

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 March 2023

Public Authority: King's Lynn and West Norfolk Borough Council

Address: King's Court
Chapel Street
King's Lynn
PE30 1EX

Decision (including any steps ordered)

1. The complainant requested information from King's Lynn and West Norfolk Borough Council (the Council) relating to Tree Preservation Orders. By the date of this notice the Council had not issued a substantive response to this request.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must issue a substantive response to the request in accordance with its obligations under the EIR.
4. 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 22 December 2022, the complainant made the following request for information to the Council:

"I would like to know the following:

GENERALLY

1. Any documentation which the Council uses for determining which trees in the authority area are given a Tree Preservation Order and the criteria which is being used by the Council for placing a Tree Preservation Order on specific trees in the authority area.
2. Any documentation (including notes of site visits), emails, or correspondence relating to the trees to the rear of [PLACE REDACTED].
3. The number of Tree Preservation Orders which were placed on trees within the authority area for each of the last 5 years.

SPECIFICALLY

1. Site visit 22/11/2022 - The site notes and details of the agreement reached with [NAME REDACTED], Arboricultural officer.
 2. Site visit 07/12/2022 - The name/s of the officer/s who carried out the survey and their arboricultural qualifications. The site notes, images and risk assessment leading to the imposition of a TPO.
 3. The report authorising the Duly Authorised Signatory to create the TPO." (sic)
6. To date, the Council has not acknowledged the request for information.

Scope of the case

7. The complainant contacted the Commissioner on 10 February 2023 to complain about the Council's failure to respond to this request.
8. The Commissioner contacted the Council on 15 February 2023 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
9. Despite this intervention the Council has failed to respond to the complainant.

10. The scope of this notice and the following analysis is to consider whether the Council has complied with regulation 5(2) of the EIR.

Reasons for decision

11. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

12. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

13. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

14. 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

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

15. 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.
16. 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

Michael Lea
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