

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 June 2016

Public Authority: The London Borough of Harrow

Address: PO Box 2
Civic Centre
Station Road
Harrow
HA1 2UH

Decision (including any steps ordered)

1. The complainant has requested information concerning a planning application from the London Borough of Harrow (the 'Council'). The Council informed the complainant that the requested information could be found in the public domain on its website. The Council also explained the planning validation process to the complainant as it understood this was part of the request. However when this aspect of the request was clarified, at internal review the Council confirmed that all the requested information which it holds is available on its website.
2. The Commissioner's decision is that Council is correct to refer the complainant to its website to access the requested information. The Commissioner is satisfied that the Council does not hold any further information concerning this request and has correctly responded under regulations 12(4)(a) and 6(1)(b) of the EIR. No steps are required.

Request and response

3. On 12 September 2015 the complainant wrote to the Council and requested a copy of a planning application (ref P/3829/15) from the Planning Services Department. He also requested the grounds on which the Council's Planning Services initially validated the application.
4. On 6 October 2015 the complainant sent a reminder to the Director of Planning Services and on 8 October 2015 he received an acknowledgement of his concerns from the Head of Management and

Building Control. On 10 November 2016 the complainant wrote to the Chief Executive of the Council and asked for a response to his information request.

5. The complainant received a response from the Council on 13 November 2015. The Council explained that it had erected a site notice of the application. It explained it had published information about the proposed development and the application on its website in accordance with its obligations under The Town and Country Planning (Development Management Procedure) Order 2015.
6. The Council explained that its validation of the application had been done in accordance with both national and local validation requirements. It informed the complainant where he could find these requirements.
7. The Council explained that it did not consider it would be fair and reasonable to print the information the complainant had requested. It argued this may disadvantage other stakeholders who may not be able to afford this service. It explained that the information was freely and publically available.
8. On 24 November 2015 the complainant made his freedom of information (FOI) request for:
 1. the initial valuation carried out by the planning services;
 2. the basis of its decision to proceed with the determination of the application to develop the site in question; and
 3. the application itself.
9. The request was acknowledged on 3 December 2015 and on 31 December 2015 the complainant received a response from the Head of Development Management and Building Control. The Council explained:
 - Valuation of the proposal is not a validation requirement and this information is not held by the Council.
 - All planning applications are validated in line with national legislation. As validation requirements are publically available, this does not fall under the FOIA.
 - The planning application itself is publically available.
10. The complainant wrote to the Chief Executive of the Council on 6 January and 18 February 2016. He complained to the Commissioner about this matter on 20 January 2016.

11. The Council wrote to the complainant on 11 February 2016 and 31 March 2016 explaining its position and addressing the points he had raised.
12. The Commissioner wrote to complainant on 9 March 2016 to ask him to confirm the scope of his complaint. The Commissioner then wrote to the Council and the complainant on 1 April 2016 to define the scope of the case and to begin his investigation. Following further communication with the complainant, the Commissioner again confirmed the scope of the case with the complainant on 11 April 2016.
13. On 13 April 2016 the Council contacted the Commissioner to explain that no internal review had been conducted. The Commissioner therefore asked the Council to conduct an internal review under the EIR, and asked it to consider the issues he had outlined as outstanding in his letter of 1 April 2016.
14. An internal review was conducted on 29 April 2016. The Council reiterated its position and addressed the points raised by the Commissioner.

Scope of the case

15. On 9 May 2016 the complainant informed the Commissioner he remained dissatisfied with the Council's response.
16. The Commissioner considers the scope of this case is to determine whether the Council handled this request in accordance with the EIR.
17. Initially the Commissioner considered the case to be concerned with whether the Council was correct when it explained that it does not hold the information requested concerning its valuation (or assessment) of the proposal and determination of the planning application. However at internal review, the Council clarified that it had misunderstood this aspect of the request and that the information it held was available on its website.
18. The case will therefore consider whether the Council holds further information with respect to its assessment and determination of the planning application (points 1 and 2 below).
19. This case will also consider whether the Council is correct to refuse to provide the requested information (points 1 to 3 below) because it is available in the public domain for the complainant to access.
20. This case is therefore concerned with the request for:

1. The initial valuation carried out by the planning services

- The initial planner's valuation/assessment carried out as part of the preplanning consultation.
- The initial valuation/assessment of the planning application in order to proceed to the determination of the planning application.

2. The basis of its decision to proceed with the determination of the application to develop the site in question

- The initial information that formed the basis of the Council's decision to proceed with the determination.
- The determination of all aspects of the proposed development.
- The information that was submitted to the planning committee in relation to the above assessment and determination of the planning application.

3. The application itself

Reasons for decision

21. Regulation 2 of the EIR states that 'environmental information' constitutes any information on measures such as policies, plans and activities which are likely to affect environmental elements and factors. These are listed in the EIR in subsection (a) and (b).
22. The Commissioner therefore considers that this request concerning a planning application falls under the EIR.
23. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
24. Regulation 6(1)(b) of the EIR states that a public authority is not obliged to provide requested information to an applicant if it is already publicly available and easily accessible to them.
25. The Council initially responded to the request under the FOIA however the internal review was conducted under the EIR. With respect to the above three points of the request listed above at paragraph 20, the Council has provided the following arguments as to why the information is either not held or is available on its website.

Information relating to an initial view/valuation/assessment – Planner's Valuation

26. The Council has explained that in its initial response to the complainant, it confirmed that it does not hold a 'valuation' of the development site or proposal.
27. The Council explained that initially it understood the complainant required information concerning any financial valuation placed on the site or its development. The Council has confirmed it has not made (nor would ever make) such a valuation of the site.
28. Following the intervention of the Commissioner and the subsequent clarification provided, the Council now understands this request is for a 'valuation' related to the Local Planning Authority (the 'LPA') evaluation or assessment of the development proposals.
29. The Council has confirmed that the LPA did hold informal discussions with the developer prior to submission of the application. It has explained that no written comments were provided to the developer. It has confirmed that the comments of the LPA arising from these discussions were summarised in the Officer's report, reported to the Planning Committee of 16 December 2015 (this summary has been provided to the complainant).

Recorded information regarding developing the site

30. The Council has further explained that it was the developer rather than the LPA that choose to develop the land. It has explained that the LPA's role, once it receives an application, is to consult on that application in accordance with the requirements set out in Article 15 of the Town and Country (Development Management Procedure) Order 2015 (the 'DMPO') and subsequently to determine the application in accordance with its legal duties set out at section 38(6) of The Planning and Compulsory Purchase Act 2004 (the 'PCPA').
31. The Council has explained that the LPA fulfilled these duties in respect of the application. It has explained that in accordance with its obligations in accordance with these regulations, it published the application on its website. It is not required to hold paper copies.

Process for assessing planning applications

32. The Council has explained that once an application is received, the LPA must 'vet' the application against the national and local validation requirements. In 'vetting' the application, the LPA is checking all of the information required to assess the application has been received. The vetting process makes no comment on the substance of the information

provided; it simply checks that all information is received. If all the information is received, the application is registered and 'validated'. At this point the LPA consults on the application in accordance with the requirements of the DMPO.

33. The Council has explained that once an application is validated, it is assigned to a Planning Officer to assess. In this assessment the Officer will identify any planning related constraints on the site and which policies of the Development Plan (a publically available set of documents adopted by the Council) are relevant to the development proposal. The Officer will conduct a site visit.
34. Once these tasks have been undertaken, the Officer will then formulate the Officer's Report and make a recommendation to the Planning Committee. This recommendation is reviewed by Senior Planning Officers. Members of the Planning Committee also make a site visit.
35. The agenda and Officer Reports are then published seven days in advance of the Planning Committee.
36. At the Planning Committee (which was held on 16 December 2015), the development proposals were introduced and questions taken from objectors to the proposal. On 18 December 2015 a decision notice was issued which reflected the members' decision to grant planning permission.

Publically available information

37. The Council has explained that full details of the planning application are available on its website. These were available at the time of the request.
38. The complainant has been provided with details of the website and how to access the available information.

The Commissioner's position

39. The complainant has argued that the above response of the Council is concerned with the planning process rather than the supporting documentation (apart from the report to the Planning Committee).
40. He has explained that he requires the supporting information from receipt of planning application to the formulation of Planning Committee report. In particular he requires the full planning application. He considers this is the information which will have been scrutinised in preparation of the report to the Planning Committee.
41. However the Council has confirmed to the Commissioner that all of the information that exists is available in the public domain. It has described

the process in some detail in order to outline the steps that are taken and to identify the information which is evaluated at each stage of that process.

42. The Commissioner is therefore satisfied that there is no other supporting documentation which the Council holds which is not available to the complainant on its website.
43. In scenarios where there is some dispute about the information held by a public authority and information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or whether any information was held at the time of the request).
44. In view of the Council's explanations, the Commissioner is satisfied that the Council has indicated where the information the complainant has requested can be found on its website and that on the balance of probabilities it does not hold any further information regarding this matter.
45. As all the held information is accessible on the Council's website, in accordance with regulation 6(1)(b) of the EIR, the Council is under no obligation to provide the requested information to the complainant. It is already publicly available and easily accessible to him.

Other matters

46. The Commissioner also notes that in its numerous correspondences with the complainant, the Council has attempted to address the concerns he has raised and has responded to him in a proportionate and fair manner. The Council has confirmed to the complainant on a number of occasions that the information it holds is publicly available on its website.

Right of appeal

47. 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

48. 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.
49. 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

Rachael Cragg
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