

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 3 March 2021

**Public Authority:** Leicestershire County Council

**Address:** County Hall

Glenfield

Leicester

LE3 8RA

#### **Decision (including any steps ordered)**

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1. The complainant requested information about local sports pitch drainage. Leicestershire County Council responded to the request, issuing a refusal notice under section 14 of the FOIA, as it considered it be vexatious.
2. Upon review the Council complied with request, correctly responding under the EIR.
3. However, the Commissioner finds that the Council breached regulation 5(2) of the EIR by failing to respond to the request within 20 working days.

## Request and response

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4. On 6 November 2019, the complainant wrote to Leicestershire County Council and requested information in the following terms:

*'With regards to the information in these minutes for a meeting between LCC and MBC, it raises further questions:-*

*- "AS informed JW that the Birchwood School pipe would be a planning enforcement matter to investigate" - has there been anything done regarding the planning enforcement issue with regards to Birchwood that is mentioned?*

*- there is again a recognition that there is an "unconsented outfall" - what reasons are given for the unconsented outfall to continue to remain unconsented? Can I have a copy of the evidence to show this is legally allowed to happen?*

*- "At the site of the attenuation basin, it was explained that the land reprofiling and the long drainage channel directly behind the properties of Wilcox Drive was done deliberately to help stop previously reported instances of surface water flooding on those properties" - why is it okay to do this and just move the problem? (and send it down to my property instead and then say it is not causing flooding at my property?) Can I have a copy of the engineers details for this part of the work (showing all documentation for the channel from Willcox Drive to the pond)? Where is the consent for this part of the work?*

*- "JW and RW explained the design and the planning process and discussed the use of SuDS features. It was noted that the use of SuDS soakaways and features would help slow the rate of flow towards the attenuation feature." How exactly do they slow the rate of flow towards the attenuation feature? In my discussions with LCC they did not think there was anything slowing the rate. We discussed the crude black pipe and the fact that there should be a hydrobrake to restrict the flow. As far as I can see, the attenuation pond is purely a pond to hold water and then the water overflows onto the top of the land and then goes via a short channel (approx one metre), then enters the 150 mm black pipe (which is approx 3 metres long and at the top of the surface of the land), then spills out of the black pipe (onto private land) and goes via a channel, which leads to the 'old' pond. I am unaware of any evidence which proves the flow of water is restricted or slowed down. Can I have a copy of all evidence to show how the rate of flow is slowed down and by how much?*

*- "AS commented that there was no evidence remaining of any pre-existing ditches, however the SuDS channel and pond would remove the*

*requirement for any further remedial action at this time" - why do the SuDS channel and pond remove the requirement?*

*- "Following this, JW attempted to find the attenuation basin outfall pipe, but could not due to the overgrowth" - why could JW not find it - when I have a photo of him stood right next to it?*

*- "AS noted that the outfall (if still there) did not go directly into a watercourse but instead ran along the hedge line to the large, natural pond" Why does AS question if it is still there -when I have been constantly speaking to him about it and he knows that I can still see it? Why does the fact that the water runs via a channel, changes things? The water is still entering the pond and then a ditch (which is a watercourse). A new watercourse has been created from the SuDS and added to an existing watercourse. Why does this not require Ordinary Watercourse consent? Can I have a copy of the evidence to show why it is not required? It is a new ordinary watercourse taking water to an existing watercourse.*

*- "The group then walked along the western edge of the sports pitches towards another surface water outfall. JW explained that while the outfall was not in the exact place as shown on plans, it served the same purpose as stated on the designs. AS agreed that as the outfall drained into the attenuation pond it was part of the internal drainage system and was not a consentable outfall." Is this the new pipe near to the MV16 wind turbine? What was the purpose as stated on the designs? Is it to move more flooding from another area? If so, what area? Again this water ends up at the back of my property. Why does this not require consent and where is the evidence that moving this water will not add to flooding elsewhere?*

*- "JW and RW discussed the remedial designs by BSP, and whose responsibility the works would be if actioned" - so whose responsibility would the works be?*

*- The remedial designs by BSP (report dated 28th August 2018) state:*

*2.2.2 The overall surface water strategy for the site is to prevent the sports pitches from becoming water logged. The surface water discharge rate has to be restricted to the existing greenfield runoff rate to minimise to impact on the local water courses and to ensure the proposed drainage system does not increase flood risk downstream.*

*2.2.3 A proposed discharge is 12.3l/s, achieved with a dry detention basin and an orifice control chamber. It has been designed to manage up to and including a 1 in 100 year storm event plus 40% climate change without flooding.*

*2.2.4 The existing drainage strategy BSP drawing 16-0434/100, please see Appendix C.*

*2.2.5 A redesign is required for the existing basin so that the flow of water is reduced to a greenfield runoff rate. This will be achieved by using an orifice flow control. Whereas the original drainage layout had an uncontrolled discharge that ran openly over the adjacent land, there will now be a pipe run that will carry the surface water to the head of the existing watercourse approximately 60m to the east.*

*This report clearly shows that the discharge rate has to be reduced to a greenfield runoff rate (because of flooding) and an orifice control chamber is required. Can I have a copy of the reasons discussed both at the meeting (and any other time) given by LCC and MBC for not going ahead with the remedial work, to prevent flooding, outlined in the BSP report?*

*- "AS commented that it was not in the LLFA remit to advise a decision on this, and it remained MBC's decision as the Planning Enforcement Authority" is it MBC's decision? If not, whose decision is it? What factors have to be taken into consideration, when making this decision? Should the fact that the water from the SuDS is causing flooding downstream be considered? Or is the only consideration to be the exact spot where water falls out of the black pipe and if flooding is caused at that spot only?*

*- "AS agreed to use the information gathered on site and from other sources to allow the LLFA to assess the unconsented outfall" - can I have a copy of this subsequent assessment?*

*- "It was agreed between all parties that once this was agreed JW would provide a collaborative response to the customer with input from RW and AS - can I have a copy of the input from RW and AS to JW/MBC?*

*- "Photographs were taken of the site in current state for evidence" - can I have a copy of the photographs taken of the site*

*- "AS (as LLFA) to assess the unconsented works and present outcome to JW and MBC" - can I have a copy of this presentation?*

*- "JW (as MBC) to decide on whether remedial works are to be agreed" - can I have a copy of all written correspondence showing this decision?*

*- "JW and RW to liaise as required depending on Enforcement decision" - can I have a copy of any correspondence relating to this?*

5. The Council replied on 11 November 2019, stating that it had responded to all the complainants' requests and complaints, and advised escalation of the matter to the ICO / LGO.
6. Whilst the email dated 6 November was lengthy in nature, it did include requests for recorded information. The Commissioner asked the Council to respond formally to the request under the EIR / FOIA on 11 March 2020. The Council did so on 20 March 2020 and issued a refusal notice under section 14 of the FOIA.

### **Scope of the case**

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7. The complainants contacted the Commissioner on 29 November 2019 to complain about the way the request for information had been handled.
8. For context, the request formed part of a number of requests and communications between the complainants, the Council and several other authorities regarding flooding within the vicinity of the complainants' property.
9. Following the Council's application of section 14 to the request, the Commissioner asked the Council to reconsider its response under the EIR, as she considered the request to be environmental in nature.
10. Although the Council considered that the request could be considered manifestly unreasonable under regulation 12(5)b of the EIR, it subsequently responded to the request, clarifying and reissuing all the information it had already supplied to the complainant falling within the scope of the request. It did not apply any other exceptions to the request.
11. The complainants still considered that one matter remained outstanding, but the Commissioner determined that this was not part of the original request, nor did it constitute a separate request for information.
12. Having complied with the request, the Commissioner could now only consider the Council's delay in doing so.

### **Reasons for decision**

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#### **Regulation 5(2)**

13. Regulation 5(2) of the EIR requires 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".*

14. The complainants submitted the request for information on 6 November 2019. However, the Council did not respond to the request until 20 March 2020, after being asked to do so by the Commissioner.
15. Whilst this is a significant and ordinarily unacceptable delay, due to the volume of communication with the complainants on the matter, and the fact that much of this communication was in the normal course of business rather than through formal information requests, the Council did not consider the email sent on 6 November 2019 as a formal information request, and in any event determined it had nothing further to add. Nonetheless, this email included requests for recorded information and the Council therefore had a statutory responsibility to respond under the FOIA/EIR. The Council therefore breached the requirement of Regulation 5(2) by failing to respond within 20 working days.

## Right of appeal

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16. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

17. 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.
18. 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 .....**

**Andrew White**  
**Head of FOI Complaints and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**