case) does not automatically mean that the legal department were involved and/or held any information."

24. It clarified that Ashfield DC is not the local planning authority for the area in question, and so there is no business purpose for planning or general enforcement records on this matter to be held by it. It clarified, however that:

"The shared legal service was instructed by MDC in both non-contentious and contentious legal planning matters so there would

have been (prior to the end of the shared service) a business purpose for legal files on such matters to be held within the shared legal service (not by ADC generally) if instructions had been received from MDC.”

25. The Commissioner notes, however, that Mansfield DC wrote separately to the complainant confirming that no enforcement action has actually been taken in respect of the relevant issues.

The Commissioner's conclusion

26. The Commissioner has considered Ashfield DC's position, in conjunction with the request. The Commissioner recognises that the complainant will be concerned that none of the information which he has requested is held by Ashfield DC given the wording of his request.
27. Ashfield DC has, however, confirmed that it has carried out adequate and appropriate searches of its files to locate any relevant information, however none is held. It has also provided an explanation as to why that is the case. Mansfield DC has also stated, separately, that no enforcement action was taken by it.
28. There is no contradictory evidence available to the Commissioner that indicates the Ashfield DC's position is wrong.
29. On this basis the Commissioner has concluded that, on the balance of probabilities, the requested information is not held.



## Right of appeal

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30. 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)

31. 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.
32. 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 .....**

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