

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

Date: 28 November 2023

Public Authority: London Borough of Croydon
Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information from London Borough of Croydon (the public authority). By the date of this notice the public authority had not issued a substantive response to this request.
2. The Commissioner's decision is that the public authority has breached regulation 5(2) of the EIR in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
 - The public authority must provide a substantive response to the request in accordance with its obligations under the EIR.
4. The public authority 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. On 14 September 2023, the complainant wrote to the public authority and requested information in the following terms:

"In his letter dated 30 March 2023 regarding planning application 23/01368/CONR (98 Hyde Road), the Agent [NAME REDACTED] states:

"... In the light of recent discussions with officers regarding these applications and in an attempt to work with the Council to try to resolve and regularise the outstanding planning issues relating to this site, the applicant has obtained advice from Leading Counsel as to the appropriate way to proceed. ... This legal advice notes the following:

a) All current breaches in respect of the 2019 Permission vis-à-vis the currently built scheme can be regularised by a s73A application for retrospective approval.

b) In the present case a building containing 8 flats of particular dimensions has been constructed. The differences in the building itself are very minor and not of planning significance. These differences include that the vehicular access has changed to the reuse of an existing access; the approved number of car parking spaces have been provided on a different layout; and the refuse and recycling stores have been moved, in a way which is an improvement.

c) In these circumstances the development has been carried out under the planning permission – so with planning permission – but in breach of condition.

+++ Please provide a full copy of the advice from 'Leading Counsel'. In the alternative, please confirm that the Council does not hold (and has never held) this information."

Reasons for decision

6. Regulation 5(1) of the EIR states that: "a public authority that holds environmental information shall make it available on request."
7. Regulation 5(2) of the EIR states that: "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
8. The Commissioner contacted the public authority on 6 November 2023 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. Despite this intervention the public authority has failed to respond to the complainant.

9. From the evidence provided to the Commissioner in this case, it is clear that the public authority did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that the public authority has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

10. 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

11. 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.
12. 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

Roger Cawthorne
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF