

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

### **Decision notice**

**Date:** 16 February 2023

**Public Authority:** Coventry City Council  
**Address:** Council House  
Earl Street  
Coventry  
CV1 5RR

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

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1. The complainant requested information with regards to two planning applications. Coventry City Council (the council) provided information to the complainant. The complainant believed that he has not been provided with the information requested.
2. The Commissioner's decision is that the council does not hold the information falling within the scope of the request, therefore regulation 12(4)(a) of the EIR is engaged. He also finds that the council breached regulation 14(3)(a) of the EIR by failing to respond with a refusal notice that stated clearly that the requested information was not held.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 11 April 2022 the complainant made the following information request to the council:

"This request is in respect of decisions by officers relating to planning applications [reference numbers redacted] and in respect of the northern portion only. The information requested is:

1a. The Council's Highway Design Guide (HDG) stipulates that for a development of more than 150 dwellings at least two main access points are required. The self contained northern portion of this site contains 182 dwellings. Upon what grounds did officers decide that two main access points were not possible.

b. Where one main access point is approved the HDG stipulates a loop should be incorporated. No loop has been incorporated. Upon what grounds did officers dispense with a loop.

c. The HDG stipulates that where possible cul de sacs (cds) and dead ends (de) should be avoided. The internal road layout is entirely cds/de. The grounds please for deviating from the HDG.

2. The West Midlands Fire Service (WMFS) in its response to the reserved matters application stated as one of its requirements that cds/de should be avoided and any cds over 180 metres should meet certain criteria as set out in its response. One cds, which leads to the northernmost point of the site is over 180m but the criteria of WMFS has not been complied with. The grounds please for ignoring the requirements of WMFS.

3. At the December planning committee meeting at which the reserved matters application was approved, an officer made a statement upon the following point:- If an obstruction occurs at a point on the internal road access to the cds, which leads to the northernmost point of the site, would not be reachable via either the main access point or the emergency access. An emergency access is required for a site of more than 150 dwellings. The officer stated that as the number of dwellings which could not be reached is less than 150 this was acceptable.

Please provide the case law or learned/authoritative text which this assertion was based to validate this."

5. The council responded on 11 May 2022 providing a link<sup>1</sup> to the Officer Report to Planning Committee, late items document and the Committee recording.
6. The complainant requested an internal review on 20 May 2022 as they did not consider the council had provided the specific information requested.
7. The council provided its internal review on 9 June 2022. It determined the request should have been handled under the EIR and stated that the complainant had all the information that was presented to the Planning Committee to enable them to reach their decision and that all the consultation responses are on its website for public view and no other information is held relevant to the scope of the request.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 13 June 2022 as he does not consider he has been provided with the information he has requested.
9. During the Commissioner's investigation, the council provided a further response to the complainant explaining that he has had all the information held by the council, however it was not clear as to whether or not it held the specific information requested.
10. The scope of the case is for the Commissioner to determine whether the council holds information falling within the scope of the request.

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<https://edemocracy.coventry.gov.uk/ieListDocuments.aspx?CIId=147&MIId=12496&Ver=4>

## Reasons for decision

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

11. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
12. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.
13. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
14. In this case, the complainant does not consider that the council has provided him with the information he has requested.
15. The Commissioner has put this to the council, as to whether the specific information requested is within the link to the documents it referred to.
16. The council has told the Commissioner that all considerations and the way the planning decision was arrived at, and the information presented to the Planning Committee is contained within the information provided to the complainant. There are no 'specific grounds' recorded. The decisions made are contained within the information provided.
17. The council has explained to the Commissioner that the HDG is a "Guidance" document, and not a rigid checklist that the council has to adhere to. So where the complainant, for example, in part 1a of his request says the HDG 'stipulates' that the development of more than 150 dwellings requires at least two main access points, the HDG actually says two access points are 'preferred', not 'stipulated'. Therefore there does not have to be the detailed reasoning that the complainant is after.
18. The council has told the Commissioner that all information presented to the Planning Committee has been provided to the complainant and all the consultation responses are on its website for public viewing. It does not hold any other information that would provide the information that the complainant has requested.
19. On review of the case, the Commissioner sees that there is clearly a differing opinion on what the council should hold in terms of recorded

explanations and reasonings for actions and decisions taken / not taken. However, the council has explained why it should not be expected to hold the information requested by the complainant.

20. A public authority is not required, under the EIR, to create new information in order to give explanations or reasons or answer questions to satisfy a request. The council has told the Commissioner that there are no 'specific grounds' recorded.
21. On review of the explanations above, the Commissioner is satisfied that, on the balance of probabilities, the council does not hold the specific information that the complainant has requested in the scope of the request. He therefore finds regulation 12(4)(a) of the EIR is engaged.

### **Regulation 14 of the EIR - Refusal notice**

22. Regulation 14(1) of the EIR states:

"If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with any of the following provisions of this regulation."

23. And regulation 14(3)(a) states:

"(3) The refusal shall specify the reasons not to disclose the information requested, including-

(a) any exception relied on under regulations 12(4), 12(5) or 13..."

24. Although the Commissioner has found that the council does not hold the specific information that the complainant has requested, the responses that the council provided to the complainant does not make this clear.
25. Whilst the council directed the complainant to the information it does hold with regards to the planning applications, for the specific information that the complainant was requesting it should have cited regulation 12(4)(a) of the EIR and been clear with the complainant that the information he was requesting was not held.
26. The Commissioner therefore finds that the council has breached Regulation 14(3)(a) of the EIR.
27. As the purpose of the refusal notice has been superseded by this notice, the Commissioner does not require the council to take any steps in relation to this breach.

## Right of appeal

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28. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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**