

Environmental Information Regulations 2004

Decision notice

Date: 9 March 2018

Public Authority: London Borough of Merton

Address: foi@merton.gov.uk

Decision (including any steps ordered)

1. The complainant has requested documents relating to two specific planning applications.
2. The Commissioner's decision is that the London Borough of Merton ("the London Borough") failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the Regulations"). The London Borough has also failed to carry out an internal review within 40 working days and has therefore also breached Regulation 11(4) of the Regulations.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Reconsider its response to the request and notify the complainant of the outcome of that reconsideration in accordance with Regulation 11 of the Regulations.
4. 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 a contempt of court.

Request and response

5. On 22 March 2017, the complainant wrote to the London Borough and requested information in the following terms:

"[I] request the following information from Merton Local Authority Planning Department

1. *The pre planning viability assessment submitted in support of the planning application for planning consent reference number 11/P2254;*
 2. *The pre commencement viability assessment in relation to planning consent reference number 11/P2254;*
 3. *The completion viability assessment in relation to planning consent number reference number 11/P2254; [sic]*
 4. *Any other viability assessments associated with planning consent reference number 11/P2254;*
 5. *The financial contributions matric calculation for planning application number 15/P4731;*
 6. *The viability assessment prepared by Quod for planning application number 15/P4731.*
 7. *Any other viability assessments of financial contributions matric calculation associated with planning consent reference number 15/P4731;*
 8. *The affordable housing contribution payable in respect of planning consent reference number 11/P2254; and the date paid or if not paid the date when payment is due*
 9. *The affordable housing contribution payable in respect of planning consent reference number 15/P4731; and the date paid or if not paid the date when payment is due*
 10. *All correspondence between the applicant of planning application number 15/P4731 and their representatives and the London Borough of Merton concerning the viability assessments, the financial contributions calculations and any negotiations regarding these matters and the applicant's agreement to pay the financial contributions."*
6. The London Borough acknowledged the request on 12 May 2017 and, after having been chased on numerous occasions, provided some information on 10 October 2017.
 7. The complainant requested an internal review of the way her request had been handled on 30 October 2017. She stated that some of the requested information had not been provided and that no explanation had been provided for the omission. The Council formally acknowledged her request for an internal review on 1 November 2017.

Scope of the case

8. The complainant contacted the Commissioner on 29 November 2017 to complain about the way her request for information had been handled. In particular, she was unhappy that she had still not been provided with the outcome of the internal review which she had requested.
9. In line with her usual practice, the Commissioner wrote to the London Borough on 26 January 2018, requesting it issue the outcome of its internal review within 20 working days. This correspondence was neither acknowledged nor responded to.
10. At the date of issuing this decision notice, the London Borough has still not notified the complainant of the outcome of the internal review she requested on 30 October 2017.
11. The complainant contacted the Commissioner on 26 February 2018 to request a decision notice considering the London Borough's compliance with the Regulations.
12. The Commissioner considers that the scope of this investigation is to consider whether the London Borough has complied with Regulations 5(2) and 11(4) of the Regulations.

Reasons for decision

13. Regulation 5(1) of the Regulations states that:

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

14. Regulation 5(2) of the Regulations states that:

"Information shall be made available....as soon as possible and no later than 20 working days after the date of receipt of the request."

15. Regulation 11 of the Regulations states that:

(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the 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.

(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which

the applicant believes that the public authority has failed to comply with the requirement.

(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.

(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—

(a) the failure to comply;

(b) the action the authority has decided to take to comply with the requirement; and

(c) the period within which that action is to be taken.

16. From the evidence provided to the Commissioner in this case, it is clear that the London Borough failed to issue a substantive response to the request within 20 working days and has therefore breached Regulation 5(2) of the Regulations.
17. From the evidence provided to the Commissioner in this case, it is clear that the London Borough has failed to notify the complainant of the outcome of the internal review that she requested within 40 working days and has therefore breached Regulation 11(4) of the Regulations.

Right of appeal

18. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Alun Johnson
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF