

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 17 October 2024

Organisation: Cala Homes (Chiltern) Limited

Address: Gemini House
Mercury Park
Wooburn Green
Buckinghamshire
HP10 0HH

Decision (including any steps ordered)

1. The complainant has requested information from Cala Homes (Chiltern) Limited regarding a specific sewage pumping station. Cala Homes (Chiltern) Limited explained that it was not a public authority for the purposes of the EIR and was therefore not obliged to provide the information.
2. The Commissioner's decision is that Cala Homes (Chiltern) Limited is not a public authority for the purposes of the EIR and therefore it was not obliged to provide the information.
3. As Cala Homes (Chiltern) Limited is not a public authority, the Commissioner cannot require further steps to be taken.

Request and response

4. On 10 August 2023 the complainant requested the following information from Cala Homes (Chiltern) Limited:-

"I would like to make an Environmental Regulation (EIR) request in regard to the sewage pumping station and associated storage tank on the Hill Foot View development in Wingrave Buckinghamshire.

I appreciate you may not have received an EIR request before but I believe you find yourselves in this position due to the reluctance of Thames Water to accept responsibility for the pumping station leaving your organisation responsible for pumping the sewage from the development into the public sewerage system for which the village is grateful. You may prefer to respond to my request as a Freedom of Information request or just to provide the information outside of any freedom of information legislation without any acceptance of associated liability and on the basis the information is confidential and not to be disclosed to any third party without your prior written permission. I am happy whichever option you choose. The information I seek is straightforward and I hope will not be onerous for you to provide.

Could you please provide me with the following in regard to the pumping station on the Hill Foot View development in Wingrave Buckinghamshire.

- The size of the sewage storage tank.
 - The rate (litres per second) which the contents of the tank are pumped back into the public sewerage system.
 - The dates, times and duration of pump back events between 1 January 2023 and the date of this letter or when Thames Water assumed responsibility for the pumping station whichever is the earlier."
5. On 20 September 2023 Cala Homes (Chiltern) Limited responded to state that it was not a public authority for the purposes of EIR. It maintained that position at internal review.

Reasons for decision

Would the requested information be environmental?

6. If the information is not environmental, it is irrelevant whether an organisation is or is not covered by the EIR.
7. 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;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
4. Although he has not seen the requested information, as it is information relating to sewage pumping, the Commissioner believes that the requested information is likely to be information on factors affecting the elements of the environment as set out in regulation 2(1)(b). For procedural reasons, he has therefore assessed this case under the EIR.

Is Cala Homes (Chiltern) Limited a public authority for the purposes of the EIR?

5. The definition of public authority is given in Regulation 2(2) of the EIR. In particular it states that a 'public authority' means the vast majority of public authorities as defined in Section 3 of the EIR and:
- (c) any other body or other person, that carries out functions of public administration; and
 - (d) any other body or other person that is under the control of a public authority and:

- (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.
6. In considering the question of whether Cala Homes (Chiltern) Limited is a public authority for the purposes of the EIR, it must therefore be established whether it has functions of public administration or is under the control of a public authority.
 7. Fish Legal v Information Commissioner & Others (GIA/0979/2011 & GIA/0980/2011) ("Fish Legal") is relevant here. This considered the issue of whether water companies are public authorities for the purposes of regulation 2(2)(c) or (d) of the EIR.
 8. The Upper Tribunal (UT) in the Fish Legal case therefore considered whether the relevant bodies are entrusted by law with the performance of services in the public interest and whether they are vested with special powers. It also considered control of the companies and their autonomy.
 9. With respect to functions of public administration, the UT in the Fish Legal case explained that persons 'performing public administrative functions' are:
 - "entities, be they legal persons governed by public law or by private law, which are entrusted, under the legal regime which is applicable to them, with the performance of services of public interest, inter alia in the environmental field, and which are, for this purpose, vested with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law".
 10. It then considered the question of whether the companies in that case had 'special powers'.

Is Cala Homes (Chiltern) under the control of a public authority?

The UT also set out the test for 'control'. It explained the test applies to the manner in which functions are performed, not the functions themselves. For example, a body is not under control of the Government merely because its powers derive from statute.

11. There are therefore two elements to the test – in order for a body to be under the control of a public authority, it must:
 - (i) operate in fact in a non-autonomous manner; and

- (ii) do so because a public authority is in a position to control it.
12. In other words, although the public authority need not actually be exercising its powers of control, the existence of the powers must have a real constraining effect on the body in question.
 13. Furthermore, the UT decided that the test requires consideration of the body's overall manner of performing its services: it would not be enough to find control in 'one or two marginal aspects' of its business.
 14. The UT pointed out that 'no legitimate business has complete freedom of action'. It explained that as all operate in a framework of legal and commercial constraints, something more is needed before one can say that they have lost their autonomy.
 15. The Commissioner is satisfied that Cala Homes (Chiltern) Limited is not under the control of a public authority. It is owned by a holding company – Cala Group (Holdings) Limited – but it is not under the control of that company and appears to be able to operate autonomously. In the absence of evidence to the contrary, the Commissioner is satisfied that Cala Homes (Chiltern) Limited is not under the control of public authority.

Has Cala Homes (Chiltern) Limited been entrusted with functions and does it have special powers?

16. In order to be classified as a public authority, an organisation must have been entrusted in law with functions relating to the environment. In practical terms, this usually means that the state must have passed a law, requiring the organisation to carry out certain functions it would more usually carry out itself.
17. The Commissioner understands that neither Cala Homes (Chiltern) Limited nor its holding company possesses any licences or permits to operate sewage pumping facilities.
18. Cala Homes (Chiltern) Limited stated that it has two agreements with Thames Water to operate the sewage pump facilities for the area in question. As set out in Cala Homes's response to the Commissioner's enquiries, these are agreements under sections 104 and 185 of the Water Industry Act 1991 which provide as follows:-
 - Section 104 provides that the water company can enter into an agreement with developers to adopt any sewage/drainage infrastructure that the developer is constructing.
 - Section 185 provides that a water company is obliged to move pipes etc to accommodate improvements to the land through

which those pipes run and allows the water company to charge the other party for carrying out those works.

19. Cala Homes (Chiltern) Limited has explained to the Commissioner that these are agreements between Cala Management Limited and Thames Water, as the statutory water and sewage undertaker responsible for the public sewerage and water supply systems in the area:-
 - (1) to relocate the pumping station to allow the development work to progress; and
 - (2) a sewer adoption agreement under Section 104 of the Water Industry Act 1991 between Cala Homes (Chiltern) Limited, Cala Management Limited, a housing association, National House Building Council and Thames Water Utilities Limited dated 18 December 2023 whereby the two Cala companies and the housing association have agreed to build a pumping station to a specific standard, which, once built, will then be adopted and maintained by Thames Water. The pumping station is complete and will be adopted by Thames Water once the adoption process is complete.
20. Therefore, it appears to the Commissioner that the agreements simply cater for the practical arrangements necessary to accommodate the construction of the estate and connect the new infrastructure to Thames Water's network. As such it does not appear that Cala Homes has itself been entrusted with public administrative functions.
21. The Commissioner also asked Cala Homes (Chiltern) Limited a number of questions as to whether it has been vested with any special powers. The Commissioner is satisfied from the responses that it has not been vested with any such special powers and operates the sewage pumping facilities in question on a temporary basis according to the agreements as set out in paragraph 19 above.
22. Cala Homes (Chiltern) Limited is therefore not a public authority for the purposes of the EIR and is not obliged to respond to requests for environmental information.

Other matters

23. Cala Homes (Chiltern) Limited has informed the complainant that the request should be sent to Thames Water as the relevant public authority. The Commissioner recommends that the complainant takes this course of action.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF