

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2024

Public Authority: London Borough of Southwark
Address: PO BOX 64529
London
SE1P 5LX

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Southwark (the Council) regarding residential units and tenants. The Council disclosed some information within the scope of the request but advised that some information was not held.
2. The Commissioner's decision is that the Council, on the balance of probabilities, does not hold information within the scope of the request for question 1. The Council has therefore provided all of the information it holds within the scope of the request.
3. The Commissioner does not require any further steps to be taken.

Request and response

4. On 15 March 2023, the complainant wrote to the Council and requested information in the following terms:

*"My question concerns the **planning application 22/AP/2226 Aylesbury Estate Site Phase 2B - Land Bounded By Thurlow Street, Albany Road, Kinglake Street and Bagshot Street.***

Can you please kindly advise:

1. On the existing site of *Phase 2B*, please advise the number of habitable rooms across the current 373 residential units? Please

include a breakdown of the number of habitable rooms per tenure (that is, the number of habitable rooms in the existing 327 social rented tenure units and separately, the number of habitable rooms for the remaining leaseholder properties).

2. Please advise the number of social rented tenants in the existing site of Phase 2B in December 2005 / December 2010 / December 2022?
3. Please advise the date the first tenant of social rented accommodation was decanted from the site which is Phase 2B of the Aylesbury estate?
4. Please advise the total number of residents who are deemed to have a right-of-return to the estate who were decanted from the site which is Phase 2B, and under direction from which policy?"
5. The Council responded on 17 April 2023. It provided some information within the scope of the request and advised the remaining information was not held.
6. Following an internal review the Council wrote to the complainant on 21 November 2023. It provided some additional information within the scope of the request, but maintained that some information was not held.

Scope of the case

7. The complainant contacted the Commissioner on 25 November 2023, to complain about the way their request for information had been handled. The complainant explained that they were not satisfied that no information is held within the scope of the request for question 1.
8. The Commissioner considers that the scope of his investigation is to determine, on the balance of probabilities, whether any further information is held within the scope of the request for question 1.

Reasons for decision

Section 1 – information held/not held

9. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.

10. The public authority is not obliged to create or acquire information in order to satisfy a request.
11. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

13. The complainant advised the Commissioner that, as the Council owns and manages the estate in question, it should have access to floorplans for the estate. Especially when considering the conditions under the Fire Safety (England) Regulations 2022¹, which require the Council to produce floor and building plans to the fire and rescue service.
14. The complainant advised that if the Council did not hold the requested information, surely Council tax records per household would provide it with the requested information for question 1.
15. The complainant explained that a floor plan should show the number of units (flats) and how many rooms each unit has. These plans should also show what each room is (living room/kitchen, etc). The complainant stated that the number of habitable rooms should be easily calculable using the floor plans.
16. The complainant further noted that, as the landlord and manager of the building, the Council should be in regular communication with all tenants (whether private leaseholders or social tenants) in relation to day-to-day management of the building including repairs and service charges.

¹ [Fire Safety \(England\) Regulations 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/legislation/factsheets/fire-safety-2022)

Therefore, the Council should be able to easily calculate the number of habitable rooms as per social tenants and as per leaseholders.

17. The complainant concluded that the Council is working in partnership with Notting Hill Genesis, who are in the process of redeveloping the estate and thus actively analysing the building floorplans and tenures.

The Council's position

18. The Council explained to the Commissioner that it had carried out searches on its electronic databases. Searches were undertaken for all the blocks in Aylesbury Estate Site Phase 2B, with only limited information being located.
19. The Council explained to the Commissioner that numerous teams were involved in searching for the requested information. Some of which included: Southwark Construction, Asset Management, Surveying, Engineering & Compliance and Sustainable Growth within the Planning and Housing functions.
20. The Council advised that enquires were made to the relevant technical teams, in order to establish which searches could be done to retrieve historical information from the databases. The technical teams confirmed that information on habitable rooms in properties of older stock is not held on its systems.
21. The Council informed the Commissioner that the buildings in question were built from 1963 to the late 1970s and, whilst the Council may have held individual floor plans for each flat at that time, (50 to 60 years ago), it is not possible to establish where that information is now.
22. The Council advised that since the complaint had been made to the Commissioner, it had been able to ascertain relevant floor plans for the estate from the London Fire Brigade ('LBF'). Upon review, the Council determined that the floor plans did not show habitable rooms.
23. The Council confirmed that the floor plans consisted of drawings for the purpose of the LBF and for complying with the Building Safety Act/Fire Safety Order only. The Council confirmed that as the plans are only required for the LBF and complying with Building Safety Act/Fire Safety Order, they only detail the internal communal building layout and external elevation only. The internal layout is not required as the LFB only need to understand the communal block layout for firefighting/evacuation purposes.
24. The Council explained that having conducted the search on its databases, ascertaining and reviewing the plans from LBF, the requested

information is not held. The Council also concluded that no dataset exists for the number of habitable rooms.

25. The Council confirmed it holds limited records from the time of the block's construction in the 1960s and 1970s and it is unable, therefore, to provide accurate or verifiable data but it did provide an estimate of approximately 954 habitable rooms across the 373 current residential units in Phase 2B.
26. The estimate was calculated from the original planning outline consent process for the estate. This involved a download of the number of bedrooms for each property, which was taken from the Council's housing management system. A multiplier was then assumed for each bed size and this yielded a number of habitable rooms. The Council explained that it was not known, or could not be known without inspection of every property, if this calculation was accurate, which is why it was offered as an estimate.
27. In response to the complainant's concerns, the Council explained to the Commissioner that the Council tax team does not hold the records suggested by the complainant, meaning the information was not retrievable this way.
28. The Council also explained that as the regeneration of the estate is expected to be new homes replacing existing homes, a planning application has not been submitted and no floor plans have been provided. Once the development reaches this stage the development will be in ownership of Notting Hill Genesis and not the Council.
29. The Council concluded that even if the plans detailed the specific layouts of each property and the number of rooms, this would not allow the Council to accurately confirm the number of rooms that could be classified as "habitable." The only way to establish this would be an inspection of each room on the estate.

The Commissioner's Decision

30. Having reviewed both the Council and the complainant's position, the Commissioner is satisfied that, on the balance of probabilities, the Council does not hold information within the scope of question 1.
31. The Commissioner is satisfied that searches on the Council's electronic databases using all the blocks in Aylesbury Estate Site Phase 2B as search terms would have located information within the scope of the request.
32. The Council also explained that numerous departments were consulted and asked to undertake searches for the requested information, the

Commissioner is satisfied that the departments outlined would be the most appropriate departments to consult with for the requested information.

33. The Commissioner also recognises that the Council conducted further searches as suggested by the complainant and still was unable to find any information within the scope of question 1. It was only able to come to an approximate calculation, but this was not recorded information it held at the time of the request.
34. The Commissioner does not require any further action to be taken by the Council.

Other matters

35. The Commissioner would like to remind the Council that whilst Internal Reviews are not legally required under FOIA, it is still considered to be a matter of good practice.
36. In the circumstances of this case, the Internal Review was not issued until well after 40 working days. This is not a demonstration of good practice by the Council.

Right of appeal

37. 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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
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