

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

### **Decision notice**

**Date:** 16 June 2016

**Public Authority:** Haringey Council  
**Address:** River Park House  
22 High Road  
London  
N22 8HQ

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

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1. The complainant has requested from Haringey Council a Comprehensive housing options appraisal for the Noel Park estate, prepared in 2015 by Homes for Haringey. Haringey Council confirmed it held the requested information but stated it was withholding it in its entirety under sections 36(2), 40(2) and 43(2) of the Freedom of Information Act 2000 (the FOIA).
2. The Commissioner's decision is that the requested information is environmental within the meaning of the EIR and therefore should have been handled by Haringey Council under this legislative regime rather than FOIA.
3. The Commissioner requires Haringey Council to take the following steps to ensure compliance with the legislation.
  - Reconsider and respond to the complainant's request dated 26 October 2015 under the EIR.
4. Haringey Council must take these steps 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 Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 26 October 2015 the complainant wrote to Haringey Council (the Council) and requested information in the following terms:

*'Please can you supply the following information;*

*Full text and appendices of the Comprehensive housing options appraisal for the Noel Park estate, prepared in 2015 by Homes for Haringey: as referred to in the Housing Investment Strategy, agreed at Cabinet, 14 July 2015, Appendix B: The Decent Homes Programme: Supporting Information, paragraph B3.<sup>1</sup>*

6. The Council responded on 23 November 2015. It confirmed that it held the requested information but said it was withholding it under sections 36(2), 40(2) and 43(2) of the Freedom of Information Act 2000 (the FOIA).
7. On 22 January 2016 the complainant requested an internal review.
8. Following an internal review the Council wrote to the complainant on 22 February 2016 and stated that it was upholding its original decision.

### **Scope of the case**

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9. The complainant contacted the Commissioner 15 March 2016 to complain about the way his request for information had been handled. In particular, he said that he was unhappy with the Council's decision to withhold the requested information in its entirety as it related to a report by a public authority about publicly owned assets.

### **Chronology**

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10. The Commissioner contacted the Council on 28 April 2016 and requested a copy of the withheld information together with any further arguments it wanted to advance in respect of the exemptions it had cited. At the same time he invited the Council to give consideration as to whether the withheld information was 'environmental' within the meaning of the EIR. At this time the Commissioner had not seen the requested information. However, he did suggest that it might be 'environmental' as it related a

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<sup>1</sup> <http://www.minutes.haringey.gov.uk/mgConvert2PDF.aspx?ID=79682>

'measure' likely to affect the 'elements' of the environment including 'land and landscape' under Regulations 2(1)(a) and 2(1)(c) of the EIR.

11. The Council responded on 27 May 2016, with a copy of the withheld information. Having reviewed the complainant's request, the Council said it stood by its original decision to handle it under the FOIA as opposed to the EIR. It stated that the document comprising the withheld information discussed a range of options relating to the future of Noel Park Estate. It added that while some financial modelling was included within the document, it was more about enabling the Council to form a strategy for how it may wish to proceed with future investment in Noel Park Estate. It therefore concluded that the document was not a straightforward viability study that had formed the basis of a final decision; instead it said it was a document exploring potential options. In the Council's view 'this strong policy element' justified the document being considered under the FOIA rather than the EIR.

## **Reasons for decision**

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### **Is the requested information 'environmental'?**

12. The first question for the Commissioner to consider is whether the requested information is 'environmental' and therefore covered by the EIR as opposed to the FOIA.

### **Regulation 2(1) of the EIR**

13. Regulation 2(1) of the EIR defines 'environmental information' as any information in any material form on:

'(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those

elements; (d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).'

14. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
15. Having viewed the requested information which comprises of a report prepared by Homes for Haringey the Commissioner is satisfied that it is environmental within the meaning of the EIR. The report itself sets out a number of options for the future development and improvement of Noel Park Estate and the methods by which it may be funded.
16. The Commissioner takes the view that the report and the options within it constitute 'measures' likely to affect the 'elements of the environment' including 'land' and 'landscape' as defined by Regulations 2(1)(c) and 2(1)(a) of the EIR. The Commissioner therefore finds that the requested information is environmental and therefore the complainant's request should have been dealt with under the EIR rather than the FOIA.

## Right of appeal

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17. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

18. 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.
19. 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 .....**

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