

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 July 2021

Public Authority: Brighton and Hove City Council

Address: Hove Town Hall
Norton Road
Hove
BN3 3BQ

Decision (including any steps ordered)

1. The complainant requested information from Brighton and Hove City Council ("the Council") relating to the emission of vibrations at a specific site. By the date of this notice the Council had not provided a substantive response to the request.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under the EIR.
4. The Council 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

5. On 13 November 2021, the complainant wrote to the Council and requested information in the following terms:

"You, Brighton and Hove City Council, regulate the development of a site in Pelham Street, being developed by Greater Brighton Metropolitan College by means of a s106 agreement. To assist you in unambiguously identifying the site, this is a link to the approved planning permission currently being built <https://planningapps.brighton-hove.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PDJTDVDM0PA00>.

The building contractor working on the site is Willmott Dixon.

Works commenced on 12.8.19, some 15 months ago and the emissions from, and impacts of, the site have been subject of complaints to the Council over this protracted 15 month period.

NOISE AND VIBRATION

This is a request under the Freedom of Information Act regarding the emissions of VIBRATION from the site. Please provide:

V (a) A site plan showing where noise and vibration monitoring is being carried out.

V (b) All results of Willmott Dixon's noise and vibration monitoring going back 3 months from today, being 13.11.20.

V (c) All results of the Council's noise and vibration monitoring going back 3 months from today, being 13.11.20.

V (d) The Council's opinion on the results of noise and vibration monitoring over the three month period (whether done by contractor or Council), and, specifically if it considers the nuisance not to be actionable, and enforcement action not necessary, the Council's reasons, in full.

V (e) If the Council does not have enough data to objectively assess the position, bearing in mind the protracted nature of the complaints it has received over the three month period, I need to see all documentation it has showing its reasons, in full, why it considers it did not have the duty to collect the data itself.

V (f) All correspondence about noise and vibration monitoring of the site over the three month period, whether correspondence with complainants, correspondence with the developers, correspondence with the contractor, or correspondence within the Council."

6. The Council wrote to the complainant on 11 December 2020 to acknowledge the request. The Council also provided the complainant with an update on the status of his request.
7. On 1 February 2021 and 8 March 2021, the Council wrote to the complainant to provide him with a further update on the status of his request.
8. As the complainant had not received any response, he wrote to the Council on 31 March 2021, 1 April 2021 and 12 April 2021, to ask for an update on the status of his request.
9. The Council wrote to the complainant on 13 April 2021 to acknowledge the complainant's requests for an update on the status of his request.
10. On 13 April 2021, the complainant wrote to the Council again to complain about its delay in responding to his request.
11. The complainant contacted the Commissioner 29 April 2021 to complain about the Council's failure to respond to his request.
12. The Council wrote to the complainant on 4 May 2021 to provide him with a further update on the status of his request. By the date of this notice the Council had not provided a substantive response to the request.

Scope of the case

13. The Commissioner contacted the Council on 27 May 2021 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
14. The Commissioner also contacted the complainant on 27 May 2021 to explain that the Council had been given 10 working days from that date within which to provide a response to their request.
15. The complainant has provided evidence that he has received an acknowledgement from the Council but, by the date of this notice, had not received a substantive response to his information request.
16. The scope of this notice and the following analysis is to consider whether the Council has complied with regulation 5(2) of the EIR.

Reasons for decision

17. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

18. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

19. The Council did not provide a substantive response to the request within 20 working days of receipt. Therefore, the Commissioner's decision is that the Council has breached regulation 5(2) of the EIR.

Right of appeal

20. 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@justice.gov.uk

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

21. 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.
22. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF