

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

### **Decision notice**

**Date:** 27 October 2023

**Public Authority:** Worcester City Council  
**Address:** The Guildhall  
High Street  
Worcester  
WR1 2EY

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

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1. The complainant requested information from Worcester City Council (the Council) relating to 'green space'. The Council's position is that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information. It was therefore correct to apply regulation 12(4)(a) of the EIR. However, the Commissioner has also decided that the council failed to carry out an internal review within the statutory time limit and, therefore, it failed to comply with regulation 11(4) of the EIR.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

#### **Request and response**

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4. On 9 May 2023, the complainant wrote to the Council and requested information in the following terms:

"I would like to evoke Freedom of information and ask you to make known to me the Company who supplied you with information and

dates when they were first instructed to carry out survey which helped formulate the Category that was chosen to use for invoking Green Space on my property, would please tell me which Category is used and to send photo copies of the professional criteria that was used to help formulate Green Space as per N.P.P.F. P.P.G.”

5. Acronyms

- NPPF – National Planning Policy Framework
- PPF – Planning Policy Guidance

6. The Council confirmed that 'green space' policy is included in the [South Worcestershire Development Plan](#) (SWDP (2016)). Within the plan, green space is described as being "... the collective term used to describe all parks, public gardens, playing fields, children's play areas, woodlands, nature reserves, allotment gardens, linear and other open space."

7. The SWDP also states that some private gardens, particularly in Worcester, are also defined as green space where they perform a local green network function.

8. The Council responded to the request on 25 May 2023, stating that they did not hold the requested information.

9. Following an internal review, the Council upheld its original response, though it did provide general information in relation to the creation of green space.

### **Scope of the case**

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10. Within their internal review request to the Council, the complainant submitted additional questions or requests for explanations. On his acceptance of the case, the Commissioner explained to the complainant that he would not be investigating the Council's response to these additional questions.

11. The scope of the case is therefore to consider whether, on the balance of probabilities, the Council holds information falling within the scope of the request above. He will also consider whether the Council complied with its obligations under regulation 11(4) of the EIR.

## Reasons for decision

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

12. This reasoning covers whether the council is correct when it says that it does not hold the information the complainant requested.
13. Under regulation 5(1) of the EIR, and subject to a number of EIR provisions, a public authority that holds environmental information shall make it available on request.
14. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information “to the extent that it does not hold that information when an applicant’s request is received.”
15. In scenarios where there is some dispute between the amount of information which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
16. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, at the time of the request a public authority held any - or additional - information which fell within the scope of the request. For clarity, the Commissioner is not expected to prove categorically whether the information is held.
17. The Council stated that it could not trace any records showing that an external company was employed for the production of the green space layer, including carrying out a survey, or providing advice on specific areas to be included. It confirmed that the work was primarily undertaken internally, by officers of the three South Worcestershire Councils involved in the production of the SWDP.
18. It went on to state that, “Due to the time that has elapsed since the councils were preparing the plan and when it was considered by the planning inspector, no information is held regarding any categories or criteria that might have been used to formulate the green space policy designation.”
19. The Council stated that information that would have informed the formulation of local planning policy as part of the SWDP, was not required once the plan was formally adopted in February 2016, and once the 6-week period for judicial review had expired. It went on to confirm that there are no statutory requirements to retain the requested information.

20. The Council has confirmed that, at the time of the original request, it carried out searches for information relating to the formulation of the SWDP, but could not trace any records detailing the criteria or formula that was used to formulate the green space policy designation or any draft plans, in so far as it affected the complainant's property.
21. As part of the internal review, the Council confirmed that further searches of Council records were carried out, and no records directly relating to the inclusion of the complainant's property were traced.
22. The Commissioner accepts that, on a balance of probabilities, the Council did not hold the requested information and it was therefore correct to rely on regulation 12(4)(a).

### **Public interest test**

23. Technically, regulation 12(4)(a) contains a public interest test. However the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

### **Procedural matters**

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#### **Regulation 11 – internal review**

24. Regulation 11 of the EIR covers public authorities' obligations in relation to the carrying out of internal reviews of the handling of requests for information.
25. Regulation 11(4) requires authorities to provide an internal review - decision within 40 working days of the date of receipt of a request for review.
26. In this case, the complainant submitted their request for review on 13 June 2023. The Council contacted the complainant on 13 July 2023, explaining that it would not be able to respond to their internal review request within the statutory timescale.
27. The Council responded to the internal review request on 10 August 2023, and apologised for the delay.
28. The Commissioner has therefore concluded that the Council failed to comply with regulation 11(4) in this case.

## 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 .....**

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**