

Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: 14 April 2015

Public Authority: London Borough of Lambeth
Address: Town Hall
Brixton Hill
Lambeth
SW2 1RW

Decision (including any steps ordered)

1. The complainant requested copies of plans regarding a development site at the garages rear of Wavertree Court, Wavertree Road, London reference 10/04487/FUL.
2. The London Borough of Lambeth ('the Council') initially dealt with the request outside of the EIR and a hard copy of the information was made available for the complainant to collect. Following a complaint to the Commissioner that the Council had failed to respond to the request the Commissioner instructed it to issue a formal response under the FOIA or EIR as appropriate. The Council subsequently refused the request under section 21 of the FOIA advising that it had already provided the information and in any event it was reasonably accessible via other means namely the Council's planning portal.
3. The Commissioner's decision is that the Council has incorrectly handled the request under FOIA, however he is satisfied that it has complied with regulation 5(1) of the EIR in making environmental information available on request.
4. The Commissioner does not require the Council to take any steps.

Request and response

5. On 9 September 2014, the complainant wrote to the Council and requested information in the following terms:

"1- Full complete unedited copies of the plans that were approved by Lambeth in 2011 with full measurements which include the height, width and breadth of the buildings, their distance from our back garden walls and their internal/external measurements.

2- Full complete unedited copies of all/any changes to the original plans that were requested along with the reasons and results of their request for changes. Please confirm which if any of the developer's request for changes were granted and if yes why? Again with full measurements to include the height, width and breadth of each building along with internal/external measurements and the distance of all the properties from our back garden walls.

3- Full complete and unedited copies of the plans that Hambridge Homes – the developers –are currently working/building to. To be clear we need the height, width and breadth, as well as the distance of Hambridge Homes properties from our back garden walls."

6. On 10 September 2014, the Council responded to the request as normal course of business. It advised the complainant how to view the approved plans for the application via its planning portal and how to arrange an appointment to inspect the planning application file at Council offices and request hard copies of the plans via those means.
7. On 15 September 2014, the Council advised the complainant that the information requested was in the process of being copied and invited the complainant to collect the information the next day. The information was subsequently collected on the 17 September 2014.
8. On 11 November 2014, the complainant contacted the Information Commissioner to complain that no response had been received.
9. On 5 December 2014, the Council issued a formal response and refused the request under section 21 of the Freedom of Information Act 2000 (FOIA) arguing that the information was reasonably accessible by other means as it had already been made available to collect.
10. On the same day the complainant submitted an internal review request.
11. On 8 January 2015, the Council issued its internal review decision. It upheld its application of section 21 of the FOIA confirming that the plans which were made available for collection are all of the plans submitted to the Council at the time of the planning application in 2010 as referred to in the decision notice approved under reference 10/04487/FUL. The Council also confirmed that the applicants made a number of applications for the approval of details in 2013 as required under the terms of the decision notice and advised that the information was accessible via the Councils planning portal.

Scope of the case

12. The complainant contacted the Commissioner on 21 January 2015, to complain that the Council had failed to answer any of the questions asked.
13. The scope of this case is to determine whether the Council has complied with regulation 5(1) of the EIR, specifically whether it has made available all the environmental information requested.

Reasons for decision

14. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
15. Under regulation 2(1)(c) of the EIR, any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.
16. Having considered that the nature of the information sought by the complainant relates to planning matters the Commissioner is satisfied that the information constitutes environmental information as defined in the EIR.
17. The Commissioner is therefore of the view that the request was incorrectly handled under FOIA.
18. Although the request was handled under the incorrect legislation the Commissioner has considered whether the Council has complied with regulation 5(1) of the EIR.

Regulation 5(1)

19. Regulation 5 (1) of the EIR states that 'a public authority that holds environmental information shall make it available on request.'
20. In the Commissioner's view, the duty to make environmental information available on request does not mean that a public authority has to provide a copy where the information has already been published and is reasonably accessible by other means in line with regulation 6(1) (b) of the EIR.

21. In this case the Council has explained that the plans requested by the complainant regarding the development site at the garages rear of Wavertree Court, Wavertree Road, London are available via its online planning portal (<http://planning.lambeth.gov.uk/online-applications/>).
22. The Commissioner also understands that the complainant was provided with a hard copy of the following 19 plans on 17 September 2014.

09.308.PL.0130C	Proposed North and South Elevations
09.308.PL.002	Site Plan Existing
09.308.PL.0112	Proposed Floor Plans, Second Floor Apartment A2 & A3
09.308.PL.0111	Proposed floorplans First Floor Apartments A1
09.308.PL.0110	Ground Floor Plan Apartment A
09.308.PL.0120	Proposed Floorplans 6 Bed House B
09.308.PL.0121	Proposed Floorplans 6 Bed House C
09.308.PL.0122	Proposed Floorplans 6 Bed House D
09.308.PL.0131C	Proposed East and West Elevations
09.308.PL.0103C	Proposed Site Plan
09.308.PL.0151A	Bin Store Elevations
09.308.PL.0152A	Proposed Site Section
09.308.PL.0155A	Proposed Floorplans 6 Bed House E
09.308.PL.0156A	Proposed Floorplans 6 Bed House F
09.308.PL.0157A	Proposed Floorplans 6 Bed House G
09.308.PL.0140	Proposed Site Plan
1181L3A	Landscape Detail Access Drive
1181L1E	Landscape Masterplan
1181L2	Landscape Masterplan

These are the plans submitted to the Council at the time of the planning application in 2010, referred to in the decision notice as approved for the consent issued under reference 10/04487/FUL.

23. The Council also confirmed that other plans which were not approved by the Council are available on the planning portal as well as applications for the approval of details as required under the terms of the decision notice.
24. The Council confirmed that there have been no applications from the developer under section 96A or section 73 of the Town & Country Planning Act 1990 in relation to this development to make non-material minor amendments to the existing grant of planning permission (which could have included amendments to plans), or to vary the conditions of the original planning permission to approve different plans.
25. The complainant argued that the documents they were provided with are not the plans they requested, describing the information as

consultation notes for plans which are out of date. The complainant also states that they have tried to access the information from the Council's planning portal but maintain that the information is not available.

26. The Council confirmed that 18 of the plans have been on its planning portal since 2011. During the course of responding to the Commissioner's queries it found that plan number 09.308.PL.0140 (Proposed Site Plan) had not been uploaded to the planning portal in 2011, although it was held on the manual file and a hard copy provided to the complainant on 17 September 2014. The Council advised that it has since corrected this omission by uploading the plan to the planning portal.
27. The Council explained that measurements are only included on plans to the extent that the person preparing the plans has included that information and it does not add measurements or other information to the submitted plans itself. It confirmed that that there was no requirement for the plans to bear measurements on their face for the purposes of validation of a planning application because they are drawn to an identified scale that enables measurements to be taken. It also advised the complainant that detailed construction drawings do not form part of the approved plans submitted as part of the planning application process and are therefore not held by the Council. It suggested that the complainant approach the developer for copies of such information.
28. The Commissioner has examined the information available via the Council's planning portal and considers that all of the information requested by the complainant is accessible via these means.
29. The Commissioner also considers that the plans requested by the complainant will not contain measurements (unless already included by the person preparing the plans) as they are produced to scale from which measurements can be taken.
30. The Commissioner is aware that the complainant has concerns about the development and the accuracy of the information provided to them. However the Commissioner is unable to address questions about the veracity of information provided in response to a request or any complaints about the planning process itself. Indeed the Commissioner is aware that the Local Government Ombudsman has investigated a complaint about the Council's handling of the planning application and found no evidence of fault.
31. The Commissioner also considers that there is some confusion between the plans which were submitted to the Council as part of the application for planning permission and detailed construction drawings potentially held by the developer. Although the complainant requested

the plans, which the Commissioner considers have been provided, it would appear that what the complainants really wish to acquire are any detailed construction drawings which the developer is working from. However the Commissioner is satisfied with the Council's explanation that it does not hold this information as it does not form part of the plans submitted for approval as part of the planning process.

32. The Commissioner is therefore satisfied that the environmental information requested by the complainant has been made available by the Council both in hard copy and via its planning portal.
33. The Commissioner's decision is that the Council has complied with regulation 5(1) of the EIR.

Right of appeal

34. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

Rachael Cragg
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