

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 20 March 2023

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

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Lambeth ("the Council") relating to planning enforcement action carried out by the Council.
2. The Commissioner's decision is that the Council is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the information requested in part 4(b) of the request. However, he finds that the Council failed to provide reasonable advice and assistance and therefore failed to meet its obligations under regulation 9 of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them submit a less burdensome request.
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. The complainant made the following information request to the Council on 23 November 2022:

"This freedom of information request is in respect of the period 1 June 2020 – 31 May 2021 ("the period") and relates to the Lambeth Council Planning and Planning Enforcement Teams in Planning and Development.

References throughout are to householder planning applications, householder planning appeals and Enforcement Notices served on householders.

1. Inspections.

During the Period:-

- (a) How many enforcement actions were taken?
- (b) How many site inspections in person took place prior to the enforcement actions in 1(a)?
- (c) How many enforcement actions were taken with no in person site inspection?

2. Retrospective Planning Permission

In respect of enforcement actions or where Lambeth sent letters alleging breaches of planning control where Lambeth requested or advised or suggested that application for retrospective planning permission be made and where applications for retrospective planning permission were then made:

- (a) How many retrospective planning applications were made;
- (b) How many retrospective planning applications were granted;
- (c) How many retrospective planning application were refused.

3. The Service of Enforcement Notices on householders. During the Period:-

- (a) How many Enforcement Notices were served on householders while they were applying for and awaiting a decision on a retrospective planning permission;

- (b) How many Enforcement Notices were served on householders refused planning permission after they had lodged householder appeals to the Planning Inspectorate?

4. Criteria for Human Rights Act 1998 and exercise discretion.

During the Period:-

- (a) What was the criteria used at Lambeth Planning Enforcement to comply with their obligations to householders under The Human Rights Act 1998 and on what date was the criteria written or last updated?
- (b) In how many cases did Enforcement Officers exercises their discretion not to issue Enforcement Notices on householders after discharging their legal obligations to householders under The Human Rights Act 1998?

5. Cost orders against The London Borough of Lambeth by The Planning Inspectorate.

During the Period how many costs ordered were made against The London Borough of Lambeth by The Planning Inspectorate:

- (a) Where the Inspector granted planning permission on appeal, and
 - (b) Where the Inspector allowed appeals made against the service of Enforcement Notices?"
6. The Council provided the complainant with some information within the scope of the request but refused to provide the information requested in part 4(b) of the request citing regulation 12(4)(b) (manifestly unreasonable) of the EIR as its basis for doing so.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

- 7. This reasoning covers whether the Council is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the information requested in part 4(b) of the request.
- 8. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.

9. The Council considers part 4(b) of the request to be manifestly unreasonable. In its submissions to the Commissioner, the Council explained that when carrying out planning enforcement investigations, officers exercise their discretion to determine whether to resolve a case informally or formally in line with local and government guidance.
10. The Council explained that it would have to manually review approximately 500 'householder' enforcement cases in order to establish which of those cases involved an officer using their discretion to not issue an enforcement notice. The Council estimates that it would take a minimum of 15 minutes to review each case.
11. The Council considers that if it did review each householder enforcement case, it may still not be able to provide the information requested in part 4(b) of the request as it may not be possible to identify if an officer has used their discretion when investigating a case as the information may not have been recorded.
12. Based on the Council's estimate of 15 minutes to review each householder enforcement case, the Commissioner has calculated that it would take the Council approximately 125 hours to provide the information requested in part 4(b) of the request (500 enforcement cases x 15 minutes = 125 hours).
13. The Commissioner considers the Council's estimate of 15 minutes to review each householder enforcement case and determine whether the enforcement officers used their discretion when investigating that case to be reasonable. Even if the Council was to take 5 minutes to review each enforcement case, the cost of complying with part 4(b) of the request would exceed the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
14. Therefore, the Commissioner decision is that part 4(b) of the request is manifestly unreasonable and so regulation 12(4)(b) is engaged. The Commissioner will now go on to consider the public interest test.
15. Whilst the Commissioner recognises that there is a public interest in how Council officers investigate breaches of planning control, he considers that complying with part 4(b) of the request would place a significant burden on the Council's limited resources. In the Commissioner's view that burden would be disproportionate and not in the public interest.
16. The Commissioner's conclusion is that the public interest in the maintenance of the exception provided by regulation 12(4)(b) outweighs the public interest in disclosure of the withheld information.

17. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions. As stated in the Upper Tribunal decision *Vesco v Information Commissioner* (SGIA/44/2019):

“If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure...” and “the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations” (paragraph 19).

18. As covered above, in this case the Commissioner’s view is that the balance of the public interest favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner’s decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(b) was applied correctly. Therefore, the Council is not required to provide the information requested in part 4(b) of the request.

Regulation 9 - advice and assistance

19. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
20. The Council did not advise the complainant that they could refine part 4(b) of their request to reduce the cost burden or provide the complainant with suggestions on how to reduce the scope of part 4(b) of the request for example, the complainant could reduce the scope of their request by narrowing the timeframe of their request.
21. The Commissioner’s decision is that the Council did not provide the complainant with adequate advice and assistance and therefore breached regulation 9 of the EIR.

Right of appeal

22. 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

23. 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.
24. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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