

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

Decision notice

Date: 6 July 2018

Public Authority: Havant Borough Council
Address: Civic Offices
Civic Centre Road
Havant
Hampshire
PO9 2AX

Decision (including any steps ordered)

1. The complainant requested information in relation to property searches on 26 specified addresses.
2. The Commissioner's decision is that Havant Borough Council ("the Council") failed to respond to any of the requests within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. As all the requests have now been responded to, the Commissioner does not require the Council to take any further steps.

Request and response

4. Between 10 April 2018 and 25 May 2018, the complainant submitted a total of 26 requests for information relating to individual addresses.
5. The information requested in respect of each address was identical and the Commissioner understands that it relates to the completion of the CON29R form:

"PLANNING AND BUILDING REGULATIONS

1.1 Planning and Building Decisions and Pending Applications

1.1.(a) Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications or agreements?

- (a) a planning permission**
- (b) a listed building consent**
- (c) a conservation area consent**
- (d) a certificate of lawfulness of existing use or development**
- (e) a certificate of lawfulness of proposed use or development**
- (f) a certificate of lawfulness of proposed works for listed buildings**
- (g) a heritage partnership agreement**
- (h) a listed building consent order**
- (i) a local listed building consent order**
- (j) building regulations approval**
- (k) a building regulation completion certificate**
- (l) any building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme?**

"Apart from matters entered on the registers of local land charges, do any of the following matters apply to the property? How can copies of relevant documents be obtained?

"3.1 Land required for Public Purposes

3.1. Is the property included in land required for public purposes?

"3.7 Outstanding Notices

Do any statutory notices which relate to the following matters subsist in relation to the property other than those revealed in response to any other enquiry in this form?

- (a) building works**
- (b) environment**
- (c) health and safety**
- (d) housing**
- (f) public health**

"3.8 Contravention of Building Regulations

Has a local authority authorised in relation to the property any proceedings for the contravention of any provision contained in building regulations?

"3.9 Notices, Orders, Directions and Proceedings under Planning Acts

Do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, make or commence any of the following?

- (a) an enforcement notice*
- (b) a stop notice*
- (c) a listed building enforcement notice*
- (d) a breach of conditions notice*
- (e) a planning contravention notice*
- (f) another notice relating to breach of planning control*
- (g) a listed building repairs notice*
- (h) in the case of a listed building deliberately allowed to fall into disrepair, a compulsory purchase order with a direction for minimum compensation*
- (i) a building preservation notice*
- (j) a direction restricting permitted development*
- (k) an order revoking or modifying planning permission*
- (l) an order requiring discontinuance of use or alteration or removal of building or works*
- (m) a tree preservation order*
- (n) proceedings to enforce a planning agreement or planning contribution*

"3.10 Community Infrastructure Levy (CIL)

- (a) Is there a CIL charging schedule?*
- (b) If yes, do any of the following subsist in relation to the property, or has a local authority decided to issue, serve, or commence any of the following:-*
 - (i) a liability notice?*
 - (ii) a notice of chargeable development?*
 - (iii) a demand notice?*
 - (iv) a default liability notice?*
 - (v) an assumption of liability notice?*
 - (vi) a commencement notice?*
- (c) Has any demand notice been suspended?*
- (d) Has the Local Authority received full or part payment of any CIL liability?*
- (e) Has the Local Authority received any appeal against any of the above?*
- (f) Has a decision been taken to apply for a liability order?*
- (g) Has a liability order been granted?*
- (h) Have any other enforcement measures been taken?*

"3.11 Conservation Area

Do the following apply in relation to the property?

- (a) the making of the area a Conservation Area before 31 August 1974*

- (b) *an unimplemented resolution to designate the area a Conservation Area*

"3.12 Compulsory Purchase

Has any enforceable order or decision been made to compulsory purchase or acquire the property?

"3.13 Contaminated Land

Do any of the following apply (including any relating to land adjacent to or adjoining the property which has been identified as contaminated land because it is in such a condition that harm or pollution of controlled waters might be caused on the property)?

- (a) *a contaminated land notice*
- (b) *in relation to a register maintained under section 78R of the Environmental Protection Act 1990*
 - (i) *a decision to make an entry*
 - (ii) *an entry*
- (c) *consultation with the owner or occupier of the property conducted under section 78G(3) of the Environmental Protection Act 1990 before the service of a remediation notice*

"3.15 Assets of Community Value

- (a) *Has the property been nominated as an asset of community value? If so:-*
 - (i) *Is it listed as an asset of community value?*
 - (ii) *Was it excluded and placed on the 'nominated but not listed' list?*
 - (iii) *Has the listing expired?*
 - (iv) *Is the Local Authority reviewing or proposing to review the listing?*
 - (v) *Are there any subsisting appeals against the listing?*
- (b) *If the property is listed:*
 - (i) *Has the Local Authority decided to apply to the Land Registry for an entry or cancellation of a restriction in respect of listed land affecting the property?*
 - (ii) *Has the Local Authority received a notice of disposal?*
 - (iii) *Has any community interest group requested to be treated as a bidder?"*

6. The Commissioner has compiled a schedule of the various requests which will be provided, with this decision notice, to both the complainant and the Council.
7. The schedule lists each request, the date it was made, the date it was answered and the number of working days between the two. The

average response time to these requests was a little over 28 working days, with 35 working days being the longest delay.

Scope of the case

8. The complainant contacted the Commissioner on 7 June 2018 to complain about the late responses.
9. The scope of the Commissioner's consideration is to determine whether the Council has complied with Regulation 5(2) of the EIR.

Reasons for decision

10. Regulation 2(1) of the EIR defines environmental information as being information 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;*
 - (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)...as well as measures or activities designed to protect those elements;*
11. The requested information largely concerns matters around Planning. The Commissioner therefore considers it to be information about "measures" affecting the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
12. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
13. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
14. The Commissioner considers that the requests in question constituted valid requests for information under the EIR.

15. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue responses to the requests within 20 working days, the Council has breached Regulation 5(2) of the EIR.

Other Matters

16. The Council offers a Personal Search service which advertises a turnaround time of 8-15 working days to process each application. The complainant has stated that a number of other searches have not been processed within the advertised timeframe, although within 20 working days. The complainant has invited the Commissioner to comment on this. The Commissioner declines to do so. The EIR requires public authorities to respond to requests for information within 20 working days. If a public authority wishes to offer a service providing environmental information within a shorter timeframe, that is a matter for that public authority – providing it stays within the 20 working day timeframe. The Commissioner has no role in assessing compliance with a timeframe other than that required by the EIR and the other legislation she is responsible for upholding.
17. The complainant has also expressed concern that the Council requires requestors to submit searches for information which she believes should be available for public inspection. The Council previously allowed individuals to view this information by appointment but appears to have scrapped this service in favour of the searches described at (16)
18. As the complainant in this case has not provided documentary evidence to the Commissioner that she specifically sought an opportunity to inspect records for environmental information, the Commissioner has not gone on to consider whether such an opportunity should have been available.

Right of appeal

19. 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

20. 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.
21. 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

Ben Tomes
Team Manager
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