

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

### **Decision notice**

**Date:** 19 October 2022

**Public Authority:** Newcastle Under Lyme Borough Council

**Address:** Castle House  
Barracks Road  
Newcastle  
Staffordshire  
ST5 1BL

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

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1. The complainant requested from Newcastle Under Lyme Borough Council "the Council") information relating to the council's dealings with his neighbour regarding the erection of a summerhouse/shed. The council disclosed some information, but said that no further information was held (Regulation 12(4)(a)). The complainant argues that further information should be held by it.
2. The Commissioner's decision is that the council does not hold any further information. It was therefore correct to apply Regulation 12(4)(a).
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 17 December 2021 the complainant made the following request for information under the EIR for:

"I am formerly requesting under the Freedom of Information Act the following recorded documents which I believe should be on file following [name of individual redacted by the ICO]'s meeting at your offices, to request permissions and re-scope of their rear garden and pathways, along with the erection of a wooden structure/building.

Following your perusal of my request and the documentation relating, may I please have a quotation for the supply of the said paperwork, before I proceed further, and for my records.

1. Date of meeting and who attended, and a copy of the formal agenda and minutes taken.
2. A copy of the scope, proposed external works drawing including size and position of the wooden structure.
3. Confirmation that the original topography grid of levels was tabled and discussed at the meeting which identified the difference in ground levels between [address of two houses redacted by the ICO].
4. Confirmation that a top water drainage proposal was tabled and discussed by all at the meeting, including gutter and water discharge from the wood structure.
5. Was the timing of the works discussed and confirmed and confirmation given that we at [house number redacted by the ICO] would be advised before the work commenced?
6. Was a traffic plan and material storage along with contractors parking discussed and agreed, along with the daily Hours of work and days per week?
7. Was there a discussion regarding installing a primary window which looks directly into out lounge along with a security light.
8. Was there a discussion regarding the top water discharge from the revised higher plateau down to the front public foot path and the road, ensuring there would be no discharge on to our land as it flows down.

9. What proposal was there to compensate for the existing soakway covered over and the front section of garden wall taken down, which acted as a water break before expelling onto the footpath?
  10. Under what clause of the regulations was the permission given and confirmation of the financial charge for granting it.
  11. What was discussed regarding cutting back our copper beach hedge in the vertical plain?
  12. Copies of any information agreements by phone, email prior to and after the meeting.
  13. Were the environmental department involved in the meeting of discussions afterwards regarding [house number redacted by the ICO] welfare issues and disruptions, bearing in mind [house number redacted by the ICO]'s Drive is 3 metres away from the bedroom window.
  14. Were the timing and duration of the mechanical digger discussed bearing in mind the close proximity to [house number redacted by the ICO]."
5. The council responded on 24 January 2022. It clarified that the majority of information is not held by it, but it did disclose a small amount of pre-application information. This included a copy of a drawing and text which it received prior to a telephone meeting with the neighbour taking place. It clarified that the meeting notes record that the development is a permitted development. A permitted development allows a homeowner to make some types of changes to their property without having to apply for planning permission to the local planning authority.
  6. Further information, including site visit notes and photographs, were disclosed on 4 February 2022.
  7. The council provided an internal review on 24 February 2022 in which it maintained its position that all of the information it holds falling within the scope of the complainant's request for information had been disclosed.
  8. Additionally, a further request for information from the complainant was responded to in the internal review outcome dated 24 February 2022 by the disclosure of the requested information.

## Scope of the case

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9. The complainant contacted the Commissioner on 7 February 2022 to complain about the way his request for information had been handled.
10. He argued that limited information was disclosed in response to his request. He doubted whether this was all of the information held by the council.
11. The scope of this case and of the following analysis is whether the council is likely, on the balance of probabilities, to hold any further information falling within the scope of the complainant's request for information.

## Reasons for decision

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### **Regulation 12(4)(a) – information not held**

12. The council argues that it does not hold the information requested by the complainant. It has therefore applied Regulation 12(4)(a).
13. The ICO must therefore decide on the balance of probabilities whether the council held any further information falling within the scope of the request at the time that the request was received by it.

#### The complainant's position

14. The complainant argues that the council must hold further information falling within the scope of his request.

#### The council's position

15. The council clarified to the complainant that it held a pre-planning application meeting with his neighbour. This is a meeting, made at the request of a developer, for advice about a development they are considering. The council said that as the proposed development was a permitted development, the complainant's neighbour would have been informed that no planning application was required to be submitted to the council in order to proceed with the development.

16. The complainant argued that the structure which was eventually built by his neighbour differs from that outlined in the pre-planning information which was disclosed to him. The council clarified, however, that the structure is still a permitted development, and therefore the houseowner was still not required to apply for planning permission from the council. It said that subsequent site visits have occurred, and the council has confirmed that work which was actually carried out is a permitted development.
17. The council argues that as the structure is a permitted development it holds no further information falling within the scope of the complainant's request.
18. The complainant made a formal complaint to the council which was ultimately responded to by the council's Chief Executive. He too confirmed that the reason that the information is not held is due to its permitted development status. He also confirmed that no further information is held by the council.

#### The Commissioner's conclusion

19. The Commissioner recognises that the complainant believes that further information should be held by the council. However, the council has confirmed to the complainant that no further information is held, and has fully explained why that is the case.
20. The erection of the structure was a permitted development. The houseowner was not therefore required to submit a planning application, or to follow the initial design discussed with council officers in the pre-planning meeting. No subsequent discussion or approval process was required from the council whatsoever in order for the houseowner to erect the structure which he did.
21. Where information is held by the council, this was disclosed to the complainant in response to his requests.
22. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong. The Commissioner is also not aware of any reason why the council would wish to withhold any information under these circumstances.
23. On this basis, the Commissioner has concluded that, on the balance of probabilities, no further information is held by the council falling within the scope of the complainant's request for information of 17 December 2021. It was therefore correct to apply Regulation 12(4)(a) and state that no further information is held by it.

## Right of appeal

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

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

25. 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.
26. 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**