

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

### **Decision notice**

**Date:** 8 February 2023

**Public Authority:** Cheshire East Council  
**Address:** Municipal Buildings  
Earle Street  
Crewe  
CW1 2BJ

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

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1. The complainant requested information about why a particular site was removed from the Danes Moss Landscape Character Area. Cheshire East Council (the Council) stated that it did not hold the requested information and, as such, relied on regulation 12(4)(a) (information not held) of the EIR. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold the requested information, in accordance with regulation 12(4)(a) of the EIR. However, the Commissioner finds that the Council breached regulation 14 of the EIR by failing to issue a refusal notice within the statutory timescale. The Commissioner does not require any steps to be taken.

#### **Request and response**

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2. On 13 May 2022, the complainant wrote to the Council and requested information in the following terms:  
  
"Please disclose all held information on the process by which the South Macclesfield Development Area site came to be removed from the Danes Moss Landscape Character Area. To illustrate, in the 'Cheshire Landscape Character Assessment' (2008) - M1: Danes Moss Character Area does include the SMDA. See here:

<https://web.archive.org/web/20211103021742/https://www.cheshireeast.gov.uk/pdf/environment/heritage-landscape-character-assessment/lcatype12mosslands.pdf>

However, the 'Cheshire East Landscape Character Assessment' (2018) - LCA 9b: Danes Moss Character Area does not include the SMDA. The process by which this happened is not clear.

An attempt has been made to ask the Head of Planning about this but no reply has been received”.

3. The Council responded on 21 June 2022 and stated that it did not hold the information requested and as such regulation 12(4)(a) of the EIR applied. The Council upheld this position at the time of its internal review.

### **Reasons for decision**

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4. This reasoning covers whether the Council is correct when it says that it does not hold information within the scope of the request and therefore, is entitled to rely on regulation 12(4)(a) of the EIR to refuse to comply with the request.
5. The Council confirmed to the Commissioner that, on receipt of the request, enquiries were made with relevant officers in its Development Management service, including the Head of Service, to ascertain information falling within the scope of the request. The Council confirmed that appropriate searches were conducted and no information was located.
6. The Council has explained that the Dane Moss Landscape Character Assessment 2018 is a “comprehensive assessment of landscape character, which updates the previous assessment to reflect current good practice, the present state of the landscape and to provide a landscape strategy”. The Council also advised that the methodology for conducting the assessment is contained within Appendix 2 of the document.
7. The Council advised the Commissioner that all of the Local Plan Strategy sites (and not just the SMDA) were omitted from the 2018 Cheshire East Landscape Character Assessment because “the sites will be developed during this plan period”. The Council also advised that this approach was agreed with Land Use Consultants, who undertook the assessment, through discussions at the start of the review process. The Council confirmed that these discussions were verbal and no recorded information is held relating to them.

8. In cases where a dispute arises over the extent of recorded information that is held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
9. It is not the Commissioner's role to establish what information a public authority *should* hold, or whether it has a requirement, statutory or otherwise to hold certain information. The Commissioner's role is to make a judgement on whether the information *is* held on the civil standard of the balance of probabilities.
10. Based on the evidence available to him, the Commissioner is satisfied that the Council has carried out adequate searches, which would have been likely to locate information falling within the scope of the request. Based on the searches undertaken and the other explanations provided, as referred to above, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold any information falling within the scope of the request. Therefore the Commissioner's decision is that the exception provided by regulation 12(4)(a) is engaged.
11. As no information within the scope of the request is held, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no information to disclose.

#### **Regulation 14 of the EIR – Refusal to disclose information**

12. Regulation 5(1) of the EIR states that, subject to any exceptions, environmental information must be made available on request. Regulation 5(2) requires that the information be made available promptly, and in any event no later than 20 working days after the date of receipt of the request.
13. Where no information is held, Regulation 14(2) requires a refusal notice to be issued no later than 20 working days after the date of receipt of the request.
14. In this case, the request was submitted on 13 May 2022 and the Council did not issue a refusal notices citing regulation 12(4)(a) until 21 June 2022. As the Council failed to issue a refusal notice within the required timescale the Commissioner finds that the Council breached regulation 14(2) of the EIR.

## Right of appeal

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15. 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)

16. 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.
17. 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 .....**

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