

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

### **Decision notice**

**Date:** 17 November 2023

**Public Authority:** London Borough of Enfield  
**Address:** Civic Centre  
Silver Street  
Enfield  
Middlesex  
EN1 3XF

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

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1. The complainant asked for a copy of the latest Meridian Water Masterplan from the London Borough of Enfield (the Council). The Council gave links to information within scope of the request; however, it initially withheld some information under section 43(2) of FOIA.
2. The Commissioner's decision is that the Council's reliance on section 43(2) is not appropriate in the circumstances of this case, and he considers that regulation 12(5)(e) of the EIR is the most relevant exception given the environmental impact and nature of the information in question. However, during the Commissioner's investigation, the Council withdrew its reliance on regulation 12(5)(e) as it explained that the withheld information had now been published by the developer concerned as part of its planning process, and that the development of the rest of the site is on-going and subject to change.
3. The Commissioner considers that on the balance of probability the Council does not hold any further information in scope of the request, namely the latest Meridian Water Masterplan. However, the Council breached regulation 14 of the EIR by failing to issue an appropriate refusal notice within 20 working days.
4. The Commissioner does not require the Council to take any steps as a result of this notice.

## Request and response

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5. On 16 May 2023, the complainant wrote to the Council and requested information in the following terms:

“Please provide me with a copy of the latest Meridian Water Masterplan, which I understand has now been completed. Like many other people, I have a strong interest in the Council’s plans regarding the regeneration of Median Water, in particular:

- The planning for the delivery of good quality, sustainable, safe, and genuinely affordable family housing.
- Plans for the provision of adequate green space (in terms of quantity, quality, and accessibility), and in particular the Council’s response to the new Banbury Reservoir Park proposed by CPRE.
- Planning for connectivity and accessibility to and across the site, in particular provisions to ensure that existing local communities will have easy and safe access to the planned new amenities and services.

These complex issues and concerns have been raised numerous times by residents, councillors and members of scrutiny committees and should have been comprehensively addressed within the latest masterplan. I would therefore be grateful if this could be provided to me, or, better still, published on the Council’s website.

Secondly, I would also be grateful if you would confirm the Council’s plans to consult the public regarding the now completed Meridian Water Masterplan.”

6. The Council failed to cite the exemption it was reliant upon to withhold the requested information in its 12 June 2023 response; however, it stated within the internal review of 5 July 2023 that the Council should have stated its reliance on section 43(2) of FOIA to refuse the request. At this time, the Council also laid out its arguments under the Public interest Test (PIT).

## Scope of the case

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7. The complainant contacted the Commissioner on 7 July 2022 to complain about the way their request for information had been handled.

8. The complainant challenged the exemption that the Council was relying on:

"... The commercial interest exemption is unjustified. Given both the nature and purpose of masterplans, it is very unlikely that publishing it would cause substantive prejudice to the Council in its commercial negotiations... Indeed, publishing the masterplan would be commercially beneficial as adopted masterplans attract investors and give them the trust and confidence, they need to invest... The Council itself previously stated that a new masterplan would help to attract inward investment and support sustainable regeneration and growth... Furthermore, the Council has repeatedly referenced specific information which it said was contained within the unpublished masterplan e.g. in response to questions from scrutiny committee members. It appears somewhat irrational for it now to claim that publishing such information would be prejudicial to its commercial negotiations... Decisions on the ICO's website relating to Section 43(2) refusals do not appear to be relevant to this case. I suggest that is because the claim the Council is making about the unpublished masterplan is highly unusually and absurd."

9. The Council explained:

"... For clarity, section 43(2) does not cover commercially 'sensitive' information as such, it covers information which specifically may cause prejudice to the commercial interests of either the authority itself, or other third parties. I apologise for the inexact language used in the Council's response... The reasons for the application of section 43(2), primarily that there remain extensive planning processes and commercial negotiations in regard to the information not released which prejudice commercial interests. For clarity, the commercial interest which the Council considers to be impacted is primarily its own... I do not consider that the information could be released in redacted format. The nature and juncture of the circumstances surrounding the information mean that the redactions would be so extensive as to render the documents meaningless, thus all that would be achieved would be the expenditure of significant officer time, which I do not consider to be in the public interest."

10. During the Commissioner's investigation, the Council revised its position regarding the use of section 43(2) to withhold the information as it

considered the Commissioners guidance around the EIR to be the more appropriate legislative framework in this case. At this juncture, the Council changed its reliance to regulation 12(5)(e) for withholding the information requested.

11. Based on the Council's submissions, and the Council's responses to the Commissioner's requests for clarification, the Commissioner's understanding was that the Council was applying regulation 12(5)(e) to the withheld information. However, after further correspondence with the Council, it was determined that the Council had withdrawn its reliance on regulation 12(5)(e) as it had stated the information in question had since been disclosed by the third-party concerned and this information was now in the public domain.
12. The Commissioner sought further clarification from the complainant and the Council, and it transpired that the information disclosed was with regard to a parcel of land within the West half of the site and not the full site overview of the Masterplan as requested by the complainant. This was further complicated by the wording used (the East of the West site SPD and not the entire site as covered by the Masterplan).
13. After further correspondence with the Council, it has said that information in the form of a Masterplan as a working document is not held as the development of the site is on-going and fluid at this present moment in time and is subject to collaboration with other public authorities within the area.
14. The present decision notice will therefore focus on whether the Council holds information in scope of the request.

## **Reasons for decision**

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### **Is the requested information environmental?**

15. Regulation 2(1) of the EIR defines environmental information as being:
  - "... any 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, programs, 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;
  - (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) ...”.
16. In this case, the requested information relates to the regeneration of an industrial estate, and the plans and agreements between the Council and third parties. The Commissioner considers that the requested information falls under regulation 2(1)(c). He has therefore assessed this case under the EIR.

**Regulation 5(1) – duty to make environmental information available on request**

17. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
18. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided to the complainant, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of on the balance of probabilities.
19. The complainant believes that the Council has not disclosed all the recorded information it holds. In particular, they have argued that given decisions have been made regarding the site in question and the Council has been reported to be working from and has used previously to answer requests about its plans for the site and it has previously said that an up to date Masterplan would be released for public scrutiny in

the near future, they believe there must be a current Masterplan in place to inform decisions concerning the site.

20. The Council has said that: 'following the Council's publication of the 2013 Masterplan, Enfield Council's master planning process for Meridian Water comprises of a series of evidence based 'masterplan documents' to support delivery across the different parcels and phases of the programme. As a result, there is not, a single 'masterplan' document that exists but rather a series of complete evidence-based documents, which form the Masterplan and set out the intentions for the site.' And 'In their original request, the requester asked for a copy of the latest Masterplan, which he understood to be complete. The Meridian Water Team has reiterated that there is a misunderstanding on this front, as the Masterplan is not complete nor has the Council made a statement that it is.'
21. The Council also reiterated that: 'for something to constitute a 'Masterplan' it has to have been agreed upon and adopted. In previous responses there has been reference to aspects of the Masterplan currently being progressed to inform the emerging Enfield Local Plan. The Enfield Local Plan will provide a single planning policy document for the borough and a vision for how Enfield will spatially develop to 2039 and beyond. There are aspects of the draft local plan, which contain specific sections on Meridian Water. However, this document would only form part of the Masterplan if it is adopted and agreed upon. At this moment in time, it has no current status and therefore the Council does not consider it to form part of the Masterplan. This is because the emerging Enfield Local Plan proposals still need to go through a formal Regulation 19 consultation and then an Examination process.'
22. The Council outlined the information it considers to be the Masterplan as; The original 2013 Masterplan, The Supplementary Planning Document (SPD)(Meridian West), The Council's Cabinet Papers (KD5463) dated 19 April 2023, The information provided regarding the plans for the IKEA site, which was originally withheld on grounds of commercial sensitivity, The Strategic Infrastructure Work Planning Permission (which is a key planning application that forms part of the Masterplan). It concluded that: 'the requester has received everything that the Council holds that constitutes the Masterplan. We have nothing further to disclose and are not relying on any exceptions to withhold any information.'
23. The Council has said that it plans to engage with landowners and the wider community as work progresses. Officers also update Cabinet from time to time as the Meridian Water programme progresses. Any updates are also provided on the Council's website.

24. The Commissioner is satisfied that the Council's approach to identifying the information which it holds within the scope of the request was appropriate and proportionate. The Council stated that it has disclosed all the relevant information to the complainant that it holds. There is no contradictory evidence available to the Commissioner that indicates the council's position is wrong.
25. Having considered all of the available information, the Commissioner is satisfied that, on the balance of probabilities, the council has provided all the information that it holds that is relevant to the request.

### **Procedural matters**

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26. In their response the Council did not cite an exception from the duty to provide information. Regulation 14 of the EIR requires a public authority wishing to withhold information to issue a refusal notice within 20 working days. The Council failed to issue an appropriate refusal notice within 20 working days and consequently breached regulation 14 of the EIR.

## Right of appeal

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

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

28. 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.
29. 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 .....**

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