

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 November 2022

Public Authority: London Borough of Croydon

Address: 2 Borrowdale Drive
South Croydon
CR2 9JS

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Croydon (the Council) relating to different aspects of a planning application. 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 failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response to the request in accordance with its obligations under 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 2 January 2022, the complainant made the following request for information to the Council:

"FOI request Point 1:

- Please confirm the actual date that [NAME REDACTED], on behalf of the Council, considers the notice to have been served.

FOI Request Point 2:

- Does the Council consider the use of backdated letters acceptable in serving notice?

FOI Request Point 4

- Why has [NAME REDACTED] failed to address the location of the doors to the ground floor flats at the rear (private gardens are not public realm)?
- Why was no mention in the Planning Officer's report, of the failure of the side door and rear entrances to meet mandatory policy?
- Why, in response to an earlier FOI request, does not one single document refer to this policy at all? There is no evidence that his policy was ever considered (or else the documents must have been withheld unlawfully).

[NAME REDACTED] avoids providing an answer about the Sunlight Study. It is a matter of public record that the developer stated in the planning application dated 26 September 2019 and validated by [NAME REDACTED] on 4 October, that a sunlight study had been conducted and there was no loss of light to neighbouring properties.

FOI Request Point 5

- Please provide a copy of this sunlight study referred to in the application and which must have been conducted prior to 26 September 2019.
- If no study exists, then please provide an explanation as to why this was not picked up by the planning team, why no sunlight study was available during the consultation period, why there were no repercussions for the developer who made a misleading statement on the planning application about this study (just as he claimed on that same application to have served Certificate B notice when he had not) and why, when I asked repeatedly for a year to see that study [NAME REDACTED] did not provide it or even raise it with the developer until a year later?

FOI Request Point 6

- Please confirm the difference in height between the original development's design and the final design that was recommended to the Committee
- Please confirm the difference in width between the original development's design and the final design that was recommended to the Committee
- Please confirm the difference in footprint of the original development's design and the final design (including the walled terraces) that was

recommended to the Committee.

- If there is no difference in height, width, no reduction in footprint, please provide a full explanation as to why the pre-planning conclusions were disregarded and why they were not brought to the attention of the Committee.
- If there is no difference in height, width, no reduction in footprint from the original design please provide an explanation as to how a development that [NAME REDACTED] and her team considered overbearing, overdevelopment, too big for the site, causing harmful enclosure, out of rhythm of the street, and where privacy issues had not been resolved, has evolved sufficiently for these issues have been resolved.

FOI Request Point 7

- Please provide a full breakdown of legal costs relating to Planning Application [REFERENCE NUMBER REDACTED] on my land
- Please provide copies of the invoices relating to Planning Application [REFERENCE NUMBER REDACTED] on my land

FOI Request Point 8

- Why was the Committee not advised that the development failed TLP21 - the requirement for the outdoor communal amenity space to be overlooked?

FOI Request Point 9

- Why did [NAME REDACTED] allow a Planning Officer's report to be published which clearly misled the Committee on this point? Why were they not made aware in the report that the privacy issues caused by the rear balcony had, in fact, not yet been resolved?"

6. To date, the Council has not acknowledged the request for information.

Scope of the case

7. The complainant contacted the Commissioner on 10 October 2022 to complain about the Council's failure to respond to this request.
8. The Commissioner contacted the Council on 13 October 2022 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
9. Despite this intervention the Council has failed to respond to the complainant.
10. The scope of this notice and the following analysis is to consider whether the Council has complied with regulation 5(2) of the EIR.

Reasons for decision

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

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

12. 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."

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's decision is 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.

Other matters

14. The Commissioner notes that some elements of the request seek information which is likely to be the complainant's own personal data and would thus fall to be dealt with under data protection legislation. Some elements of the request should also be considered as queries.

15. Whilst the Commissioner has no power to compel the Council to do so as part of a decision notice issued under FOIA, he would recommend that the Council also consider its responsibilities under data protection legislation and respond to the complainant accordingly.

16. The Commissioner also reminds the Council that he issued a practice recommendation¹ which drew attention to its poor performance in responding to information requests within the required time limits. The Commissioner expects to see improved performance going forwards.

¹ <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4021726/fpr0987660.pdf>

Right of appeal

17. 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

18. 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.
19. 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
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Wycliffe House
Water Lane
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SK9 5AF