

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 29 March 2023

Public Authority: London Borough of Haringey
Address: 7th Floor, River Park House
225 High Road
Wood Green
London
N22 8HQ

Decision (including any steps ordered)

1. The complainant has requested information relating to planning applications and correspondence regarding these agreements for the High Road West Scheme.
2. The Commissioner's decision is that London Borough of Haringey (the Council) has correctly relied on regulation 12(4)(b) when refusing these requests. However, the Council has breached regulation 9 by failing to provide advice and assistance.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance in accordance with regulation 9 of 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. The complainant made two requests for information to the Council, which can be seen in the Annex below.

6. The Council responded to the first request on the 28 June 2022 and the second request on the 1 July 2022 . It stated that as the requests were both similar in nature, it was aggregating the requests and refusing both under Regulation 12(4)(b).
7. Following an internal review the Council wrote to the complainant on 8 August 2022. It stated that it was upholding it's original decision.

Scope of the case

8. The complainant contacted the Commissioner 17 August 2022 to complain about the way his request for information had been handled.
9. The scope of the case, therefore, is to decide whether the council was correct to aggregate the requests and refuse to comply with them on the basis of regulation 12(4)(b).

Reasons for decision

Regulation 12(4)(b)

10. 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.
11. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance with the request would incur a manifestly unreasonable burden on the public authority both in terms of cost and the diversion of resources.
12. In this case the Council has relied upon the latter interpretation of regulation 12(4)(b), it considers the amount of work required to comply with these requests would bring about a manifestly unreasonable burden.
13. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £450 for the Council.
14. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.

15. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.
16. The Commissioner's guidance on regulation 12(4)(b) states that public authorities may be required to accept a greater burden in providing environmental information than other information.
17. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is "manifestly unreasonable", rather than simply being "unreasonable". The Commissioner considers that the term "manifestly" means that there must be an obvious or clear quality to the identified unreasonableness.
18. Given the high burden referred to within paragraph 16, the Commissioner expects a public authority to provide both a detailed explanation and quantifiable evidence to justify why complying with a request would impose such an unreasonable burden on it, and therefore why regulation 12(4)(b) is engaged.

The Council's position

19. The Council explained that the information requested relates to development of a specific area of land and therefore comprises of information related to measures, programmes and activities affecting the environment. The request is therefore for environmental information under Regulation 2(1) of the EIR.
20. The Council confirmed that it has aggregated the requests and to comply with both, would impose a manifestly unreasonable burden on it in terms of costs and the diversion of resources.
21. The Council told the Commissioner that the full Development Agreement includes sixteen appendices, which together with the main document comprises over 700 pages. The Council further explained that the main body of the Development Agreement is already in the public domain as a redacted document. However, this is not the case for the appendices, which comprise of around 550 pages and are highly likely to contain substantial amounts of confidential information.
22. The Council advised the Commissioner that the complainant has also requested the preferred bidder's bid documents, which comprise over 200 pages including;

- masterplan for the High Road West area
 - approach to a design code
 - detailed socio-economic strategy
 - proposal and cost plan for the Library and Learning Centre
 - affordable housing strategy
 - replacement homes strategy
 - phasing approach and programme
 - land assembly strategy
 - estate management strategy
 - commercial strategy and
 - sustainability and energy strategy
23. The Council explained that after conducting a sampling exercise, it applied an assuming rate of approximately 1.5 minutes for an officer to review each page. This would be before an officer decided whether the information falls into any of the exceptions. The Council stated that based on reviewing a sample of 10 pages across two documents, it took the officer 8.25 minutes to review the first 5 pages and 5.5 for the remaining 5 pages. It concluded that this would average around 1.5 minutes per page.
24. The Council explained to the Commissioner that this sampling exercise was only conducted on two documents from the request, the remaining requested information also contains numerous documents. For example, the Steering Group minutes comprised over five years of meetings, the request also includes emails, notes and other documents related to a decisions made in 2011 and 2013.
25. The Council's IT service confirmed that no emails were available unless they had already been saved as documents in the organisation's folders. The IT department confirmed that folders were not the most practical to search through, the only way to retrieve these documents would be to do a key word search. The Council advised that it conducted a test to explore this search and it took 9 hours for an officer to search in respect to only one department, with the search having to be abandoned due to repeated system crashes.

26. The Council concluded if it were to continue searches in this manner for all departments, it would take around 10 key word searches. This would equate to over 90 hours of work and therefore create a manifestly unreasonable burden on the Council.
27. The Council finally went on to conduct a sampling exercise to illustrate the amount of time it would take two case officers to make the appropriate redactions to any documents which contained confidential information. The Council confirmed that two officers were required to ensure that no discrepancies occurred when making these redactions.
28. The Council used two of the requested documents to supply the Commissioner with evidence of the amount of time it expected appropriate redactions to take. The first document had a total of 45 pages, whilst the second had a total of 104 pages.
29. The Council explained to the Commissioner that 10 pages had been selected from each document and the case officers conducted a more comprehensive review and made appropriate redactions.
30. The Council confirmed that for each document, it took both officers 30 minutes to complete the review of 10 pages and a further 15 minutes to make the appropriate redactions. The Council concluded that the total time for both documents to be reviewed and redacted in full, would be 68.2 hours.

The Public Interest Test

31. When considering the public interest in the requested information, the Council advised that there was a presumption in favour of disclosing the information as it promotes both transparency and accountability.
32. The complainant advised that disclosing the requested information would promote public understanding and safeguarding of democratic processes.
33. The complainant advised that disclosure would demonstrate the Council are upholding the standards of integrity and ensuring fair commercial competition in a mixed economy.
34. The Council told the Commissioner that it routinely publishes documents which are considered to be of public interest, this includes a redacted version of the Development Agreement.
35. The Council explained that maintaining the exception would protect the Council from exposure to disproportionate burden and prevent officers spending a disproportionate amount of time away from general service delivery and other correspondents.

36. The Council advised that the public interest in disclosing the information is strongly outweighed by the public interest in maintaining the exception, particularly given what information it has already made publicly available in the public domain. The Council concluded that this publicly accessible information already provides an insight into the robust basis for decision making process in matters similar to these.

The Commissioner's Decision

37. The Commissioner's guidance on regulation 12(4)(b)¹ states: "As the FOIA fees regulations do not apply under the EIR, there is no specific provision for the aggregation of substantially similar requests for environmental information. Our position, however, is that there may be occasions where it permissible to consider a number of EIR requests together when deciding if they are manifestly unreasonable on the grounds of cost. This is in line with the approach to requests considered manifestly unreasonable on the grounds that they are vexatious, where the context in which they are made can be taken into account"
38. The Commissioner has considered each request, he finds that the requests for information are similar enough to be considered together. Both requests were made within close succession of each other and both requests relate to the High West road regeneration programme.
39. Whilst the Commissioner can see that there is a strong public interest in the requested information, he is satisfied that the public interest in maintaining the exception outweighs the public interest in disclosing the information.
40. The Commissioner notes that the sampling exercise undertaken was only based on the first initial request, meaning that if the Council was to comply with both requests it would likely take more time to perform all the redactions required.
41. The Commissioner is satisfied that the burden that would be placed on the Council to disclose all of the requested information is clearly very high and would divert time from other crucial services. For these reasons the Commissioner is satisfied that the Council is entitled to rely on regulation 12(4)(b).

Regulation 9 - advice and assistance

¹ [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

42. 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.
43. Whilst the Council stated in its submission to the Commissioner, that it had previously advised the complainant how to make a request which was acceptable and would not be a burden on cost and resources, they failed to provide advice and assistance for these requests.
44. 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

45. 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

46. 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.
47. 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

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

Annex

48. On 27 May 2022, the complainant wrote to the Council and requested information in the following terms:

1. "The Development Agreement"

The Council formally resolved to appoint Lendlease as its development partner for the High Road West Scheme in September 2017 (and confirmed that resolution in October 2017). The Club understands that a formal development agreement was entered into between the Club, Lendlease (High Road West) Limited and Lendlease Corporation Limited on 20 December 2017 ("the Development Agreement"). A redacted copy of the Development Agreement is publicly available on the High Road West website.

- 1.1. We would ask for a full unredacted copy to be made available which could provide an answer to the majority of the questions below.
- 1.2. Please can you confirm whether there have been any variations to the Development Agreement, and if so, provide a copy of such agreements
- 1.3. "**Strategies**" - Clause 4 of the Development Agreement provides for the preparation, submission and approval of a number of "Strategies" by the Steering Group (as defined in the Development Agreement) to inform the planning application and the scheme as a whole. Please provide copies of the approved and current: Socio Economic and Skills Strategy, Business Plan, Vacant Possession Strategy, Design Code, Resident Rehousing Strategy; Commercial Occupier Relocation Strategy, Integrated Energy Strategy, and Estate Management Strategy.
- 1.4. "**Phase Plan**" - Clause 4.5 of the Development Agreement provides for the adoption of a Phase Plan. Please provide a copy of the current Phase Plan.
- 1.5. "**Planning Performance Agreement**" - Clause 6.1 of the Development Agreement requires the completion of a Planning Performance Agreement. Please provide a copy of the Planning Performance Agreement entered into between the Council, Lendlease and the GLA.

- 1.6. **"Development and Phasing Programme"** – please provide a copy of the current Development and Phasing Programme as defined in the Development Agreement.
- 1.7. **Dates** – Please confirm the following dates as set out in the Development Agreement and/or provide the relevant definitions: **"Planning Submission Target Date"**, **"Site Wide Condition Longstop Date"** **"Site Wide Condition Drop Dead Date"** **"Site Wide Condition Target Date"**. In addition, please confirm any **"Phase Condition Target Date"**, **"Phase Condition Longstop Date"**, or **"Phase Condition Drop Dead Date"**. Please also confirm the **"Subsequent Phase Conditions Trigger Date"**.
- 1.8. **"Affordable Housing Grant Condition"** – please confirm whether Lendlease or a Registered Provider procured by Lendlease has entered into a grant agreement with the GLA for affordable housing grant for any Phase of the High Road west scheme, as contemplated in the definition of **"Affordable Housing Grant Condition"**.
- 1.9. **"Milestone Condition"** – please provide the definition of the Milestone Condition.
- 1.10. **"Delivery Methodology"** – please provide a copy of any Delivery Methodology submitted by Lendlease under the terms of the Development Agreement.
- 1.11. **"Steering Group"** – please provide copies of the minutes of any meetings of the Steering Group (as contemplated by Clause 31 of the Development Agreement).

2. **Affordable Housing Grant Agreement**

The Officer Report to Cabinet for the meeting on 16 March 2021 records that the Housing Zone Funding for High Road West would be superseded by alternative funding provision from the GLA. This comprised £70m of Affordable Housing Grant and a £22m loan from the Mayor's Land Fund. In respect of the Affordable Housing Grant, the Cabinet Report contemplates the Council entering into an agreement with the GLA and a further agreement then been entered into between the Council and Lendlease to enable the funding to be drawn down by the Council and then transferred to Lendlease.

- 2.1. Please confirm whether an agreement has been entered into between the Council and the GLA regarding the Affordable Housing Grant for the High Road West scheme – and if so,

provide a copy of that agreement and any subsequent variations.

2.2. Please confirm whether a separate grant agreement has been entered into between the Council and Lendlease regarding the Affordable Housing Grant for the High Road West scheme – and if so, provide a copy of that agreement and any subsequent variations.

2.3. In respect of the Affordable Housing Grant please confirm:

- a. The total amount of Affordable Housing Grant available;
- b. Whether the funding may only be passed on by the Council to Lendlease or if the Council is authorised to transfer to a third party (or in turn whether Lendlease is permitted to transfer the funding (or part of it) to a third party);
- c. Any contractual limitations on the use of the grant;
- d. Any conditions that must be discharged before it can be drawn down;
- e. Whether it may all be drawn down in one lump sum or in tranches;
- f. Whether the funding is limited to any individual phase or phases of the High Road West scheme;
- g. Whether the funding can be transferred between phases;
- h. Whether there are any timing constraints or delivery requirements for the High Road West scheme on the availability of the funding; and
- i. Whether there are any obligations requiring repayment of the Affordable Housing Grant and if so, in what circumstances it (or any part of it) must be repaid.

3. Mayor's Land Fund Loan Agreement

3.1. Please confirm whether the Council has entered into a funding agreement with the GLA regarding the Mayor's Land Funding for the project – if so, please provide a copy of the agreement and any subsequent variations.

3.2. Please confirm whether the Council has entered into a loan agreement with Lendlease regarding the Mayor's Land

Funding for the project – if so, please provide a copy of the agreement and any subsequent variations.

3.3. In respect of the Mayor's Land Funding loan please confirm:

- a. The total amount of loan funding available;
- b. Whether the funding may only be passed on by the Council to Lendlease or whether the Council may transfer to a third party;
- c. Any contractual limitations on the use of the grant;
- d. Any conditions that must be discharged before it can be drawn down
- e. Whether it may all be drawn down in one lump sum or in tranches;
- f. Whether the funding is limited to any individual phase or phases of the High Road West scheme;
- g. Whether the funding can be transferred between phases;
- h. Whether there are any timing constraints or delivery requirements for the High Road West scheme on the availability of the funding;
- i. A summary of the rates of the loan; and
- j. A summary of when the loan must be repaid from Lendlease to the Council and from the Council to the GLA.

Please provide the Council's response by e-mail."

49. On 1 June 2022, the complainant wrote to the Council and requested information in the following terms:

"Please provide:

1. Documents (including emails, attendance notes and meeting minutes, both external and internal) evidencing the negotiation and agreement of (i) the commitments given by LBH in the MOUs; and (ii) the accompanying joint press release issued by THFC and Haringey Council on 31 January 2012 outlining their joint pledge to the major regeneration of North Tottenham;

2. Copies of attendance notes and minutes of all internal meetings held within the LBH Regeneration Team between August 2011 and January 2013 in which the proposed North Tottenham Regeneration and the retention of THFC in the area was discussed;
3. Copies of all emails sent within the LBH regeneration team between August 2011 and January 2013 in which the proposed North Tottenham Regeneration and the retention of THFC in the area was discussed;
4. Documents evidencing the decision making process behind LBH's resolution at its December 2015 Cabinet to procure a new developer partner for HRW by way of an OJEU process, and the subsequent selection of Lendlease as the preferred bidder. Specifically, please provide the following documents, all of which are referred to in the relevant Cabinet Reports as indicated (and have previously been requested by THFC):-
 - (i) Full copy of GVA Bilfinger High Road West Business Case Report November 2015 – including exempt Financial Assessment of Delivery Options (December 2015 – Appendix 1). Page 3 22629929-122635932-1
 - (ii) Copy of Briefing Note prepared by Eversheds LLP on the Procurement Options September 2015 and any other associated advice on the Procurement Process (December 2015, Appendix 1, para 7.1).
 - (iii) AECOM Infrastructure Study (September 2016, Appendix 2, p.16).
 - (iv) Copy of the preferred bidder's masterplan for the High Road West Area, approach to a design code, detailed socio-economic strategy, proposal and cost plan for the Library and Learning Centre, Affordable Housing strategy, replacement homes strategy, phasing approach and programme, land assembly strategy, estate management strategy, commercial strategy and sustainability and energy strategy (September 2017, para 6.46)."