

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 30 November 2022

**Public Authority:** London Borough of Croydon

**Address:** Bernard Weatherill House  
8 Mint Walk  
Croydon  
CR10 1EA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the London Borough of Croydon (the Council) relating to a planning application.
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 EIR within 40 working days. It 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

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5. On 2 January 2022, the complainant wrote to the Council and requested information in the following terms:

“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?" (sic)

6. The Council responded to the request on 27 July 2022.
7. The complainant requested an internal review on 27 July 2022, but the Council had not completed its review at the date of this notice.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the way this request for information had been handled.
9. The Commissioner contacted the Council on 3 November 2022 to highlight the outstanding internal review and asked the Council to complete its reconsiderations within 10 working days.
10. Despite this intervention the Council has failed to respond to the complainant.
11. The scope of the Commissioner's investigation is to determine whether the Council has complied with regulation 11 of the EIR.
12. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether the Council was entitled to rely on the exception of regulation 12(5)(e) in their initial response to the complainant.

## Reasons for decision

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13. Regulation 11<sup>1</sup> of the EIR states that:
  - (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."
14. 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.

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/11>

## Right of appeal

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15. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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**