

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 4 September 2013

Public Authority: London Borough of Hillingdon
Address: Civic Centre
High Street
Uxbridge
UB8 1UW

Decision (including any steps ordered)

1. The complainant made a number of requests for information associated with a planning application. The London Borough of Hillingdon (the 'Council') disclosed some of the information requested. In relation to the remainder of the requests, it stated either that the information was reasonably accessible by other means (section 21 of FOIA), or that no further information was held relevant to the request. The complainant asked for an internal review which has not been carried out.
2. The Information Commissioner's decision is that the Council did not deal with the request for information in accordance with the EIR in that it did not apply the correct legislation when handling the request. It also failed to carry out an internal review. He therefore requires the Council to take the following step to ensure compliance with the legislation.
 - Reconsider the requests of 5 February 2013, together with the additional requests sent on 9 March 2013, under the EIR and send a fresh response to the complainant.
3. 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 Act and may be dealt with as a contempt of court.

Request and response

4. On 5 February 2013 the complainant wrote to the Council and requested information associated with a particular planning reference. The requests are set out in full at Annex A of this notice.
5. On 9 March 2013 the complainant added to his original requests. Details are set out in Annex A.
6. The Council responded on 12 March 2013. It provided a response to part 1 of the complainant's request and cited section 21 of FOIA (information accessible to applicant by other means) in relation to part 6 of the request. The Council stated that the information was either already in the complainant's possession or was available from the Land Registry.
7. On 16 March 2013 the complainant wrote to the Council to advise that it had only addressed two of the twelve parts of his request. He also highlighted that the answers provided did not adequately address the two parts of his request to which a response had been provided and explained why this was his view.
8. The Council wrote to the complainant again on 11 April 2013 providing responses either by way of attachments or by weblinks to the additional requests from 9 March 2013. It said that it held no information in relation to part 1 of the complainant's request of 5 February 2013. It acknowledged that its response to part 6 was confusing and provided the complainant with two links to the information specified in that request. It also said it had located a paper copy of the letter of 29 December 2013 specified in part 5 of the request and provided this with its response.
9. Finally, the Council said it was not aware of any outstanding issues from the original request of 5 February 2013, with the qualification that it was not obliged to provide general comments or create information in order to respond to the requests; instead it is only obliged to consider information held in a recorded form.
10. The complainant wrote to the Council again on 27 April 2013 and 13 May 2013 expressing dissatisfaction with the Council's responses. He explicitly requested an internal review on 29 May 2013. The Council did not conduct an internal review.

Scope of the case

11. The complainant contacted the Commissioner on 11 June 2013 to complain about the way his requests for information had been handled. He asked the Commissioner to consider his view that only some of the information requested had been provided and that the Council had taken too long to provide it. He also raised the matter of some of the information being "*false*" and that he was certain the application had been approved "*incorrectly*"; neither of which are matters with which the FOIA and EIR are concerned and so which cannot be considered by the Commissioner.
12. The Commissioner has established that the Council received the complainant's request for an internal review, but that it has not responded because it was aware that the complainant had complained to the Commissioner and did not want to duplicate resources.
13. The Commissioner has considered whether the Council handled the requests of 5 February 2013 and the additional requests of 9 March 2013 under the correct access regime and whether it was obliged to carry out an internal review.
14. Whilst the complainant's primary concern was whether all the information held had been provided, the Commissioner noted early in the case handling process that the information requested appeared to be environmental. The analysis in this notice therefore focusses on whether the information is environmental and therefore covered by the EIR, rather than the FOIA.

Reasons for decision

15. The Council has processed the complainant's request for information under FOIA and has applied section 21 to part of it. However, the Commissioner has first considered whether the requested information in this case constitutes environmental information and whether the correct access regime is, therefore, the EIR.
16. Environmental information is defined in regulation 2 of the EIR as :
*"any information in written, visual, aural, electronic or any other material form **on** ..."*:
 - the state of the elements of the environment, such as air, water, soil, land;

- emissions and discharges, noise, energy, radiation, waste and other such substances; and
 - measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.
17. The Commissioner's approach is to interpret "*any information... on*" fairly widely. He does not consider it necessary for the requested information itself to have a direct effect on the environment in order for it to be environmental information. It will usually include information concerning, about, or relating to measures, activities and factors likely to affect the state of the elements of the environment.
18. Having considered the nature and context of the requests, the Commissioner has concluded that the information falling within the scope of these requests constitutes environmental information as defined by regulation 2(1)(c) of the EIR. This is because the information in this case relates to information on a measure or activity, in the form of a planning application, and the measure or activity in question will effect environmental elements and factors referred to in regulations 2(1)(a) and (b).
19. He therefore requires the Council to reconsider the requests under the EIR and send a fresh response to complainant.

Regulation 11 – Representations and reconsideration

20. Regulation 11(1) of the EIR states "*...an applicant may make representations to a public authority in relation to an 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*".
21. The complainant requested an internal review on 29 May 2013. Under regulation 11(2) of EIR the Council was required to conduct an internal review within 40 working days which it failed to do. As the finding at paragraph 19 means that the Council is already required to issue a fresh response under the EIR, no step is included in this notice to remedy this breach of regulation 11(2). However, should the complainant respond after the reconsidered response has been issued and request an internal review, the Council should ensure that this is carried out within 40 working days.

Right of appeal

22. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex A

Request of 5 February 2013

The complainant's complete request made on 5 February 2013 is detailed below:

"I have been advised to contact you by Democratic Services.

Further to my recent complaint stage 1-3 which has now been referred [sic] to the Ombudsman regarding planning permission granted for land adjacent to no xx [address redacted] planning ref: F13276/App/2010/2168 I would like to request copies of documents referred to either in the replies or stated by the Planning Officer as noted below.

- 1. Copy of the information referred to by [name redacted] in his letter to me dated 31 August 2012 that [name redacted] (previous owner) has an interest in [name redacted] (current owner) I have advised previously that I did a Company's House search but can find no such interest (see item 31 of stage 1 response).*
- 2. Copy of the legal advice regarding the legality of the "altered" certificate of ownership signed and dated prior to the applicant owning the property and showing L.B.H. as owner. The Planning Officer advised that "they" had taken legal advice but declined to provide a copy (stage 1 complaint reply item 20 and stage 3 item 53).*
- 3. Copy of the layout plans for Bourne Avenue as built by "George Wimpey" in early 1930's which establishes "the building line" (which as noted in my reply to complaint response stage 1 item 28 and stage 2 items 46/49) regarding the Planning Officers statement that no. 137 is built in fact approx, 1m in front of the building line.*
- 4. Copy of the calculations carried out by Planning Officers which proves that the site size is acceptable (see stage 2 complaint items 46-47). It was initially stated by the Planning Officer that the plot size was just below the 200m² stated in the London planning density matrix adopted by LBH. And as such was acceptable, but when I checked it was apparent that he had misread the matrix as the 200m" was for linked houses/flats not the detached house applied for which would have required 250m², when I raised this he changed his mind and stated that the matrix was not intended for single building plots. But has ignored request for proof that the site is adequate (this is also mentioned in conclusions item 74 but not clarified or fully answered.*
- 5. Copy of the letter 29th December stating "new planning application your chance to comment" (or copy of notification to nearby residents*

"that the scheme has been made valid and list of those notified) (see stage 1 response item 22 and stage 3 response item 66.

6. *Copy of the outline planning permission referred to by the Planning Officer in the response to my complaint headed "Land adjacent to xx [address redacted] " (not land forming part of 135 [address redacted] which was granted prior to the site being split into two separate plots.*
7. *Details of the distances from end terraced properties to corner infill developments which the officer states is no different to that proposed and which it is stated officer spent some time checking dimensions [sic] (see stage 1 response item 28 and stage 2 response item 36). Also see agenda page 11 and advise which properties are in fact no different to the proposed infill development (stage 2 response item 46).*
8. *Copy of notice to owner [name redacted] on the revised certificate of ownership (stage 2 item 31) and copy to LBH as owner (stage 2 response item 63).*
9. *Copy of the certificate of ownership fully completed accurate and in line with Council procedure as quoted (conclusions item 65).*
10. *Please advise of what action has been taken in respect of the sixteen months unexplained delay starting after the application was dismissed as invalid Feb 2011 and copies of any; bearing in mind that the response to my complaint has stated that it would be unreasonable to delay the proposed hearing by one month.*
11. *Please can I have a response to my enquiry regarding [name redacted] promise to read my opening speech as lead petitioner to the Planning Committee on 14 June 2012 but this is not shown in the minutes. This has been raised a number of times and in my complaints but has been avoided.*
12. *Conclusions item 78 states (outline planning permission is for the same site) this mix up being due to "land forming part of xx [address redacted]" "and land adjacent to xx [same address redacted]". This has the same land registration no. My comment – this was not a mix up but a deliberate and considered act by the previous owner after refusal of full planning to get round the previous refusal of full planning as it would have left no xx with insufficient amenity space and no replacement parking. This was achieved by the previous owner [name redacted] disposing of no xx but keeping the "building plot" as the same land reg no so that it appears that the previous outline [sic] planning is for this site. This is noted in agenda 9. The planning history highlights unauthorised [sic] sub-division [sic] and a lack of garden area an [sic] no replacement parking but out of time for enforcement*

but this was only made final by the July 2012 granting of planning permission and could have been a reason for refusal.

Consideration no 76

As previously advised the fence in question was erected by the previous owner [name redacted] on the sale of xx [address redacted] to elite properties if there is any evidence [sic] contrary to this please advise and provide a copy.

I hope the foregoing provide all the information you require if not I can be contacted on E at [contact details redacted].

It may be that some of the items requested are not within your remit if so I would appreciate your advice.

As this has now been submitted and accepted by the ombudsman I would appreciate reply [sic] as soon as you can."

Additional points submitted 9 March 2013

The complainant supplemented his requests of 5 February 2013 with some additional points about planning reference F13276/App/2010/2168 which he submitted on 9 March 2013 as follows:

"Further to my previous F.O.I request of 5th February 2013 I would further request a copy of the letter of consultation to adjacent resedents [sic] and previous petitioners; giving time to comment and advising of the "rehearing" of this application by the Planning Committee on 14th June 2012.

Due to the certificate of ownership (previously dismissed as invalied [sic]) having been made valid. And a copy of this validated certificate. And also a copy of the list of who the consultation letter was actually sent to."