

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 June 2022

Public Authority: London Borough of Croydon

Address: Bernard Weatherill House
8 Mint Walk
Croydon
CR10 1EA

Decision (including any steps ordered)

1. The complainant has requested information from the London Borough of Croydon ("LBC") relating to planning applications.
2. The Commissioner's decision is that LBC has failed to carry out a reconsideration (internal review) of a response it provided under the EIR within 40 working days. It has therefore breached regulation 11 of the EIR.
3. The Commissioner requires LBC to take the following steps to ensure compliance with the legislation.
 - Reconsider how it responded to the original request and inform the complainant of the outcome of that reconsideration in accordance with regulation 11 of the EIR.
4. LBC 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 26 October 2021, the complainant wrote to LBC and requested information in the following terms:

"Dear Croydon Borough Council,

I have been waiting for a response to the FOI request below for over 8 months. You have failed to respond. The FOI request is below which I am submitting again. You must now respond within 20 days.

Please provide the following:

1. What is the exact TOTAL height of the development?
2. What is the difference in height between the highest point of the development and the ground level of my home. This is not the same as the above - as you are fully aware the developer presented an inaccurate representation of the land gradient and relationship to my home but you continue to use misleading images
3. A full explanation as to why Development Management has regarded minimum distances required. As the entrances have been moved to the elevation facing my home the distance must equal the height of the development. The distance from the ground floor balconies to the actual edge of my home is 7 metres (potentially less). Even if the entrances were on Brownlow Road - which they are not - the minimum distance would be 18 metres. The entire development must be moved back by the height of the development.
4. A full explanation as to why the Council has failed to apply mandatory policy 3.1.1 of the London Plan.

You have already been given notice that I will be building a wall along my land. No entrances to the building will be visible from the street.

You have withheld every piece of information I have requested under FOI and data protection acts since November frustrating both your own complaints process and litigation.

If you are unable to meet the statutory deadlines for this request you must let me know and provide a full explanation as to why and the date that this will be received. If you are unable to provide any of the information requested above you must provide an explanation as to why."

6. LBC responded to the request on 11 February 2022.

7. The complainant requested an internal review on 20 March 2022, but LBC had not completed its review at the date of this notice.

Scope of the case

8. The complainant contacted the Commissioner on 22 April 2022 to complain about the way this request for information had been handled.
9. The Commissioner contacted LBC on 4 May 2022 to highlight the outstanding internal review and asked LBC to complete its reconsiderations within 10 working days.
10. Despite this intervention LBC has failed to respond to the complainant. On 31 May 2022, the complainant informed the Commissioner that the internal review remained outstanding.
11. The scope of the Commissioner's investigation is to determine whether LBC has complied with regulation 11 of the EIR.
12. For the avoidance of doubt, the Commissioner has not yet considered and therefore takes no position on whether LBC holds further information.

Reasons for decision

13. Regulation 11¹ of the EIR states that:

“(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.”

¹ <https://www.legislation.gov.uk/ukxi/2004/3391/regulation/11>

14. From the evidence presented to the Commissioner in this case it is clear that, in failing to carry out an internal review within 40 working days, LBC has breached regulation 11 of the EIR.

Right of appeal

15. 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

16. 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.
17. 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