

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 27 April 2017

Public Authority: Natural England
Address: Foss House
Kings Pool
Peasholme Green
York
YO1 7PX

Decision (including any steps ordered)

1. The complainant has requested information from Natural England relating to a Site of Special Scientific Interest (SSSI).
2. The Commissioner's decision is that Natural England has provided the complainant with all the information it holds falling within the scope of requests 1-4. In relation to request 5, the Commissioner is satisfied that the information is publically available and reasonably accessible to the complainant in accordance with regulation 6(1)(b) of the EIR.
3. The Commissioner requires Natural England to take no steps.

Request and response

4. On 12 May 2016, the complainant wrote to Natural England and requested information in the following terms:

Area 1

There have been 7 breaches of your SSSI guidance by the Surrey Heath Borough Council

For example

1. *Extreme land fill*
2. *Changes in the land drainage system*
3. *Step cut into hillside*

4. *Trees felled, Heather removed*
5. *Large area of gorse removed*
6. *Have even ploughed and planted with grass*
7. *Regular mowing*
8. *Large area ferried off for livestock*

Please explain:

1. *How does this affect S.S.S.I?*
2. *Does this now comply with EU guidelines?*
3. *Who authorised these breaches?*
4. *Please Explain!*
5. *Natural England have imposed a 700 metre zone where development is denied, i.e. Planning overturned, what reason please?*
6. *What are the justification for this imposition?*

Area 2

This was historically a sand pit devoid of any ground cover.

7. *Can you explain please what makes subsequent grounds so special as to warrant S.S.S.I?*
 8. *Also please provide your evidence of grounds nesting birds*
 9. *My research with S.H.B.C show no bird exist, it has been open to public since 1953 dog walkers. Please explain.*
5. Natural England responded on 20 July 2016. It cited regulation 12(4)(a) for requests 1, 2 and 9. It further applied regulation 12(4)(b) to requests 3, 5, 6 and 7. However, Natural England did provide the information falling within the scope of requests 4 and 8.
 6. Following an internal review Natural England wrote to the complainant on 25 August 2016. Natural England upheld its position and confirmed that it had provided the complainant with all the information it held relating to this matter.

Scope of the case

7. The complainant contacted the Commissioner on 26 August 2016 to complain about the way his request for information had been handled.

8. After receiving a number of pieces of correspondence from the complainant, the Commissioner set out the scope of her investigation in a letter to the complainant on 3 October 2016. She explained her investigation would focus on whether the information sought in requests 1, 2 and 4 was held. She further explained that she would consider whether Natural England was correct to apply regulation 12(4)(b) to requests 3 and 5. The complainant did not dispute this.
9. During the Commissioner's investigation, Natural England withdrew its reliance on regulation 12(4)(b). Instead, Natural England explained that it had provided the complainant with the information in its response dated 20 July 2016.
10. The Commissioner has therefore had to consider whether Natural England holds any further information falling within the scope of requests 1-4. For request 5, Natural England directed the complainant to a website. The Commissioner will therefore consider whether the information falling within the scope of request 5 is publically available and easily accessible in accordance with regulation 6(1)(b).

Background

11. Natural England provided the Commissioner with some background to the case. It explained the land subject to the request is Lightwater Country Park which is managed by Surrey Heath Borough Council. Natural England explained that the park is part of a Colony Bog and Bagshot Heath SSSI.
12. The SSSI was first notified as such 1975 and again in 1988 and 1993. The Colony Bog and the associated complex bog, wet and dry heath and other habitats within this site form one of the finest surviving tracts of predominately wet heathland in south-east England, as well as being the largest in the London basin. Some rich unimproved grassland is also present on the site. The wide range of habitats within the site support a rich variety of plants and animals, including county and national rarities, many of which are dependent on high quality heathland or bog for their survival. The site supports many characteristic heathland birds, including strong breeding populations of nightjar, woodlark and Dartford warbler.
13. Natural England confirmed that it has no land management responsibilities on the land.
14. Natural England further confirmed that the complainant has been asking Natural England and one of its founder bodies, English Nature, for the same or similar information since at least 2004.

Reasons for decision

15. Regulation 12(4)(a) provides that a public authority may refuse to disclose information where it does not hold that information when a request is received.
16. Where there is a difference between the amount of relevant information identified by a public authority and the amount of relevant information that the complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of proof, the balance of probabilities. The Commissioner must decide whether on the balance of probabilities the public authority holds (or held at the time of the request) any information which falls within the scope of the request.

Request 1

17. Natural England explained that it understood that the complainant's request for what 'affects the SSSI' to be the "*7 breaches of your SSSI guidance by the Surrey Heath Borough council*".
18. Natural England explained that the complainant had listed the 8 breaches as:
 - *Extreme land fill, now artificially land scaped*
 - *Changes in the land drainage system*
 - *Steps cut into hillside*
 - *Trees felled, heather removed*
 - *Large areas of gorse removed, (Habitat of Dartford Warbler)*
 - *Large area ploughed and planted with grass (alien to Heath)*
 - *Regular mowing*
 - *Large area of fence off for live stock (cows now goats)*
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19. Natural England explained that in its initial response to the complainant it confirmed that it did not hold any information on how those operations affect the SSSI as there was no requirement legal or otherwise for it to hold the information and the operations were not breaches.
20. Natural England stated that it knew this as a matter of course, however it did carry out a search on its paper and electronic records just in case. Natural England confirmed that it looked at the Responsible Officer's emails, on the local server, in its electronic document management system (HP Records Manger) and it retrieved from storage some paper files for the site and consulted with other colleagues.
21. Following this process, Natural England confirmed that no information was held.

Request 2

22. For request 2, Natural England explained that there was no legal requirement or otherwise to hold information on how operations comply with EU guidelines. Natural England explained that it took EU guidelines to mean *“European Protected Sites eg Special Area of Conservation (SAC) and Special Protection Area (SPA).*
23. Despite knowing it wouldn't hold this information; Natural England explained that it carried out the same searches as detailed on paragraph 20. After carrying out these searches, Natural England confirmed that no information was held.
24. However in order to be helpful, Natural England did provide some information relating to two Environmental Stewardship agreements. Natural England explained:

“These agreements cover habitat management for the conservation and enhancement of the SSSI and SPA. These are classed as a plan or project under Habitat Directive and are directly connected with or necessary to the management of all the European Protected Sites qualifying feature, therefore it is considered to be exempt from further Habitats Regulations assessment. This relates to the vegetation and habitat items detailed in the examples (in paragraph 19) 4-8”.

Request 3

25. In its response, Natural England confirmed that the examples were not breaches. Natural England confirmed that the operations were approved by Natural England and its predecessor bodies.

Request 4

26. For request 4, Natural England explained that in its response to the complainant, it provided him with a table detailing the evidence of where the operations were consented either specifically by Natural England and its predecessor bodies or under an approved management plan, or under a HLS agreement. Alongside this, Natural England also provided documents which showed that the operations had been approved.

Request 5

27. Under regulation 6(1)(b) of the EIR, a public authority does not have to comply with an applicant's preference if it is reasonable to make the information available in another form and format or if the information is already publically available and accessible in another form and format.

28. The link to the Commissioner's specific guidance produced in regard to this regulations is provided below:

<https://ico.org.uk/media/for-organisations/documents/1639/form-and-format-of-information-eir-guidance.pdf>

29. Natural England provided the complainant with a link to the information he sought in request 5. The link provided information on planning restrictions and guidelines that allow for the creation of a buffer zone around SSSI. Natural England also corrected the complainant and confirmed that the buffer zone is 400m and not 700m.
30. The complainant has not stated that he cannot access this link. The Commissioner is therefore satisfied that the information sought in request 5 is publically available and reasonable accessible to the complainant.

Conclusion

31. Based on the information provided by Natural England, the Commissioner is satisfied on the balance of probabilities that Natural England has provided the complainant with all the information it holds that falls within the scope of requests 1-4. She is also satisfied that Natural England has complied with regulation 6(1)(b) with respect to request 5.

Right of appeal

32. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Jack Harvey
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