

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

### **Decision notice**

**Date:** 15 August 2022

**Public Authority:** Warwick District Council

**Address:** Milverton HI  
Leamington Spa  
CV32 5HZ

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

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1. The complainant requested information from Warwick District Council (the Council) relating to Gigafactory planning consent, Coventry Airport, Coventry Aeroplane Club and Sport England. By the date of this notice the Council had not issued a substantive response to this request.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response to the request in accordance with its obligations under the EIR.
4. The Council must take these steps 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 Freedom of Information Act and may be dealt with as a contempt of court.

## Request and response

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5. On 1 June 2022, the complainant made four requests for information. The Council combined the four requests as it considered they were all substantially on the same topic. On 16 June 2022, after seeking clarification of the complainant's request, the Council confirmed its interpretation of the request as follows:

"1. I request that WDC provide me with any held legal confirmation and documentation that allows the exclusion of Cov Aero from the OPA process to take place.

2. I request any held evidence indicating whether the Case Officer instructed the Planning Committee that Cov Aero was to be excluded from the OPA process

3. I request any held legal documentation which proves that Cov Aero is not a GA facility under the auspices of the NPPF and also the definition provided within the ICOA.

4. I request WDC provide the legal confirmation and documentation to support their stance that the airport is a 'commercial airport rather than a GA facility. Should the legal documentation be provided, I require WDC to provide the legal confirmation and documentation that potentially allows WDC to exclude Cov Aero from any entitlement to support under Paragraph 99 of the NPPF.

5. Please provide any held legal submission / facts and basis which supports the view that Paragraph 99 of the NPPF is not valid with respect to the OPA and therefore the content of Paragraph 99 should not be enforced within the Section 106 process."

6. On 16 June 2022 the complainant stated that the Council had omitted part of their request, which was as follows:

"The Challenge and Request for Legal Clarification.

1. Please confirm that WDC accept the validity and content of the submission by Sport England within the NPPF and the OPA process.

2. Please confirm that WDC accept that Paragraph 99 of the NPPF is valid with respect to the OPA and therefore the content of Paragraph 99 should be enforced within the Section 106 process.

3. Assuming that WDC do not accept (2) above please provide the legal submission / facts and basis the by which this has been refused."

The full text of these requests can be found in Annexes below – note that the background provided with each request is the same.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 16 July 2022 to complain about the Council's failure to respond to this request.
8. The Commissioner contacted the Council on 26 July 2022 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
9. Despite this intervention the Council has failed to respond to the complainant.
10. The scope of this notice and the following analysis is to consider whether the Council has complied with regulation 5(2) of the EIR.

### **Reasons for decision**

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11. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

12. 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."

13. 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's decision is 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

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14. 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)

15. 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.
16. 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 .....**

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

## **Annex 1 – Request 1 “The ‘Red Line Issues’”**

### **Background**

With regard to the OPA process for the GigaFactory and as mentioned above I have been refused meetings with :

- the Case Officer regarding multiple concerns relating to the exclusion of Cov Aero from the original OPA process and the associated S106 Process.
- I have been refused a meeting with the WDC Planning Manager
- I have also been refused a meeting with the WDC Chairman , Planning Committee.
- I have also been refused a meeting with the WDC Legal Team.

At the very outset I advised the CEO of WDC that it was my intention to attempt to understand the process and to challenge why Cov Aero had effectively been excluded from the OPA process. It is my opinion that I have been ‘stonewalled’ by the Case Officer, the CEO and the Chairman of the Planning Committee..

I am now at the point where it is now clearly my only option to take forward each of my concerns and issues and attempt to gain the legal position of WDC as formal requests under the FoI Act. For the avoidance of doubt the CEO has copies of all of the communications referred to below but I would be pleased to provide copies of each / all of the documents referred to – should the need arise.

### **The ‘Red Line Issue’ (Within the OPA Process)**

It is a stated fact that Cov Aero has been a tenant of Coventry City Council with full access to Coventry Airport since the early 1930’s. A long lease arrangement remains in force at this time and Cov Aero own the buildings, aircraft and club facilities.

We are not therefore a tenant of the potential airport developers (Rigby Group) as such. Cov Aero is a ‘not for profit’ club and is open to membership (flying and social) to the community at large.

The OPA for the GigaFactory required a plan detailing the land under consideration The plan as submitted detailed a red line boundary as demarcation and presumably because the Cov Aero site was not a direct tenant of the developers was detailed to be outside of the red line area. There is no doubt however that Cov Aero has been part of and has relied upon the airport infrastructure since the early 1930’s.

The Case Officer has stated that the boundary of the GigaFactory is designated by the 'red line boundary' on the plans; and Cov Aero is outside of this line. This is not in dispute.

However, clearly if the OPA is progressed to build out then Cov Aero will have our existing building with aircraft etc but no facilities (runways, taxiways, refuelling etc) as currently provided by Coventry Airport.

The Case Officer has acknowledged in writing that Cov Aero was excluded from any form of consideration or consultation under the formal OPA process, and this decision was based on the premiss that Cov Aero was not entitled to any such consideration since Cov Aero was not directly affected by the proposals since Cov Aero is outside of the designated 'red boundary line'. It is clear however that Cov Aero would be unable to function without the facilities afforded by the airport and to state that Cov Aero would not be affected is completely untrue.

To the best of my knowledge Cov Aero was and is the only tenancy so affected by the exclusion from consultations within the OPA process.

**The Challenge and Request for Legal Clarification.**

- 1. I challenge the legal right of the Case Officer to exclude Cov Aero from the OPA process (noting the above considerations) and request that WDC provide me with the legal confirmation and documentation that allows this exclusion to have taken place.**
- 2. Furthermore, I question whether the Case Officer instructed the Planning Committee that Cov Aero was to be so excluded from the OPA process?**

I await your response at your earliest but will be available to provide any confirmatory documentation or assistance should this be required.

**Annex 2 – Request 2 “The Status of Coventry Aero Club under the terms of the National Planning Policy Framework (NPPF) and as applied within the OPA for Coventry Airport and the GigaFactory..”**

**The Status of Coventry Aero as a consideration under the National Planning Policy Framework (NPPF)**

It is a stated fact that Cov Aero has been a tenant of Coventry City Council with full access to Coventry Airport since the early 1930's. A long lease arrangement remains in force at this time and Cov Aero own the buildings, aircraft and club facilities.

Cov Aero is a 'not for profit' club and is open to membership (flying and social) to the community at large.

It is of note that Sport England, as part of their submission to the OPA advised the Planning Committee that they should take note of the NPPF and specifically Para 99 which relates to leisure and sporting activities and which are within the scope of planning regulations and in particular the NPPF. It has become apparent that this requirement has been completely ignored by the Case Officer. (See also FoI Request No 4; Sport England).

The Case Officer has stated that Cov Aero was excluded from the Section 106 considerations based on the premiss that :

- 1) Cov Aero is and remains outside of the red line boundary' and is therefore exempt for consideration, and,
- 2) Cov Aero may (or presumably may not?) meet the criteria for a sporting and leisure facility under the NPPF, and
- 3) May (or presumably may not) meet the criteria for a General Aviation (GA) facility under the definition provided by the ICOA for a General Aviation (GA) facility.
- 4) And thereby That Cov Aero fails to meet the Section 106 obligations under the statutory tests as set out in regulation 122 of the Community Infrastructure Levy Regulations 2010.

I would suggest that Cov Aero as a Civil Aviation Authority (CAA) training organisation can only be classified, within the remit of the NPPF, as a GA facility – a fact that the Case Officer appears to be reticent to accept?

I have already forwarded a copy of the definition to the Case Officer but for ease I, once again, attach the ICOA definition below:

ICAO, the UN's International Civil Aviation Organization, defines general aviation as all civil aviation other than scheduled or non-

scheduled airlines. In other words, it's everything in aviation that isn't military or airline.

**The Challenge and Request for Legal Clarification.**

- 1) I challenge the assertion of the Case Officer that Cov Aero is not a GA facility under the auspices of the NPPF and also the definition provided within the ICOA and request the legal documentation to prove otherwise.

I await your response at your earliest but will be available to provide any confirmatory documentation or assistance should this be required.



**Annex 3 – Request 3 “The Status of Coventry Airport under the terms of the National Planning Policy Framework (NPPF).”**

**The Status of Coventry Airport as a consideration under the National Planning Policy Framework (NPPF)**

Coventry Airport

It has been stated by the Case Officer that in her view and that of the legal team associated with the OPA; Coventry Airport is a ‘commercial’ airport. However, attempts to gain any form of legal view on this point have failed to gain any response.

It is my view that Coventry Airport is a General Aviation (GA) facility within the remit of both the OCOA definitions and the NPPF

It is also a fact that Coventry Airport and is actually described as a GA facility within the submissions from the various contributors to the OPA and furthermore the document goes to great lengths to confirm that the airport is ‘dominated by test and training flights’ and also ‘has been restricted away from ‘full service’ and ‘there are no commercial passenger flights from Coventry’.

When requested to provide the ‘promised’ supporting evidence from the Case Officer I was presented with 6 submissions – none of which did not even mention the words ‘commercial airports’.

I would state that whereas Coventry did, in the past, have a full commercial air transport arrangement, this has not been the case for many years. The airport has therefore subsequently depended mainly upon the GA facilities that have tenancy arrangements – or incoming transiting GA aircraft – for its day-to-day income. (Please review the submissions within the OPA files for confirmation)

Therefore, for the Case Officer to suggest that Coventry Airport is a ‘commercial airport’ is totally untrue.

However, I would further suggest that the reason that this course of action has been taken by the Case Officer is an attempt to deflect the argument away from the fact that under Para 99 of the NPPF there would be a liability to recognise that there will be a liability on the developer (and under Section 106), to provide support in the form of financial compensation to Cov Aero.

**The Challenge and Request for Legal Clarification.**

The documentation that was prepared for the OPA states that Coventry Airport is a GA facility and the supporting evidence within the reports also supported this status.

The structure and terminal buildings supporting the original airport were demolished some time ago. Additionally, the navigational aids required in order to support air transport and commercial operations have been disconnected and the airport no is no longer supported by Civil Aviation Authority (CAA) legislation for commercial operations.

In short, the Airport has been systematically 'run down' and is now solely supported, from an aviation perspective, by GA aircraft and GA facilities.

However, and regardless of the above the Case Officer and her legal team has made a 'judgement' that the Airport is a commercial Airport.

1. I now require the WDC to provide the legal confirmation and documentation to support their stance that the airport is a 'commercial' airport rather than a GA facility.
2. Should the legal documentation be provided, as per (1) above I require WDC to provide the legal confirmation and documentation that potentially allows WDC to exclude Cov Aero from any entitlement to support under Paragraph 99 of the NPPF.

I await your response at your earliest but will be available to provide any confirmatory documentation or assistance should this be required.

**Annex 4 Request 4 "The Status of the Sport England submission and Paragraph 99 under the terms of the National Planning Policy Framework (NPPF)."**

**The submission of Sport England to the OPA Process**

It is a fact that Sport England made a submission to the OPA consultation process, and a copy of that submission is included within the main file and on the WDC website.

The introductory paragraph to their response is copied below:

The proposed development does not fall within either our statutory remit (Statutory Instrument 2015/595), or non-statutory remit (National Planning Policy Guidance (PPG) Par. 003 Ref. ID: 37-003- 20140306), therefore Sport England has not provided a detailed response in this case, but would wish to give the following advice to aid the assessment of this application.

General guidance and advice can however be found on our website: [https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-forsport#planning\\_applications](https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-forsport#planning_applications) If the proposal involves the loss of any sports facility then full consideration should be given to whether the proposal meets Par. 97 of National Planning Policy Framework (NPPF), link below, is in accordance with local policies to protect social infrastructure and any approved Playing Pitch Strategy or Built Sports Facility Strategy that the local authority has in place.

There has been a significant correspondence between myself and the WDC CEO on the above matter, however I remain unsure as to whether WDC accept that the response from Sport England was valid and also whether the WDC accept that the referral to paragraph 99 of the NPPF was also both valid and relevant with specific regard to the case as presented by Cov Aero?

I have stated that Cov Aero is a GA organisation and should be considered as part of the sporting and leisure facilities afforded to the community.

I have also stated that Coventry Airport is ultimately owned by Coventry City Council and is a GA facility.

Is it of note that the Section 106 report specifically excludes any financial support for Cov Aero , should there ultimately be a requirement to vacate the site. This would indicate that that the requirements of Paragraph 99 will not be enforced.

Unfortunately however WDC have failed to respond to my requests as to their understanding of the status of both Cov Aero and Coventry Airport – under the terms of the NPPF and clearly this is an integral part of our concerns.

**The Challenge and Request for Legal Clarification.**

- 1. Please confirm that WDC accept the validity and content of the submission by Sport England within the NPPF and the OPA process.**
- 2. Please confirm that WDC accept that Paragraph 99 of the NPPF is valid with respect to the OPA and therefore the content of Paragraph 99 should be enforced within the Section 106 process.**
- 3. Assuming that WDC do not accept (2) above please provide the legal submission / facts and basis the by which this has been refused.**

I await your response at your earliest but will be available to provide any confirmatory documentation or assistance should this be required.