

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

### **Decision notice**

**Date:** 12 April 2024

**Public Authority:** Lake District National Park Authority

**Address:** Wayfaring House  
Murley Moss Business Park  
Oxenholme Road  
Kendal  
LA9 7RL

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

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1. The complainant has requested information in relation to a planning application. Lake District National Park Authority (LDNPA) disclosed information in response to the request. The complainant considered further information was held, specifically a report and records of discussions.
2. The Commissioner's decision is that LDNPA has complied with regulation 5(2) of EIR as it has disclosed all of the information it held within the scope of the request. The Commissioner does not, therefore, require LDNPA to take any further steps.

#### **Request and response**

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3. On 17 May 2023, the complainant wrote to LDNPA and requested information relating to a planning application. The request was in the following terms:
  - "any planning report generated by [name redacted] considering the trees that were proposed to be felled and part of the application;
  - details and copies of correspondence and discussions, however undertaken, between [name redacted] or any deputy, and the

planners throughout the period that the planning application was under consideration;

- details and copies of any correspondence and discussions, however undertaken, between staff of the planning department throughout the period that the planning application was under consideration;
  - details and copies of any correspondence and discussions, however undertaken, between the planning authority and [name redacted], or his advisors, throughout the period that the planning application was under consideration; and
  - details and copies of any correspondence and discussions, however undertaken, between staff of the planning department and any external advisors throughout the period that the planning application was under consideration.”
4. LDNPA responded on 19 June 2023 disclosing information. It stated that there was no report from [name redacted] to [name redacted] but rather advice as set out in emails it disclosed to the complainant.
  5. The complainant asked for an internal review of this response on 11 August 2023 listing a number of points for clarification. Following an internal review LDNPA wrote to the complainant on 5 September 2023. It stated that there was no further information held in scope of the request that had not already been provided.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 16 October 2023 to complain about the way their request for information had been handled.
7. The Commissioner considers that the scope of his investigation is to consider if any further information within the scope of the request is held and if LDNPA has complied with its obligations under regulation 5(1) of the EIR.

## Reasons for decision

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

8. 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.
9. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any further information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
10. The complainant raised a number of concerns with LDNPA's response and areas where more information could or should be held. The Commissioner raised these points with LDNPA for comment and will address these in turn.
11. The first bullet point of the request referred to the planning report. The complainant referred to an email of 3 March 2023 stating "[name redacted] can send you her report direct" and an email of 9 March 2023 stating "I do not have a report that I can provide you". A further email of 19 June 2023 said "there is no report as such". The complainant therefore considers this suggests a report, or equivalent existed and should have been disclosed. The Commissioner asked LDNPA to confirm if a report existed, if reports are ever produced in these circumstances and if there was any explanation for the apparent discrepancy in references to the possible existence of a report in the various emails.
12. LDNPA explained the Trees and Woodlands Officer is part of the Development Management team along with the Case Planner. They provide specialist support and advice to colleagues on applications as required/requested. This support can be verbal or in writing and the LDNPA explained there is no prescribed format for advice. In this case it states there were email exchanges between the Case Planner and the Trees and Woodlands Officer containing advice and these emails have been provided.
13. In terms of a report; LDNPA explained the Case Planner prepares a report for all planning applications – the report in this case was published on the website in line with normal practices. LDNPA has been

clear that there is no separate planning report prepared by the Trees and Woodlands Officer.

14. The next part of the request related to correspondence and discussions between [name redacted] and any deputy or planners. The complainant was concerned no records of discussions had been provided and that discussions by the LDNPA have been documented in other circumstances. The complainant further pointed out that the Civil Service Code requires accurate official records be kept.
15. On these points the Commissioner asked LDNPA to explain what searches it had carried out to identify information in scope of the request and LDNPA explained it undertook searches of its electronic records and requested copies of any emails held by relevant team members ie the Case Planner and Trees and Woodlands Officer. LDNPA considers this would have resulted in any relevant information being located. LDNPA further explained it is not part of the civil service and the Civil Service Code therefore does not apply to it but, in any event, it keeps accurate official records and handles information as openly as possible within the legal framework.
16. It confirmed the planning application was determined within the relevant legal framework and records of the decision were retained as required. It's decision notice formally records the decision and the Case Planner's report sets out the assessment and reasons for the decision.
17. LDNPA stated discussions of work, sharing of ideas and the provision of support and advise is a normal part of work and it does not require conversations between peers to be documented.
18. The third bullet point of the request asked for correspondence and discussions between staff of the LDNPA planning department. The complainant directed the Commissioner to references made in the disclosed emails of conversations between [name redacted] and their manager but that no such records of these discussions had been provided.
19. In addition, the complainant pointed out the final report incorporated the phrase, in the "Representations" paragraph, "Restrictive covenant on the site relating to extensions" when the phrase "relating to extensions" did not feature in any documentation submitted by any party for this planning application. The complainant considers this suggests interactions between staff of the LDNPA did occur for which documentation exists and has not been provided.

20. The LDNPA considers it has already explained that discussions are not required to be documented when answering the Commissioner's questions around early parts of the request.
21. The fourth bullet point of the request focused on correspondence and discussions between the LDNPA and the applicant or their advisors. In this case, the complainant queried whether correspondence was at one point held but had been deleted as the LDNPA stated no correspondence is held.
22. The Commissioner asked LDNPA to confirm if any relevant information had ever been held and to provide details of its retention policy for information relating to planning applications.
23. LDNPA explained regulation 40 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 sets out the legal requirements for the documentation which must be placed and retained on the planning register and LDNPA retains this information in perpetuity. The Procedure Order does not require internal email correspondence to be retained, nor does LDNPA expect team members to retain copies of all emails. It is for the Case Planner to consider whether, based on its contents, information received by email should be placed on the planning register. LDNPA stated it had no reason to believe that information that should have been placed on the planning register was not and was instead deleted. It has conducted searches for relevant emails and any information found has been provided.
24. The final part of the request concerned correspondence and discussions between staff of LDNPA's planning department and any external advisors. Again, the complainant was concerned LDNPA had not mentioned records of discussions when stating all correspondence had been provided. LDNPA had nothing further to add on this point beyond the explanations it had already provided the Commissioner in relation to the other parts of the request.
25. For each of the parts of the request and the comments and questions raised LDNPA has provided clear and cogent explanations as to why information is not held. The Commissioner's decision is not based on whether information should be held but only on whether, on the balance of probabilities, LDNPA has identified and provided all information it holds within the scope of the request.
26. The Commissioner is satisfied that LDNPA's searches of its electronic records and emails of relevant employees would have returned the information in scope of the request that was held by LDNPA. This information combined with information that was disclosed and is publicly available would seem, on balance, to be the extent of the information

held by LDNPA given that records of discussions and conversations are not required to be created.

27. The Commissioner's decision is therefore that LDNPA has complied with regulation 5(2) of EIR as it has disclosed all of the information it held within the scope of the request. The Commissioner does not, therefore, require LDNPA to take any further steps.

## Right of appeal

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28. 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)

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jill Hulley**  
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