

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 May 2022

Public Authority: London Borough of Croydon

Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR0 1EA

Decision (including any steps ordered)

1. The complainant requested information from the London Borough of Croydon ("the Council") relating to a planning application and notice. By the date of this notice the Council had not issued a substantive response to this request.
2. The Commissioner's decision is that the Council has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Council 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.
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

5. On 2 January 2022, the complainant made the following request for information to the Council:

“FOI request Point 1:

- Please confirm the actual date that [name redacted], on behalf of the Council, considers the notice to have been served. By her own account, it was not 26 September 2019. She may wish to familiarise herself with the law on legal service of notice.

FOI Request Point 2:

- Does the Council consider the use of backdated letters acceptable in serving notice?

[Name redacted] confirms that if a notice is incorrectly served, the applicant must re-serve correct notice and that a further 21 days would be allowed. On that basis, since the notice was defective she must now ask the developer to serve notice correctly, allow 21 days for representations and return the application to the Committee.

[Name redacted] avoids providing a full response to the question about the development failing mandatory policy on the location of the doors.

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?

The Council's own documents confirm that [name redacted] and her team considered the development overbearing, overdevelopment, too big for the site, causing harmful enclosure, out of rhythm of the street, and that privacy issues had not been resolved. [Name redacted] now claims that the development evolved and these issues were resolved.

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.

[Name redacted] has repeatedly directed me to documents that do not contain the information requested under the FOI. This is unlawful. The information requested here is not contained in the planning documents so [name redacted] must provide the actual difference in measurements.

[Name redacted] states that the legal costs so far - almost £10,000 including vat - are a result of legal proceedings against the Council. Given that the Council's solicitors have sent one letter to me inaccurately stating that I am unable to serve a PAP notice following the Council's resolution to grant and has not replied to my solicitor's PAP notice, this seems an astonishing amount to have spent.

FOI Request Point 7

- Please provide a full breakdown of legal costs relating to [reference redacted] on my land
- Please provide copies of the invoices relating to [reference redacted] on my land

[Name redacted] avoids answering the question that the planning committee was not advised that the development failed TLP21 - the requirement for the outdoor communal amenity space to be overlooked. Instead she fudges a response by referring to amenity space that is provided. The louvres - designed to provide privacy to my property - must also prevent the communal garden being overlooked - this is in breach of TLP21. They cannot simultaneously protect the privacy of my home and provide a view of the communal garden (presumably a safety issue).

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?

The Planning Officer's report presented planters on the rear balcony as a solution to the privacy issues that balcony causes and the planning officer confirmed this at Committee. However, by the Council's own admission privacy issues were 'not resolved' and subsequent correspondence confirms that in fact the privacy issues caused by the balcony have not yet been solved.

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?"

6. To date, a substantive response to the request has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 4 April 2022 to complain about the Council's failure to respond to this request.
8. The Commissioner contacted the Council on 13 April 2022 reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
9. Despite this intervention the Council has failed to respond to the complainant.
10. The scope of this notice and the following analysis is to consider whether the Council has complied with regulation 5(2) of the EIR.

Reasons for decision

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. From the evidence provided to the Commissioner in this case, it is clear that the Council did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that the Council has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR

Right of appeal

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

15. 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.
16. 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