

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 November 2021

Public Authority: The London Borough of Croydon

Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Croydon ("the Council") relating to a developments flood risk assessment and drainage proposals. By the date of this notice the Council had not issued a substantive response to this request.
2. The Commissioner's decision is that the Council has breached regulation 5(2) of the EIR in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - The Council must provide a substantive response to the request in accordance with its obligations under the EIR.
4. The Council must take this step 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 22 September 2021, the complainant wrote to the Council and requested information in the following terms:

"I note that although [name redacted] is shown as the case officer on the Officer Report (OR) to Planning Committee on 21 January 2021, it seems that [name redacted] had left the Council's employ by December 2020. [Name redacted] is now shown as the case officer, and for the purposes of this request I assume that it was [name redacted] who finalised the OR.

At 6.2 of the OR, [name redacted] tells us that with regard to the development's impact on flooding. "...The application included a sustainable drainage strategy which was found acceptable by the Local Lead Flood Authority. ..."

At 8.58 the OR tells us that "... The application included an FRA which was checked by the Council's Local Lead Flood Authority ...".

At the Planning Committee, the presenting officer ([name redacted]) explained that given the risk of surface water flooding in the area, the Lead Local Authority (LLFA) were (unusually) consulted on this particular 'minor' application.

Notwithstanding the above, the website indicates neither consultation with, nor comment from the LLFA regarding this application. I also note that on the submitted Application Form (item 11), under 'Assessment of Flood Risk' and 'How will surface water be disposed of?', both the 'sustainable drainage system' AND 'main sewer' boxes are 'ticked'

+++ Please provide COPIES of all the correspondence between the case officer(s) and the LLFA, with regard to the proposals set out in the applicant's 'flood risk assessment' and 'sustainable drainage strategy'. This should include all the LLFA's comments on the submission, including details of the planning conditions reportedly requested.

+++ Please also provide COPIES of any correspondence between the Council and Thames Water about the drainage proposals for this development."

6. The Council wrote to the complainant on 23 September 2021 to acknowledge the request. By the date of this notice, the Council has not provided the complainant with a substantive response to his request.

Scope of the case

7. The complainant contacted the Commissioner on 29 October 2021 to complain about the Council's failure to respond to his request.
8. The Commissioner has considered whether the Council has complied with its obligations in relation to the time for compliance at regulation 5(2) of the EIR.

Reasons for decision

9. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

10. Regulation 5(2) of the EIR states 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."

11. On 2 November 2021 the Commissioner wrote to the Council, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention the Council has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner finds that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

14. 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

15. 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.
16. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF