

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 13 June 2017

Public Authority: Historic England
Address: The Engine House
Fire Fly Avenue
Swindon
Wiltshire
SN2 2EH

Decision (including any steps ordered)

1. The complainant has requested from Historic England ('HE') previously known as English Heritage, information relating to a development plan of a particular site and information about the trees that had been planted.
2. The Commissioner's decision is that the requested information is environmental for the purposes of the EIR and that HE does not hold any information falling within the scope of the request. The Commissioner is satisfied that the requested information is not held and that regulation 12(4)(a) applies.
3. The Commissioner does not require HE to take any steps.

Request and response

4. On 2 March 2016 the complainant wrote to HE and requested information in the following terms:

"all the information held as EH reported on Site M003 (and others) to say October 2011 with reference to mature trees (at Browne's Meadow) inhibiting any development via the city council Conservation

Development plan. However this site from 1989 was further extended then and apparently that's when the trees were planted.

5. *Therefore please provide any historical and all information about the trees and the site despite the trees being known to be "mature" by Oct 2011 M003 update to Norwich City Plan . This was only a summary. The summary relies upon a site visit, knowledge etc.*
6. *The managers of the land have to update EH on any work that affects the setting of the cathedral, the seat of a Bishop and as a place of worship. EH should have lots of information about this site and trees as "it was progressively developed from. 1989"*
7. On 3 March 2016 Historic England acknowledged receipt of this request and said that it will be considered under the FOIA and EIR.
8. On 14 April 2016 Historic England responded. Following an internal review, it stated that it does not hold a file on the site M003. This statement was later clarified as during the investigation, HE reported that information had already been provided to the complainant concerning site M003 as a whole.
9. The Commissioner had found from reviewing the previous decision notices which HE had referred to and its correspondence regarding information which had already been disclosed to the complainant, these historical cases did reveal that information relating to the requests had been provided.
10. HE added to its internal review that HE considered the request to be motivated by concerns about planning in Norwich and therefore believed that this was a continuation of previous requests from the complainant.

Scope of the case

11. The complainant contacted the Commissioner on 13 September 2016 to complain about the way her request for information had been handled.
12. During the course of the investigation, HE agreed that the request should have been handled under the EIR and not FOIA.
13. The Commissioner therefore considers the scope of the case is to determine whether HE holds any information to the request.

Reasons for decision

Is the information environmental information?

14. Regulation 2(1) of the EIR defines environmental information as 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;*
15. 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 information in this case relates to a specific local plan document for a specific site and which refers to trees on this site.
16. The Commissioner is therefore satisfied that the information is environmental information and should be considered under the EIR rather than the FOIA.

Regulation 12(4)(a)

17. 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.
18. 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 additional information which falls within the scope of the request.
19. HE revisited the request and it maintained its original position that it does not hold any information that falls within the scope of the request. HE confirmed that it does not hold any information that is not already publically available through Norwich City Council's Local Plan / Local Development Framework (LDF) documentation.
20. HE was asked by the Commissioner a number of questions in regards to determining whether information is held. In relation to the searches HE carried out, it said that it does not consider that any recorded

information relevant to the scope of the request was ever held, deleted or destroyed.

21. HE explained that it had not been consulted on tree works and it had not been consulted on specific trees or any tree works for the site specified (M003) as this falls outside of its statutory remit. It said that it does not have a retention policy for this type of record as it is not a type of record that HE holds. It added that the relevant Local Planning Authority has the responsibility for trees and HE provided a link to its website which detailed advice and consent on tree conservation:

<https://historicengland.org.uk/advice/hpg/consent/treeconservation/>

22. HE further explained that as part of its role as a consultee for the Norwich Local Development Framework (LDF), Norwich City Council had sent HE copies of the LDF which makes one reference to trees on the site in question – M003. HE provided the Commissioner with this document for reference. It said that the full version of this document is publically available and that the latest version could be found online. HE reported that it subsequently made general comments about the LDF to Norwich City Council but did not provide any comments concerning tree works. The document is contained within the link below:

https://www.norwich.gov.uk/downloads/file/2681/adopted_site_allocations_and_site_specific_local_plan_document

23. HE directed the Commissioner to the document entitled "*Adopted site allocations and site specific local plan document*" which refers to trees on site M003 on page 305 of the document.
24. HE confirmed that manual and electronic searches for information within the scope of the request were conducted. It considered the paper files that it holds entitled '*Norwich City Council – Norfolk – Local Development Plans*' and confirmed that it does not hold any information that falls within the scope of the request that is not publically available either online or through Norwich City Council. HE said that the only reference to trees on site M003 is contained within Norwich City Council's development plan document.

25. In regards to electronic files, HE reported that it had searched 75 documents within the 'Norwich City' and 'Greater Norwich' file folders

and confirmed that there is no information held regarding trees that falls within the scope of the request. HE said that the database (which holds statutory records of planning casework) had been examined for the requested information and following an entire search for all statutory work for the east of England region (30,000 records) no information was held relating to the request.

26. HE said that it had spoken with the Inspector of Historic Buildings and Areas for the East of England and with the Principal Local Engagement Adviser and they had confirmed that this kind of information falls outside HE's remit. It added that it had been consulted on Norwich City Council's LDF, this it explained, makes reference to trees within the document itself. However, HE stated that it had not been consulted on any tree works nor had it made any comments on trees for the location specified in the request.
27. HE reported that with regards to all information held relating to site M003 as a whole, that it forms part of a long running and complex case of which the Information Commission and the Tribunal had previously dealt with. HE confirmed that the complainant had already been provided with the information which it held concerning site M003 as a whole and that she had been supplied this information as part of numerous information requests. This is set out in the link below which contains the ICO's decision notice and tribunal decisions:

<https://case-law.vlex.co.uk/vid/-449808794>
28. HE stated that it had previously responded to the complainant on this issue and that the ICO and the Tribunal had also been involved. HE argued that it had formerly disclosed to the complainant all the information it held regarding site M003. This is referenced in the decision notice dated 16 May 2011 – FER0382502 on page 4. Therefore, HE was "*unclear*" as to why the information relating to site M003 had been requested again.

The complainant's view

29. During the investigation, the complainant wrote to the Commissioner raising additional points in support of her argument against HE's response to her request. The complainant's position is based on the assertion that she considers it is likely that information (*reference material*) is held as it would be impossible to do the required level of statutory reporting without it. She believes this is a planning pre requisite and that site visits and survey reports are necessary to anywhere being planned. The complainant is of the view that HE should hold information relating to trees and the site M003.
30. The complainant considers that it is unlikely HE would invent trees being on site without references (e.g. photographs or site visit reports) to hand. The complainant argued that information must be held "*otherwise there can't be the right level of review response.*"

The Commissioner's view

31. Without any evidence to the contrary and in view of HE's representations and assurances, the Commissioner has found on the balance of probabilities that HE does not hold any information falling within the scope of the request.

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

Andrew White
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