



**First-tier Tribunal  
(General Regulatory Chamber)  
Information Rights  
Decision notice FER0792745**

**Appeal Reference: EA/2019/0425V**

**Heard on the CVP platform  
On 15 March 2021**

**Before**

**JUDGE CHRIS HUGHES**

**TRIBUNAL MEMBERS**

**DAVID COOK & ALF MURPHY**

**Between**

**JOHN CAMERON**

Appellant

**and**

**INFORMATION COMMISSIONER**

First Respondent

**WIMBELDON AND PUTNEY COMMONS CONSERVATORS (WPCC)**

Second Respondent

**Appearances:-**

<b>Appellant:</b>	<b>in person</b>
<b>First Respondent:</b>	<b>Leo Davidson</b>
<b>Second Respondent:</b>	<b>Christopher Knight</b>

**Cases**

Eva Glawischnig And Bundesminister für soziale Sicherheit und Generationen,  
ECJ C-316/01,  
The Department for Business, Energy and Industrial Strategy v The Information  
Commissioner & Alex Henney [2017] EWCA Civ 844  
DfT, DVSA and Porsche Cars GB Limited v Information Commissioner and John  
Cieslik: [2018] UKUT 127 (AAC)

### DECISION

The appeal is dismissed.

### REASONS

1. On 3 September 2018 Mr Cameron wrote to WPCC seeking information:-

*"I wish to make a request under FOI/EIR in respect of the sale of the freehold of Mill House in 2006. You will be aware that WPCC sold the freehold for some £2.5m, which was immediately sold to a BVI Nominee for £6.1m. The charity received advice in respect of the value of their freehold during the transaction. I require you to provide;*

1. Copies of all "Qualified Surveyors Reports" and/or "valuations" and/or "valuation advice" (whether in formal reports or otherwise) procured by the WPCC at the time of the sale.
2. Copies of all other professional advice received at the time for the sale, (ie from Counsel or solicitors etc acting for the WPCC)
3. Copies of all other information which is held in respect of the sale (ie correspondence between management/trustees/advisors/insurers and so on)

*To facilitate the WPCC in dealing with the request I am prepared to "receive" access by viewing the information at WPCC offices, thus avoiding administrative time"*

2. WPCC replied explaining that it was not subject to FOIA and that since the material was not environmental information there was no right of access to the information. In order to be accountable it published a history of the transaction.
3. Mr Cameron complained to the Information Commissioner who investigated. She concluded that a site plan and information about covenants was environmental information and ordered their disclosure. She held that the remainder of the information was not environmental and did not have to be disclosed.
4. Mr Cameron appealed against this decision raising a number of issues about the transaction and the duties of WPCC under its charitable law and what he claimed were breaches of those duties by the Conservators. In the hearing he

accepted that the only valid ground of appeal in this tribunal was whether or not the information was properly characterised as falling within EIR and proceeded on that basis.

5. Environmental information is defined by regulation 2(1):-

*“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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);*

6. Mr Cameron argued that the intention of drafters of the Aarhus Convention was to produce a broad definition of environmental information and the ICO's guidance emphasised then need to interpret the definition broadly. The sale of Mill House was an administrative measure falling within 2(1)(c) and as WPCC would be required by law to have a valuation of the property that was a cost-benefit analysis within regulation 2(1)(e). The function of WPCC under the 1871 Act which created it was the protection of the two commons, which was environmental and its resources were devoted to that end. The proceeds of the sale of Mill House were ring-fenced to produce income for WPCC and for major investments. The valuation and professional advice were administrative measures which directly affected the proceeds of sale which accrued to WPCC for its environmental responsibilities.

7. Mr Cameron relied on a previous decision of the ICO relating to WPCC (FER0674590 of 24 October 2017) where the ICO had directed WPCC to supply the information requested:-

*'Copies of the work instructions issued to Daniel Watney LLP and the resulting retrospective valuation report (RVR)'*

8. The ICO had reasoned that:-

60. *The Commissioner has considered the requested information and agrees that the granting and use of the easement is an 'administrative measure' and activity affecting or likely to affect the elements of the environment, namely land and landscape.*

61. *The Commissioner takes the view that the easement, which is effectively a right of way over the land, is a continuing one. Therefore its use continues to affect the environment. As a result the Commissioner believes that the financial value of the easement is still information on an 'activity' affecting the environment. The requested information would effectively provide an insight to the actual value in monetary terms of allowing the public to use the land and affect the environment on and around it.*

62. *The Commissioner also takes the view that the easement is covered by Regulation 2(1)(e) of the EIR as it is information on a 'cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in 2(1)(c). The activity is the granting of an easement to pass over the land, the cost benefit or economic analyses is the value of that easement to WPCC (which is the retrospective valuation report itself).*

63. *The Commissioner therefore concludes that the requested information is environmental within the meaning of the EIR as it is information on a measure and an activity affecting or likely to affect the elements of the environment, namely land and landscape.*

9. Mr Cameron argued that in both cases there was a transaction; an asset was sold resulting in a substantial receipt. In return WPCC should have received the correct amount of money to use for the Commons. This was a cost benefit analysis within 2(1)(e).

10. In resisting the appeal Mr Davidson addressed the legal framework and Mr Knight applied this to the material in question. Mr Davidson emphasised the limits of the rights given under the directive relying on *Glawischnig*

*25 Directive 90/313 is not intended, however, 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 in Article 2(a). To be covered by the right of access it establishes, such information must fall within one or more of the three categories set out in that provision*

11. The information had to be *on* a measure affecting or likely to affect the elements and factors in (a) and (b). The Court of Appeal in *Henney* emphasised the issue:-

*It will be necessary to consider each case on its own facts in order to determine whether disputed information can properly be said to be "on" a given measure and to have regard to the purpose of the EIR and the Directive.*

12. In *Cieslik* the Upper Tribunal relied on the principle established by the Court of Appeal in *Henney* (and derived from *Glawischnig*):-

*"...that information which has only a minimal connection with the environment is not environmental information. That principle must apply not only in deciding whether information is on an environmental matter but whether a measure or activity has the requisite environmental effect."*

13. Mr Knight emphasised the need for the connection between the information in question and a measure likely to affect the factors and elements in the environment. He submitted that *Cieslik* was significant to the analysis of this case. In *Cieslik* a safety inspection carried out on a car (which required the engine to be running and the production of exhaust gas) did not mean that the safety inspection was environmental information and *"In any event VCA's environmental remit does not mean that all information which comes into its hands is environmental information."*

14. He argued that for the disputed information to be within the ambit of EIR there needed to be some form of measure within 2(1)(c) which met the requirement of *affecting or likely to affect* (a) or (b). The Mill House sale of a house under leasehold reform legislation was an activity and therefore information about it could be information on a measure. However the residential property existed before and after the sale, there was nothing in such a sale which affected the environment.

15. He distinguished between the ICO's decision in this case and in FER0674590. In that case the grant of an easement enabled a substantial redevelopment to go forward of the Putney hospital site. The land over which the easement was granted was subsequently surfaced with tarmac, gated and fenced. The sale of Mill House was a compulsory transaction by which the leaseholder became the freeholder of the property,

### Consideration

16. S34 of the Wimbledon and Putney Commons Act 1871 vested the Commons in the Conservators and gave them the role of protecting the Commons

*"The Conservators shall at all times keep the commons open, unenclosed, and unbuilt on ..."*

17. However while their functions are essentially environmental, the caselaw clearly demonstrates that this is insufficient to mean that all their information is environmental. Where information is not directly concerning *the state of the elements of the environment* then, for it to be environmental information within (c) it must be a measure *affecting or likely to affect* such elements. What was sought by the request is financial information about the sale since Mr Cameron wanted to understand how the price had been arrived at. However, this is information which goes to explain how much money was transferred to WPCC in 2006. There is not, as the ICO found in FER0674590 *a continuing effect on the environment*. It says nothing about the .. *soil, land, landscape and natural sites ... biological diversity* which EIR gives access to information about. It is not environmental information.

18. The ICO's decision is correct.

Signed Hughes

Judge of the First-tier Tribunal

Date: 24 March 2021

Promulgated: 21 May 2021