

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

Date: 4 November 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about building work at a specific property. The London Borough of Waltham Forest ("Council") provided the complainant with some information within scope of their request but maintained that further information was not held.
2. The Commissioner's decision is that the Council does not hold further information within scope of the request.
3. The Commissioner does not require further steps.

Background

4. On 26 July 2023 the complainant contacted the Commissioner in respect of the Council's handling of their information request.
5. On 30 August 2023 the Commissioner issued his decision finding that that Council had not processed the request under the correct legislation,

and directed it to provide the complainant with a fresh response under the EIR.¹

6. The Council's fresh response forms the basis of this decision notice.

Request and response

7. On 9 May 2023, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act I would like to request the following information from Waltham Forest Council – All information is in relation to single storey rear infill extension [address redacted]; Retrospective planning application [reference redacted]

Please state/describe method or process that was used to check and then verified that excavations/foundations are compliant with current Building Regulations

Please give date(s) when on-site investigation of this structures excavations/foundations took place

Please give number of employees/operatives on-site on investigation date(s)".

8. Following the Commissioner's decision in IC-249992-J5P6 the Council responded on 22 February 2024.
9. In its response the Council disclosed some information from its building control records that it had previously provided the complainant in respect of their related request for details of building foundations:

"Our Building Control records indicate that the foundation excavations were recorded as being witnessed on the 7th October 2021 – A single surveyor carried out the inspection and recorded the inspection as follows: "Depth of excavations seen to be 1m, in good ballast soil for the rear 3m and the 6m extension, existing front foundation to remain with dowel bars fitted in to the new concrete pad. Agreed that the far face of the end of the excavation be lined with DPM. Drains found to be shallow, and new runs to be connected to the external existing MH."

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4026317/ic-249992-j5p6.pdf>

10. The Council further explained that it held one building control record for a rear extension at the address given by the complainant, and stated that "it appears the infill extension was considered as part of this single application". The Council also provided the wording of the notes of the surveyor who had witnessed the foundation excavations and stated that "Whilst the infill extension is not specifically mentioned in the notes, I understand from discussions with the surveyor that the note is relevant to the infill part", and, "A different senior surveyor reviewed the building at shell stage (DPC, Walls, Roof etc) on the 4th November 2021. No contraventions were noted."

11. The complainant wrote to the Council in the following terms:

"I request an Internal Review of my information request – reference [redacted]. I am dissatisfied with the response and handling of my information request.

The information you have given me is for 1 extension at the address. A single storey rear extension. Planning application 203910. You have not given me the requested information for the single storey rear infill extension. Planning application [redacted]."

12. Following an internal review the Council wrote to the complainant on 20 March 2024. In its internal review it referred the complainant to a response provided by the Head of Building Control on 18 March 2024:

"Further to your recent communications in respect of the EIR response, I would like to clarify that the two services of Planning and Building Control are separate services within the Council, carrying out separate functions and accordingly whilst the Planning Service did receive two separate applications for separate extensions, the Building Control Service only received one building regulation application and both of the extensions were considered under that single building regulation application, accordingly the notes and considerations previously provided by building control were relevant to both extensions and reiterate, after discussion with my surveyor, we are satisfied that the foundations provided are satisfactory.

As it appeared the primary concern was in relation to foundation design, it was felt that Building Control would be best placed to provide the necessary answers and as noted, Building Control has just the single application reference that covered both extensions.

I noted above that Planning and Building Control are separate services so it may be worth explaining that the Planning Section consider the visual effects of the building, including the size, shape and appearance of a building or buildings and they do this primarily through the analysis

and approval of plans, whereas Building Control oversee technical construction matters on site to seek to ensure the finished building will be fit and safe for the occupiers to use and inhabit. I will also note that Building Control do not check compliance with Planning Approvals nor vice versa."

Scope of the case

13. The complainant contacted the Commissioner on 10 June 2024 to complain about the way their request for information had been handled and the Commissioner accepted the case for investigation on 26 June 2024.

14. The Commissioner contacted the complainant to establish the scope of the case. The Commissioner understand the complainant's position to be the following:

- That the Council has provided building control information relating to an extension built at the property under a different planning application, submitted in 2020. They state that as the information disclosed predates the retrospective planning application relating to the infill extension, submitted in 2022, it is therefore outside of the scope of their request of 9 May 2023.
- That the information provided to them by the Head of Building control on 18 March 2024 contradicts earlier information provided to them by the Council in 2023:

"When this search was carried out, it was found that the Building Control team only held one record and this record was the one for the rear infill extension retrospective planning application with reference [redacted]."

15. The Commissioner considers the scope of his investigation to be whether the Council has complied with the complainant's request for information.

16. With respect to the provision of statements that the complainant alleges are contradictory, the Commissioner is unable to determine the veracity of information disclosed in response to a request. The legislation operates to provide individuals with access to information which is held by a public authority. It is not necessarily the case that any such information will be correct and accordingly the operation of the legislation does not relate to the accuracy or truthfulness of any

information which may be held by a public authority². With this in mind, the Commissioner will not be considering this element of the complaint as part of this decision.

Reasons for decision

Is the requested information environmental?

17. 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

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https://caselaw.nationalarchives.gov.uk/ukftt/grc/2024/820?query=Letheby&from_date=None&to_date=None&party=&judge= Terence Letheby v The Information Commissioner [202] UKFTT 820 (GRC), paragraph 44

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

18. The request in this case relates to information about building work at a specified property. The Commissioner believes that planning and development of land is a measure which is likely to affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

The complainant's position

19. In a letter to the Commissioner the complainant outlined their grounds of complaint in the following terms:

"The Council's responses to my EIR request on 22 February 2024 and 20 March 2024 were not truthful.

The Council has responded at all times with the information of another extension built at the property. Planning application [reference redacted]. The 7 metre rear extension with "existing front foundation". Detail and description given in their response to my request.

The details and declaration of planning application [reference redacted] state the date for the start of the work on the single storey rear infill extension – 15 November 2021. Also it has the recorded information that NO local authority assistance or advice was sought prior to the Retrospective – retention planning application...

The Council have not and cannot verify/demonstrate with documents compliance for the single storey rear infill extension foundations/excavations.

[Name redacted] Data Protection Officer and [name redacted] Head of Building Control have made contradictory response statements to me in respect of the Building regulation application / one Building Control Record."

The Council's position

20. In submissions to the Commissioner the Council explained that all relevant material such as drawings, specifications, calculations, site inspection records and correspondence are recorded onto an electronic database called Tascomi, and this is what was searched when responding to the complainant's request. It did not conduct any staff consultations.
21. To search for information within scope of the request, a site inspection record in this case, the Council used the address of the property where

the rear infill extension is located. The Council explained that all relevant data was recorded electronically in the Tascomi database file and there are no paper records.

22. The Council stated that no information has been deleted or destroyed.
23. The Council further explained that it had a business and statutory purpose for retaining all information within scope of the request:

“Building control records are retained so that if defects should arise, the records may help us to understand how they arose and also if a complaint is made against Building Control, it can be properly considered. The records are held under the 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. We are required retain planning applications and hold a publicly available planning register under the Development Management Procedure Order (2015 as Amended) -, which can be found here:

<https://builtenvironment.walthamforest.gov.uk/planning/index.html>

The defects liability period set out in the Defective Premises Act was 6 years. The Building Safety Act 2022 made amendments to the Building Act 1984 and to several other pieces of legislation. The defects liability period is extended to 30 years for claims arising before 28/06/2022.

This extended 30 year period would be relevant to works carried out at [address redacted]. It is likely that relevant data will be retained for in excess of 30 years.”

The Commissioner’s position

24. The Commissioner appreciates that the information that the complainant has received from the Council is perhaps not what they had expected, however he considers that what has been provided does reasonably fall within scope of their request. While the information disclosed is not exactly what the complainant has asked for, it is certainly relevant and therefore the Commissioner is satisfied that the Council has responded to the request with the information it holds, albeit in a manner that falls below the standard he expects of public authorities. He will touch on the Council’s request handling further in the Other Matters section below.
25. The Commissioner notes that the majority of this complaint centres on matters relating to building control, which fall outside of his remit. Whether both extensions at the property can be considered under one building regulation application, and indeed whether they were, is not for

him to determine. However, based on the information provided by both the Data Protection Officer and the Head of Building Control he is satisfied that it is likely that the Council only holds one building control record, although he recognises that there is some dispute over which extension the building control record relates.

26. He also considers that, based on the explanation it has given above with regard to the searches undertaken and the content of the building control record, it is unlikely that the Council would hold any information within scope of the complainant's request further than that which has already been provided.

Procedural matters

27. Regulation 5(2) of the EIR provides 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."

28. 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.
29. The Commissioner has made this finding as the Council did not comply with the steps ordered in his decision notice in IC-249992-J5P6 within the prescribed time for compliance.

Other matters

30. Throughout its engagement with the complainant the Council has sought to aggregate its response to this request with another of the complainant's requests, as the material is similar in nature and information within scope of both can feasibly be provided in this manner. While the Council may be entitled to do this it failed to explain to the complainant that it was taking this approach, which has resulted in confusion on the part of the complainant and the Commissioner as to which information request the Council has responded to and when.
31. As noted at paragraph 28 above, the Commissioner has recorded a procedural breach of the legislation in respect of the Council's delay in providing the complainant with a fresh response to their request. He

also notes that this represents a serious failing on the part of the Council to comply with steps ordered by the Commissioner, and he would remind it that non-compliance may result in written certification of this fact to the High Court pursuant to section 54 of the Act, and may be dealt with as contempt of court.

32. Finally, the Commissioner would like to be clear that he cannot address matters not relating to information rights, and that employing the EIR or FOIA mechanism to seek to address grievances with a public authority is not an appropriate use of the legislation.

Right of appeal

33. 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

34. 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.
35. 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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