



**Case Reference: FT/EA/2024/0171  
FT/EA/2024/0120**

**Neutral Citation Number: [2025] UKFTT 00215 (GRC)**

**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Heard by Cloud Video Platform  
Heard on: 6 February 2025  
Decision given on: 21 February 2025**

**Before**

**JUDGE SOPHIE BUCKLEY  
MEMBER MIRIAM SCOTT  
MEMBER DR PHEBE MANN**

**Between**

**TEES VALLEY COMBINED AUTHORITY**

Appellant

**and**

**(1) THE INFORMATION COMMISSIONER  
(2) GILLIAN TARRY (FT/EA/2024/0171 ONLY)**

Respondent

**Representation:**

For the Appellant: Mrs Simson, in-house Solicitor

For the First Respondent: Mr. Lavery, Counsel

For the Second Respondent: In person

### **Decision in FT/EA/2024/0171**

1. The appeal is **Dismissed**.
2. The Tees Valley Combined Authority must take the steps ordered by the Commissioner in paragraph 3 of decision notice IC-265274-X3J2 of 19 March 2024 within **35 calendar days** of the date this decision is sent to the parties.
3. Any failure to abide by the terms of the tribunal's decision may amount to contempt which may, on application, be certified to the Upper Tribunal.

### **Decision in FT/EA/2024/0120**

1. The appeal is **Dismissed**.
2. The Tees Valley Combined Authority must take the steps ordered by the Commissioner in paragraph 3 of decision notice IC-253841-L8V1 of 29 February 2024 within **35 calendar days** of the date this decision is sent to the parties.
3. Any failure to abide by the terms of the tribunal's decision may amount to contempt which may, on application, be certified to the Upper Tribunal.

## **REASONS**

### **Introduction**

1. The tribunal heard two appeals together.
2. FT/EA/2024/0120 is an appeal against the Commissioner's decision notice IC-253841-L8V1 of 29 February 2024 which held that the requested information was environmental information and that the Tees Valley Combined Authority (the Authority) should have handled the request under the Environmental Information Regulations 2004 (EIR) rather than under the Freedom of Information Act 2000 (FOIA). The Commissioner required the Authority to reconsider the request and its scope under the provisions of the EIR and issue a fresh response.
3. FT/EA/2024/0171 is an appeal against the Commissioner's decision notice IC-265274-X3J2 of 19 March 2024 which held that the requested information was

environmental information and the request should therefore have been handled under the EIR rather than FOIA. The Commissioner held that by failing to respond to the request within the statutory time for compliance, the Authority breached regulation 5(2) of the EIR. The Commissioner required the Authority to reconsider the information held under points (1), (2) and (8) of the request, under the provisions of the EIR, and issue a fresh response accordingly.

4. The appeal was originally listed for hearing on 3 December 2024. The Commissioner's counsel was unavailable at short notice due to an accident and the Commissioner was unavailable to instruct alternative Counsel at such short notice. Although the Commissioner was content for the tribunal to proceed on the basis of written submissions from the Commissioner, the panel determined that it was in the interests of justice and in accordance with the overriding objective to postpone the hearing.
5. The parties were ordered to address the substantive exemptions relied on under FOIA so that, if necessary, that issue could be determined without the need for a further hearing.
6. Following the postponed hearing the Authority disclosed a version of some of the requested information with updated redactions in both appeals on 10 January 2025.

### **Background to the appeals**

7. The requests in both appeals relate to a piece of land known as Teesworks ('the Site'). The Site is one of the largest brownfield remediation projects in Europe, covering 4,500 acres of land south of the River Tees in the Borough of Redcar and Cleveland, including a former steelworks site. Much of the Site is contaminated following years of heavy industry and needs decontamination/remediation before it can be developed.
8. The South Tees Development Corporation (STDC) is responsible for the regeneration of the Site. The Site is owned by South Tees Developments Limited, a wholly publicly owned subsidiary company of South Tees Development Corporation, which is, in its own right a separate public authority (Mayoral Development Corporation) created by the Tees Valley Combined Authority, pursuant to the provision of the Localism Act 2011. The Site is subject to an option to purchase in favour of Teesworks Limited, a public/private joint venture company owned on a 10%/90% basis.

9. These appeals concern valuation reports commissioned by the Authority in relation to the Site:

9.1. EA/2024/0171 relates to a valuation report by Knight Frank dated 20 October 2021 (the Knight Frank report).

9.2. EA/2024/0120 relates to a valuation report by George F White dated 31 March 2022 (the George F White report).

10. The Knight Frank report relates to an area of approximately 1,602 acres and the George F White report relates to an area of approximately 90 acres.

### **The requests and responses**

#### ***The first request - FT/EA/2024/0171***

11. The appeal in FT/EA/2024/0171 relates to the following request made by Mrs. Gillian Tarry on 4 May 2022 (the numbering has been added by the Commissioner and adopted by the Tribunal):

""I'm interested in the value of the land known as the old SSI site, Tees works, and particularly the Southbank quay land which was sold for a nominal amount recently.

[1] Please provide the valuation which was undertaken by estate agents Knight Frank (as reported recently in Private Eye), for land and which was subsequently sold and transferred to the new owners.

[2] Please provide their valuation figures both before and after remediation of the land.

[3] Who were the new owners

[4] Please also provide the fees paid to Knight Frank for their services.

[5] Was a value for money assessment undertaken before commissioning Knight Frank to carry out the valuation. It would be normal business practice to 'get a couple of quotes' before deciding to go with one particular agent.

[6] Which other agents were asked what they would charge to carry out the valuation.

[7] When and how was it decided/ agreed to commission Knight Frank to carry out the valuation above other agents.

[8] Also provide any other land valuation that has been carried out in relation to the old SSI site, Teesworks, Southbank quay.”

12. In response to a request for clarification, Mrs Tarry clarified that part 8 of her request was confined to valuations since the inception of the South Tees Development Corporation and added the following part 9 to her request:

“[9] Also can I add who carried out the valuation”

13. The Authority responded to Mrs Tarry’s request on 31 July 2023. It provided some information. It withheld the information requested in part 3 relying on section 21 FOIA (information accessible by other means). It withheld the information requested in parts 1, 2 and 8 relying on section 43(2) (commercial interests). The Authority maintained its position on internal review.

14. During the course of the Commissioner’s investigation:

14.1. The Authority revised its position and stated that the Knight Frank report could be provided with some redactions.

14.2. The Authority disagreed with the Commissioner’s view that the request should have been dealt with under the EIR.

15. During the course of these proceedings, the Authority reviewed its position and put forward a different redacted version of the Knight Frank report.

### ***The second request - FT/EA/2024/0120***

16. The appeal in FT/EA/2024/0120 concerns the following request made by Richard Brooks on 6 May 2023 (numbering inserted by the Commissioner and adopted by the Tribunal):

“In response to questions concerning a report I wrote recently about land sales by South Tees Developments Ltd, mayor Ben Houchen has said repeatedly that land on which SeAH is building its plant was valued at £13m and sold for £15m.

Please let me have –

[1] the valuation report(s) used to arrive at the figure of £13m

[2] details of the sale referred to above, showing the asset sold, the date of the sale, the precise price, the identity of the buyer and any other information relevant to the statement that a sale took place for £15m”

17. The Authority responded to the second request on 7 June 2023. It withheld the George F White report (part 1 of the request) under section 43(2) FOIA (commercial information) and withheld the information requested in part 2 of the request partly under section 21 FOIA (information accessible by other means) and partly under section 43(2).
18. The Authority upheld its position on internal review but disclosed a redacted Supplemental Land Value Deed.
19. During the course of the Commissioner’s investigation:
  - 19.1. The Authority stated that a redacted version of the George F White report could be released.
  - 19.2. The Authority disagreed with the Commissioner’s view that the request should have been dealt with under the EIR.
20. During the course of these proceedings, the Authority reviewed its position and put forward a different redacted version of the George F White report.

### **The decision notices**

21. In both decision notices the Commissioner decided that the requested information was environmental information and required the Authority to reconsider the requests under EIR.
22. The Commissioner’s view was that, although the information related to the finance of the redevelopment project and/or the valuation of land, it was information on measures and/or activities which are likely to affect the elements and factors of the environment.

### **Notices of appeal**

23. The grounds of appeal are, in summary, that the Commissioner was wrong to find that the EIR was the appropriate regime because the requested information was not environmental information.

## The Commissioner's responses

24. The Commissioner submitted that the information requested is environmental information. The question in all cases is whether it meets the definition at Regulation 2(1) of the EIR. The regulation gives "such as" examples of a measure or administrative measures, which are broad in range and includes environmental agreements. The information requested was a valuation report and details of the sale of land which the Authority has explained was "for a proposed disposal, or for redevelopment".
25. The Commissioner noted that the Authority argues that "The purpose of the valuation report is to consider the value of the land in question, whether that be for a proposed disposal, or for redevelopment". The Commissioner submitted as required by **Henney** considering "the wider context, and is not strictly limited to the precise issue with which the information is concerned" that the requested information falls within the definition at regulation 2(1) of the EIR as it is "information on measures and/or activities (the sale of that land for redevelopment) which are likely to affect the elements and factors of the environment."

## Issues

26. The issues for the tribunal to determine are:
  - 26.1. Was the information requested environmental information under the EIR?
  - 26.2. If not, was the Authority entitled to rely on section 43 or section 40(2) to withhold any of the requested information.

## Legal framework

### Environmental information

27. The **UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters** (the Aarhus Convention) was signed by the first parties (including the UK) in 1998 and came into force in October 2001. It was ratified by the UK in February 2005, at the same time as its ratification by the European Community.
28. The definition of "environmental information" in the Aarhus Convention of 1998 (the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters) appears in

Article 2(3) and has three categories which are reflected in the six categories in the EIR:

“Environmental information” means any information in written, visual, aural, electronic or any other material form on:

(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of subparagraph (a) above, and cost-benefit and other economic analyses and assumptions used in environmental decision-making;

(c) The state of human health and safety, 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 or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;’.

29. The status of the Aarhus Convention is set out in the Court of Appeal’s decision in **Morgan v Hinton Organics** [2009] EWCA 107 Civ as follows at [22]:

“For the purposes of domestic law, the Convention has the status of an international treaty, not directly incorporated. Thus its provisions cannot be directly applied by domestic courts, but may be taken into account in resolving ambiguities in legislation intended to give it effect (see Halsbury’s Laws Vol 44(1) Statutes para 1439)). Ratification by the European Community itself gives the European Commission the right to ensure that Member States comply with the Aarhus obligations in areas within Community competence (see Commission v France Case C-239/03 (2004) ECR I09325 paras 25-31).”

30. The Aarhus Convention is given effect in EU law by Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (the Directive), which replaced Directive 90/313/EEC of 30 June 1990.



31. The EIR gave effect in UK law to the EU Directive. Under the European Union (Withdrawal) Act 2018 the EIR are retained EU law. The tribunal agrees with and adopts the following passage from Coppel, Information Rights Vol 1 at [17-005] as a correct statement of the relevance of the Directive post- Brexit:

“(1) The Marleasing duty of consistent interpretation remains post-Brexit, requiring that EU derived domestic law be read consistently with the EU Directives it implements. The duty remains in at least three respects:

(a) EU-derived domestic legislation continues to have effect as it had effect immediately before 31 December 2020, i.e. EU-derived domestic legislation should be read in the same way.

(b) The case law of the CJEU including Marleasing applies when considering the ‘meaning or effect’ of retained EU law.

(c) Continuation of the principle of supremacy of EU law so far as is relevant to ‘the interpretation disapplication or quashing of any enactment or rule of law passed or made before IP completion day,’ and the duty of consistent interpretation is one of the manifestations of the supremacy of EU law.

(2) The limited continuity of the direct effectiveness of directives, in that any rights...arising under a directive continue to be recognised and available in UK law to the extent that they are ‘of a kind recognised by the European Court or any court or tribunal in the United Kingdom in a case decided before [31 December 2020] ...

(3) With some limited exceptions, decisions of domestic courts and the CJEU before 31 December 2020 generally remain binding in relation to retained EU law.”

32. Regulation 2(1) of the EIR faithfully adopts the definition of environmental information in the Directive and defines it 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;

(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) 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)''

33. In **BEIS v IC and Henney** [2017] EWCA Civ 844 (**'Henney'**) the Court of Appeal held that:

"35. ...an approach that assesses whether information is "on" a measure by reference to whether it "relates to" or has a "connection to" one of the environmental factors mentioned, however minimal...is not permissible because, contrary to the intention of the Directive, it would lead to a general and unlimited right of access to all such information.

...

37. ...It is therefore first necessary to identify the relevant measure. Information is "on" a measure if it is about, relates to or concerns the measure in question. Accordingly, the Upper Tribunal was correct first to identify the measure that the disputed information is "on".

...

42. Furthermore, Mr Choudhury accepted that it is possible for information to be "on" more than one measure. He was right to do so. Nothing in the EIR suggests that an artificially restrictive approach should be taken to regulation 2(1) or that there is only a single answer to the question "what measure or activity is the requested information

about?”. Understood in its proper context, information may correctly be characterised as being about a specific measure, about more than one measure, or about both a measure which is a sub-component of a broader measure and the broader measure as a whole. In my view, it therefore cannot be said that it was impermissible for the Judge to conclude that the Smart Meter Programme was “a” or “the” relevant measure.

43. It follows that identifying the measure that the disputed information is “on” may require consideration of the wider context and is not strictly limited to the precise issue with which the information is concerned, here the communications and data component, or the document containing the information, here the Project Assessment Review. It may be relevant to consider the purpose for which the information was produced, how important the information is to that purpose, how it is to be used, and whether access to it would enable the public to be informed about, or to participate in, decision-making in a better way. None of these matters may be apparent on the face of the information itself. It was not in dispute that, when identifying the measure, a tribunal should apply the definition in the EIR purposively, bearing in mind the modern approach to the interpretation of legislation, and particularly to international and European measures such as the Aarhus Convention and the Directive. It is then necessary to consider whether the measure so identified has the requisite environmental impact for the purposes of regulation 2(1).”

34. The UNECE has published an Implementation Guide to the Aarhus Convention. That Guide is not legally binding. The ECJ has stated that ‘it may be regarded as an explanatory document, capable of being taken into consideration, if appropriate, among other relevant material for the purpose of interpreting the convention [but with] no binding force’. (**Fish Legal and Shirley v Information Commissioner & Others** [2014] QB 521).
35. In interpreting the definition of environmental information in the EIR, the tribunal adopts a purposive approach, interpreting the EIR, as far as possible, in the light of the wording and purpose of the Directive, which itself gives effect to the international obligations arising under the Aarhus convention.
36. The Court of Appeal in **Henney** stated as follows:

“14. ... In Case C-297/12 *Fish Legal v Information Commissioner* [2014] QB 521, [2014] 2 CMLR 36 the CJEU stated:

“35. First of all, it should be recalled that, by becoming a party to the Aarhus Convention, the European Union undertook to ensure, within the scope of EU law, a general principle of access to environmental information held by or for public authorities: see *Ville de Lyon v Caisse des dépôts et consignations* (Case C-524/09) [2010] ECR I-14115, para 36 and *Flachglas Torgau GmbH v Federal Republic of Germany* (Case C-204/09) [2013] QB 212, para 30.

36. As recital (5) in the Preamble to Directive 2003/4 confirms, in adopting that Directive the EU legislature intended to ensure the consistency of EU law with the Aarhus Convention with a view to its conclusion by the Community, by providing for a general scheme to ensure that any natural or legal person in a member state has a right of access to environmental information held by or on behalf of public authorities, without that person having to state an interest: see the *Flachglas Torgau* case, para 31.

37. It follows that, for the purposes of interpreting Directive 2003/4, account is to be taken of the wording and aim of the Aarhus Convention, which that Directive is designed to implement in EU law: see the *Flachglas Torgau* case, para 40.”

15. The importance of the obligation to provide access to environmental information is seen from the recitals to the Directive and the Aarhus Convention. The first recital to the Directive states that:

“increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.”

The recitals to the Aarhus Convention include:

“citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters”;

and,

“improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns”.

16. It is well established that the term “environmental information” in the Directive is to be given a broad meaning and that the intention of the Community’s legislature was to avoid giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities: see Case C-316/01 *Glawischnig v Bundesminister für Sicherheit und Generationen*, (13 June 2003) at [24]. That decision concerned Directive 90/313/EEC but it was common ground that the same approach applies to Directive 2003/4/EC, which replaced it, and with which this case is concerned. That a broad meaning is to be given to the term is also seen from the decisions of this court in *Secretary of State for Communities and Local Government v Venn* [2014] EWCA Civ 1539 at [10]- [12] per Sullivan LJ (referring to the decision of the CJEU in Case C-240/09 *Lesoochránarske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej Republiky* [2012] QB 606) and in *Austin v Miller Argent* [2014] EWCA Civ 1012 at [17] and [30] per Elias and Pitchford LJ.
17. *Glawischnig* and *Fish Legal*, however, also show the limits of the broad approach. In *Glawischnig’s* case it was stated (at [25]) that the fact that the Directive is to be given a broad meaning does not mean that it intended;

“to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal, with one of the environmental factors mentioned ... . To be covered by the right of access it establishes, such information must fall

within one or more of the ... categories set out in that provision”.

In *Fish Legal* it was stated (at [39]):

“... [It] should also be noted that the right of access guaranteed by Directive 2003/4 applies only to the extent that the information requested satisfies the requirements for public access laid down by that directive, which means inter alia that the information must be ‘environmental information’ within the meaning of Article 2(1) of the directive, a matter which is for the referring tribunal to determine in the main proceedings (*Flachglas Torgau*, paragraph 32).”

### **The role of the tribunal**

37. The tribunal’s remit is governed by s.58 FOIA. This requires the tribunal to consider whether the decision made by the Commissioner is in accordance with the law or, where the Commissioner’s decision involved exercising discretion, whether he should have exercised it differently. The tribunal may receive evidence that was not before the Commissioner and may make different findings of fact from the Commissioner.

### **Evidence and submissions**

38. We read and took account of open and closed bundles in each appeal. We also had before us the following documents/submissions:

38.1. The Commissioner’s skeleton argument dated 11 October 2024

38.2. The Authority’s skeleton argument dated 11 October 2024

38.3. Mrs Tarry skeleton argument dated 11 October 2024

38.4. Written submission of Mr Brooks dated 25 November 2024

38.5. The Authority’s updated submissions dated 10 January 2025

38.6. Updated redacted versions of the George F White report and Knight Frank report dated 10 January 2025.

38.7. The Commissioner’s Supplemental Skeleton dated 27 January 2025

38.8. Email and attachments of Mrs Tarry dated 27 January 2025

39. Although the email from Mrs Tarry dated 27 January 2025 was labelled ‘submissions’, Mrs Tarry instead provided a number of screenshots and a link to a YouTube video. The other parties did not object to the Tribunal taking this evidence into account.

40. Because we have concluded that the information is environmental information, it has not been necessary to set out the oral or written submissions on section 40(2) or 43(2) including any submissions on the public interest.

### **Submissions and skeleton arguments on whether the information is environmental**

41. We heard and took account of oral and written submissions from all parties and a Mr Brooks, the requestor in FT/EA2024/0120. We heard closed submissions from Mr Lavery and Mrs Simson.

#### ***Skeleton argument from the Authority***

42. The Authority submitted that despite, prima facie, the report being related to land, it is a valuation report that was prepared for the purposes of the Authority informing its constituent members, cabinet and officers to ensure the Authority presented informed options and decision processes. Although the report, on the face of it, related to land, the Authority argued that the request itself pertains to valuation information and not the state of the environment.

43. The Authority said that the purpose of the instruction to the Surveyor was to provide a report which will help to determine the market value of a property or the land through a basic inspection. As such the land valuation report pertains to the monetary value attributed to the land and that it is not likely to have an effect on elements and factors referred to within regulation 2(1) EIR, and that it would be an inappropriate interpretation of the EIR.

44. The Authority submitted that the valuation report, which is the subject of the Request, does not directly refer to nor is it likely to affect factors or elements of the environment.

45. The Authority noted that the information requested contains no data-based information which would fall within the definition of the EIR. Instead, it makes assumptions on the presence of contamination and assumptions as to the presence of asbestos containing materials at the site. The Authority argued that the information that alludes to or indirectly relates to elements of the environment are assumptions on which the wider document is based, as opposed to information that would rightly fit within the scope of the EIR.

46. The Authority emphasised that the sole purpose of the information requested was to allow the Authority to make an informed decision and provide justification for potential land transactions. It noted that the information within the report does not give a foregone conclusion that the land would be remediated or developed and the intrinsic point is that the information relates to potential opportunities and options open to the Authority for consideration. On that basis the Authority contended that it would be inaccurate to assume that the information would have a direct or is likely to affect factors or elements, there are a number of other influences which would require consideration. Given the nature and the intention of the report in question, the Authority's submission was that the information contained in the report would not give rise to an increased opportunity for the public to be involved in decision making.
47. It was contended by the Authority that the information is not on a relevant measure or factor because the information in the report is only one of many influences and aspects that would be considered before the Authority acted. The Authority noted that the valuation report makes assumptions about a number of factors but does not provide an opinion on environmental elements. The Authority argued that the valuation report in question is not sufficiently closely connected to a measure which will or is likely to affect the elements because the information simply alludes to environmental issues, on a hypothetical basis, on which to determine a valuation.
48. With reference to **DfT, DVSA and Porsche Cars GB Ltd v Information Commissioner and John Cieslik** [2018] UKUT 127 (AAC), the Authority noted that although the report makes reference to land it does not seek to analyse the environment, elements or factors of the environment. The report is one of many components which will be used by the Authority to inform its Board of their options.
49. The Authority submitted that one possible outcome that following receipt of the land valuation report the land would not be remediated or developed. Should this be the case then the land would not require any specific changes and based on the decision process above and the lack of causal link between the information in the report and effect on the land it was submitted that the information was not Environmental.

### ***Oral submissions from the Authority***

50. The Authority's representative relied primarily on the skeleton argument but made very brief oral submissions on whether the information was



environmental. Mrs Simson noted that the valuation reports make clear that they had not been drafted by environmental experts and that no actual testing of the land had been carried out, thus at internal page 12 the George F White report states:

“George F White LLP are not environmental specialists and therefore we do not carry out any scientific investigations of sites or buildings to establish the existence or otherwise of any environmental contamination, nor do we undertake searches of public archives to seek evidence of past activities which might identify potential for contamination.”

51. She submitted that although the main aim was the valuation of the land there was no quantifiable environmental data within the reports that fell within the EIR.
52. Mrs Simson also responded briefly to some of the points raised in the other parties' or Mr Brooks' submissions.

***Skeleton argument from the Commissioner***

*What measure or activity is the information “on” or about?*

53. The Commissioner noted that the requested information in both appeals is the valuation and sale price of the land or sites within the land known as Teesworks. He noted that the Authority had stated in correspondence that the valuations/sales were essential:

“As the site is decontaminated and remediated ready for development, the nature of the site requires it to set its own market rate for rental sale price as relevant. The Site is unique. There is nothing like it in the region or indeed anywhere else in the country. It is an asset in its own right, unparalleled elsewhere. There are therefore no parallels for surveyors to draw like for like comparisons on which the value the Site... it is in the public interest that the Site is developed and brought back into use.” (p120 and 171 of the open bundles).

54. Given the unique nature of the land the Commissioner argued that it was clear that information regarding its value/sale price would enable the public to be informed about and to participate in decision-making in relation to the redevelopment.

55. The Commissioner submitted that the requested valuation and sales information is information on the measure of the redevelopment of Teesworks (regulation 2(1)(c)) and/or economic analyses and assumptions used within the framework of this redevelopment (regulation 2(1)(e).

*Does that measure or activity have the requisite environmental impact for the purposes of regulation 2(1)?*

56. The Commissioner said that the redevelopment of the largest brownfield site in Europe was plainly an activity that was likely to affect the state of the elements of the environment. He noted that current onsite and earmarked projects include SeAH Wind Ltd's offshore wind monopile manufacturing facility and a BP-led gas-fired power plant with carbon capture, utilisation and storage capabilities (known as Net Zero Teesside).

### ***Oral submissions from Mr Lavery***

57. Mr Lavery gave detailed and persuasive submissions that the tribunal took into account. In summary he submitted as follows.

58. Mr Lavery argued that the Authority appear to have misunderstood the remit of the EIR. In support he referred us to the following extract from the letter from the Authority to the Commissioner dated 27 November 2023:

“Although there is environmental information contained within the report, the request itself pertains to valuation information and not the state of the environment.”

59. Mr Lavery noted that it is the nature of the information not the purpose of the request that determines the appropriate regime.

60. Mr Lavery highlighted a number of extracts from the reports that illustrated the nature of the information:

61. Under ‘purpose of valuation’ at page 4 of the Knight Frank report, it states:

“This Valuation is provided to inform and provide justification for certain contemplated land disposal transactions in accordance with and to satisfy the provisions of Section 209 of the Localism Act 2011”

62. Mr Lavery submitted that the purpose of the report is to facilitate the disposal of the land, which will be purchased because the buyer wants to do

something with it which will affect the environment. Further, without the report, disposal could not take place and therefore the report was necessary in order to progress the development of the Site.

63. At page 9, paragraph 2.8, the Knight Frank report states:

“The existing buildings on site are in the process of being demolished and the site fully remediated.”

64. At page 14, paragraph 2.46- 2.49 of the Knight Frank report state:

**“Environmental Considerations  
Contamination**

2.46 Due to the historic use as a steel works, the site is heavily contaminated and requires substantial remediation prior to any development taking place.

2.47 Remediation works have started on site and based on the costs to date at Dorman Point and part of the site at South Bank we understand that the average remediation costs rate of approximately [redacted]

[redacted]

**Asbestos**

2.49 During our inspection, the presence of asbestos containing materials (ACMs) was suspected in a number of buildings on site. This is a matter for specialist advice and will have to be accounted for during the demolition and remediation of the site.”

65. Mr Lavery noted that these extracts are about environmental considerations and contain evaluative statements about the state of the environment. They are not assumptions but conclusions drawn on the basis of inspection.

66. In the George F White report, Mr Lavery drew our attention to the list of sources of information relied on by the valuer at internal p 2 of the report in 1.7 which included information provided by the Environment Agency. Mr Lavery argued that the fact that the valuer thought they needed to have

recourse to the Environment Agency in order to prepare the report was strong evidence that the report was environmental information.

67. On internal page 9 Mr Lavery highlighted an entry in the list of valuation factors and considerations under the heading 'planning' in paragraph 4.2.1 which stated that "Outline planning application for the development of up to 185,806 sq.m (gross) of general industry (use class B2) and storage or distribution facilities (use class B8) with office accommodation (Use Class E), HGV and car parking, works to watercourses including realignment and associated infrastructure works" from which he said that it could be inferred that once the property was sold the planning permission would be made use of.
68. Mr Lavery acknowledged that the George F White report stated that they are not environmental specialists and do not carry out scientific investigations to establish the existence of environmental contamination but submitted that that does not mean that the tribunal should discount any references to the environment in the report. He submitted that the fact that environmental information in the report was based on information that George F White had been given by the Authority, does alter the fact that the report contains environmental information.
69. Taking a step back Mr Lavery submitted first that each report clearly contained information on the state of the environment within regulation 2(1) (a). The reports both contain conclusions on the state of the environment. In the Knight Frank report this is based on inspection and in the George F White report it is based on information provided to the valuers.
70. Second, he submitted that the reports clearly are information on measures affecting or likely to affect the environment within regulation 2(1)(c) or economic analyses and assumptions used within the framework of such measures within regulation 2(1)(e). Mr Lavery submitted that the measure is the redevelopment of the Site. He argued that was the purpose for which the development corporation was created. He submitted that the regeneration of one of the largest brownfield sites in Europe is a measure with the requisite environmental impact.
71. Mr Lavery submitted that the reports, explicitly produced to inform the sale of the land, were sufficiently closely connected to the measure.
72. Mr Lavery took us to a number of additional passages in closed to illustrate his submissions.

***Skeleton argument/oral submissions from Mrs Tarry (FT/EA/2024/0170 only)***

73. Mrs Tarry submitted that, in the light of conflicting statements in the media on the valuation and the purchase price of the land in question, the public deserve to know the answer.
74. Mrs Tarry noted that the Local Government Transparency Code 2015, cited in the Tees Valley Assurance Framework states that the Government has 'not seen any evidence that publishing details about contracts entered into by local authorities would prejudice procurement exercises or the interests of commercial organisations, or breach commercial confidentiality unless specific confidentiality clauses are included in contracts' and states that commercial confidentiality should not, in itself, be the reason not to follow the code.
75. Mrs Tarry noted that since the valuation the land, a former heavily contaminated industrial plot, was subsequently remediated (at a cost to the tax payer). It was sold following that remediation to 2 private developers for just short of £100. Records in the land registry confirm this. It was then leased back to STDC, who in turn sub leased it to SeAh Wind. Running concurrently with this lease & sub lease arrangements, the developers sold the main lease to global asset manager Macquarie. The land was then built upon by SeAh wind, building what is purported to be the biggest monopile factory in the world.
76. In Mrs Tarry's view the land in question bears no environmental resemblance today to the land surveyed and valued by Knight Frank 3 years ago and she submitted that this makes a strong argument for considering this request under EIR as opposed to FOI.
77. Mrs Tarry also made submissions on the commercial sensitivity of the information and stated that she challenged the redactions to the report.

**Written submissions from Mr Brooks (the requestor in FT/EA/2024/102)**

78. Mr Brooks submitted short written submissions dated 25 November 2024, in which he set out some helpful background facts and submitted that the public interest in disclosure was very strong.

**Oral submissions from Mrs Tarry and Mr Brooks**

79. Mrs Tarry and Mr Brooks made thoughtful oral submissions largely focussed on sections 40(2) and 43 and the public interest. We took those submissions into account where they were relevant to question of whether or not the information was environmental.

### **Discussion and conclusions**

80. We have reached the conclusion that the reports are environmental information within regulation 2(1)(c) EIR because they are information on measures or activities affecting or likely to affect the environment.
81. Taking into account the guidance in **Henney** as applied in **DfT and Porsche Cars GB v Information Commissioner and John Cieslik** [2018] UKUT 127 (AAC) (**Cieslik**), we take the following approach.
82. First, we need to identify the 'measure' or 'activity' that the information is 'on' or about. Then we must ask if that measure or activity has the requisite environmental impact for the purposes of regulation 2(1).
83. This is not restricted to the measure or activity the information is specifically, directly or immediately about. The information can be about more than one measure or activity. The relevant measure or activity is not required to be that which the information is "primarily" on. A mere connection, however minimal, is not sufficient.
84. Identifying the measure or activity that the disputed information is "on" may require consideration of the wider context and is not strictly limited to the precise issue with which the information is concerned, or the document containing the information.
85. It may be relevant to consider:
- 85.1. the purpose for which the information was produced,
  - 85.2. how important the information is to that purpose,
  - 85.3. how it is to be used, and
  - 85.4. whether access to it would enable the public to be informed about, or to participate in, decision-making in a better way.
86. The statutory definition in regulation 2(1)(c) does not mean that the information itself must be "intrinsically environmental" in nature (see **Henney**, paragraph 45). Although the tribunal notes that the withheld information in this appeal – the reports – do contain intrinsically

environmental information which is plainly 'on' the state of an element of the environment namely land. For example paragraphs 2.8 and paragraphs 2.46-49 of the Knight Frank report which record the current state of the land, the presence of contamination and asbestos containing materials and, in appendix 4 (closed) a fairly detailed breakdown of the anticipated steps and costs of the steps which will form part of the remediation of the land. The George F White report, for example, also records information on the environmental state of the land notably the 'Subject Property' that it had been remediated of contamination arising from its historic use.

87. We do not accept Mr Lavery's submission that the presence of these paragraphs which no doubt fall within paragraph 2(1)(a) is conclusive. In our view we must ask ourselves whether each report as a whole, looked at holistically and contextually, falls within the definition of environmental information. The fact that individual paragraphs might fall within that definition is relevant to, but not determinative of the answer to that question (see the Upper Tribunal decision in **Information Commissioner v DfT and Hastings** [2018] UKUT 184 (AAC)).
88. In considering what each report is 'on' we have considered the purpose of the reports.
89. We note that the Authority states that the reports were prepared for the purposes of the Authority informing its constituent members, cabinet and officers to ensure the Authority presented informed options and decision processes. The Authority also said that the purpose of the instruction to the Surveyor was to provide a report which would help to determine the market value of the land through a basic inspection.
90. The Knight Frank report states that it was prepared to 'inform and provide justification for certain contemplated land disposal transactions in accordance with and to satisfy the provisions of Section 209 of the Localism Act 2011.' In the Authority's skeleton argument report the same statement is made in relation to the George F White.
91. The George F White report states that it was prepared for 'financial reporting purposes' to provide a 'fair value' i.e. the market value at the relevant date. The valuation was done on a 'desktop' basis without a physical site inspection. The land that was the subject of the George F White report ('the SeAH site') has been, following the report, the subject of a number of complex transactions and arrangements, including, as the tribunal understands it, the transfer of the freehold of that part of the site to

Teesworks Limited which has been the subject of media reporting. The George F White valuation report has been relied on by the Mayor, Ben Houchen, in the context of questions about that transaction, as having informed a valuation of £13m.

92. We find that the valuation reports were used or were intended to be used for the purposes of informing actual or contemplated land disposal transactions in relation to some or all of the Site. Those land disposal transactions were an integral part of the redevelopment and regeneration of one of the largest brownfield sites in Europe.
93. In our view it is clear that access to both reports would enable the public to be informed about, or to participate in, decision-making in relation to environmental matters in a better way. They contain detailed information about the state and value of that land and have been used to inform the public authority's decision making processes in relation to the ongoing process of the redevelopment and regeneration of this land, which has taken place through a series of complex and opaque transactions.
94. Having considered the context, in accordance with **Henney**, we take the view that this is clearly not information which only has a minimal connection with the environment. This is not, in our view, information which could not reasonably be said to fall within the regulation.
95. Taking all the above into account and taking account of the guidance in **Henney** and **Cieslik** we find that the measure or activity that the reports are 'on' is the redevelopment and regeneration of the Site. We find that that measure or activity undoubtedly has the required impact under the EIR: given the former uses of the Site, the need for remediation and development and the proposed projects this is clearly a measure or activity affecting or likely to affect a number of elements of the environment including but not limited to land and air. We note that current onsite and earmarked projects include SeAH Wind Ltd's offshore wind monopile manufacturing facility and a BP-led gas-fired power plant with carbon capture, utilisation and storage capabilities (known as Net Zero Teesside).
96. For those reasons we conclude that the Commissioner was correct in both appeals to conclude that each report was environmental information and the appeals are dismissed.
97. In the light of that conclusion we did not need to go on to consider section 40(2) or section 43(2) FOIA.



## Observations

98. These observations do not form part of the reasons for our decision.
99. When considering afresh the requests for information under EIR, the public authority may wish to bear in mind the following observations.
100. The Authority no doubt understands that there are a number of differences between section 43(2) and the 'equivalent' provision in EIR. This includes, for example, a requirement under EIR that there 'would' be an adverse effect and the requirement for confidentiality provided by law. The question of whether the exception is engaged and the balance of the public interest will also need to be answered taking account of the position at the date of the fresh response in 2025.
101. For those reasons it is not the case that the outcome under EIR will be the same as the outcome under FOIA.
102. However, the panel is conscious that the requirement for the Authority to reconsider the request afresh has the potential to cause significant delay, in particular for the requestors, because any challenge to the Authority's fresh response will have to be challenged by way of a new complaint to the Commissioner.
103. In the circumstances, the panel wished to make clear that on the information before it today, we would not have been persuaded that the Authority was entitled to withhold the information under section 43(2). There was insufficient explanation and evidence before us to support the Authority's assertions that there was a causative link between disclosure and the asserted prejudice or that any such prejudice would or would be likely to occur.
104. Many of the justifications provided by the Authority, as illustrated by the specific examples we were taken to by Mr Lavery, were either simple assertions that prejudice would be caused or that information was commercially sensitive or were not borne out when the text of the proposed redaction was scrutinised.
105. Further, even if we had been persuaded that the exemption was engaged, there was a lack of evidence and submissions from the Authority on the severity of any such prejudice and, in contrast, an obvious clear and weighty public interest in transparency.

106. For those reasons we urge the Authority to consider carefully, in relation to each proposed redaction, whether it has sufficient evidence before it to conclude that disclosure would have the required adverse effect under EIR, or whether it can disclose the information. It should also consider whether it is able to provide a properly reasoned justification for each redaction.
107. We did not consider the proposed redactions of personal data and are unable to give any equivalent indication of our likely conclusion under FOIA. The Authority will need to consider those redactions afresh, and will no doubt take account of the points made by Mr Brooks and Mrs Tarry as the seniority of the individuals concerned and the asserted legitimate interest in knowing their identity.

Signed Sophie Buckley

Date: 14 February 2025

Judge of the First-tier Tribunal