

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 October 2024

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

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Waltham Forest (the Council) relating to a specific planning application. The Council disclosed the information which it held.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any additional information within the scope of the request.
3. The Commissioner also finds that the Council breached regulation 11 of the EIR by failing to conduct an internal review.
4. The Commissioner does not require further steps.

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 responded on 9 May 2023. It provided information within the scope of the request and advised that no additional information was held. The Council subsequently disclosed some additional information to the complainant during its internal review, but advised no further information was held.
7. On 30 August 2023, the Commissioner made a decision notice ordering the Council to provide a new response under EIR rather than under the Freedom of Information Act 2000.
8. The Council provided this response on 22 February 2024. It provided the same information as previously disclosed for this request. The Council did not conduct an internal review.

Scope of the case

9. The complainant contacted the Commissioner on 28 June 2024 to complain about the way their request for information had been handled.
10. The complainant explained that the Council had not provided the requested information and this was the basis for their complaint.
11. The Commissioner considers that the scope of his investigation is to consider, on the balance of probabilities, whether the Council holds any additional information within the scope of the request.

Reasons for decision

Is the requested information environmental?

12. 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);
13. As the requested information is information which relates to a planning application, the Commissioner believes that the requested information is likely to be information on measures which are likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5 – duty to make environmental information available on request

14. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
15. Where there is a dispute between a public authority and a complainant as to whether all requested information falling within the scope of a request has been provided, the Commissioner, following the lead of a number of First-tier Tribunal decisions, must decide the matter based on the civil standard of on the balance of probabilities.
16. The Council advised the Commissioner that any information which relates to a planning application, including drawings, specifications, calculations, site inspection records and correspondence, are required to be recorded on the Councils electronic database, Tascomi.

17. On receipt of the request, the Council conducted a search on Tascomi using the address details of the property in question, as the keyword for the search. The Council advised that the information located had been provided to the complainant and no further information was held.
18. The Council advised that Building Control Records are retained so that if defects should arise, the records may help it to understand how they arose and also if a complaint is made against Building Control, it can be properly considered.
19. It added that the records are held under Building Control and the construction of buildings is subject to the Building Safety Act 2022. It is a requirement to obtain planning consent from the Council under the 1990 Town and Country Planning Act. It added that it is required to retain planning applications and hold a publicly available planning register under the Development Management Procedure Order (2015 as amended).
20. The Council advised that for the property in question, any information held would likely be required to be held for a period of 30 years or more. Therefore had any additional information been held, it would have been located during its search.
21. The Council clarified that although it recognises that there are two separate planning applications, this does not mean that there are two separate building control applications. For this specific case, both planning applications are recorded under one building control application with the building control team.

The Commissioners Decision

22. The Commissioner would like to remind the complainant that he is not required to decide whether the Council ought to hold specific information in circumstances such as these, he is only required to determine whether, on the balance of probabilities, any further information is held and whether adequate searches for the requested information have been conducted.
23. Having reviewed the Councils position, the Commissioner is satisfied that, on the balance of probabilities, it does not hold any additional information within the scope of the request.
24. The Commissioner is satisfied that had any additional information been held, by searching the electronic database Tascomi, using the specific address as a search term would have been identified information it held within the scope of the request. The Council has clearly explained that it is not required to hold two building control applications for two planning

applications and he therefore is satisfied with the response provided. The Commissioner does not require any further steps.

Procedural matters

Regulation 11 – reconsideration (internal review)

25. In the relation to the duty to carry out internal reviews the relevant sections of regulation 11 of the EIR state:

“(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

26. In this case the complainant requested an internal review on 18 March 2024 and despite the Council acknowledging this request on 21 March 2024, it failed to carry out an internal review.

27. The Commissioner therefore finds that the Council has breached regulation 11 of the EIR by failing to carry out an internal review within the statutory time limit of 40 working days.

Right of appeal

28. 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

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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