

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 November 2021

Public Authority: Warwickshire County Council
Address: Shire Hall
Market Place
Warwick
CV34 4RL

Decision (including any steps ordered)

1. The complainant has requested certain information relating to village greens held by Warwickshire County Council (the council).
2. The Commissioner's decision is that the council is correct to consider the complainant's representations as three separate requests for information. She is also satisfied that, aside from one small set of information recently identified, the council has, on the balance of probabilities, provided the complainant with all the information it holds that is relevant to the three requests.
3. However, by failing to respond to Request 1, Request 2 and Request 3 within the statutory timescales, the Commissioner has found that the council has breached regulation 5(2) of the EIR.
4. The Commissioner requires the council to release the small set of additional information it recently identified as being relevant to Request 1, if it has not already done so.
5. The 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

6. The complainant has made a number of requests that will be considered within this decision notice. These are set out within Annex A of this decision notice. The council's initial response to the requests have also been included within the Annex where it has been deemed appropriate to do so.

Request 1

7. The complainant submitted requests for information on 3 May 2019, 4 May 2019, and 12 May 2019; the council dealt with these as one request (Request 1).
8. The council provided its response to the complainant on 4 June 2019, as set out within Annex A of this decision notice.
9. On the same date, the complainant wrote to the council asking for further details about how it had handled his request. He also questioned parts of the council's response where it had stated that information was not held, or could not be provided.
10. On 8 July 2019, the council provided a response to the complainant, setting out further details about its decision of 4 June 2019.
11. The council also confirmed to the complainant that it now accepted that some of the information that had been requested may meet the definition of environmental information as set out within the EIR. It went on to provide an explanation as to why it was satisfied that this would not affect the outcome.
12. The complainant responded to the council on the same date. He again questioned the council's claim that certain information was not held. He asked the council to confirm what data existed in its corporate Geographical Information System(GIS), stating that such systems would contain plans and a searchable database. He also stated that as GIS systems operate as a number of layers, it is possible to identify where there are overlaps, such as village greens with work orders.
13. On 17 July 2019, the council advised that it had provided an answer to part of the complainant's correspondence on 8 July 2019 (in its response to Request 2). It also advised that part of his correspondence was to be dealt with as a new request (Request 3).
14. The complainant responded on the same date, requesting an internal review.

Request 2

15. The council had advised the complainant that part 2(a)-2(e) of his correspondence of 4 June 2019, was to be dealt with as a new request (Request 2) for information, and it provided its response on 17 July 2019 (set out in Annex A of this decision notice).
16. On 19 July 2019, the complainant advised the council that he believed that it had '*deliberately hidden and blocked access*' to information held relating to village greens that he had proven to exist. He also stated that whilst the council had now confirmed that there was information held on its database, and special data, this had still not been released to him.
17. On 21 July 2019, the complainant requested an internal review.

Council's Internal Review response to Request 1 and Request 2

18. On 12 September 2019, the council provided its internal review response to both Request 1, and Request 2.
19. The council confirmed that Request 1 should have been considered under the EIR from the outset. It went on to provide the complainant with some explanations about information that was held, or was not held, that related to village greens and dual status, works, policies, enforcement actions and complaints, and GIS systems.
20. The council explained to the complainant why it did not believe that it had an obligation to create information in response to a request, and why it believed it was correct to apply regulation 12(4)(b) of the EIR to parts of his request.
21. The council also provided copies of some information to the complainant; this included details of nine village greens known to have dual status as a village green and highway.
22. In addition, the council released a copy of an internal document which listed common land and town and village greens in the county. It stated that this included some of the information which had been requested; the town or village name, the village green reference, the land registry references for the land. It also explained that whilst the information may not be complete or accurate, and could potentially have been subject to an exception under the EIR, it had decided to release this to him.

Request 3

23. Following receipt of the council's correspondence of 17 July 2019 (to Request 2), the complainant contacted the council again. He advised that the GIS system that had now been described by the council '*would*

be fine', despite being old, and he asked that the entire dataset be provided to him in an electronic format.

24. On 19 July 2019, the council confirmed to the complainant that as he had now narrowed his request to data held in GIS systems, his correspondence of 17 July 2019, was to be dealt with as a new request (Request 3).
25. On 16 October 2019, the council provided the complainant with information held relating to its GIS system; however it advised him that some of this data may be inaccurate and/or out of date.

Scope of the case

26. The complainant initially contacted the Commissioner on 11 December 2019, to complain about the way his request for information had been handled.
27. The Commissioner has made a decision on the following matters:
 - Whether the information requested is environmental.
 - Whether the council failed to identify and provide information in response to any request.
 - Certain procedural matters.

Reasons for decision

Is the information environmental?

28. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR, rather than the FOIA, if it meets the definition set out in regulations 2(1)(a) to 2(1)(f) of the EIR.
29. Regulation 2(1)(c) of the EIR says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors listed in regulation 2(1)(a) and 2(1)(b) will be environmental information. One of the elements listed under 2(1)(a) is land.
30. The Commissioner is satisfied that the information requested can be considered to have an affect on the land and its use, and that it fits squarely into the definition of environmental information set out within regulation 2(1) of the EIR.

31. Whilst the council originally made reference to the FOIA, this was fully corrected at the internal review stage of Request 1. Therefore, she does not intend to give any further consideration to the council's actions in this regard.

Regulation 5 - the duty to make environmental information available on request

32. Under Regulation 5(1) of the EIR, a public authority holding environmental information is obliged to make that information available on request.

33. Regulation 5(2) sets out the timescales for this and 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.'

34. The complainant has argued that the council failed to provide all the information he required in response to his original request, and that subsequent requests should not have been necessary.

35. The Commissioner understands that the complainant is particularly concerned that he did not receive the GIS data in response to his original request; this was subsequently provided in response to Request 3.

36. The council has argued that its GIS dataset does not fall within the scope of the original questions asked by the complainant. It refers to his internal review correspondence of 17 July 2019, where he states that:

'if you look at the original request I asked for details of village greens in the County (spatial and/or database). You replied that the only data available was a paper record and that no other data existed.'

37. The council disagrees with the complainant's claim, stating that he was very specific about his request for 'a list of every registered village green' along with information as to which were dual status, and where planning permission was required for works. It does not agree with the complainant that the GIS data would answer the questions that were set out in his original request.

38. The council also disputes that it stated that 'no other data existed' or that 'the only data available was a paper record' in the context described by the complainant; it asserts that it provided an answer to each of the complainant's specific questions. It also states that there is no list of dual status village greens, but that they are identified by trawling through the paperwork on an adhoc basis.

39. The council argues that Request 2 and Request 3 ask questions that are qualitatively different from the original request for a list.
40. The council accepts that if GIS polygons were superimposed with highways GIS data, an indication of dual status may be provided where the details of a village green and highways coincide. However, it states that the difficulty with this is that its GIS dataset with defined polygons in an ESRI¹ Shape file was created in around 2011 or 2012, with a view to the planning team being able to get an indication of the location of village greens for the purposes of considering planning consents. The council goes on to say that village greens were drawn on to electronic modern maps having regard to an historic paper map to a scale on which a pen line can be highly uncertain (1:2500). In addition, the polygons are based on the village greens marked on the paper maps in the Register of Village Greens but need legal review against the Register to confirm that they are accurate.
41. The council has advised that whilst only a court can give a definitive answer as to the existence and extent of a highway, the council's highways surveyors and legal services team can reach an opinion by looking at the Register and its maps, the packets of pre registration paperwork, the highways team's plans and, on occasion, the application for registration and historic documents.
42. The council states that it would not have been able to answer the question as to whether a village green has dual status by creating a GIS village greens layer over a GIS highways layer, as the layers are neither definitive nor reliable; it could only have identified that the further inquiry was necessary.
43. The Commissioner appreciates that the complainant has found the GIS data to be helpful, and that it has provided him with some of the details he states that he required about village greens. However, whilst this may be the case, she agrees with the council that such data does not obviously fall within the terms of the complainant's original request.
44. As a result, the Commissioner is satisfied that there is no substantive evidence to support the complainant's claim that the council may have deliberately omitted this type of data from its consideration of his original request. Furthermore, she does not regard it to have been unreasonable of the council not to have considered the GIS data when carrying out searches to identify information relevant to Request 1.

¹ ESRI is a company that supplies GIS software

45. The complainant was also concerned that whilst he made significant references to the council's GIS systems in his correspondence of 4 June 2019, he still did not receive copies of the GIS data until 16 October 2019.
46. In certain circumstances, the content and context of a request will provide sufficient detail to make it obvious that copies of certain information are required, even if it is not explicitly stated. Where it is unclear what is required, a public authority should contact the requester to get clarification.
47. In this case, the complainant did not explicitly state that he wanted the council to provide copies of GIS data in Request 2, dated 4 June 2019. However, the correspondence clearly focussed on questions about GIS data and its potential relevance to the request. Therefore, the question is whether the council should have considered this as a request for copies of GIS data, even though it did not explicitly state this, or whether it should, at the very least, have asked the complainant whether this is what he now required.
48. The Commissioner regards it to be pertinent to note that the complainant included the following comments in his correspondence of 4 June 2019:

'Can you list the systems that hold data about TVGs and what that data is please? This will help me request data that you are able to supply.'
49. It is the Commissioner's view that it would not have been unreasonable for the council to have concluded from this statement that, in this particular instance, the complainant required direct answers to his questions only, with a view to then proceeding with an additional request for information for certain sets of data.
50. As a result, in this particular case, the Commissioner does not have any particular concerns that the council did not consider supplying copies of GIS data in response to Request 2.

Has the council identified all the relevant information held?

51. The council provided the complainant with information, answers, or explanations in its response to each point of each of his three requests. It also provided some information within its internal review response to Request 1 and Request 2; in particular, the Commissioner has noted that the council provided the complainant with a list of village greens held by its legal team, and also a list of nine village greens which were known to have dual status. It also referred the complainant to information which was publicly available that included details of the village greens in the county.

52. The council has now confirmed to the Commissioner that, upon review, it has found a tenth village green to add to the list of nine previously provided to the complainant; the Commissioner has already requested that the council release this information directly to him.
53. The council, for the sake of completeness, has also described certain other information that it holds in its representations to the Commissioner; however, she is satisfied that this information does not fall within the scope of the complainant's requests.
54. The council has also confirmed to the Commissioner that it is willing to overlap its internal working database of highways extents over its internal working database of village greens and provide this data to the complainant. It would appear that this would be particularly helpful to the complainant (as he had referred to a wish to have such information in his complaint to the Commissioner). As a result, the Commissioner has asked that the council consider providing this information to him.
55. However, as the council has confirmed that this information may indicate that a question arises about whether a village green may have dual status, but would not provide a definitive answer, it is the Commissioner's decision that this would not fall within the scope of the complainant's requests. As a result, the Commissioner cannot require the council to provide this information as part of this decision notice.
56. The council has also explained to the Commissioner why it believes that it would be manifestly unreasonable under regulation 12(4)(b) of the EIR to provide a specific answer as to whether each of the village greens in the county has dual status, as requested by the complainant.
57. It is the Commissioner's view that the council has provided some sound arguments in support of its application of regulation 12(4)(b) of the EIR (setting out details of the time that it would take to obtain the relevant information for each village green in the county). However, the Commissioner is of the view that, ultimately, in order to provide the information, a legal person or council surveyor would still have to look at the relevant documents, once collated, and reach an opinion as to whether a village green has dual status.
58. Given this, whilst carrying out this process might go some way to providing the complainant with what he requires, it is the Commissioner's view that this would require the creation of new information, and therefore it is not held. As a result, she does not intend to consider the merits of the council's application of regulation 12(4)(b) to the request for a list of village greens that have dual status.

59. The council has confirmed to the Commissioner that the Register and its paper maps remain the definitive authority with regards to the location of a village green, and that this will continue to be the case until the council '*is moved by Her Majesty's Government to the digitised system of registration provided for under the Commons Act 2006*' (the council has advised that it is unclear when this will take place).
60. The council has also confirmed that it does not hold a list of village greens in any other format. It also states that registration payments through electronic systems are not, as suggested by the complainant, held as a list, because the council has been keeping the Register since 1965. It states that the packet of registration documents kept with the Register should be referred to instead.
61. It is the Commissioner's view that, aside from the small amount of information recently identified by the council (details of the additional village green which has been identified as having dual status) it is unlikely that, on the balance of probabilities, there is any further information which is held that within the scope of the complainant's requests.

Procedural matters

62. The complainant has also asked that the Commissioner consider the timeliness of the council's responses to him.
63. The complainant submitted Request 1 on 3 May 2019. However, the council only provided some of the information relevant to the request at the internal review stage (12 September 2019). Furthermore, the council has recently identified further information to add to the nine village greens it provided to the complainant in its internal review response.
64. The complainant submitted Request 2 to the council on 4 June 2019, and the council only provided its response on 17 July 2019.
65. The complainant submitted Request 3 to the council 17 July 2019 and the council only provided its response on 16 October 2109.
66. The council has therefore failed to meet its obligations under regulation 5(2) of the EIR in respect of all three requests.

Right of appeal

67. 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

68. 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.
69. 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

Annex A

Requests 1, 2, 3 are as follows. The council's initial response to a request has been included in bold under each point where it has been found appropriate to do so.

'Request 1' (submitted 3 May 2019, 4 May 2019, and 12 May 2019)

This request is to obtain clear documentary evidence from WCC regarding works carried out by (or with the permission of) WCC on a TVG. Please provide (along with any additional information that may be useful):

1. *WCC's definitions of "dual status" relating to registered TVGs, to include:*

a. As clearly as possible WCC's definition of "dual status"

b. Confirmation of how WCC would treat differently a registered TVG and a registered TVG also classed as "dual status" (in relation to carrying out works under the Highways Act)

c. What legal basis WCC use to determine that the Highways Act takes precedence over the Inclosure Act 1857 and Commons Act 1876 (section 29) when carrying out works on "dual status" TVGs.

Please clearly indicate the relevant sections of the law and any case law that supports WCC's interpretation of the law. Please only include actual relevant examples that allow WCC to ignore parts of the aforementioned Acts where they are at odds with the Highways Act eg. excavating soil, damaging the TVG or carrying out any works not for the better enjoyment of the TVG. Ie. Please do not pad this justification with unsupported assumptions, the request is for verifiable evidence that supports WCC's conclusions. If none are available, please state none.

Council response:

The Freedom of Information Act covers all recorded information held by a public authority. The Act does not cover information that is in someone's head. The authority is only required to provide information that it already holds in recorded form at the time that the request was received. It is not required to create new information for the sake of an information request.

The information requested under point 1 is not held by the County Council in recorded form except to the extent that a Senior Solicitor in the County Council's Legal Services team has corresponded with you on these matters. I have attached a copy of that correspondence for ease of reference.

2. *WCC's policies and procedures relating to carrying out works on a legally registered town or village green (TVG), to include:*

a. A list of works that WCC may need to carry out or may authorise to be carried out on a registered TVG (please mention the legal Act under which this work would be carried out eg. Dropping a kerb and allowing construction of a tarmacked driveway under Section 184 of the Highways Act 1980)

b. The process for granting approval of works on a registered TVG. Where there is a difference for a registered TVG and a registered TVG also classed as "dual status" please indicate the differences.

c. Checks done during the approval process to confirm the land is a legally registered TVG

d. Consultation process and who would be consulted. Where there is a difference for a registered TVG and a registered TVG also classed as "dual status" please indicate the differences.

e. Any permission WCC would sometimes require in order to work on a TVG mentioning the circumstances, the authority required and why permission is needed. Where there is a difference for a registered TVG and a registered village green also classed as "dual status" please indicate the differences.

Council response:

The County Council does not have in place a policy or procedure specifically relating to works to registered town or village greens, or to dual status village green/highways. Dual status village green/highways are treated as any other highway and therefore the County Council's general procedures and policies for highways are applied. You can find information about the Council's highway service standards and asset management on our website.

3. *List every registered village green in the County (stating town or village name, village green references, any land registry reference for the land, any other reference commonly used, organisation or person who applied to register the village green along with their public contact details).*

Also, against each village green please indicate:

a. If this TVG is considered to be "dual status". If only a part of the village green is "dual status" please indicate part "dual status".

b. Where a TVG is not "dual status" please indicate the reason why it isn't.

Council response:

The County Council has a statutory duty to maintain the register of Common Land/ Town and Village Greens for Warwickshire. This is maintained in paper form at Shire Hall in Warwick. It is available for public inspection on application. It is not possible to provide a concise list of dual status village greens. The statutory format of the Register does not require that this information be formally recorded in the register (although sometimes there are notes of objection by the highway surveyors which give an indication that dual status may be in issue). Cases of dual status tend to be identified on an ad hoc basis as a result of queries by the public, and are confirmed by trawling through the pre-registration paper work and taking a fresh view from WCC highway surveyors.

4 May 2019 request added to previous request:

4. Against the list of TVGs (above) can it also be indicated if a Planning Application may need approval before WCC can carry out (or grant permission) to do works (such as create a driveway) on the TVG? I believe this depends on the type of road the TVG is on.

a. Information regarding why the type of road makes a difference would help me understand what works are permitted. I presume this is because of a law or agreement with the local authorities? Details would be appreciated.

Council response:

As above, the County Council maintains a register of Common Land/Town and Village Greens. The register does not indicate whether planning permission is required for works on a town or village green. Vehicle access requests may require planning consent. You can find information about this on our website.

12 May 2019 request added to previous requests:

We would like to review all works that have been carried out on TVGs in the County. Also, all works applied for whether they were approved or refused. This is to assess if WCC are considering if the land is a registered TVG and are consistent in their approach to how they approve, carry out and refuse works on TVGs. As such I would like to see a list of all applications to carry out work on a TVG along with

5. Can I request a list of all works carried out and all applications for works to be carried out on any registered TVG? This list (which should not be very long) should include all works and requests to do works going back as far as 1971. This list to include:

a. Any reference identifiers for the application and/or work

- b. The date the application was made, or the work was carried out*
- c. The TVG that the application related to or the work was carried out on*
- d. Who carried out, or requested permission to carry out, the work (eg. the utility company, land owner, local resident)*
- e. Brief summary of the work (or attached details) eg. dropped kerb, widen road etc.*
- f. Indicate if the work was approved. If it was approved what legal Act or powers did WCC use to approve or carry out the work eg. Section 184 of the Highways Act 1980 (Dropped Kerb)*
- g. Indicate if the work was refused. If it was then the reason and what legal Act or powers did WCC use to refuse the application or to not carry out the work eg. Section 29 of the Commons Act 1876 restricts this type of work*

Council response

The County Council does not maintain a list of works/applications for works carried out on registered town or village greens. While it is likely that information is held in County Council databases, systems and records that would enable the creation of such a list, the County Council is not required to create new information. Further, the effort and resource required to complete such a task would present a huge burden on the public purse. This point of your request is therefore refused with regard to section 12 of the Act, as it is estimated that the cost of officer time required to locate, retrieve and extract the information required to meet your request for far exceed the appropriate limit of £450.

- 6. Can I request a list of all enforcement action, complaints or incidents that WCC staff or agents have been involved in that relate in any way to a TVG (eg. illegal damage, enclosing the land etc)? The list to include:*
- a. Any reference identifiers for the enforcement or investigation*
 - b. The date of the enforcement or investigation*
 - c. The TVG that the issue related to*
 - d. Brief summary of the issue (or attached details) eg. illegal excavation.*

e. Indicate under which legal Act and/or powers WCC were investigating. Eg. possible criminal damage under Section 29 of the Commons Act 187

f. Decision made by WCC indicating if the issue was found to contravene the legal Act or policy of WCC.

Council response:

The County Council does not maintain a list of enforcement action, complaints or incidents that relate to registered town or village greens. While it is likely that information is held in County Council databases, systems and records that would enable the creation of such a list, the County Council is not required to create new information. Further, the effort and resource required to complete such a task would present a huge burden on the public purse. This point of your request is therefore refused with regard to section 12 of the Act, as it is estimated that the cost of officer time required to locate, retrieve and extract the information required to meet your request for far exceed the appropriate limit of £450. This response therefore acts as a refusal notice under section 17 of the Act

'Request 2' (submitted 4 June 2019)

I would like to understand why it is impossible to provide any of the requested data (in any format at all). It seems strange to me that modern computer systems can't be searched to provide a report or GIS spatial data. I am sure this is true but to confirm I would like to know which systems were considered and why they cannot be searched before I forward this request to the ICO:

- a. What GIS system is used by WCC (eg OS mapping with Heron and GeoServer)?*

Council response:

WCC staff currently use a range of GIS software, mainly desktop GIS such as ESRI ArcGIS, QGIS, and MapInfo (although other systems are used by teams for specific reasons.) There is also an intranet/internet Corporate GIS solution based on Heron and Open Layers. GeoServer is used to publish data held on databases. Under the PSMA agreement with the OS, we have access to a wide range of OS mapping data, such as AddressBase and MasterMap, but we also get data from a variety of sources such as the Environment Agency.

- b. What spatial data and associated meta data may include land classed as a village green? Ie. Highway extent, digital plans for recent TVG applications*

Council Response:

We do have an older GIS dataset (in polygon geometry) for Village Greens, created a few years ago from various legal source documents, but this not digitised to OS Mastermap. It contains some limited attributes for each Village Green polygon. Our legal department will hold paper and digital records for them. It is possible that staff in Planning and Development and Rights of Way will have associated data as well.

- c. *Is it possible to identify TVGs using WCC's GIS or another mapping system WCC has access to?*

Council response:

Yes. The older dataset exists as an ESRI .shp and can be loaded into GIS software such as QGIS, and therefore displayed over OS base mapping or aerial photography. At the moment it is not published to the Corporate GIS, but could be once fully checked and updated.

- d. *Is it possible (and if it is how many hours does it take) for your GIS team to overlay highways extents and village greens to identify points of intersection?*

Council response:

The GIS team have no regular access to the "Highway Extents" data, as it is maintained by a separate team in WCC County Highways and due to the nature of the data it is generally not available to other teams (mainly because the digitising is still not complete, a lot of the data needs re-digitising, and the possible misuse of the data.) However, that team have ESRI ArcGIS software and should be able to do the task very quickly once they have access to the Village Green GIS data. However, that GIS data needs to be updated and passed by our legal department first, as mentioned above

- e. *Can you list the computer systems used to process an application to register a village green (eg. Finance system, CRM, GIS, Case management etc)?*

Council response:

***Visualfiles
Compass***

Request 3: 17 July 2021

If you look at the original request I asked for details of village greens in the County (spatial and/or database). You replied that the only data available was a paper record and that no other data existed. You have since replied to [Request 2] saying that your GIS system has both spatial data and database data associated with the polygons. Albeit, that this data is old, that is fine. Just to add, I note you want me to only specify one village. I did not request one village, I want the whole data set in electronic format. Ideally in several easily exported formats so that it can be opened by popular GIS and database applications. Please let me know the different formats you can supply this information and I will choose the best formats for me.

I would like you to do an internal review as you have continually failed to provide any information.

You have also mislead me by saying information isn't available that clearly is. After 2.5 months you have still not provided any of the information that I have requested even though it is clearly available. Why haven't you sent me the data that you have?

Council response

I can confirm that the information requested is held by Warwickshire County Council. I have detailed below the information that is being released to you. Please be advised that, due to the format of the records being released to you, I am unable to send them to you via email. Please be advised that the files have been burned onto a CD and will be posted to you. If you have any difficulties accessing them please let me know.

As advised previously, the records held in the County Council's GIS systems are old and in some cases outdated. They are incomplete and have not been quality assured.