

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 6 March 2023

Public Authority: East Sussex County Council
Address: County Hall
St Anne's Crescent
Lewes
BN7 1UE

Decision (including any steps ordered)

1. The complainant has requested information with regards to a planning application.
2. The Commissioner's decision is that East Sussex County Council (the council) has responded to the request in accordance with regulation 5(1) of the EIR.
3. The Commissioner does not require any steps.

Request and response

4. On 25 July 2022 the complainant made the following information request to the council:

"1. Copies of any correspondence between the Council and Bellway or its agents confirming that Bellway, as the applicant/developer, were privy to the suggestion in the highway report dated 19/09/2019 at paragraph 4 page 4, and were agreeable to the meeting the costs of monitoring and, if need be, installation of the measures to deter its use including the costs associated with the future maintenance of said measures.

The suggestion: It has been suggested that new signage could be erected at the Clavering Avenue/Maple Walk (road name corrected) junction to inform traffic that this is an un-adopted road with no through route. However, in addition to this I would recommend that any grant of consent includes a condition requiring ongoing monitoring of the Maple Walk route with potential for introducing measures to deter its use if necessary.

2. Copies of correspondence that identifies the source of (who raised) the safety concerns for pedestrians, cyclists and other road users in Maple Walk post development and the suggestion that it be linked to the grant of consent caveat.
3. Whether the Council informed Sussex Safer Roads of its concern for road safety in Maple Walk post development.
4. Copies of correspondence confirming why the grant of consent caveat was deemed appropriate in this instance.
5. Copies of any internal correspondence that confirms the fact that East Sussex County Council Environmental Health Department (EHD) was informed/consulted of councils concerns for the safety of pedestrians and cyclists and other road users using Maple Walk post development; its suggestion on how to address the issue and that it fully explained its decision to the EHD for making its own road safety suggestion subject to a grant of consent complete with its justification for so doing."
5. The council responded on 12 August 2022. For part 1 of the request it responded that the information was not held, but also applied section 21 of the Freedom of Information Act 2000 (the FOIA) – information reasonably accessible advising information could be viewed on Rother District Council's website.
6. For part 2 and 4 of the request the council stated the relevant documents on Rother District Council's website. The council stated no further information was held.
7. For part 3 the council's response was 'No'. and for part 5 of the request, the council stated no information was held.
8. The complainant requested an internal review on 16 August 2022, dissatisfied with the council's response to part 1 and 2 of his request.
9. On 18 August the council provided clarification to parts 1 and 2 of the request. It stated it does not hold the information for part 1 of the request. For part 2 it advised that the consultee was the council itself.

10. The complainant contacted the Commissioner on 27 September 2022 dissatisfied with the council's response to his information request.

11. On 4 October 2022 the complainant asked the council to confirm whether its internal complainant process was now concluded.

12. Following several more emails of correspondence to one another, the council conducted an internal review on 31 October 2022 to parts 1 and 2 of the complainants request.

13. The council located some email correspondence falling within the scope of part 1 of the request. This being email correspondence between the Principal Officer of the council's Highway Authority and Ardent Consulting Engineers, acting as Bellway's agent. It provided this information to the complainant redacting personal data under section 40(2) of the FOIA.

14. The council stated that it did not hold the information to part 2 of the request.

Scope of the case

15. The complainant contacted the Commissioner further to complain about the council's response. He provided the Commissioner with an email dated 13 December 2022 that he sent to the council which sets out the basis of his complaint. That being he wants the council:

"...to reveal the precise location within the stated report, that provides unambiguous evidence supporting the suggestion by the council that had the grant of consent been secured it would have been Bellway's responsibility to fulfil the required actions in respect of Maple Walk."

16. The scope of the case is for the Commissioner to firstly determine whether the request is a request for environmental information. Then the Commissioner will go on to determine whether the council has provided the information it holds falling within the scope of the request.

Reasons for decision

Is the request a request for environmental information?

17. The Commissioner has considered whether the request constitutes a request for environmental information, as defined by regulation 2(1) of the EIR.

18. The request relates to a planning application for Maple Walk for information such as conditions for ongoing monitoring of its use and considerations to the safety of those that will use it.

19. The Commissioner's view is that an information request relating to a planning application is by its very nature 'environmental'. He is therefore satisfied that this request, for information which concerns matters relating to a planning application, falls within the definition of regulation 2(1)(f) - the state of human health and safety, as well as (c) - measures affecting or likely to affect the elements and factors referred to in (a) - namely the landscape.

20. The Commissioner therefore finds that the request is a request for environmental information and so it falls under the EIR.

Regulation 5(1)– Providing information on request

21. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.

22. The complainant's complaint to the Commissioner is that he wants the council:

"...to reveal the precise location within the stated report, that provides unambiguous evidence supporting the suggestion by the council that had the grant of consent been secured it would have been Bellway's responsibility to fulfil the required actions in respect of Maple Walk."

23. The report is the one referred to in the complainant's request which is the Highway Consultation Response¹

24. The Commissioner would highlight that under the EIR and FOIA, a public authority only has to provide a copy of the recorded information it holds

25. In this case the complainant is asking that the council provide an explanation or opinion as to where a specific scenario is within a publicly available document. Under the EIR or FOIA, a public authority is not required to explain this.

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https://planweb01.rother.gov.uk/OcellaWeb/viewDocument?file=dv_pl_files%5CRR_2018_3127_P%5CRR_2018_3127_P-ESH_1.pdf&module=pl

26. The Commissioner is therefore satisfied that the council has complied with regulation 5(1) of the EIR by issuing the responses it has to the actual request that was made. He does not require it to take any steps.

Right of appeal

27. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.

29. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF