

**Freedom of Information Act 2000 (Section 50)
and
The Environmental Information Regulations 2004.**

Decision Notice

Date: 11 August 2010

Public Authority: New Forest District Council
Address: Appletree Court
Lyndhurst
Hampshire
SO43 7PA

Summary

The complainant submitted a request to New Forest District Council ('the Council') for information from environmental records held on a property in Lyndhurst. The complainant specified that he wished to view the records in person. The Council agreed to provide some of the information requested, but stated that the complainant could not inspect other information. As an alternative, the Council offered to provide a report containing the relevant information for a set fee. The Commissioner's decision is that the Council breached regulation 5(1) as it failed to make information available on request and regulation 5(2) as it failed to make it available within the statutory time for compliance. The Commissioner found that the Council breached regulation 6(1) by failing to comply with the complainant's request to receive the requested information in a particular format. In addition, the Commissioner found that the Council breached regulation 8(2)(b) by attempting to impose a charge for allowing the complainant to inspect the requested information. The Commissioner requires the Council to make the requested information available for the complainant to inspect within 35 days of this notice.

The Commissioner's Role

1. The Environmental Information Regulations (The Regulations) were made on 21 December 2004, pursuant to the EU Directive on Public

Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that The Regulations shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into The Regulations.

Background

2. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. This is usually accompanied by form CON29R.
3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
4. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 5 February 2010 the complainant requested access, free of charge, to the Local Land Charges Register, and records containing the information necessary to answer questions 1.1(f)-(h), 1.2, 2(a)-(d), 3.1, 3.2, 3.3(a)-(b), 3.4(a)-(f), 3.5, 3.6(a)-(i), 3.7(a)-(f), 3.8, 3.9(a)-(n), 3.10(a)-(b), 3.11, 3.12(a)-(c), 3.13. of the CON29R form.¹

The complainant requested this information in relation to a specific named property, and specified that he wished to inspect these records in person.

7. On 10 February 2010, the Council responded to the complainant. The Council explained that it would continue to levy a charge of £22 to

¹ Annex A details the nature of the information relevant to each CON29R enquiry

allow applicants to conduct a personal search of the Local Land Charges Register, in line with the provisions of the Local Land Charges Rules 1977 (as amended). The Council stated it did not accept that all the information relating to CON29R enquiries was environmental. It was in the process of considering whether any of the information could be provided under the EIR, and if so, what charges could be levied. The Council confirmed that in the interim, it would continue to make CON29R information available in accordance with its established procedures and fees. The Commissioner notes that the Council currently charges a total fee of £80 to allow applicants to conduct a personal search of CON29R information not on public registers, however, the Council confirmed that this would be in the form of a compiled report. These charges are detailed on [the Council's website](#).

8. On 11 February 2010, the complainant wrote to the Council and requested an internal review of this decision.
9. On 7 April 2010, the Council provided its internal review outcome to the complainant. This reiterated the Council's original response of 10 February 2010.

The Investigation

Scope of the case

10. On 10 May 2010, the complainant contacted the Commissioner to complain about the Council's compliance with the provisions of the EIR. During the course of the investigation, the Council confirmed that it did not hold information relevant to questions 2(a)-(d), 3.2, 3.3(a)-(b), 3.4(a)-(f), 3.5, 3.6(a)-(l) and 3.7(e). The complainant accepts that this is the case and therefore the Commissioner has excluded these parts of the request from the scope of his investigation.
11. The Council confirmed that information relevant to questions 1.2, 3.9(a)-(b), 3.10(a)-(b) was available for public inspection either at its offices or on its website. It also stated that it would allow the complainant to inspect the hard copy information relevant to question 3.7(a)-(d) and (f), which it confirms would provide sufficient information to complete the CON29R form. The Commissioner has therefore excluded these parts of the request from the scope of his investigation.

12. In addition, the Council has confirmed that although it routinely holds information of this nature, there is no specific information held relevant to the property in question in relation to questions 3.1, 3.8, 3.9(c)-(n), 3.11 and 3.12(a)-(c). This means that there is no relevant information available for the complainant to request; in effect, the fact that no information exists provides a response to the complainant's request for information in order to complete these sections of the CON29R form. These parts of the request have also been excluded from the scope of the investigation.
13. The remaining information that has been the focus of the Commissioner's investigation is the Local Land Charges Register, and the information relevant to questions 1.1(f)-(h), and 3.13 of the CON2R form.

Chronology

14. On 27 May 2010, the Commissioner wrote to the Council and explained that as the requested information was environmental in nature, it should be considered for disclosure under the provisions of the EIR, rather than the Local Authorities (England) (Charges for Property Searches) Regulations 2008 (the CPSR). The Commissioner also drew the Council's attention to the decision notice [FER0236058](#), and the subsequent Information Tribunal decision, [East Riding of Yorkshire Council v Information Commissioner \(EA/2009/0069\)](#), which had dealt with a similar request for access to building control information. The Council was asked to reconsider its response to the complainant's request.
15. On 23 June 2010, the Council emailed the Commissioner and provided substantive arguments in support of its position. The Council confirmed that it relied upon regulation 6(1)(a) in refusing to comply with the complainant's request to inspect the requested information. It also confirmed that it would continue to impose a charge to allow inspection of the Local Land Charges Register in accordance with the Local Land Charges Rules 1977.
16. On 25 June 2010, the Commissioner acknowledged this email and wrote to the Council with some additional queries.
17. On 28 June 2010 the Council provided the Commissioner with a response to these queries.
18. On 13 July 2010, the Commissioner wrote to the Council with some additional queries.

19. On 14 July 2010 the Council responded to these queries.
20. On 30 July 2010, the Commissioner wrote to the Council and asked whether it wished to reconsider its position regarding access to the Local Land Charges Register as a result of the Local Land Charges (Amendment) Rules 2010. This amendment was published on 29 July 2010, and revokes the set fee of £22 charged for inspection of the Land Charges Register. The amendment comes into force on 17 August 2010.
21. On 3 August 2010, the Council responded and stated that it was "digesting" the impact of the new Amendment.

Analysis

Substantive Procedural Matters

Regulation 2

22. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.
23. The Commissioner considers that the information requested falls within regulation 2(1)(c): "measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements". Information about a plan or a measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested by the complainant to be environmental information. In its email to the Commissioner of 23 June 2010, the Council accepts that the requested information is environmental.

Regulation 5

24. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) provides that this information should be made available within 20 working days following receipt of the request. The complainant's original request for information was made on 5 February 2010. As yet, the Council has not provided the complainant with the requested information, although it has stated that

it will do so if the complainant pays a set fee. The Commissioner therefore concludes that the Council has breached regulation 5(1) as it failed to make information available on request and regulation 5(2) by failing to make the requested information available within 20 working days following receipt of the request

Regulation 6

25. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. The Commissioner has set out his interpretation of regulation 6(1) in decision notice [FER0236058](#). It is the Commissioner's view that "although regulation 6(1) may appear to be primarily concerned with the particular physical form or format in which the information is provided, it should be interpreted broadly and does provide a right to request the inspection of environmental information".
26. A public authority should comply with this preference unless one of two exceptions applies. These exceptions are at regulation 6(1)(a), which provides an exception from complying with a preference for a particular format where it is reasonable to make the information available in another format, and 6(1)(b), which applies when the information is already publicly available in another format.
27. The Council does not accept the Commissioner's interpretation. Specifically, it rejects that 'inspection' constitutes a "form or format". Rather, it views inspection as a "manner of accessing information". Therefore, it does not accept that regulation 6(1) gives an applicant the right to request to inspect information. However, the Commissioner reiterates that based on passages in interpretative aids such as the Directive and the Implementation Guide, he considers that 'inspection' constitutes a 'form or format' under regulation 6(1), and consequently, the complainant is entitled to request to inspect the requested information.

Is the complainant entitled to inspect the Local Land Charges Register?

28. The Council has confirmed that the complainant is entitled to access the Local Land Charges Register under its normal procedures. The Council routinely allows personal searches of the register to be conducted, albeit upon payment of a fee. Therefore, the Commissioner considers that the Council has complied with regulation 6(1) in relation to this part of the complainant's request.

Is the complainant entitled to inspect information relevant to CON29R enquires?

29. Despite the fact that the Council does not accept that regulation 6(1) includes the right to request to inspect information, it has also chosen to rely on regulation 6(1)(a) in relation to information relevant to CON29R enquiries. It has provided a comprehensive submission to support this position. As the Commissioner does not accept the Council's contention that regulation 6(1) excludes the right to request inspection, he has considered the Council's arguments for its reliance on regulation 6(1)(a).
30. The arguments submitted by the Council focus on the reasons why the Council feels that it would be unreasonable to comply with the complainant's preference for inspection in relation to the outstanding CON29R information. In assessing the Council's submission, the Commissioner has considered the findings of the Information Tribunal in [East Riding of Yorkshire Council v Information Commissioner](#) ('the Tribunal decision'). In this case, the Tribunal did not accept that the arguments put forward by East Riding demonstrated that it was reasonable to provide information in another format as set out in regulation 6(1)(a). However, the Tribunal decision emphasised that this did not mean another public authority could not demonstrate that it was reasonable in the circumstances to rely on 6(1)(a) (para. 40).
31. The information in relation to questions 1.1(f)-(h) is held on the Council's Acolaid system. The Council states that this system contains a large amount of personal data, information provided to the Council in confidence, information subject to copyright, and legally privileged communications. The complainant could potentially access if he was permitted to inspect the data on this computer system. The Council argues that any personal information is not reasonably capable of being separated from the rest of the information, as although the system can be locked down to a certain extent, personal data is spread throughout the system.
32. As the system cannot be fully locked down, the Council contends that allowing an applicant access to the Acolaid system would compromise the integrity of its data. Records could be created, deleted or altered.
33. The Council purchases licences which allow staff members to use the Acolaid system. An applicant inspecting information on the system would require such a licence if they were allowed to access the computer system themselves. Licences are purchased in batches of four at a cost of £2,500, with an additional annual maintenance fee of

- £500. GIS licences, which apply to the Council's mapping software, cost £620 and attract an annual maintenance fee of £500. The Council argues that allowing applicants to access this software would therefore impose a significant financial burden.
34. The Council argues that the Acolaid software that holds the requested information is "very complex and certainly not intuitive". The Council's staff carry out a number of tasks in order to locate accurate and relevant information. This involves using software drawing tools to manually adjust outlines on maps. The Council officers also use their training, experience and local knowledge to ascertain whether information should be included in a CON29R answer, and to ensure all relevant information is located. The Council estimates that it would take at least two hours to train an applicant to use this software in order to locate the correct information.
 35. If the Council allowed applicants to inspect information using its back-office terminals, it argues that there would be security issues posed to staff and their belongings, the Council's equipment, assets and records. In addition, the Council is concerned that if the complainant were allowed to inspect the requested information by accessing the Council's computer system, the list of security controls attached to the Council's Government Connect Secure Extranet (GSCX) would be breached.
 36. The Council also argue that allowing applicants to inspect information on the computer system would cause disruption to its existing functions. This is because staff computer terminals would be occupied by applicants and therefore, productivity during these periods would drop.
 37. Question 3.13 of the form CON29R enquires if a property is located in a 'radon affected area'. Radon is a natural radioactive gas that is present in all parts of the UK. However, certain areas have higher than average levels of radon. Exposure to particularly high levels may increase the risk of developing lung cancer. The Health Protection Agency (HPA) advises that indoor radon above 200 Becquerels per cubic metre should be reduced. This is known as the 'Action Level'. A radon potential dataset is produced jointly by the British Geological Society (BGS) and the HPA. This dataset allows an estimate to be made of the probability that a property is an area at or above the 'Action Level' for radon. The BGS provides a free radon access online. The public authority directed the complainant to this resource. However, this atlas does not provide enough detail to definitively provide an answer to question 3.13. An adequate answer can only be obtained from the radon potential dataset.

38. The Council has purchased a 5 year digital data license from the Natural Environment Research Council, at a total cost of £2,512.15. The licence covers five users, so the Council argues that if agents were allowed to inspect this data themselves, additional expenditure would be incurred. In addition, the Council argues that if the information were disclosed free of charge, it would be unlikely to renew its licence in 2013, which would limit the environmental information available from the Council.
39. Therefore, for all of the reasons set out above, the Council submits that it is reasonable to make the information requested available in the form of a 'compiled report', rather than allowing the complainant to inspect the information. In his email of 25 June 2010, the Commissioner enquired whether the Council had considered copying information relevant to the complainant's request from its computer systems. This information could then be redacted as appropriate, and presented to the complainant either in a secure computer document, or printed out for inspection. The Commissioner considers that this would satisfy the complainant's request to inspect the information.
40. In its email of 28 June 2010, the Council argued that this would have the effect of converting the information into a different format, because the Council would have to "locate, extrapolate, filter, refine and compile" raw data in order to produce information relevant to the complainant's request. However, the Commissioner does not accept this view. If the requested information is extracted from the originating computer system and provided to the complainant to be examined, the Commissioner considers that this would comply with the complainant's request to 'inspect' the requested information.
41. In its letter of 23 June 2010, the Council argues that "when determining whether it is reasonable to refuse to allow an applicant to examine the information requested...regard has to be made to, not just the individual request, but also to the operating environment of the public authority." The Council points to paragraphs 40 and 42(i) of the Tribunal decision in support of this position. It has consequently based some of its arguments on the impact that dealing with a large number of requests for inspection of information of this nature would cause, rather than the impact of complying with this specific request. In the financial year 2009/10, the Council received 2,379 requests for CON29R information. If all of these applicants had stated that they wished to inspect the requested information, the Council estimates that the cost of compliance would exceed £69,000, based on an additional 1,784 staff hours.

42. Paragraph 40 of the Tribunal decision discusses an argument put forward by York Place, the property search company who were joined as an additional party in the Tribunal decision. York Place argued that the Council should only assess reasonableness solely by reference to the specific information requested, i.e. environmental records for a particular property. At paragraph 40, the Tribunal decision stated that:

“We do not accept that argument. We believe that if a public authority is able to demonstrate that particular restrictions are reasonably necessary to prevent, for example, the inadvertent disclosure of personal data likely to be contained in certain types of record, it should be allowed to rely on a general practice intended to prevent disclosure across that range and should not be required to examine each request for information to see if it should be treated as an exception to the general rule”.

The Commissioner does not accept that this supports the Council's position that it is appropriate to look at the impact of a wide range of requests when assessing if it is reasonable to provide information in a form other than inspection. Rather, the focus was on whether when considering data protection issues, a public authority was required to consider each specific request or whether it could adopt a more generic approach. The Commissioner is of the opinion that this argument does not extend to the cost of making adjustments and introducing new procedures in order to accommodate such requests. Nor does it extend to consideration of the accumulative cost of dealing with an anticipated volume of requests.

43. Paragraph 42(i) of the Tribunal decision recounts the comments made by a Council official about the number of searches it received per week, and the potential costs of allowing inspection in all cases. The Tribunal made no comment on whether it felt that this was an appropriate method of assessing whether it was reasonable to provide information in a format other than the one specified.
44. The Commissioner therefore does not accept the Council's contention that it is appropriate to consider the impact of complying with a large range of similar requests when assessing whether regulation 6(1)(a) applies. Instead, he considers that each request for information should be considered on an individual basis. The Council does not suggest that it would be manifestly unreasonable to comply with this particular request for information; indeed in its letter of 23 June 2010 it states that in relation to the complainant's specific request for information, relevant to a particular property:

“it would arguably be possible for an officer to meet the complainant’s agent, escort him or her...to the back office computer, log onto the computer...talk him or her through the complicated processes to retrieve, refine and compile the necessary CON29R information (whilst keeping him or her under constant supervision) and then escort him or her to the front office area”.

The Commissioner is therefore of the opinion that the Council could reasonably comply with the complainant’s request to receive information in a particular form, specifically inspection. Consequently, the Commissioner considers that the exception to complying with this preference under regulation 6(1)(a) has been applied incorrectly.

45. Since neither of the exceptions to the Council’s obligation to provide information in the form and format requested can be satisfied, the Commissioner concludes that the Council has breached regulation 6(1) and the complainant should be permitted to inspect the requested information.

Regulation 8

46. Regulation 8 provides a general right for public authorities to charge for making information available. However, that right is subject to a number of conditions. The relevant conditions in this case are set out in regulation 8(2).
47. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers of lists of environmental information, and regulation 8(2)(b) states that a public authority shall not make any charge for allowing an applicant to examine the information requested at a place which the authority makes available.

Can a charge be made for inspection of the Local Land Charges Register?

48. The Commissioner notes that the Council continue to impose a charge to provide the information requested by the complainant. In terms of the Local Land Charges Register, The Council has emphasised that this charge is levied in accordance with the Local Land Charges Rules 1977 (LLCR). The [Local Land Charges \(Amendment\) Rules 2009](#) amended the 1977 Rules to allow a charge of £22 to be made for a personal search of the Local Land Charges Register.

49. It is the Council's position that the provisions of the LLCR continue to apply to the requested information. The Council is therefore of the opinion that the EIR do not apply in this case. However, the Commissioner's position on this is that regulation 5(6) specifically disapplies the charging provisions under the LLCR.
50. The Commissioner notes that the Council claims that it has "several powers" to impose a charge for providing the requested information. In relation to the Local Land Charges Register, the Council refers to the [Local Land Charges \(Amendment\) Rules 2009](#). This amended the Local Land Charges Rules 1977 to allow a fee of £22 to be charged for a personal search of the Land Charges Register in relation to one parcel of land. During the course of the investigation, the [Local Land Charges \(Amendment\) Rules 2010](#) were published. These revoke the fee of £22 levied for inspection of the Local Land Charges Register. Although the Amendment does not come into force until 17 August 2010, the explanatory memorandum that accompanies it states that

"the Environmental Information Regulations 2004 (EIR) provide that access to environmental information must be available free of charge. As the vast majority of local land charges contain environmental information, this instrument revokes the fee for inspection in person of the registers to ensure that the two pieces of legislation are consistent"

This supports the Commissioner's view that the current charging provisions are disapplied by the EIR.

51. Consequently, the Commissioner considers that if the property records comprise environmental information as defined by regulation 2 of the EIR the LLCR cannot be used as the basis for charging and the Council must adopt the charging provisions of the EIR. The Council has not disputed that this property information is environmental. Therefore, despite the provisions of the LLCR, the information should be considered for disclosure under the EIR. For the reasons set out above, the Commissioner considers that the EIR entitle the complainant to request to inspect the requested information free of charge, and the LLCR cannot apply. This position also acknowledges the primacy of EU legislation whereby European law, such as the EIR, takes precedence over domestic law.
52. The Council has stated that it will allow the complainant to conduct a personal search of the Local Land Charges Register. However, it proposes to charge a fee of £22 in order to allow the complainant to do

this. Therefore, the Commissioner finds that in relation to this part of the request, the Council has breached regulation 8(2)(b).

Can a charge be made for inspection of information relevant to CON29R enquiries?

53. The Council submits that, irrespective of whether the requested information is provided for the complainant to inspect on a computer or in a hard copy, it will have to engage in “locating, extrapolating, filtering, refining and compiling” the requested information from raw data. It therefore argues that it is entitled to impose a charge under regulation 8(3) in order to recover the costs of this work. However, the Commissioner does not accept that the Council is entitled to levy any such charge. This is because the complainant’s request is for the information required to answer CON29R queries about a specific property. Therefore, by locating and isolating the specific information that the complainant wishes to request, the Council is merely complying with the complainant’s request.
54. As detailed above, the Council has agreed that answers to the CON29R questions can be provided to the complainant upon provision of a fee. It intends to impose a charge in order to provide this information. Regulation 8(2)(b) provides that a public authority is not entitled to charge a fee for allowing inspection of information. The Commissioner notes that in this case, the Council has refused to provide access to the requested information and so has not breached regulation 8(2)(b) in relation to the CON29R information. However, the Commissioner is of the opinion that the complainant is entitled to inspect this information free of charge.
55. The Council made detailed submissions relating to charging under regulation 8(3), however as the Commissioner has concluded the complainant is entitled to inspect this information free of charge he has not gone on to consider those submissions in this Decision Notice.

The Decision

56. The Commissioner’s decision is that New Forest District Council did not deal with the request for information in accordance with the EIR. The Council has breached the requirements of regulation 5(1) as it failed to make information available on request and regulation 5(2) of the EIR as it failed to make the requested information available for inspection within the statutory time for compliance. The Council has breached

Regulation 6(1) by refusing to provide the complainant with the requested CON29R information in the requested format. In addition, the Council has breached regulation 8(2)(b) by attempting to impose a charge to allow the complainant to inspect the Local Land Charges Register.

Steps Required

57. The Commissioner requires that the Council make the requested information available for the complainant to inspect free of charge.
58. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

59. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 11th day of August 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (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) and (b) as well as measures or activities designed to protect those elements;

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 6 - Form and format of information

Regulation 6(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

Regulation 8 - Charging

Regulation 8(1) Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

Regulation 8(2) A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.

Regulation 11 - Representation and reconsideration

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 11(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

Regulation 11(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

Annex A - CON29R Enquiries

- 1.1** Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications:
- a) a planning permission
 - b) a listed building consent
 - c) a conservation area consent
 - d) a certificate of lawfulness for existing use or development
 - e) a certificate of lawfulness for proposed use or development
 - f) building regulations approval
 - g) a building regulations completion certificate
 - h) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme
- 1.2** What designations of land use for the property or the area, and what specific proposals for the property are contained in any existing or proposed development plan?
- 2.** Which of the roads, footways and footpaths named in the application for this search are:
- a) highways maintainable at public expense
 - b) subject to adoption and supported by a bond or bond waiver
 - c) to be made up by a local authority who will reclaim the cost from the frontagers
 - d) to be adopted by a local authority without reclaiming the cost from the frontagers
- 3.1** Is the property included in land required for public purposes?
- 3.2** Is the property to be acquired for road works?
- 3.3** Do either of the following exist in relation to the property:
- a) An agreement to drain buildings in combination into an existing sewer by means of a private sewer, or
 - b) An agreement or consent for (i) a building or (ii) extension to a building on the property to be built over or in the vicinity of a drain, sewer or disposal main?
- 3.4** Is the property (or will it be) within 200 metres of any of the following:

- a) the centre line of a new trunk road or special road specified in any order draft order or scheme
- b) the centre line of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway
- c) the outer limits of construction works for a proposed alteration or improvement to an existing road involving (i) construction of a roundabout (other than a mini roundabout) or (ii) widening by construction of one or more additional traffic lanes
- d) the outer limits of (i) construction of a new road to be built by a local authority, (ii) an approved alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway or (iii) construction of a roundabout (other than a mini roundabout) or widening by construction of one or more additional traffic lanes
- e) the centre line of the proposed route of a new road under proposals published for public consultation
- f) the outer limits of (i) construction of a proposed alteration or improvement to an existing road involving construction of a subway, underpass, flyover, footbridge, elevated road or dual carriageway or (ii) construction of a roundabout (other than a mini roundabout) or (iii) widening by construction of one or more additional traffic lanes under proposals published for public consultation.

3.5 Is the property (or will it be) within 200 metres of the centre line of a proposed railway, tramway, light railway or monorail?

3.6 Has a local authority approved but not yet implemented any of the following for the roads, footways and footpaths which abut the boundaries of the property:

- a) permanent stopping up or diversion
- b) waiting or loading restrictions
- c) one way driving
- d) prohibition of driving
- e) pedestrianisation
- f) vehicle width or weight restrictions
- g) traffic calming works including road humps
- h) residents parking contracts
- i) minor road widening or improvement
- j) pedestrian crossings
- k) cycle tracks
- l) bridge building

3.7 Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in a response to any other enquiry in this Schedule:

- a) building works
- b) environment
- c) health and safety
- d) housing
- e) highways
- f) public health

3.8 Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in Building Regulations?

3.9 Do any of the following subsist in relation to the property or has a local authority decided to issue, serve, make or commence any of the following:

- a) an enforcement notice
- b) a stop notice
- c) a listed building enforcement notice
- d) a breach of condition notice
- e) a planning contravention notice
- f) another notice relating to breach of planning control
- g) a listed buildings repairs notice
- h) in the case of listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation
- i) a building preservation notice
- j) a direction restricting permitted development
- k) an order revoking or modifying planning permission
- l) an order requiring discontinuance of use or alteration or removal of building or works
- m) a tree preservation order
- n) proceeding to enforce a planning agreement or planning contribution

3.10 Do the following apply in relation to the property:

- a) the making of the area Conservation Area before 31 August 2014
- b) an unimplemented resolution to designate the area a Conservation Area

3.11 Has any enforceable order or decision been made to compulsorily purchase or acquire the property

3.12 Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is such a condition that harm or pollution of controlled waters might be caused on the property):

- a) a contaminated land notice
- b) in relation to a register maintained under section 78R of the Environmental Protection Act 1990:
 - (i) a decision to make an entry
 - (ii) an entry
- c) consultation with the owner or occupier of the property conducted under section 78G of the Environmental Protection Act 1990 before the service of a remediation notice?

3.13 Do records indicate that the property is a 'Radon Affected Area' as identified by the Health Protection Agency?