

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 September 2023

Public Authority: London Borough of Southwark

Address: PO BOX 64529

London

SE1P 5LX

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Southwark (the public authority). By the date of this notice the public authority had not issued a substantive response to this request.
2. The Commissioner's decision is that the public authority has failed to respond to the request within 40 working days and has therefore breached regulation 7(1) of the EIR.
3. The Commissioner's decision is that the public authority:
 - did not issue a response to the request within 40 working days and breached regulation 7(1) of the EIR.
4. The Commissioner requires the public authority 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.
5. The public authority 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

6. On 5 May 2023 the complainant made the following request for information to the public authority:

"Correspondence between Southwark and Native Land (including emails, papers and memos) regarding the redevelopment of Bankside Yards, previously known as Ludgate House and Sampson House"

1. Any correspondence between Southwark and Native Land or persons acting on its behalf (together the Parties) on the potential scale of development at Bankside yards prior to submission of a formal planning application.
2. Any correspondence between Southwark and the Parties on the impact of development on daylight / sunlight and rights of light for neighbours and adjoining properties.
3. The very first piece of correspondence/note in which there is a reference either by Southwark Council or by Native Land or persons acting on its behalf (together the Parties), to the use of the powers conferred by Section 203 Housing and Planning Act 2016 in relation to the Bankside Yards Development.
4. Any correspondence after the initial piece of correspondence listed at point 1, in which Section 203 Housing and Planning Act 2015 is mentioned by either of the Parties as a way of circumventing privately held rights.
5. Any correspondence exchanged between the parties in the lead up to Native Land's formal request for Section 203 protection in a letter addressed to [name redacted] dated 12 October 2021, including, but not limited to, a letter dated 20 September 2021 from Southwark Council to Native Land.
6. All 23 pieces of correspondence addressed to the owner of Flat [number redacted] and referred to in the letter dated 12 October 2021, (referenced above).
7. Any and all correspondence exchanged between the Parties, between the letter dated 12 October 2021 in which the Section 203 was requested by Native Land and the Southwark Councillors meeting on 18 January 2022 in which the request for the use of the Section 203 was approved by Southwark Councillors.

Internal Correspondence at Southwark Council (including emails, papers and memos)

1. Any and all internal correspondence relating to the letter from Native Land dated 12 October 2021.
2. Any minutes of internal meetings relating to the Bankside Yards development and any discussions on the use of Section 203 Housing and Planning Act 2016 that took place between the letter dated 12 October 2021 and the Southwark Councillors meeting on 18 January 2022.

Documents arising from the Engagement of Section 203

1. Any copies of the Title Register which detail Southwark Council as the owner of the parcels of land comprised under title numbers: (TG162703 - Ludgate House) (TG154167 - Airspace Land Ludgate House), (TG1138850 - Sampson House).
 2. The first draft of and the executed Put and Call Option between Southwark Council and Ludgate House Limited in relation to the site of the former Ludgate House and the Airspace Land.
 3. The first draft of and the executed Put and Call Option between Southwark Council and Sampson House Limited in relation to the site of the former Sampson House.
 4. The 999 year Lease granted by Southwark Council to Ludgate House Limited and Sampson House Limited respectively."
7. The Public authority requested clarification on 16 May 2023, regarding point 6 of Section 1 of the request. The complainant provided clarification on 19 May 2023 in the following terms:

"The correspondence being sought is referred to in paragraph 1, page 6 of the letter of the 12 October 2021 from Native Land to the council, where it states, 'Correspondence from CRS follows 23 attempts by GIA on behalf of the developers between November 2017 and January 2021 to contact and engage with the previous owner'. We anticipate the council maybe in receipt of all this information as it sought evidence of the representations made (23 items of correspondence had been sent), if this is not the case, can the council confirm they are not in receipt of that correspondence. We are not the addressee - the correspondence was sent to the prior owner/occupant of flat [number redacted]"

8. The public authority wrote to the complainant on 19 May 2023 to acknowledge the request.
9. On 5 June 2023 and 27 June 2023 the public authority wrote to the complainant, each time informing them that it would be extending the period to issue a response by a further 5 working days. This was in accordance with regulation 7(1) of the EIR, although it was not stated explicitly.
10. On 3 July 2023 the public authority wrote to the complainant and informed them that:

“the requested information may be held in physical files at our offsite storage facility. This information is currently being retrieved and then consideration will be given to whether any exemptions apply. We will keep you updated on the progress of the retrieval and reviewing of the information. I appreciate that our response has already been delayed and thank you for your patience.”

Reasons for decision

Regulation 5(2) – time for compliance and regulation 7(1) – extension of the time for compliance

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. Regulation 7(1) of the EIR states that:

“Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in the provisions in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.”

14. On 5 June 2023 and 27 June 2023 the public authority sought to apply the extension, in the following terms on the specified dates.

- 5 June 2023:

"Please note that the Regulations allow us 20 working days to respond to your request from the date of its receipt. However, it is occasionally necessary to extend the 20 working day time limit for issuing a response. In this case, I regret that we must extend the time limit for responding by an additional 5 working days because of the volume and complexity of the request. Therefore, we hope to let you have a response by 19 June 2023 and will notify you of any further delay."

- 27 June 2023:

"Regulations allow us 20 working days to respond to your request from the date of its receipt. However, it is occasionally necessary to extend the 20 working day time limit for issuing a response. In this case, I regret that we must extend the time limit for responding by a further 5 working days because of the volume and complexity of the request. Therefore, we hope to let you have a response by 4 July 2023 and will notify you of any further delay."

15. From the evidence provided to the Commissioner in this case, it is clear that the public authority did not deal with the request for information in accordance with the EIR. The Commissioner finds that the public authority has breached regulation 7(1) by failing to respond to the request within 40 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

16. 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: <https://www.gov.uk/courts-tribunals/first-tier-tribunalgeneral-regulatory-chamber>

17. 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.
18. 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
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SK9 5AF