

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 November 2020

Public Authority: London Borough of Islington

Address: Municipal Offices
222 Upper Street
London
N1 1XR

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence from the London Borough of Islington (the Council) relating to planning proposals regarding the current and future use of the Former Part of the Archway Methodist Central Hall site.
2. The Commissioner's decision is that the Council has failed to carry out a reconsideration (internal review) of a response it provided, under the Environmental Information Regulations (the EIR), within 40 working days and has therefore breached Regulation 11 of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the EIR.
4. The Council 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 19 May 2020, the complainant wrote to the Council and requested information in the following terms:

"Request for information under the Environmental Information Regulations 2004 and Freedom of Information Act 2000

This is a request for the London Borough Council of Islington ("the Council") to make available to me, [Redacted], all emails and all other written correspondence between officers within the Council's Planning Department (both the development management and plan making teams) and either (A) [Redacted] or (B) any other representatives of the Better Archway Forum ("the Forum") in relation to:

1. Better Archway Forum's proposals for the future use of the site known as Former Part of the Archway Methodist Central Hall ("the Site"), whether

2. as advanced in relation to Planning Appeal APP/V5570/W/19/3229738 or

3. in relation to proposed policy ARCH3 within the emerging Local Plan Review.

4. Proposals made by other parties (including Flowervale UK Ltd) for the use of the Site;

5. Any other comments made by [Redacted] or the Forum in relation to the current or future use of the Site.

I consider that the above information is environmental information within the 2004 Regulations and I ask you to deal with this request under those provisions."

6. The Council responded to the request on 30 June 2020. It disclosed the information requested in relation to points 3 and 5 (above) but relied on Regulation 12(5)(e) – disclosure would adversely affect commercial or industrial confidentiality and 12(5)(f) – disclosure would adversely affect the interests of the person or organisation who provided the information, to withhold the information requested in points 2 and 4.
7. The complainant requested a review on 15 July 2020, but the Council had not completed its review at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 24 September 2020 to complain about the way his request for information had been handled.
9. In line with her usual practice, the Commissioner contacted the Council on 8 October 2020 to highlight the outstanding response. She requested that the Council complete its reconsiderations within 10 working days. The correspondence was neither acknowledged nor responded to.
10. The complainant contacted the Commissioner on 5 November 2020 to request a decision notice considering the Council's compliance with the EIR.
11. The scope of the Commissioner's investigation is to determine whether the Council has complied with Regulation 11 of the EIR.

Reasons for decision

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. The Commissioner has not seen the requested information but, as it is information relating to planning proposals regarding a built structure, she believes that it is likely to be information about the elements of the environment. For procedural reasons, she has therefore assessed this case under the EIR.
14. Regulation 5(1) states that: *"a public authority that holds environmental information shall make it available on request."*
15. Regulation 5(2) states that such information shall be made available *"as soon as possible and no later than 20 working days after the date of receipt of the request."*
16. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Council has breached Regulation 5(2) of the EIR.

Reconsideration/Internal Review

18. Regulation 11 of the EIR states that:
 - (1) *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.*
 - (2) *Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
 - (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.*
- (5) *Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
- (a) *the failure to comply;*
 - (b) *the action the authority has decided to take to comply with the requirement; and*
 - (c) *the period within which that action is to be taken.*
19. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days the Council has breached Regulation 11 of the EIR.

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@justice.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

Ben Tomes
Team Manager
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SK9 5AF