

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

### **Decision notice**

**Date:** 1 March 2023

**Public Authority:** Wiltshire Council  
**Address:** County Hall  
Bythesea Road  
Trowbridge BA14 8JN

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

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1. The complainant requested information provided to Wiltshire Council by a residential land promoter. Wiltshire Council (the "council") refused the request, citing the exceptions for commercial confidentiality (regulation 12(5)(e) and interests of the information provider (regulation 12(5)(f)).
2. The Commissioner's decision is that the council is entitled to rely on regulation 12(5)(e) of the EIR to refuse to provide the requested information.
3. The Commissioner does not require the council to take any steps.

## **Request and response**

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4. On 24 October 2022, the complainant made the following request for information to Wiltshire Council (the "council"):

"I am writing to request copies of information supplied to the Council by Lightwood Strategic in April this year including landscape, archaeological and heritage baseline reports as part of the Master Development Plan for the Local Plan Review."

5. The council's final position is that the request is refused and that the exceptions for commercial confidentiality (regulation 12(5)(e) and interests of the information provider (regulation 12(5)(f)) apply.

## **Reasons for decision**

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### **Regulation 12(5)(e)- confidentiality of commercial information**

6. Regulation 12(5)(e) applies to information where its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
7. The council has explained that Lightwood Strategic ("Lightwood") is a residential land promoter working with local landowners regarding land that could potentially be identified for housing led development by the council as part of the review of its Local Plan. The council has clarified that the objective of a land promoter is to secure planning permission, following the allocation of land in a Local Plan.
8. The council has explained that the withheld information consists of reports containing Lightwood's internal intelligence relating to their commercial asset, the effect on its development potential, and on potential planning options. The council's position is that the information clearly relates to the commercial development of the land for housing and other uses.
9. The council has further argued that the information is more than trivial as it relates to the preparation of the Local Plan, a wider project providing for development including new homes across Wiltshire and relates directly to development around Trowbridge.
10. In relation to adverse effects, the council has argued that the promotion of land for development through the planning system is a commercial activity and, should the information be made available to others by its publication, it would be harmful to Lightwood's commercial objectives as

competitors could use the information to their unfair advantage.

11. The council has explained that there are other land promoters, housebuilders and landowners with a direct interest in the land to which the information relates. It has argued that information about Lightwood's view of the characteristics of the land and the potential arrangement of land uses and access arrangements, if made public, would be harmful to Lightwood in relation to current commercial and contractual negotiations related to land assembly.
12. In setting out its position the council confirmed that it consulted with Lightwood and sought its views as to the effects of disclosure on its interests. The Commissioner is satisfied, therefore, that the arguments presented accurately reflect the relevant factors.
13. Having considered the arguments provided and referred to the withheld information the Commissioner is satisfied that the requested information is commercial in nature. He is also satisfied that the information is subject to confidentiality by law because it is not trivial and is not otherwise accessible and so has the necessary quality of confidence.
14. The Commissioner has gone on to consider whether the confidentiality is provided to protect a legitimate economic interest. In this case he recognises that Lightwood is operating in a competitive land promotion market and that the information provided to the council consists of unique commercial intelligence it has generated to facilitate its market position.
15. The Commissioner accepts that disclosing this information would provide competitors with insights into Lightwood's commercial strategy and with intelligence which would otherwise not be accessible other than via disclosure under the EIR. The Commissioner considers that disclosure would result in competitors gaining an advantage in this specific commercial environment as there would be no reciprocal disclosures of equivalent information produced by Lightwood's competitors.
16. In light of the above, the Commissioner is satisfied that disclosure would result in adverse effects to Lightwood's legitimate economic interests and that the confidentiality protecting these interests would inevitably be affected if the council disclosed this information.
17. The Commissioner has gone on to consider the public interest test being mindful that regulation 12(2) provides that a public authority shall apply a presumption in favour of disclosure.

### **Public interest in disclosure**

18. The council has acknowledged that there is an inherent public interest in public authorities operating with openness and transparency. It has also recognised that there is a specific public interests in information being available to inform the public in local planning matters.
19. The complainant has raised concerns about the the relationship between the council, Lightwood and various landowners. In the complainant's view the failure to disclose the requested information restricts public scrutiny of the appropriateness of the council's role in these relationships.

### **Public interest in maintaining the exception**

20. The council has argued that the disclosure of commercial and confidential information provided by land promoters to councils would be likely to inhibit other land promoters from providing similar information in the future which would have a detrimental effect on the council's abilities to undertake similar exercises.
21. The council has explained that the Local Plan is to be subjected to formal public consultation that has been delayed but is now scheduled to commence Quarter 3, 2023. The council has confirmed that it will then be subject to a public examination by an independent planning inspector, appointed by the Secretary of State. As part of the public consultation the council will publish the evidence that it relies on to form its polices. If the council decides to allocate the land in question and also relies upon the requested information, then it will be published. It would not be in the public interest to pre-empt that process by publishing the information prior to a decision being taken on whether to allocate the land, or not.

### **Balance of the public interest**

22. The Commissioner recognises that there is a general public interest in disclosing information which facilitates public engagement with planning matters.
23. In relation to the complainant's concerns about the appropriateness of the council's role in this matter, the Commissioner accepts that this might be a valid consideration. However, it is not the Commissioner's role to reach a view on this matter. In relation to the council's practice, there are other remedies for raising such concerns.
24. Moreover, the Commissioner does not consider that disclosing the specific information requested would address such concerns

as the information consists of intelligence created in support of a commercial proposal. He does not see how disclosing the information would reveal anything about the relationship between the council and Lightwood and/or other parties or, at least, nothing that would identify whether the relationship is appropriate or otherwise.

25. The Commissioner has accepted that disclosure would result in adverse effects to Lightwood's legitimate economic interests and he has not been presented with arguments which identify a specific public interest in disclosure which would outweigh the harm which would be caused.
26. Whilst he is sympathetic to the complainant's concerns, the Commissioner does not consider that disclosure in this case would serve the public interests which have been identified. In relation to the broader public interest in enabling public engagement with planning matters the Commissioner notes the council's submissions (above) regarding public consultation and the Local Plan. In the Commissioner's view, withholding the information does not inhibit public ability to engage with this process and does not unduly restrict the public interest in accountability and transparency.
27. In light of the above the Commissioner has concluded that the public interest in this case favours maintaining the exception. He has, therefore, concluded that the council is entitled to withhold the information under regulation 12(5)(e).
28. As he has determined that regulation 12(5)(e) has been correctly applied the Commissioner has not gone on to consider the council's application of regulation 12(5)(f).

## **Right of appeal**

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29. 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)

30. 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.

31. 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 .....**

**Christopher Williams**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**