

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 23 September 2021

Public Authority: London Borough of Brent
Address: Brent Civic Centre
Engineers Way
Wembley
HA9 0FJ

Decision (including any steps ordered)

1. The complainant submitted a request to the London Borough of Brent (the Council) seeking planning information about a particular housing development. The Council provided him with information falling within the scope of his request and directed him to a website where further information could be found. The complainant argued that the link provided did not work and furthermore that the Council had not provided him with all of the information falling within the scope of his request. During the course of the Commissioner's investigation, the Council subsequently provided the complainant with copies of the information which could be found at the website link, but maintained its position that it did not hold any further information falling within the scope of the request.
2. The Commissioner is satisfied that on the balance of probabilities the Council does not hold any further information falling within the scope of the request beyond that provided to the complainant. However, she has concluded that the Council breached regulation 5(2) of the EIR by providing some of the information in the scope of the request outside of the 20 working days period required by the legislation.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the Council on 2 June 2020:

'I would be grateful for the planning, build control and adoption records for the land and roadways on Pellatt Road, Wembley, HA9, particularly on the development of the GEC Sports Ground during 1999 to 2002.'

5. The Council contacted the complainant on 22 June 2020 and asked him to clarify which types of planning documents he was looking for, noting that there were a number of planning applications relevant to the GEC Sports Ground.

6. The complainant subsequently clarified his request on 22 June 2020 by explaining that he was seeking the following specific information:

'...the planning documents in relation to Barratt Homes Limited circa 1997-2002. I understand the architect engaged was Derek Homer Associates.

With regard to:

- 1. To the construction of the roadways on Pellatt Road.*
 - 2. The submitted plans for the construction of the verges bordering the above road including any walls, borders, trees, hedges etc.*
 - 3. The documents submitted for the intended adoption and maintenance of any land bordering the above roadway from its junction on Preston Road to the entrance of the GEC trading estate.'*
7. The Council provided the complainant with a response to his request on 26 June 2020. It provided him with copies of an adopted new road plan and other documents concerning technical approval and substantial completion letters. The Council also explained that the submitted landscaping plans could be viewed online.¹
8. The complainant contacted the Council on 29 June 2020 and explained that in relation to the link provided he was receiving the error message 'server problem' when attempting to access the tab 'View site history' on

¹ The Council provided the complainant with the following link:

https://pa.brent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=DCAPR_31054

'Planning application documents'. The complainant also contacted the Council on 30 June 2020 and asked it to provide him with the drawings referred to in the technical approval letters it had disclosed to him.

9. The Council contacted the complainant on 1 July 2020 and explained that it had sent him the files it held via secure file transfer, ie the files provided on 26 June (with the implication being that the Council did not hold any further information). The Council also suggested to the complainant that he tried using a different browser to access the documents on its website.
10. The complainant contacted the Council on 7 July 2020 and asked it to conduct an internal review of its response to his request. He raised the following grounds of complaint:
 - i) The information provided to him regarding the development was incomplete and the documents that had been provided included documents relating to the development of the IBIS Hotel, Wembley and were therefore irrelevant to his request.
 - ii) The website link provided still returned a 'server error' when trying to access the documents about the history of site.
 - iii) Although the Council provided the adoption and completion letters, it had failed to provide the attachments and plans which were referred to in those letters.
11. The Council informed the complainant of the outcome of the internal review on 5 August 2020. In response to point i) the Council explained that the pdf document provided to him on 26 June contained all of the approved drawings and plans for planning application 98/2552 (including the submitted landscape plans). The Council noted that these were linked to the outline planning application (95/0986) for the erection of 271 dwellings with associated access roads, car-parking, amenity and play areas and landscaping on the GEC Sports Ground, Preston Road. The Council noted the complainant's concerns that the pdf contained documents relating to the IBIS Hotel, Wembley. However, it explained that the documents in the scope of his request were nevertheless contained in the pdf document provided to him.
12. In relation to point ii) the Council apologised that he had problems accessing the website. It explained that this appeared to be working internally but it would arrange for documentation associated with the site history linked to planning application reference 98/2552 to be sent to him.
13. In relation to point iii), the Council explained that all it had were copies of technical approval and substantial completion letters, ie it did not hold the attachments and plans referred to in the letters.

Scope of the case

14. The complainant contacted the Commissioner on 1 September 2020 in order to complain about the Council's handling of his request. He raised the following grounds of complaint:
- i) He was unhappy with the Council's failure to provide the drawings and plans referred to in the technical approval letters.
 - ii) He explained that despite the Council's assurance that it would provide him with the documents he could not access via its website, such documents had not been sent. He was also unhappy that the website link did not work.
 - iii) He was dissatisfied that the Council had sent documents to him in response to this request which were not relevant to it, ie the documents about the IBIS Hotel, Wembley.
15. In relation to complaint ii), at the Commissioner's request the Council provided the complainant with copies of the documents contained at the website link which he could not access on 15 June 2021.²
16. Following this disclosure the complainant contacted the Council on 18 June 2021 and acknowledged receipt of this disclosure but explained that he remained concerned that certain files were missing. More specifically, he stated that:

'1. None of the drawings referred in the Section 38 Agreement letters are yet to be supplied. I did make that clear in my previous email to you. Can you please supply these as soon as possible.

2. Thank you resending the files. I believe these are are [sic] incomplete. To assist you, I am particularly looking for dha (Derek Homer Associates) drawing title "Conveyance Plan" dated May 1999. 4 of 4 is repeated a number of times in the attachments but attachments 1,2 & 3 are missing. I would be grateful if you could search for these. and advise.'

17. The Council responded on 22 June 2021 and explained that it did not hold copies of the documents sought by point 1 and that it could not locate the information referred to at point 2.
-

² The Commissioner could also not access the documents via the website link provided to the complainant.

18. The complainant explained to the Commissioner that he also sent the following email to the Council on 28 June 2021:

'Thank you for your email of 22 June 2021.

I write in the order of your response.

1.

a) Please advise the policy adopted by the Council with regard to retention of documents at the time. Though the redacted letters have been kept, they are of no use without the associated letters.

b) The technical approval letters also refer to attached enclosures and letters. None of these have been supplied, I believe these to be relevant to my inquiry, please explain why these are not supplied.

c). You state that you have supplied the final section 38 drawing. Can you please confirm its drawing number and technical letter approval number and in which file I may find these.

d) I have been given substantial completion letters 1 & 2 but cannot see a final completion letter nor confirmation of section 38 and section 278 agreements are in place. Please supply a copy of the completion letter and how I may review agreements under sections 38 and 278.

2. I note that the drawing in question does not appear on the Application 98/2552. However, it has been included in the documents. Please therefore confirm that it does relate to this development. I believe my request applied to all the records not just those listed on the planning application. Please confirm if it possible that some records may be retained elsewhere.

3. I'm sorry to disagree, there was a suggestion that the inability to access the Council records was of my own doing. I informed your colleague of the access error and it was suggested I tried other web browsers. This did not clear the issue and advised your colleague whereupon she closed the inquiry.

4. Thank you for noting [the Council's response had 'noted' the complainant's comments about the inclusion of irrelevant records undermining his confidence in its responses], please advise what steps will be taken to correct these records.'

19. The complainant explained to the Commissioner that he did not receive a response to this email, despite sending a chaser to the Council on 5 August 2021.

20. The Commissioner has considered the points raised in these further emails, to the extent that they are relevant to the complainant's concerns about his request of 22 June 2020, as part of her consideration of complaint i) below.

21. With regard to the Council's failure to respond to the complainant's email of 28 June 2021, the Commissioner has contacted the Council separately and advised it that it needs to provide a response to the complainant in relation to any information requests contained in that email. The Council's failure to reply to that email does not, therefore, form part of the Commissioner's findings in this decision notice.
22. As the complainant's request of 22 June 2020 seeks information relating to planning matters, the Commissioner is satisfied that any information falling within the scope of the request constitutes 'environmental information' as defined by the EIR. Therefore, the request, and the Council's compliance with it, needs to be considered under the EIR rather than FOIA.

Reasons for decision

Complaint i)

23. Regulation 5(1) of the EIR states that public authorities shall make environmental information available on request.
24. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
25. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
26. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out, or other explanations offered as to why the information is not held.

The Council's position

27. In order to investigate this complaint i) the Commissioner asked the Council a series of questions. The Commissioner has set out below what these questions were and summarised the Council's response to them.

Question: What searches have been carried out to locate the drawings and plans referred in the technical approval letters and why would these searches have been likely to retrieve any relevant information?

28. The Council explained that to try and locate the drawings and plans referenced in the technical approval letters a search was made for the project file relating to the development (its reference TSU/99/183). The

Council explained that the file was originally a paper file and would have contained all correspondence and drawings related to the project.

29. However, the Council explained that all paper files were destroyed post 2012 in preparation of the opening of the Civic Centre (ie the Council's current head office) with the Council taking steps to go 'paperless' to reduce unnecessary storage space. The Council explained that files which were still active at the time, or had been active over the preceding seven years, were scanned onto electronic files. Therefore, the Council explained that if it still held the drawings and plans referred to in the technical approval letters they would be on a scanned file from 2012.
30. The Council explained that it searched the files that were electronically scanned in 2012 to see if this particular file had been scanned or not. It explained that the file in question was not listed amongst the files that had been scanned and no electronic copy of the file was therefore found. The Council explained that this was consistent with its retention policy that only files completed within the previous seven years are retained, noting that the roads in question had been adopted nine years previously in 2003. The Council explained that there was no business need to keep correspondence, aside from the final approved road layout, beyond a seven year period.
31. The Council explained that the only documents that were located on its files were a copy of the final adopted layout and the handful of letters, that is to say the technical approval letters from the Council which the complainant had already been provided with. The Council explained that there was also no requirement to retain these letters, it just so happened to still have these on its files.
32. With regard to documents associated with the planning applications in question, 95/0986 and 98/2552, the Council explained that all documents about the applications are held in electronic format only on its Idox Document Management System. The Council explained that the record for each application was opened and the electronic documents held in relation to each application were viewed. The Council provided the Commissioner with screen grabs listing the documents associated with each application – none of the documents were the missing documents sought by the complainant.

Question: Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

33. The Council explained that the planning record for applications of this age are only held on the Document Management System so no further searches or consultation was undertaken in relation to Planning.

Question: If searches included electronic data, what search terms were used and what types electronic records were searched (ie emails, databases, etc)

34. The Council explained that its Planning System, Acolaid, was searched to find the original outline application for redevelopment, its reference 95/0986. The Council explained that planning applications are linked by the property record, which is also stored on the Council's systems. It explained that the history of the property parcel associated with this planning application was viewed for this planning record which showed the details of the Reserved Matters application through which the detailed design of the development was approved (reference 98/2552). The Council provided the Commissioner with screen grabs of the documents listed on this system for the respective application which confirmed that none of the missing documents were held.

Question If the information were held, would it be held as manual or electronic records?

35. All of the information on this subject is held as electronic records.

Question is there not a business need to retain documents such as the drawings and plans in question?

36. The Council explained that it must maintain a register of planning applications pursuant to Part 9 of the Town and Country Planning (Development Management Procedure) Order 2015, as amended.
37. It explained that all supporting reports are normally saved to the application file. However, at the time that this application was considered, these documents were held in hard copy and scanned after the application had been determined. The Council explained that it was unclear why supporting documents were not scanned, but it is possible that they were not within the hard copy file when it was sent to be scanned.
38. The Council explained that the development must be implemented in accordance with the drawings and documents listed within the decision notice. It explained that the supporting technical reports form the basis for the consideration of the proposal and are relevant while the application is being considered and during the period for any potential challenge (e.g. appeal or judicial review). Such documents can also help to inform any subsequent applications to vary the consent or for the approval of matters reserved by condition. However, the Council explained that the relevance of technical reports diminishes substantially after this period and they would have little to no relevance now.

The Commissioner's position

39. The Commissioner appreciates that the technical approval letters provided to the complainant (ie letters from the Council to the developer) clearly confirm that that the Council had received copies of the drawings and plans sought by the complainant. These documents were therefore presumably still held by the Council when it issued technical approval letters in 1999 and 2000.
40. However, the Commissioner appreciates that simply because such records were held then, does not necessarily mean that such records will have been retained some 20 years later. Furthermore, taking into account the Council's submissions to her which are summarised above, the Commissioner is satisfied that the Council has conducted sufficiently thorough and extensive searches such that if it still held the drawings and plans then these would have been located.
41. The Commissioner also notes the Council's possible explanation as to why these documents are not held in the electronic file – ie because they were not in the paper file copy when this was sent for scanning prior to 2012. The Commissioner accepts that this is one plausible explanation for why the documents are not held now. Moreover, the Commissioner notes the fact that the drawings and plans were received circa 1999 and 2000 and the hardcopy files were not scanned until approximately 12 years later, and in line with the retention period the documents only needed to be retained for seven years.
42. Furthermore, the Commissioner acknowledges the Council's explanation that the relevance of these drawings and reports has diminished significantly overtime and it has no business need for such drawings at this point in time.
43. Taking all of the above into account, the Commissioner is satisfied that on the balance of probabilities the Council does not hold the drawings and plans referred to the technical approval letters.
44. As noted above, following the disclosure of further information to him on 15 June 2021 the complainant contacted the Council in order to question whether he had been provided with all of the relevant information. More specifically, the complainant explained that he was:

'particularly looking for dha (Derek Homer Associates) drawing title "Conveyance Plan" dated May 1999. 4 of 4 is repeated a number of times in the attachments but attachments 1,2 & 3 are missing. I would be grateful if you could search for these. and advise'
45. In response the Council explained that:

'the Planning Department has provided the information that is held that relates to your request. We have rechecked the other documents on the file, and cannot see other plans relating to this. It is worth noting that the drawing that is referred to in this question (Derek Homer Associates drawing title "Conveyance Plan" dated May 1999) is date stamped 8 September 2000 (after these applications were determined) and was not referred to in the decision notice for this application (reference 98/2552 determined on 16 March 1999) this seemed to have been placed on the file at a later stage as it would not relate to this specific planning application.'

46. In light of this explanation, and given the thoroughness of the Council's searches for the drawings and plans referred to in the technical approval letters, the Commissioner is also satisfied that on the balance of probabilities the Council does not hold this information either.
47. The Commissioner appreciates that the complainant also contacted the Council on 28 June 2021 with further queries in relation to its handling of his request. The Commissioner notes that the Council did not respond (although as explained above she has informed that Council that it needs to provide a response to the complainant in relation to any information requests contained in his email of 28 June 2021). However, despite the additional points made by the complainant in this email, in the Commissioner's view none of these alter her findings in relation to this point of complaint in relation to the request of 22 June 2020 and she is satisfied that the Council has provided the complainant with all of the recorded information it holds falling within the scope of that request.

Complaint ii)

48. As explained above, the Commissioner was also unable to use the link provided to the complainant to view some of the documents held by the Council falling within the scope of his request. In her view the Council cannot be said to have provided the complainant with these documents simply by providing him with this link (ie because the link did not work).
49. Although the Council provided the complainant with copies of these documents on 15 June 2021, it obviously failed to provide these to the complainant within 20 working days of his request as required by regulation 5(2) of the EIR.
50. The Commissioner finds that the Council therefore breached this part of the legislation.
51. The Commissioner appreciates that the complainant remains concerned that the website link provided is not functioning. It is beyond the remit of the Commissioner to address this issue. Rather, her role is limited to determining whether requested information, if held and disclosable, is provided to an applicant under the EIR. The information to which the

Council directed the complainant via the link has now been provided via other means and therefore the Council has complied with regulation 5(1) of the EIR, albeit not within 20 working days, hence the breach of regulation 5(2).

Complaint iii)

52. The Commissioner asked the Council to explain why documents associated with the IBIS Hotel, Wembley were included in the documents sent to the complainant.
53. In the response the Council explained that the documents were scanned to the application file in error. At the time that these applications were considered, the drawings and documents were held as hard copies and scanned once the application had been determined. Drawings and documents were typically scanned in groups (e.g. all approved/refused drawings as one multi-page document) rather than as an individual file for each page or sheet. In this instance, the file containing the approved drawings for 98/2552 also includes scans of the IBIS hotel.
54. The Council suggested that it was likely that these drawings related to another application and were accidentally placed in the hard copy file for application 98/2552. They then would have been scanned with the bundle of approved drawings for application 98/2552.
55. The Commissioner considers this to be a rationale explanation for why such documents, irrelevant to the request, were provided to the complainant. In any event, as discussed above, the Commissioner's remit in considering complaints about EIR requests is limited to determining whether requested information, if held and disclosable, is provided to an applicant. Disclosing irrelevant information in response to a request in such circumstances does not mean that the Council has breached any aspect of the EIR (albeit she can understand why the complainant was understandably confused about the inclusion of such documents in the information provided to him).

Right of appeal

56. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

57. 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.

58. 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

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