

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 March 2023

Public Authority: Borough Council of Calderdale
Address: Town Hall
Crossley Street
Halifax
West Yorkshire
HX1 1UJ

Decision (including any steps ordered)

1. The complainant has requested information relating to an environmental permit appeal from the Borough Council of Calderdale ("the Council"). The Council provided some information but said that no further recorded information was held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further recorded information.
3. The Commissioner does not require further steps

Request and response

4. On 22 September 2022, the complainant wrote to the Council and requested information in the following terms:

"As you will be aware it now over a year since the High Court quashed the grant of the above environmental permit (date of Cabinet decision 8 February 2021).

The public were told at the time that the application would be re-determined and as part of that there would be prior public consultation.

As you know I submitted an expert report into the original application – please see the email below.

Apart from an acknowledgement by you of the report I have not seen anything further on this matter. The Council's website still shows the application as "duly made" but there is no further information.

I would find it quite extraordinary if the original application is still being held over to be determined after all this time without any public update.

Can you please provide me with an update on the status of this application. If it still pending then please provide me with details as to the reasons and process that the Council considers it is following. Please also provide me with information as to the discussions that have taken place with the applicant and its advisors. Please provide me with the information about any updates that have been provided to Councillors ."

5. The Council responded on 29 September 2022. It provided some information and advised that an appeal had been submitted to the Planning Inspectorate, but no date had yet been given for the hearing.
6. Following an internal review the Council wrote to the complainant on 28 November 2022. It stated that it upheld the original response; that the complainant had been correctly provided with what information was held by it at the time that it responded to the request, albeit that the specific information requested, regarding any documented discussions and/or updates, was not held.

Scope of the case

7. The complainant contacted the Commissioner on 4 December 2022 to complain that not all the requested information had been provided.
8. The scope of the case is for the Commissioner to determine whether, on the balance of probabilities, the Council holds additional information which falls within the scope of the request.

Reasons for decision

Regulation 5 – duty to make environmental information available on request

9. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority which holds environmental information shall make it available on request.
10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that no further information is held, and he will consider any other reasons offered by the public authority to explain why no further information is held. The Commissioner will also consider any reason why it is inherently likely or unlikely that no further information is held.
11. The Council said that the complainant was provided with the information that it held at the time that the request was responded to.
12. It went on to confirm that no further recorded information is held beyond that already disclosed as part of the process underway for the Appeal. It confirmed that this has already been provided to the complainant.
13. As part of the investigation the Council explained to the Commissioner that the appeal falls under the auspices of the Planning Inspectorate and that, and as part of this process, a barrister was instructed by the Council.
14. An oral briefing confirming the barristers appointment was provided to the Officers of the Council by its legal team. As this was an oral briefing, the council confirmed that no further information is held relating to this.
15. The Commissioner understands that a letter to the barrister confirming their appointment is held by the Council and that a copy of this letter has been provided to the complainant.

The Commissioner's conclusion

16. The Commissioner has considered the Council's position, in conjunction with the request.

17. Whilst the complainant believes that further information should be held by the council, the Commissioner's decision must be based on the information which the council did hold.
18. The Council has confirmed to the Commissioner that as an appeal was already under way by the time that the complainant made his request for information, no further information was held by it.
19. There is no contradictory evidence available to the Commissioner that indicates the Council's position is wrong.
20. 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.

Right of appeal

21. 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

22. 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.

23. 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**