

## **Freedom of Information Act 2000 (FOIA)**

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

#### **Decision notice**

**Date:** 22 May 2023

**Public Authority:** Sheffield City Council  
**Address:** Town Hall  
Pinstone Street  
Sheffield  
S1 2HH

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

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1. The complainant has requested information on a planning application relating to a dropped kerb and vehicle access, including information as to why no enforcement action was taken. Sheffield City Council ("the Council") provide some explanations and links to the planning portal.
2. The Commissioner's decision is that there are two additional emails containing information in scope of the request that have not been disclosed.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Disclose the email dated 6 October 2017 by the Enforcement Officer in Highways to the Assistant Planning Officer and disclose the internal email from the Council's solicitor from June 2020 or issue a fresh refusal indicating the exceptions under the EIR the Council is relying on to withhold this information.
4. The public authority 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 Act and may be dealt with as a contempt of court.

## Request and response

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5. On 31 August 2021, the complainant wrote to the Council and requested information in the following terms:

"Retention of access ramp and construction of means of vehicle access including hardstanding [address redacted] for The retrospective application was 21/07/2017.

The proposed works were started before planning permission was granted on 03/04/2017 and were completed on the 01/05/2017. The hardstanding is less than 5m of usable space and no vehicle can safely be parked there. The dropped kerb is 8.1 m wide including taper kerbs.

A Single should be 4.5 including taper kerbs and a double 6.3m including taper kerbs. The tenant /owner as never owned a vehicle and the construction of ramp and vehicle crossing is for a grade 2 mobility scooter. The planning application was not complied with, and an unlawful planning application.

I would like to know by freedom of information how this planning application was passed and no enforcement was taken to reinstate the dropped kerb. I would like answers from Planning, Highways Development Control and Planning and Highways Legal Team.

I have concerns over the Health & Safety over the less than 5m hardstanding and the 8.1m dropped kerb, as vehicles have been parked over the hardstanding overlapping the path. Who will be held responsible for health & safety and held responsible for risk assessments of works granted. As this is not vehicle access. Who is ensuring the safety of the public especially children.

I would now like freedom of information on how planning permission was granted and passed for [address redacted] under the Town and Country planning Act 1990 planning permission."

6. The Council responded on 7 September 2021. It stated that retrospective planning permission was granted for the access ramp and vehicle access including hardstanding so no planning enforcement action was required. The Council provided a link to the planning application on its website, indicating this would provide more information about how the planning application decision was made.

7. The complainant requested an internal review on 16 September 2021. They stated the response did not answer their request as they wanted to know how "this got past under the planning act 1990 and who is overseeing it health and safety and risk assessments to ensure public safety for vehicles parking over the less than 5m usable space."
8. Following multiple emails chasing a response to the internal review request, the Council eventually conducted an internal review and responded on 9 January 2023. It explained that the objective of the enforcement service is to stop breaches of planning control that would otherwise harm the environment and retrospective planning is considered an acceptable solution if it is not considered harmful. The Council confirmed no enforcement action was taken as the application was not considered harmful. Similarly, health and safety was considered during the planning application process and plans were deemed appropriate. The Council further explained that kerbs and footways are under the ownership of the Highways Authority and access cannot be blocked.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 27 January 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine if the Council holds any further recorded information in the scope of the request.

### **Reasons for decision**

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

11. 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.
12. 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 the balance of probabilities.
13. The complainant explained the request was in relation to planning permission granted for an access ramp parking space. The complainant

stated the area was less than five metres so no car could park safely without overlapping onto the pavement. The complainant had concerns about the length of the dropped kerb and whether this was compliant with the Town and Country Planning Act 1990. The complainant therefore wanted to know how planning permission was given, how it was passed retrospectively with no enforcement action, and who oversaw the health and safety aspects of the risk assessment for the planning permission at this property. The complainant did not consider the Council's response answered their request.

14. The Council explained the application was retrospective and was for a dropped kerb and excavation works to the front garden to create an access ramp and parking area. It explained that planning permission for a vehicle crossing is not always required but in this case it wrote to the residents of the property to advise that excavation of the front of the property to create a new parking area would require planning consent. The retrospective planning application and drawings are on the planning portal<sup>1</sup>. The Delegated Officer Report of 6 October 2017 (also on the planning portal) addresses the length and width of the parking bay indicating that only a mobility scooter or smart car could be accommodated.
15. In relation to the vehicular footway crossing, the Delegated Officer Report noted:

"Highways records indicate that the vehicular footway crossing is wider than that which was approved. Furthermore as the crossing will not provide access to a full sized parking space as intended; the validity of the crossing is under question. It is noted that [address redacted] is narrow with a high level of on street parking. It is considered that the wide crossing contributes to highway safety issues on the street and that it should be reduced to a more appropriate size for mobility scooter use. However the implementation of this recommendation is a highways enforcement role."
16. The Commissioner notes the request asked for "how this planning application was passed and no enforcement was taken to reinstate the dropped kerb". It also asked how planning permission was granted. The Commissioner considers the information on the planning portal covers the majority of the recorded information held by the Council relevant to the request. This publicly available information is a record of the Council's decision making with regard to granting retrospective planning permission.
17. In terms of the part of the request asking for information as to why no enforcement action was taken to reinstate the dropped kerb; the Council

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<sup>1</sup> [17/03100/FUL | Retention of access ramp and construction of means of vehicle access including hardstanding | 37 Rokeby Drive Sheffield S5 9JT](#)

maintains this part was answered by reference to the Delegated Officer Report and the section highlighted at paragraph 15 of this notice. The Council's position is that this makes it clear the matter is a highways enforcement matter.

18. In the Council's submissions to the Commissioner they refer to an email dated 6 October 2017 in which it discusses the difficulties around enforcement – the Council accepted this email was held at the time of the request and internal review and "could have referred to it then as it specifies the difficulties that were referred to in the email to [complainant's name] of 4 February 2020." This email of February 2020 contained a statement that an Enforcement Officer had investigated the dropped kerb and vehicular crossing but found a number of issues that would make it difficult to take enforcement action. The Council acknowledges this email of 6 October 2017 would provide more detail to explain the difficulties referred to in the email to the complainant of February 2020. The Council also makes reference to an email in July 2020 from its solicitors discussing the difficulties of enforcement action in respect of the dropped kerb.
19. In the Commissioner's view, both of these emails are within the scope of the request as they detail the Council's consideration of enforcement action and why it was not taken. The Council considers it has provided the relevant information it holds in respect of the request but neither of these two emails have been disclosed or any reason given as to why they cannot be disclosed under the EIR.
20. As such the Commissioner is not satisfied that, on the balance of probabilities, the Council has provided all the information it holds that is relevant to this request.
21. He now requires the Council to either disclose the emails in question or issue a fresh response clearly stating the exceptions under the EIR it is relying on to withhold the information.

## **Procedural matters**

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22. Regulation 11(4) requires a public authority to inform the requester of the outcome of the internal review as soon as possible and not later than 40 working days after that date on which an internal review was requested. The complainant submitted their internal review request on 16 September 2021, but the Council did not provide its response until 9 January 2023. The Commissioner appreciates some of these delays were due to the pandemic and the Council did communicate with the complainant about the delays but this delay is excessive under any circumstances. Given this, the Commissioner finds that the Council has breached regulation 11(4) of the EIR.

**Right of appeal**

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23. 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)

24. 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.

25. 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 .....**

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