

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

Date: 30 August 2023

Public Authority: London Borough of Waltham Forest
Address: Waltham Forest Town Hall
Forest Road
Walthamstow
E17 4JF

Decision (including any steps ordered)

1. The complainant requested information in relation to a single storey rear infill extension. London Borough of Waltham Forest (the Council) handled the request under FOIA.
2. The Commissioner's decision is that the Council did not deal with the request for information under the correct access regime.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation:
 - issue a fresh response which complies with regulation 5(1) of the EIR or issue a new refusal notice giving valid grounds for refusal.
4. The Council must take this step 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 2 April 2023, the complainant wrote to the Council and requested information in the following terms:

“Under the Freedom of Information Act/Environmental information Regulations I would like to request the following information – All for single storey rear infill extension [address redacted] Planning application [reference redacted]

Please give foundation/excavation trench depth measurement.

Please give depth measurement for foundations concrete base pad.

Please give depth/height measurement for the blockwork and brickwork built up on top of the base pad -To above ground level”.

6. The Council acknowledged receipt on 3 April 2023. It told the complainant that it was dealing with the request under the terms of FOIA.
7. The Council provided its substantive response on 9 May 2023, in which it provided the complainant with information. It advised that the information was supplied by its Building Control Team and said that it was all the information requested that it holds.
8. The complainant was dissatisfied with the information provided, telling the Council:
- “I have been given information for a rear extension dated [date redacted]. Not the requested information in relation to the rear infill extension retrospective planning application [reference redacted]”.
9. Following an internal review, in which the Council acknowledged that the complainant does not consider that they received the information they requested, the Council clarified its position. It stated that it does not hold some of the requested information.

Scope of the case

10. The complainant contacted the Commissioner on 7 June 2023 to complain about the way their request for information had been handled. They told the Commissioner that the planning application specified in the request gives a date in mid-November 2021 as the date when work started.

11. The complainant considers that the response provided by the Council relates to another extension at the specified property. In support of that view, they told the Commissioner that the details provided by the Council predate the start of the building work that the planning application specified in the request relates to.
12. After receiving further correspondence from the Council, the complainant remained dissatisfied.
13. Having taken into account the wording and context of the request, the Commissioner is not satisfied that the Council handled the request for information under the correct regime. He considers that it should have been handled under the EIR.

Reasons for decision

Is the requested information environmental?

14. 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;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (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;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred

to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

15. The request in this case relates to information about building work at a specified property.
16. The Commissioner considers that planning and development of land is a measure which is likely to affect the elements of the environment, namely land and landscape.
17. As such he considers that the Council should have handled the complainant's request under the EIR.

Other matters

18. The Commissioner expects the Council to have due regard to the wording of the request and the complainant's observations about dates when it issues its fresh response.

Engagement with the ICO

19. The Commissioner is concerned to note the poor level of engagement shown by the Council in relation to his involvement in this case. He considers this particularly disappointing in light of the recent practice recommendation which was issued, amongst other reasons, due to the nature of the Council's poor engagement with the Commissioner's Case Officers.
20. In future, the Commissioner expects the Council to engage with his Case Officers in a timely and constructive manner.

Right of appeal

21. 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

22. 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.
23. 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

Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF