

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 5 December 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 has requested information from the London Borough of Croydon ("the Council") in relation to a specific planning application. The Council originally advised that the information was publicly available, citing regulation 6(1)(b) of the EIR. The Council also advised that it does not hold any further information in relation to the request, citing regulation 12(4)(a) of the EIR.
2. The Commissioner's decision is that, on the balance of probabilities, the Council does not hold any further information and, therefore, regulation 12(4)(a) of the EIR is engaged. The Commissioner also finds that some of information in question is both publicly available and easily accessible. The Council was therefore entitled to rely on regulation 6(1)(b) of the EIR.
3. The Commissioner does not require the Council to take any steps as a result of this decision notice.

Request and response

4. On 12 August 2021, the complainant wrote to the Council and requested information in the following terms:

"I have asked repeatedly for information that you have failed to provide and failed to provide exemption. Once again please provide the

evidence and data that was used to make the following assessment in the planning officer's report:

8.17 As regards noise and disturbance, the proposed development would not result in undue noise, light or air pollution as a result of an increased number of occupants on the site. The increased number of units would increase the number of vehicle movements to and from the site, but this would not be significant and is not considered harmful.

In addition:

What will be the increase in the number of vehicle movements to the site?

On what basis have you concluded that this 'would not be significant'? Please provide evidence.

On what basis have you concluded that this 'is not considered harmful'? Please provide evidence and criteria.

17 residents, their guests, deliveries and others will be using my drive. As you know I was not consulted over this development and the developer falsified a certificate B to which you have failed to take any action. Please confirm how many hours per week I will not be able to access my home or the public driveway due to 'The increased number of units would increase the number of vehicle movements to and from the site' and the fact that this development has only one disabled and no other parking?"

5. The Council responded on 13 September 2021. It explained that some of the requested information is held, however, it is publicly available and, as such, it cited regulation 6(1)(b) of the EIR. The Council also explained to the complainant that requests can only be for recorded information and the remainder of the requested information cannot be provided, as it is not held in a recorded format.
6. Following an internal review, the Council wrote to the complainant on 16 November 2021. The Council referred the complainant to a document titled "Officer report and Technical Note 1 Parking Provision".
7. During the Commissioner's investigation, the Council amended its position and explained that it was also relying on regulation 12(4)(a) of the EIR, as other than the documents available on the Planning Portal, the information is not held by the Council.

Scope of the case

8. The complainant contacted the Commissioner on 27 November 2021, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this investigation is to determine if the information that is held is reasonably accessible and if any of the remaining requested information is held by the Council.

Reasons for decision

Is the requested information environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
11. The Commissioner considers that, as the requested information is for planning applications, it falls under regulation 2(1)(c), due to the information relating to plans likely to affect the element and factors referred to in 2(1)(a). The Commissioner therefore considers that the request should be dealt with under the EIR.

Regulation 6(1)(b) – publicly available and easily accessible

12. Regulation 6(1) of the EIR states that:

“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

 - (a) it is reasonable for it to make the information available in another form or format; or

(b) the information is already publicly available and easily accessible to the applicant in another form or format.”

13. The EIR should always be read in the context of the EU Directive and the Aarhus convention – from which the EIR derive. Both the Directive and the Convention that preceded it refer to the need to promote access to environmental information – so that it can be used to encourage public participation in environmental decision-making.
14. In the Commissioner’s view, Regulation 6(1)(b) should be understood in the context of Regulation 4 of the EIR which places an obligation upon all public authorities to make progressively available as much of the environmental information they hold as possible.
15. The EIR place an obligation upon public authorities, but they also provide public authorities with some protection. Where environmental information has already been made available, public authorities can shield themselves from some of the burden of responding to requests – either because would-be requesters have already found the information for themselves or because the public authority can, when a request has been made, simply point to the information already available. Therefore Regulation 6(1)(b) exists in part to protect public authorities from having to re-provide the same information continually – it also acts as an extra incentive for public authorities to make the environmental information available in the first place.
16. The Council has explained that all of the documents in relation to the planning application in question are available on the Planning Portal.
17. The Council advised the Commissioner that it has searched to see if any other information is held elsewhere, however it says that all of the information it holds is available on the Planning Portal.
18. The Commissioner has checked the Planning Portal during the investigation, and he is satisfied that it is easily accessible and easy to use. Therefore, he is satisfied that the Council was entitled to rely on regulation 6(1)(b) of the EIR to refuse to provide the information.

Regulation 12(4)(a) of the EIR - Information held / not held

19. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
20. Regulation 12(4)(a) of the EIR allows a public authority to refuse to provide the requested information if it does not hold it at the time of the request being received.

21. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
22. The Council has explained to the Commissioner that searches for the information had been undertaken on the case management system, as well as on Outlook, using the application reference number and the site address separately.
23. The Council also explained that it checked with the Planning Department which has advised, after further checks, that no additional information is held and anything that is held, is already available on the Planning Portal.
24. The Commissioner asked the Council to explain how the Planning officer had come to their conclusion in relation to the complainant's request.
25. The Council explained that the Parking Provision Technical Note was considered by the relevant Planning Officers, and it was reviewed in conjunction with the proposed plans for the site, prior to drawing conclusions and taking these into account in consideration of the application.
26. The Commissioner acknowledges why the complainant would consider that the Council would hold such information. However, there is no evidence to suggest that the Council holds this information or anything further relating to it. The Commissioner is satisfied with the Council's explanations of how the Planning Officers came to the conclusions that they did and that no further information is held that has not already been published on the Planning Portal.
27. Under the EIR, public authorities are not required to create information in order to comply with a request. In this case, the Commissioner is satisfied that all relevant information is on the Planning Portal and is not held elsewhere.
28. On this basis, the Commissioner finds that on the balance of probabilities, the council does not hold the requested information. The exception provided by regulation 12(4)(a) of the EIR is, therefore, engaged.

Regulation 12(1)(b) of the EIR - Public Interest Test

29. Regulation 12(1)(b) of the EIR requires a public interest test to be carried out if a request is refused under any of the exemptions set out under regulation 12 of the EIR.
30. However, as no further information has been found to be held, the Commissioner can only find that the public interest in maintaining the exemption at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because there is no information to disclose.

Right of appeal

31. 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

32. 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.
33. 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
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