

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

### **Decision notice**

**Date:** 17 July 2023

**Public Authority:** Newport City Council  
**Address:** Civic Centre  
Godfrey Road  
Newport  
South Wales  
NP20 4UR

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

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1. The complainant has requested information relating to a planning application. Newport City Council (the council) provided some information and then provided further information during the Commissioner's investigations.
2. The Commissioner's decision is that the council holds no further information and therefore regulation 12(4)(a) of the EIR is engaged. The Commissioner also finds that the council breached regulation 5(2) of the EIR as it did not provide all the information held within the required 20 working days
3. As the information has been provided, the Commissioner does not require any steps.

## Request and response

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4. On 16 January 2023 the complainant made a 15 part request to the council:

"1. On Planning application, all the certificates (ie A B Cand D) that were issued to the various landowners notifying them of the Jubilee Park development including the flood defence wall DURING THE PLANNING PROCESS

2. The landownership names identified IN THE PLANNING PROCESS including all the unknown ownership and plans showing the extent of the ownership including the unknowns

3. All Notices that went into the Press to the landowners including the unknowns prior to the flood defence wall being built DURING THE PLANNING PROCESS - a legal requirement

4. All Site Notices put up notifying the landowners including those unknowns prior to the giving notice of the proposal of the flood defence wall DURING THE PLANNING PROCESS - a legal requirement

5. Access rights / license granted by various landowners for Walters to construct the flood defence wall DURING THE CONSTRUCTION PHASE and if not, why not?

6. Access rights granted by various landowners for JPMC to have access to inspect and maintain the flood defence wall ON COMPLETION OF THE CONSTRUCTION PHASE AND WHOLE SITE HANDOVER TO JPMC

7. As built Construction drawings to satisfy all of the Planning Condition close out of the flood defence wall that is now under JPMC's responsibility

8. Planning Conditions associated with the whole development including the flood defence wall

9. Evidence of planning condition close out

9. The full list of the consultees DURING THE PLANNING PROCESS for the whole development including the wall.

10. Agreement for the NCC PROW to EXIST on others land and to be ACCESSED AND MAINTAINED on others land between the flood defence wall and river. Agreement need to include the designated width of the PROW

11. Powers under the Highways Act that NCC have to force a landowner to maintain the land the NCC PROW sits on
  12. Responses from NRW DURING THE PLANNING PROCESS to the whole development including the flood defence wall
  13. If planning was not required for the Flood defence wall, which landowners were notified before access was made for its construction and what agreement is in place to access it for future Principal inspections
  14. Who was on the planning committee for Jubilee park and it's flood defence wall
  15. AIP and GDR for the flood defence wall submitted with the planning application for the TAA certification"
5. The council responded on 14 February 2023 providing some information, advising some information was available on its website and for part 15 it stated it will provide this information within the next seven days.
  6. The complainant requested an internal review on 14 February 2023. The complainant was satisfied with the response to parts 8 and 14 of their request and set out their dissatisfaction to the responses to the other parts as follows:
    - "1. link not supplied
    2. link not supplied
    3. Press release not supplied
    4. site notices not supplied
    5. not supplied yet
    6. not supplied yet
    7. as built drawings not supplied
    9. only partial closing out supplied - I required record of full planning close out
    10. I have received no appointment for inspection yet
    11. link not supplied to powers to enforce landowner to repair
    12. link not supplied
    13. link not supplied
    15. not supplied yet"
  7. The council provided its internal review on 7 March 2023. It explained where to find some of the information requested and advised that it did not hold some information.
  8. The complainant contacted the Commissioner on 5 March 2023. Stating that they were only satisfied with the council's response to parts 8 and 14 of their request.

9. During the Commissioner's investigation the council provided two further responses to the complainant on the 2 and 30 May 2023. The council provided the planning portal links for parts 1 – 4, 12 and 13 and an explanation of how to locate the information.
10. For part 9 of the request the council provided a decision notice with the conditions, and a spreadsheet providing a link to the relevant page of the planning portal to see other decision notices relating to discharges/decisions.
11. For part 10, the council provided the email address for the complainant to arrange an appointment. It provided a further link to an additional document in response to part 11.<sup>1</sup>

### **Scope of the case**

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12. Following these further responses by the council the complainant clarified that they are still dissatisfied with the council's response to parts 5, 6, 7 and 15 of their request; information which the council said that it does not hold.
13. The scope of the case is therefore for the Commissioner to determine whether the council holds any further information falling within the scope of the request for information.

### **Reasons for decision**

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#### **Regulation 12(4)(a) of the EIR – Information held/ not held**

14. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
  15. 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.
  16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a
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<sup>1</sup> <https://www.gov.wales/sites/default/files/publications/2019-04/public-rights-of-way-guidance-for-local-authorities.pdf>

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).

17. The council said that the information for parts 5 and 6 of the request would be held by Walters, an engineering company, and Jubilee Park Management Company (JPMC). These are private companies which are not related to the council.
18. It explained that Walters owned the adjacent land and developed a large housing site on it, which it named Jubilee Park. It also built the perimeter flood wall which lay between the footpath and the housing site.
19. The council explained that it had been suggested that Walters may have owned the land on which the footpath ran, but there is no evidence of this in the council's possession and the land has not been registered at the Land Registry.
20. The council confirmed to the Commissioner that it holds no information relating to the access agreements for the construction of the wall.
21. With regards to any other information held, the council advised that the Area Planning Manager undertook a search for the information by drawing around the Jubilee Park estates within the council's share (GIS) database, essentially creating a spatial grab of all planning applications within the area. Then the collected data was examined to identify what information was held.
22. The council said that searches were carried out again by the Planning Systems Officer, which provided more information than the original search. This further information was then provided to the complainant during the Commissioner's initial investigations.
23. The council said that it is not clear why the same searches produced to different results, in terms of the information located. Nevertheless, it clarified that the searches were then checked by the Geospatial Data Development Manager, and it confirmed that all of the information it holds has now been located and disclosed.
24. The council confirmed to the Commissioner that no information has been deleted or destroyed. It said that the records it holds as regards this application are in accordance with its statutory duties as a local planning authority under the provisions of the Town and Country Planning Act 1990.

25. The Commissioner has considered the council's explanations as to why it does not hold any further information, together with its description of the searches it has carried out. He is satisfied that it has searched for the information in the most likely places it would be held.
26. The searches have been made by three different council employees on the system due to further information being located during the second search which was carried out.
27. Based on the above, the Commissioner is satisfied that, on the balance of probabilities, the council holds no further information beyond that which it has already disclosed. He has therefore decided that regulation 12(4)(a) of the EIR was correctly applied by the council in response to the relevant parts of the request.

### **Regulation 5(2) of the EIR – Time to respond**

28. Regulation 5(1) of the EIR states that a public authority that holds information shall make it available on request and regulation 5(2) requires a public authority to provide that information within 20 working days following receipt of a request.
29. In this case the request was made on 16 January 2023 and the council did not provide all the information held until 30 May 2023. This is outside of the 20 working days for response required by Regulation 5(2). The Commissioner has therefore decided that the council did not comply with regulation 5(2) of the EIR.
30. As the information it does hold has now been disclosed, the Commissioner does not require any steps.

## Right of appeal

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31. 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)

32. 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.
33. 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**