

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

### **Decision notice**

**Date:** 15 February 2024

**Public Authority:** Lincolnshire County Council  
**Address:** County Offices  
Newland  
Lincoln  
LN1 1YL

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

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1. The complainant requested information from Lincolnshire County Council ("the Council") relating to its Minerals and Waste Local Plan, and the updating of that plan.
2. The Commissioner's decision is that on the balance of probabilities, the Council does not hold information within the scope of the request. Therefore, the Council is entitled to rely on regulation 12(4)(a) (information not held) to refuse to comply with the request.
3. The Commissioner does not require the Council to take any steps.

#### **Request and response**

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4. On 21 April 2023, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act, I would like to request the following information: -

All recorded information held by Lincolnshire County Council including notifications, forms, letters, emails, minutes of meetings, dates of telephone calls, notes of telephone calls, file notes, diary notes, proposals, assessments, reports in respect to the following decisions and actions. This information also include all communications with external organisations, e.g. local and central government organisations, legal firms, consultants, other landowners and gravel companies (Breedon/Cemex): -

1. Decisions and action taken by Lincolnshire County Council in its position as the landowner in the development, approval and acceptance in the consenting of MS29 in 2017.
2. Decisions and action taken by Lincolnshire County Council in its position as the landowner in the development, approval and acceptance not to carry the consented MS29 into the proposed new "Updating of the Lincolnshire Minerals and Waste Local Plan" in 2022.
3. Decisions and action taken by Lincolnshire County Council in its position as the landowner in the development, approval and acceptance in the inclusion of SG17 in the "Updating of the Lincolnshire Minerals and Waste Local Plan" in 2022,
4. Decisions and action taken by Lincolnshire County Council in its position as the landowner in the development, approval and acceptance in the decision to delay the "Updating of the Lincolnshire Minerals and Waste Local Plan" by a year to 2024.

I would request the information is provided in electronic format.

5. The Council denied holding information within the scope of the request. It therefore applied regulation 12(4)(a) (information not held) of the EIR to the request.

### **Reasons for decision**

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6. This reasoning covers whether the Council is correct when it says that it does not hold information within the scope of the request and is therefore entitled to rely on regulation 12(4)(a) to refuse to comply with the request.

### **The complainant's position**

7. In their complaint to the Commissioner, the complainant stated that they consider the Council to hold information within the scope of the request. They stated that the Council owns the land MS29, and as the landowner, it must have been involved in, and agreed to, the decision to include MS29 in the Council's Minerals and Waste Local Plan in 2017.
8. The complainant also stated that the Council owns the land SG17, and as the landowner, it must have been involved in, and approved, the decision to include the land SG17 in the updated Minerals and Waste Local Plan.
9. The complainant therefore considers the Council, as landowner, to hold information relating to the decision to include both MS29 and SG17 in the Mineral and Waste Local Plan.

### **The Council's position**

10. By way of background, in its submissions to the Commissioner, the Council explained that it is the mineral and waste planning authority for Lincolnshire, and is therefore responsible for the production, monitoring, review and updating of a minerals and waste local plan.
11. The Council said that the Lincolnshire Minerals and Waste Local Plan (LMWLP) was created in two parts, with the first part being adopted in June 2016, and the second part being adopted in December 2017. In 2021, the Council authorised the updating of the LMWLP, and said that it is currently still in the process of being updated.
12. The Council maintained that it does not hold any information within the scope of the request. It explained that it has consulted the business manager of the Council's Corporate Property Team, who is responsible for the Council's county farms estate which includes the land referred to in the request. The business manager stated that the role of the Corporate Property Team is to oversee day to day operations of the county farm estate, and is not involved in any decisions relating to the LMWLP, as planning matters do not fall within its remit. The business manager therefore confirmed that the Corporate Property Team does not hold any information within the scope of the request.
13. The Council also explained that the Policy Planning Team has undertaken a search for information relating to the LMWLP that falls within the scope of the request. This involved manually reviewing both physical and digital archives. However, no information within the scope of the request was located. The Policy Planning Team also conducted a search of its digital records for information relating to the updating of

the LMWLP that falls within the scope of the request. However, no information within the scope of the request was identified.

14. With regards to the updating of the LMWLP, the Council explained that the Council, as landowner, was included in a general consultation on an issues and options paper and a call for sites exercise in June 2022. However, the Council did not respond to the consultation. Furthermore, the Council explained that the Council as landowner has not been involved in any work relating to the submission of sites for allocation in the updated LMWLP, or consulted on such matters.
15. The Council states that as landowner it has not been involved in any decisions or actions relating to the process of updating the LMWLP and therefore, it does not hold any information relating to the updating of the LMWLP that falls within the scope of the request.

### **The Commissioner's position**

16. The Commissioner considers it pertinent to note that the request asks for information relating to decisions and action taken by the Council in its position as landowner regarding the LMWLP, and the updating of the LMWLP. He therefore considers that if the Council has made decisions and taken action relating to the LMWLP, or the updating of the LMWLP, information held relating to those decisions and action would not fall within the scope of the request if they were not made by the Council in its position as landowner of MS29 or SG17.
17. Whilst the Commissioner notes that the Council has not been explicit in explaining why it does not hold information relating to decisions and actions taken relating to the LMWLP that fall within the scope of the request, he is satisfied that the searches carried out by the Council were reasonable and would have identified any relevant information, if held.
18. The Commissioner also considers that the Council has carried out reasonable searches for information relating to the updating of the LMWLP that falls within the scope of the request, and accepts the Council's reasoning for not holding any relevant information.
19. The Commissioner is therefore satisfied that, on the balance of probabilities, the Council does not hold any information within the scope of the request. His decision is that the Council is entitled to rely on regulation 12(4)(a) to refuse to comply with the request.
20. As no information within the scope of the request is held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no information to disclose.

## Right of appeal

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

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

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