

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 September 2019

Public Authority: Trowbridge Town Council
Address: The Civic Centre
St Stephen's Place
Trowbridge
BA14 8AH

Decision (including any steps ordered)

1. The complainant requested information from Trowbridge Town Council (the Council) about a park storage planning application.
2. The Commissioner's decision is that the Council has breached regulation 5(2) of the EIR in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must provide a substantive response to the request in accordance with its obligations under the EIR.
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 23 July 2019, the complainant wrote to the Council and requested information in the following terms:

"Just very recently on 10th July 2019. Trowbridge Town Council submitted a new planning application to Wiltshire Council Planning Department for works to be conducted in Trowbridge town Park for a new storage facilities with staff toilets, and landscaping.

Ref: 19/06606/FUL, Town Park, Erection of store (ancillary to the Town Park) and Associated Landscaping Works.

Please send me dated copies of ALL correspondence and any attached documents that were sent and received between Trowbridge Town Council, the agent, the architect, and Wiltshire Council Planning Department, in relation to these Town Park Storage Plans.

Please also include dates, details, and documentary evidence, of when the architect, agent, builder, etc, were first contacted, hired, instructed, etc, to undertake this planning application work, and when they had first attended any site visits to conduct conveyancing, site assessments, preparatory works, etc, for the architect drawings and reports that are subsequently supplied in the new planning application at the Town Park.

Please also include all and any correspondence as stated above, from the date of receiving this request and the date of sending the completed response back to me. Therefore at the time of receiving the response I will have been sent ALL correspondence ever sent or received between the above mentioned entities and individuals."

6. The Council acknowledged the request on 26 July 2019 and advised that there would be a delay in providing a substantive response. The complainant contacted the Council on a series of occasions in August 2019 to ask for updates and explanations for the delayed response. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 2 August 2019 to complain about the Council's failure to respond to their request.
8. A representative of the Council spoke with the Commissioner by telephone on 29 August 2019. The Council argued that a response had already been provided to the complainant's request because an acknowledgement had been sent. The Commissioner explained that an acknowledgement did not constitute a substantive response. The Council representative voiced the opinion that in a previous telephone discussion with the complainant both parties had agreed that a response could be provided on or around 17 September 2019. The Commissioner explained that the complainant had contacted her to voice their dissatisfaction at a proposed delay of that length and was thereby disputing that analysis of events.
9. Further into the telephone discussion with the Council on 29 August 2019, the Commissioner explained that a response needed to be provided to the request within 10 working days. The Council representative explained that it was not prepared to do so and asked what the consequences would be if the Commissioner's deadline was not adhered to. The Commissioner explained that she would be forced to issue a decision notice if a response had not been provided by that point. The representative indicated that the Council's position remained unchanged and that they were unwilling to respond within the Commissioner's deadline. The Commissioner advised that the best course of action for the Council was to respond within 10 working days.
10. The Commissioner has considered whether the Council has complied with its obligations in relation to the time for compliance at regulation 5(2) of the EIR.

Reasons for decision

11. 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);

12. The Commissioner has not seen the requested information but has considered the wording of the request and notes that it is for information about a park storage planning application. She believes that this is likely to be information about policies, legislation, plans, programmes, environmental agreements and activities likely to affect the elements and factors referred to in Regulation 2(1)(a) and Regulation 2(1)(b). For procedural reasons, she has therefore assessed this case under the EIR.
13. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
14. Regulation 5(2) of the EIR states that:

"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."
15. On 29 August 2019 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
16. Despite this intervention the Council has failed to respond to the complainant.

17. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner finds that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

18. 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@justice.gov.uk

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

19. 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.
20. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**