

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 September 2024

Public Authority: Antrim and Newtownabbey Borough Council

Address: Antrim Civic Centre
50 Stiles Way
Antrim
BT41 2UB

Decision (including any steps ordered)

1. The complainant requested information in relation to statements made in a case officer's report in respect of a planning application. The above public authority ("the Council") stated that the information was not held.
2. The Commissioner considers that, on the balance of probabilities, the Council does not hold the information requested and regulation 12(4)(a) of the EIR is engaged.
3. The Commissioner also finds that the Council provided adequate advice and assistance under Regulation 9 of the EIR.
4. The Commissioner does not require the Council to take any further steps.

Request and response

5. On 22 December 2023, the complainant requested the following information from the Council:

"This freedom of information request is about statements used in Planning Application: LA03/2020/0349 and the Case Officer's report of 15 March 2021 page 30.

In particular the paragraph headed Road Reparations. These statements are not singular to this application and this application is

used as an example only. The paragraph is set out here for ease of reference.

"Road Reparations

Concerns were raised by objectors with respect to traffic generation from the proposed scheme and the subsequent detrimental impact the additional vehicular movements will have on the quality of the surrounding roads. The objectors have stated that the developer should be subject to a binding commitment to upgrade the private road. They also stated that the existing Lenamore Drive residents will be disadvantaged by having to pay for post 2 construction road reparations and that the owners of private roads at Lenamore Drive, Lenamore Avenue, Church Avenue and Glenkeen Avenue should be contacted for their opinion in respect of this matter. No verifiable evidence has been submitted to indicate what exact effect this proposal is likely to have on the quality of the roads and there is no certainty that this would occur as a direct consequence of the proposed development. The upgrade of the surrounding private road network is a civil matter and accordingly it is considered that this issue should not be afforded determining weight in the determination of this application.

1. I would like to see or have copies of any records which are held around the assessment which allowed the following statement to be made: "...there is no certainty that this would occur as a direct consequence of the proposed development."

2. I would like to see or have copies of any records which are held around the assessment of the definition of civil matter and how it pertains the lanes within Lenamore ATC. This phrase is used in the following statement: "The upgrade of the surrounding private road network is a civil matter and accordingly it is considered that this issue should not be afforded determining weight in the determination of this application."

3. I would like to see or have copies of any records which are held around the assessment: "...accordingly it is considered that this issue should not be afforded determining weight in the determination of this application." It is of public interest to see or have copies of these records. Planning applications for development within Lenamore ATC appear to accept these statements as statements of fact and it is in the public interest to be able to test this premise."

6. On 15 January 2024, the Council responded as follows:

"The information held around the assessment of planning application LA03/2020/0349/F contained in the application file including the Planning Report, Decision Notice, associated drawings, supporting documents and 3 consultation responses is available to view online via Planning Portal Public Register Northern Ireland Public Register ([Northern Ireland Public Register \(planningsystemni.gov.uk\)](https://planningsystemni.gov.uk))

The Council has considered your request for copies of any records which are held around the assessment of the definition of civil matter and how it pertains to the lanes within Lenamore ATC and has applied the exception of regulation 12(4)(a) of the EIR as the Council does not hold this information.

The information held around the assessment of planning application LA03/2020/0349/F contained in the application file including the Planning Report, Decision Notice, associated drawings, supporting documents and consultation responses is available to view online via Planning Portal Public Register Northern Ireland Public Register ([Northern Ireland Public Register \(planningsystemni.gov.uk\)](https://planningsystemni.gov.uk))"

7. The complainant requested an internal review in the following terms:

"I'm afraid I find the response I received on 15 January 2024 unsatisfactory. I've set out my reasons as below:

1. Please note there is no evidence provided to support this statement on the Public Register. Please therefore provide the background records to allow this statement to be made.

2. I find this extremely odd as the Council use this phrase throughout the assessment of the planning application. Can you please let me know who does hold this information so I can make an appropriate FoI request. The paragraph states that a particular issue can't be given any weight because it is a civil matter. I would like to see the information and records which allowed Council to make this statement of fact.

3. As above there is no discussion of this statement in any of the documents on the planning portal so I repeat this request. I would like you to carry out an internal review."

7. On 25 March 2024, the Council provided its internal review outcome which stated:

"The Council has carried out a review of your previous request and is unable to provide any additional information to that previously provided.

A request for information under the Environmental Information Regulations 2004 will provide information held by the Council it is not a means to provide clarification on the information.

The issues of significance and determining weight are matters of professional judgement for the decision maker.

The potential damage to the private laneway is a matter to be resolved by the affected parties and would be regarded as a civil legal matter. You may wish to seek legal advice regarding this..."

Scope of the complaint

8. On 17 May 2024, the complainant contacted the Commissioner to raise a complaint about the Council's response.
9. The Council cited regulation 12(4)(a) of the EIR in response to this request and, accordingly, the scope of this decision notice is to determine whether regulation 12(4)(a) of the EIR applies in this case.

Reasons for decision

Is the requested information environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape, and natural sites including wetlands, coastal and marine areas, biological diversity, and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation, or waste, including radioactive waste, emissions, discharges, and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

11. The request seeks information regarding planning applications which, in the Commissioner's opinion, would fall under Regulation 2(1)(c) of the EIR and is therefore environmental information. Therefore, the Council was correct to consider the request under the EIR.

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

12. Regulation 5 of the EIR requires that a public authority that holds environmental information shall make it available on request. This is subject to any exclusions or exceptions that may apply.
13. Regulation 12(4)(a) of the EIR says 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.
14. In scenarios where there is some dispute about whether a public authority holds relevant information, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the Council to check that the information is not held, and he will consider any other reasons offered by the Council to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
16. The Commissioner notes that the complainant asked for information about a number of statements used as part of a Planning Case Officer Report, citing LA03/2020/0349/F as the example of where these statements were used. The statements are set out in the request.
17. The complainant is convinced that the Council holds further information in respect of their request, and in their complaint to the Commissioner stated that there must be some documented discussion regarding the phrase "civil matter" which has been used in various planning applications and that, therefore, the Council must hold further information in scope of the request.
18. The Council explained to the Commissioner:

"Whilst case law provides the basis for a Planning Officer determining if an issue raised is considered to be a material planning consideration and should be afforded determining weight it does not direct what determining weight should be applied."

In addition, case law has defined matters which are not material planning considerations and in some instances identified them as civil matters, such as private roads, and are therefore not to be afforded determining weight in the assessment of a planning application by Antrim and Newtownabbey Borough Council. The Strategic Planning Policy Statement states; 'The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest.' It then goes on to say that the administration of spatial planning does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases.

These statements and judgements in relation to an application are informed by the knowledge and professional experience of the Planning Case Officer. In addition the Planning Section processes include a senior review of all planning applications therefore confirming the Officer has appropriately applied their professional knowledge. Where an application is referred to Planning Committee, the case officer report is further scrutinised by Senior Officers of the Council."

19. The Council further explained:

"This planning application was refused by the Council and was subsequently appealed to the Planning Appeals Commission. The issue of the damage to the laneways was also raised at the appeal and the Commissioner also referred to these as civil matters. (paragraph 6.39 of appeal reference 2020/A0171)."

20. The Commissioner questioned the Council about the searches it had carried out to find the information requested and the Council provided a full explanation of the detailed searches it had carried out to find information in scope of the request.

21. The Commissioner understands that the complainant is convinced that the Council must hold information falling within the scope of their request. However, it is not the Commissioner's role to establish what information a public authority should hold, or whether it has a requirement, statutory or otherwise to hold certain information. Nor will the Commissioner undertake a forensic examination of all records held by a public authority if it is not proportionate to do so. The Commissioner's role is to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

22. Based on the evidence made available to him, the Commissioner is satisfied that the Council has now carried out adequate searches, which would have located any information falling within the scope of the request.
23. Based on the searches undertaken and the other explanations provided, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any information falling within the scope of the request.

Public interest test

24. 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.

Regulation 9 – Advice and Assistance

25. Regulation 9(1) of the EIR requires public authorities to provide advice and assistance to requestors, so far as it would be reasonable to expect the authority to do so.
26. As stated in the Commissioner's guidance, the duty to provide advice and assistance can be triggered if a public authority is aware, at the time of the request, that the applicant may actually be seeking other information, beyond what they have asked for in the request.
27. The guidance states:

“In this situation, you should respond by providing the information the applicant has requested. However, if your examination of the request shows that the applicant is clearly seeking other information and what this is, you should also advise and assist them with a view to enabling them to make another request.”
28. The Commissioner notes that, in its internal review response, the Council offered the complainant the opportunity to speak to a senior planning officer for more detail about the matter and provided the relevant contact details.
29. The Council informed the Commissioner that the complainant did not take up this offer.

30. The Commissioner's decision is that the Council did comply with its obligations under regulation 9(1) of the EIR to offer advice and assistance.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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