

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 April 2019

Public Authority: Bury Council
Address: Town Hall
Knowsley Street
Bury
BL9 0SW

Decision (including any steps ordered)

1. The complainant has requested information with regards to volume increases to proposed extensions and erections of dwellings. Bury Council (the council) provided a response. The complainant complained to the Commissioner that no internal review has been carried out after it was requested.
2. The Commissioner's decision is that the council has breached regulation 11(4) of the FOIA as it has not carried out an internal review, which requires one to be completed within 40 working days following receipt of an internal review request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Conduct an internal review to the complainant's request as required by regulation 11 of 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 12 September 2018 the complainant made the following information request to the council:

"The volume increase of the proposed extensions / erection of replacement dwellings calculated by Bury Council and / or submitted by the applicants as part of the process for assessing each application against Bury Council's Green Belt policies. For avoidance of doubt, the volume calculation should be in % terms and be the comparison between the volume of the proposed works and the volume of the original building. The information should include whether the figure was provided by the applicant or calculated by Council officers. [Reference's and addresses redacted]."

6. The council responded on the 2 October 2018 applying section 10(3) of the Freedom of Information Request (the FOIA) to extend its response time as it needed further time to fully consider the request.
7. The complainant disputed the council's application of section 10(3) of the FOIA as the council had not cited an exemption or explained that it needs further time to consider the public interest test (which is what section 10(3) of the EIR should be used for)
8. The council then responded to the request on the 8 October 2018. On the same day, the complainant requested an internal review setting out his reasons why he was dissatisfied with the response.
9. The complainant contacted the Commissioner on 11 October 2018. The Commissioner responded that the council needs time to firstly carry out its internal review and to contact her further if it has not completed it within 40 working days of it being requested.

Scope of the case

10. The complainant contacted the Commissioner further advising that no internal review had been provided within the 40 working day timeframe.
11. The Commissioner contacted the council on the 3 December 2018 asking that it complete an internal review within 10 working days.
12. As no internal review has been carried out the Commissioner considers the scope of the case is to determine whether the council breached regulation 11 of the EIR – requirement to carry out an internal review.

Reasons for decision

Is the requested information environmental information?

13. The Commissioner has first considered whether the requested information would constitute environmental information as defined by regulation 2(1) of the EIR.
14. Regulation 2(1)(c) With (b) is relevant in this case. The information requested is measures affecting, or likely to effect the elements of the environment, namely the landscape. A potential volume increase of dwellings would have a change on the landscape.

Regulation 11 of the EIR – Representations and reconsiderations

15. Regulation 11 of the EIR deals with representations and reconsiderations (internal reviews). Regulation 11(1) of the EIR states:

"Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

16. Regulation 11(4) of the EIR states:

"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 receipt of the representations.

17. In this case, the complainant requested an internal review on the 10 October 2018. To date, no internal review has been carried out.
18. Therefore the Commissioner finds that the council has failed to comply with regulation 11(4) of the EIR as it has not provided its internal review within the required 40 working days.
19. The Commissioner requires the council to carry out the steps set bulleted in paragraph 3 above.

Right of appeal

20. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. 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.
22. 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

Andrew White
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