

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

### **Decision notice**

**Date:** 14 April 2015

**Public Authority:** London Borough of Lambeth  
**Address:** Town Hall  
Brixton Hill  
Lambeth  
SW2 1RW

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

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1. The complainant requested information regarding a development site at the garages rear of Wavertree Court, Wavertree Road, London reference 10/04487/FUL.
2. The London Borough of Lambeth (the Council) provided the majority of the information requested and advised the complainant that the remainder of the information which had not been provided was either not held or was exempt from disclosure under section 21 of the Freedom of information Act 2000 (FOIA).
3. The Commissioner's decision is that the Council has incorrectly handled the request under FOIA. He is satisfied that it has made available the majority of the information requested. However he finds the Council in breach of regulation 5(1) of the EIR in relation to questions 5 and 15 of the request as it did not provide information it held relating to fire safety and ground contamination.
4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation:
  - Disclose the letter from the London Fire and Emergency Planning Authority to the London Borough of Lewisham dated 24 December 2014.
  - Disclose drawing number 11(100) 'proposed site plan'.
  - Disclose Report No. 10401 – Ashmere Soil Laboratories – 'Report on an investigation of ground conditions' dated December 2012

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 Act and may be dealt with as contempt of court.

## **Request and response**

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6. On 2 April 2014, the complainant wrote to the Council and requested information in the following terms:
  - 1- *The name of the owner as well as the present contact details of the current development organisation/company responsible for the present development of the site*
  - 2- *The date and times of all the consultation meetings with local residents regarding the development of the site took place and who was invited and specifically how those concerned citizens i.e. local residents were made aware firstly that meetings were being held and secondly of the time of the meetings and where the meetings were taking place?*
  - 3- *A list of names of all those that attended consultation meetings regarding the proposals of the Wavertree Garages Developers.*
  - 4- *What information was given to those that attended the meetings?*
  - 5- *The site's plans for the health and safety requirements of the site particularly with regards to the ability of a fire vehicle to be able to make a 3 point turn safely within the space allowed i.e. in the event of a fire and they need to get in and out. We understand that the present measures fall short of the legal requirements. The engine does not currently have the legally required place to turn.*
  - 6- *The date and time that the required notifications were placed on display making local residents particularly those whose gardens back onto the site.*
  - 7- *What form did notification of local residents take? Was it leaflets, emails, letters, newspaper notices... How many were printed/sent?*
  - 8- *How many notices were put up for people to view the Developers plans/proposals where exactly each notification was placed and how long for?*

- 9- *Exactly how were the parking requirements met i.e. how many parking spaces did they claim were available? What was the date and time of day that the survey done?*
- 10- *Please specify the impact these proposed developments will have on current local parking. Along with an explanation of how the impact was calculated.*
- 11- *Please list exactly who - which of the residents - were contacted to make them aware of the proposed plans for developing the Wavertree site.*
- 12- *Please quantify with dates and exactly how i.e. the method that was used to contact the residents referred to in point 7 were contacted.*
- 13- *Please supply examples of the notifications that were sent*
- 14- *Please confirm all those working with the Developing company that have a personal i.e. family/friend or have ever worked with any of the members of staff that either presently in the past have worked at the company presently developing the Wavertree site.*
- 15- *In the interest of the safety of all local residents, particularly those whose gardens back onto the development. How all the toxic waste from the petrol station is going to be excavated and disposed of i.e. with full details of the procedure to be undertaken?*
- 16- *When did Wavertree Garage developers inform the local residents of their proposed plans for schedule of works?*
- 17- *How will the proposed development affect the houses/dwellings surrounding it enjoyment of daylight and sunlight?*
- 18- *What impact will the proposed development have on the privacy of the dwellings surrounding the site?*
- 19- *When will the developers of the site begin communicating with local residents? Plan and schedule.*
- 20- *How many other developments from this particular development company/organisation within this borough has Lambeth 'green lit'.*
- 21- *What relationship does Lambeth have with the developers of Wavertree Garages?*
- 22- *How the impact of the constant drilling into the ground will affect the structures of the dwellings surrounding the proposed development will be measured by whom and where.*

7. On 6 May 2014, the Council responded and provided information in response to the majority of the questions raised. It applied section 21 of the FOIA to part of question 1 relating to the details of the current owner of the site, refusing the request on the basis that the information was accessible via the Land Registry website. The Council confirmed that it did not hold information in relation to questions 2, 3 and 4 as it was not party to any pre-application consultation meetings. In relation to questions 5 and 15 the Council stated that it did not hold the information and referred the complainant to the London Borough of Lewisham as the partner authority dealing with the Building Regulation Application. The Council also confirmed that it did not hold information in relation to questions 14, 16, and 19 advising that those questions would need to be raised directly with the developer.
8. On 6 August 2014, the complainant submitted an internal review request querying the responses given to each of the questions raised.
9. On 15 January 2015, the Council issued its internal review decision and upheld its initial response. It confirmed that it had nothing further to add to the information and responses already provided.

### **Scope of the case**

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10. Following the outcome of the internal review the complainant contacted the Commissioner on 21 January 2015, to complain that the Council failed to answer any of the questions asked.
11. The scope of this case is to determine whether the Council has complied with regulation 5(1) the EIR, specifically whether it has made available all the information requested.

### **Reasons for decision**

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12. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
13. Under regulation 2(1)(c) of the EIR, any information on activities affecting or likely to affect the elements or factors of the environment listed in regulation 2 will be environmental information. One of the elements listed is land.

14. Having considered that the nature of the information sought by the complainant relates to planning matters the Commissioner is satisfied that the information constitutes environmental information as defined in the EIR.
15. The Commissioner is therefore of the view that the request was incorrectly handled under FOIA.
16. Although the request was handled under the incorrect legislation the Commissioner has considered whether the Council has complied with regulation 5(1) of the EIR.

### **Regulation 5(1)**

17. Regulation 5 (1) of the EIR states that '*a public authority that holds environmental information shall make it available on request.*'
18. The complainant argued that the Council failed to answer the request but did not provide the Commissioner with any further specific arguments detailing why they considered that the request had not been answered. The Commissioner has therefore based this investigation on the queries raised by the complainant in the internal review request.
19. In response to question 1 the Council provided details of the applicants responsible for the development of the site. It refused to provide details of the current owner of the site under section 21 of the FOIA on the basis that the information was accessible via the Land Registry.
20. The complainant argued that the Council did not answer the question and stated that they conducted a google search but were unable to obtain any information.
21. The Council advised the Commissioner that it did not undertake any searches to determine whether land ownership information was held. It explained that when an applicant applies for planning permission they must provide a statement about the ownership of the site. However if the land owner were to sell the site at a later date after the submission of the application the Council would not be advised of the change of land ownership, nor does the Council have any obligation to monitor any subsequent changes of land ownership. The Council explained the difficulties in determining who the land owner was at the time the request was received, advising that it may hold information about land ownership at a particular date only if the person submitting the information has provided that specific information. The Council therefore considers it would be unreasonable to search all of the information it holds across different services on the basis that it might identify the landowner at particular date, especially as the information it holds would not be captured or stored in such a way that would enable it to identify

the land owner. The Council advised the Commissioner that it holds information in the form of a deed of variation of the section 106 agreement completed on 5 December 2013, that identified the owner of the site at that date and as such the identity of the land owner could have changed by the time the request was received. In light of all of the difficulties in identifying the current land owner at the time the request was received the Council therefore considered that it was more appropriate to direct the complainant to the Land Registry to obtain details of the current land owner.

22. The Commissioner is satisfied that information regarding contact details of the applicants responsible for the development of the site was made available to the complainant. In relation to the identity of the land owner the Commissioner's view is that the Council incorrectly applied section 21 of the FOIA as this matter should have been considered under the EIR. The Commissioner accepts the explanation provided by the Council in terms of the difficulties in determining who the land owner was on the date the request was received, however he considers that the Council should have provided details of the information it had received on 5 December 2013, explaining that ownership of the land could have changed hands in the intervening period before referring the complainant to the Land Registry.
23. In relation to questions 2, 3 and 4 the Council advised the complainant that there was no requirement for the Local Planning Authority to carry out consultation meetings in advance of submission of a planning application. It provided the complainant a copy of a planning statement submitted by Turley Associates which contained details of the applicant's pre-application consultation with neighbours and advised that it was not party to the pre-application consultation meetings and so was unable to provide any further details in relation to the matter as no additional information was held.
24. The complainant argued that the Council failed to respond to the question and complained that they had no knowledge of the meetings suggesting that they were deliberately not told about them.
25. In the Commissioner's view the complainant's arguments that they had no knowledge of the meeting is irrelevant to the consideration of whether the Council has complied with the EIR. The Commissioner is satisfied that he Council did respond to the questions raised and provided a copy of the information it held relevant to the request. The Commissioner is also satisfied with the Councils argument that it was not party to the pre-application consultation meetings and so no further information is held in relation to these parts of the request.

26. In relation to questions 5 and 15 the Council advised the complainant that health and safety matters are covered by the Building Regulations and The Building Control System. The Council further explained that the Building Regulations application was being dealt with by way of a Partner Application where the applicants determine that they wish to use a building control body in an authority of their choosing which in this case is the London Borough of Lewisham. The Council advised the complainant that the application had been conditionally approved by the London Borough of Lewisham and to contact them directly for the information.
27. The complainant argued that the response suggested the Council are unconcerned about the health and safety implications and questioned why the Council would leave such health and safety matters to the developer to resolve.
28. The Council advised the Commissioner that when an application for building regulation approval is dealt with under a 'partner' arrangement the application is submitted to the partner authority, in this case the London Borough of Lewisham. The Council explained that the partner authority is responsible for preparing the necessary applications and will hold its own information in connection with the application adding that all details and drawings submitted to the partner authority should be forwarded to the Council. The Council further explained that because the partner authority assumes responsibility for the preparation of the application, documentation is sent en bloc and is not catalogued by reference to its content, therefore the information cannot be readily searched for specific subjects.
29. In relation to question 5 the Council provided the Commissioner with a letter from the London Fire and Emergency Planning Authority to the London Borough of Lewisham consisting of advice given in relation to the planning proposals. The Council could not confirm whether it held the information at the time of the request and explained that it had been obtained from Lewisham Council in response to the Commissioner's enquiries.
30. The Council also advised the Commissioner that a turning head is shown in plan number 0103C which is one of the planning application approved plans which was subsequently provided to the complainant in response to a further request. However the Council also confirmed that a turning head appears on drawing number 11(100) which was submitted to the Council on 7 March 2014, as part of the building regulation approved drawings. The Council explained that this is a further example of the difficulties in retrieving information submitted en bloc which is neither recorded or indexed by reference to the specific subject of the request, in this case the space for a fire engine to effect a three point turn, as the



drawing does not make reference to a 'turning head' but is simply referred to as 'proposed site plan'.

31. The Commissioner is unable to determine whether the letter from the London Fire and Emergency Planning Authority was held at the time of the complainant's request, however he notes that the date of the letter is 24 December 2014 and so it would be reasonable to suggest that the information was likely to be held by the Council when the request was received. The Commissioner accepts the Council's explanation for the difficulties in identifying the building regulation approved drawing which contained information relating to the space for a fire engine to effect a three point turn but notes that the information was held at the time of the request and should therefore have been provided to the complainant. The Commissioner therefore finds the Council in breach of regulation 5(1) of the EIR for not making this information available.
32. In relation to question 15 the Council advised the Commissioner that it had identified Report No. 10401 – Ashmere Soil Laboratories – 'Report on an investigation of ground conditions' and again explained that this formed part of the en bloc submissions of documents from the partner authority and therefore the particular subject matter is not readily identifiable. The Council confirmed that the report was received on 28 February 2014 and was therefore held at the time of the request.
33. The Council also advised the Commissioner that in its original response reference should have been made to the information held in the approval of details application under reference 13/04167/DET. These documents include the officer's delegated decision report dealing specifically with the issue of a petrol station having previously been on the site, a land contamination survey and a follow up letter.
34. The Commissioner notes that although the Council did not provide a copy of the information held in the approval of details application under reference 13/04167/DET this information is available online via the Council's planning portal. However the Commissioner finds the Council in breach of regulation 5(1) of the EIR in not providing the complainant with a copy of the Ashmere Soil Laboratories report which it held at the time of the request.
35. In relation to questions 6, 7, 8, 12 and 13 the Council provided a copy of the published officer report presented to the Planning Applications Committee and advised that the time site notices were placed and the exact locations of the site notices was not recorded as it is not a statutory requirement under the Town and Country Planning (Development Management Procedure) (England) Order 2010 to do so. The Council also provided copies of the examples of notifications sent including a neighbour consultation letter, site notice and press advert.



36. The complainant argued that the Council refused to answer questions 7, 12 and 13 and disputed the Council's claim that notices were placed.
37. In the Commissioner's view the information requested by the complainant was provided by the Council. The Commissioner is unable to address the complaint about whether the notices were actually placed, however he is aware that the Local Government Ombudsman considered this complaint and found in the Council's favour. The Commissioner is satisfied with the Council's argument that no information is held regarding the time notices were placed and their exact locations as it is not a statutory requirement to record such information.
38. In relation to questions 9 and 10 the Council again referred to the published officer report and also provided a copy of the Planning Applications Committee minutes and the Transport Statements submitted by the applicant. It also advised the complainant that a parking survey had not been submitted with the application.
39. The Complainant argued that the Council failed to confirm the time and date the parking survey was done as well as refuting the findings of the Transport Statement.
40. The Commissioner is satisfied that the information requested has been provided. The information provided by the Council confirmed that no parking survey was submitted with the planning application and therefore it would not be able to confirm the time and date as it does not hold this information. The complainant's view that the findings were incorrect is irrelevant to the consideration of whether the Council has complied with the EIR.
41. In response to question 11 the Council provided a list of all neighbours consulted as part of the Local Planning authority's statutory consultation and included a map denoting all consulted properties with an 'X'.
42. The complainant has argued that the Council provided a fraudulent list as none of the residents mentioned on the list received a letter.
43. The Commissioner is unable to address complaints about the veracity of information provided in response to a request. However he is aware that this aspect of the complaint was investigated by the Local Government Ombudsman who found in the Council's favour. Taking this into account the Commissioner is satisfied that the complainant has been provided with the information the Council holds in relation to this matter.
44. In response to questions 14, 16 and 19 the Council advised that it did not hold any information on employee details of third party organisations and advised the complainant to raise the questions with

the developer. In response to question 19 the Council did provide an email it was copied into between Hambridge Homes and the complainant regarding the developers offer to enter into dialogue with complainant.

45. The complaint argued that the Council failed to answer these questions and queried the responses given suggesting that the Council had provided a vague legal answer which would allow them to refuse to answer the question.
46. In the Commissioner's view the Council is correct in stating that it does not hold the information requested as it related to information which would be held by the developer.
47. In response to question 20 the Council confirmed that it held 47 applications submitted by Hambridge Homes and one had been refused. It provided a link to its Planning Applications Database where all the applications were available to view.
48. The complainant questioned the relationship between the developer and the Councils planning department and suggested the relationship should be investigated.
49. Again, this is a matter that is outside the Commissioner's remit, and therefore not one he can reach a view on. The Commissioner is satisfied that the Council provided the information it holds in relation to this part of the request. The complainants query as to the veracity of the information is irrelevant to whether the Council has complied with the EIR in terms of the provision of the information requested.
50. In response to question 21 the Council confirmed that it is the local planning authority that is empowered by law to exercise statutory town planning functions within its administrative area.
51. The complainant queried the response suggesting the Council provided a vague answer.
52. The Commissioner is satisfied that the Council responded to this request and was clear in explaining its relationship with the developers.
53. In response to question 22 the Council advised that it was unable to answer the question due to its speculative nature explaining that the builder has a duty of care not to damage adjoining building but the likelihood of homes being damaged during construction works was not a material consideration in the assessment of the planning application as it is a common law issue and does not fall within the Planning Acts of Building Regulations.

54. The complainant argued that the Council did not respond to this question.
55. The Commissioner is satisfied that the Council would not hold information about how the drilling will affect the structures of the surrounding dwellings.
56. The complainant's concerns have largely related to matters outside of the EIR and relate to the handling of the planning application itself the majority of which have been addressed by the Local Government Ombudsman who found no evidence of fault by the Council. Where the complainant has queried the information provided by the Council they have challenged the veracity of the information provided or simply stated that the Council has not answered the question. However it is clear to the Commissioner that the questions have been answered. The Commissioner considers that the complainant's issues with the response they have received to the request are largely due to disagreeing with the information provided based on a fundamental objection to the development itself rather than a valid concern that the Council has not complied with its obligations under the EIR.
57. The Commissioner is therefore satisfied that the majority of the environmental information held by the Council was made available in response to the complainant's request. However in relation to questions 5 and 15 the Commissioner finds the Council in breach of regulation 5(1) of the FOI for not making available information relating to fire safety and ground contamination.

## Right of appeal

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58. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

59. 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.
60. 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** .....

**Rachael Cragg**  
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