



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER (INFORMATION RIGHTS)**

**EA/2015/0119  
Decision Notice Ref: FER0569249**

**WYATT PARK ROAD RESIDENTS' GROUP**

***Appellant***

**and**

**THE INFORMATION COMMISSIONER**

***Respondent***

**Hearing**

Held at Field House, London on 30 October 2015 as an oral hearing.  
Before: Dave Sivers, Pieter de Waal, and Judge Claire Taylor

**Decision**

The appeal is unanimously upheld in part for the reasons set out below, such that we find partially in favour of the Appellant.

**Steps to be taken**

The Council are required to comply with the steps set out in paragraphs 22 and 23 below and in the Appendix to this decision.

## Our Reasons

1. The background to this appeal is set out at paragraphs 4 to 6 of the Response of the Information Commissioner's ('the Commissioner') Response of 27 July 2015.
2. On 2 April 2014 the Appellant requested from the London Borough of Lambeth ('the Council'), the following as a 'public authority':
  - i. *"We would like ALL information you have on file about the waiver tree garages development site. We would need this to include the following..."* ('the Overarching Request'); and
  - ii. The Appellant then listed 22 specific questions which are set out in the Decision Notice and are repeated in the Appendix to this decision ('the Specific Questions').
3. We understand that, on 6 May 2014, the Council responded to the Appellant providing some information, and in other cases stating that the information was not held or was accessible elsewhere, citing s.21 of the Freedom of Information Act 2000 ('FOIA') as being applicable such that it did not need to be provided.
4. The matter progressed with the Commissioner issuing a decision notice on 14 April 2015, the findings of which are summarised at paragraph 10 of the Commissioner's Response of 27 July 2015.
5. The Appellant now appeals on grounds that are summarised at paragraph 12 of the Commissioner's Response.
6. The Commissioner maintained in his Response that the grounds did not identify any respect in which (a) the decision made by the Commissioner was not in accordance with the law or, (b) where the Commissioner's decision involved exercising a discretion, he should have exercised it differently. On 24 June, the Tribunal Registrar asked questions of the Appellant to help clarify its position. The Commissioner subsequently made Additional Submissions on 24 September 2015. At paragraph 7 of that document the Commissioner summarised the Appellant's submissions, which the Appellant confirmed to us was a fair summary. The Commissioner suggested that in view of this response, the Appellant had appealed the wrong decision notice. (The Commissioner had made a separate decision in relation to another request made by the Appellant, which is not the subject matter of this appeal.) The Appellant clarified their position at the hearing that the second request (which is not the subject of this appeal) was made as a consequence of not being given what they had asked for. However, they maintained that their Overarching Request included all aspects covered by paragraph 7 of the Commissioner's Additional Submissions. As far as we know, the Appellant made no submissions to the Tribunal prior to the hearing.
7. The Appellant attended the oral hearing and submitted lengthy written submissions. Although these were made out of time, we accepted them in view of the Appellant not being legally represented. Further detailed submissions were made in answer to the panel's questions, which were posed in order to help focus the Appellant on the issues relevant for the purposes of the appeal. These are summarised in the Appendix. The Commissioner did not attend the oral hearing. Whilst we directed that the Appellant's written submissions presented at the oral hearing be provided to the Commissioner, we did not convey to the Commissioner those submissions that were

made verbally by the Appellant in response to the panel's questions at the hearing. In view of rule 2 of the *Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 S.I. 2009 No. 1976 (L. 20)* ('the Rules') and the overriding objective of dealing with the case fairly and justly including:

- dealing with the case in ways which are proportionate to (a) the importance of the case; (b) the complexity of the issues; (c) the anticipated costs and the resources of the parties (and of the Tribunal);
- ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; and
- avoiding delay, so far as compatible with proper consideration of the issues;

We did not consider it appropriate for us to provide the Commissioner with the oral submissions. The Commissioner made the decision not to attend the hearing, such that any expectation to then be included in further submissions made at the hearing would not seem reasonable or in compliance with his duty under rule 2(4) of the Rules.

8. In their Notice of Appeal, the Appellant stated that they preferred an oral hearing but did not want the Council to be present at the hearing because the Appellant claimed that there had been a "tremendous amount of intimidation and threats" against them by both the Council and Hambridge Homes. The Council had not applied to be joined to this appeal and was not present at the hearing. At the direction of the Tribunal, the Appellant subsequently submitted to the Tribunal certain documents that she had referred to in the hearing. Contrary to our directions, the documents were not clearly labelled to show which document was being supplied to relate to which of the Specific Questions. However, acting proportionately within rule 2(2)(a) of the Rules, we have tried our best to decipher this. The documents included:
  - i. A document entitled '*Consultations for Reports to Planning Applications Committee*' which appeared to be 'Document 10' (*see below*); and
  - ii. A letter from R Thackray (a former Councillor for the Green Party) of 1 November 2015. This stated:
    - She and two other councillors had visited the portacabin office on the site of where Hambridge Homes were building, uninvited, on Friday 19 December 2014.
    - The purpose was to explore the allegations made by members of the Appellant of the conduct of the construction manager and, in particular, an allegation of harassment.
    - A spokesperson for the Appellant had said that the residents kept members' names secret because they had received aggressive threats from the Council via [X] and from Hambridge Homes to 'destabilise' their walls and to 'fix' them for making trouble.
    - The construction manager showed them plans on his wall. However, she was not certain whether they were dated 2014.
  - iii. A covering letter that noted that:
    - An email had been sent to the Council asking for confirmation that the 4 year old planning notes was the most current information the Council

had to hand. They claimed that the lawyer representing the Council had declined to answer.

- They were attaching an email from Streatham Councillor Scott Ainslee 'confirming far more up to date actual plans'. (The Tribunal notes that the only email received from Scott Ainslee was dated 2 Nov 2015 11:29:and did not confirm this.)

9. The covering letter referred to in paragraph 8iii also sought to make further submissions which were extremely long and intricate. As noted above, the Appellant had already introduced lengthy written submissions at the hearing which we accepted and carefully reviewed with their representative to ascertain the Appellant's arguments and to assist them. The Appellant's submissions had not been forthcoming prior to the hearing (*see above*), and they had been refusing to attend the hearing with a printed bundle after having not provided a proper address (with a correct name) for service. This non-compliance with case management directions had complicated matters, where the directions are designed to make the process fair to all parties and to ensure that the appeal runs smoothly. The Tribunal made allowances for the Appellant not being legally represented. The Appellant had clearly gone to considerable effort to make further submissions both at the hearing and thereafter. However the Tribunal needs to have regard to what is reasonable and proportionate. Regrettably, within that context, it was not acceptable, proportionate or fair to the other party or to the Tribunal to introduce yet further submissions after completion of the hearing. Parties have a duty under rule 2(4) of the Rules to (a) help the Tribunal to further the overriding objective and (b) co-operate with the Tribunal generally.

10. Additionally, we note that it had been made clear to the Appellant which further documents could be submitted after the hearing and that these would need to be provided quickly. We did not include further submissions within that list.

11. We have reviewed all of the material submitted to us even if not specifically referred to below. We would note that the bundle was missing key documents that we would normally expect to see in a bundle, in line with the *Hearing Bundles – Good Practice Guide 2015* issued by the Tribunal. These were:

- i. A clean copy of the Appellant's request (we were given a document at page 69 of the bundle that seemed to include this but it included subsequent notes from the Appellant).
- ii. The Council's response to the request. Instead we were provided with the covering email without the attachment.
- iii. The Council's full internal review. We were provided with a chart that was labelled in the index as the outcome of the internal review, however it contained the Appellant's subsequent comments so could not have been a clean version, and it did not contain the attachments referred to in the document.
- iv. The documents the Council claimed to have provided and/or to be available elsewhere.
- v. Attachments referred to in emails (for instance at page 76 of the bundle).

12. In view of the Council's decision not to apply to be joined as a party to the appeal and the Commissioner choosing not to attend the hearing, we did not consider it proportionate within the meaning of rule 2(2)(a)<sup>1</sup> of the Rules to seek this information. We took the view that there was sufficient information for us to come to a fair and just decision.

### The Task of the Tribunal

13. The Tribunal's remit is governed by s.58 of the Freedom of Information Act 2000 ('FOIA'). This requires the Tribunal to consider whether the decision made by the Commissioner is in accordance with the law and, where the Commissioner's decision involved exercising a discretion, whether he should have exercised it differently.

14. The Tribunal is independent of the Commissioner, and considers afresh the Appellant's complaint. It is not within our remit to consider or comment on the Council's compliance with any legislation aside from the Environmental Information Regulations ('EIR') or FOIA, or complaints of conduct in relation to the Commissioner's handling of the Appellant's complaint or, for instance, to comment on whether the development that is the subject matter of the request has or will have a detrimental impact. In this case, our remit is limited to considering whether the Council complied with the requirements under the EIR in responding to the Appellant's request. The Tribunal may receive evidence that was not before the Commissioner, and may make different findings of fact from the Commissioner.

### The Law

15. It is not in dispute that this appeal concerns the EIR. Regulation 5(1) EIR requires a public authority holding 'environmental information' to make it available on request, subject to exceptions. Environmental information is defined in regulation 2(1) to include: "*any information in written, ... electronic or any other material form 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...*" The information requested in this case relates to the state of the elements of the environment, and specifically to land.

16. We received very limited submissions on the application of the law. In the absence of this we set out our understanding of the law to the extent it is relevant to this case.

17. Public authorities are under a general duty under the EIR to disclose up to date information where it is requested:

*"Duty to make available environmental information on request*

**5.** - (1) *Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations,*

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<sup>1</sup> This provides: "(2) Dealing with a case fairly and justly includes— (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;"

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

*(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes..."*

**(Regulation 5)**

*"Form and format of information*

*6.—(1) 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—*

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

**(Regulation 6)**

18. We know from regulation 12 that public authorities do not have to provide the information to the extent to which an 'exception' applies and in all the circumstances of the case the public interest in applying the exception outweighs that of disclosure. In considering the exception and public interest, a presumption must apply in favour of disclosure:

*Exceptions to the duty to disclose environmental information*

*12. (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose*

*environmental information requested if—*

*(a) an exception to disclosure applies under paragraphs (4) or (5); and*

*(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*

*(2) A public authority shall apply a presumption in favour of disclosure...*

*(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*

*(a) it does not hold that information when an applicant's request is received...*

*(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9; ..."*

19. Under regulation 9 EIR, public authorities must provide advice and assistance to applicants seeking information.<sup>2</sup> This obligation is deemed to be satisfied where the authority has complied with a code of practice made under regulation 16 EIR:

**"9.— Advice and assistance**

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<sup>2</sup> It is noted that for the exception in regulation 12(c) to be 'engaged', the request for information must be formulated in too general a manner and the public authority must have complied with regulation 9.

*(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.*

...  
*(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.”*

**(Regulation 9)**

20. The code of practice<sup>3</sup> provides:

- i. The duty on the public authority is to provide advice and assistance “so far as it would be reasonable to expect the authority to do so”. (Para. 9 of the code).
- ii. “Where the applicant does not describe the information sought in a way which would enable the public authority to identify or locate it, or the request is ambiguous, the authority should, as far as practicable, provide assistance to the applicant to enable him or her to describe more clearly the information requested.” (Para. 16 of the code).

21. Onus of Proof: The onus of persuading the Tribunal to allow an appeal against a decision notice (or any part of it) rests on the Appellant. Accordingly, where we state below that we have no reason for instance to believe that a document is false or that the information is not held, then we must find in favour of the Commissioner in accepting that the relevant document is not false or that it is not held, as the case may be.

## **Our Findings**

### *The Overarching Request<sup>4</sup>*

22. Neither the Commissioner nor the Council seem to have addressed this part of the request. We note from the decision notice that the Commissioner excluded it when he copied the Appellant's information request into paragraph 6 of his decision notice. We also note that, in the course of investigating the complaint with the Council, the Commissioner's Office did not address this part of the request. Since the Commissioner was not present at the hearing, he also did not address the matter then. There is also no indication that the Council responded to this part of the request, or that it applied any FOI exemption or EIR exception to it, or that it sought to advise and assist the Appellant in compliance with regulation 9 of EIR. The Council had the opportunity to respond to the request in its entirety (including the Overarching Request) and to apply any exceptions that it considered it wished to rely on. It additionally chose not to be joined to this appeal. Accordingly, we now find that the Commissioner's decision notice is not in accordance with the law and we allow the appeal by substituting, in respect of this part of the request, the following notice:

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<sup>3</sup> This refers to Code of Practice on the discharge of the obligations of public authorities under the Environmental Information Regulations 2004 (SI 2004 No. 3391), issued under Regulation 16 of the Regulations, February 2005.

<sup>4</sup> See paragraph 2 of this decision.

**The Council has failed to comply with its obligation under regulation 5(1) of EIR, which provides:**

***5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part [2] and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.***

- i. The Council is required to provide the Appellant with the information specified in the Overarching Request in accordance with Regulation 5(1) of EIR within 10 days from the date of this decision save for as set out in subparagraph 22(ii) below.**
- ii. We may not order disclosure of any information that falls within Regulations 12(3) and 13. The Appellant has not presented submissions in relation to this exception for personal data. Having regard to the overriding objective rule 2 (see paragraph 7 above) and in particular the need to avoid unnecessary delay and act proportionately, to the extent that the information requested includes personal data of which the Appellant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with Regulation 13.**

*Specific Questions*<sup>5</sup>

23. Our findings in relation to the Specific Questions are set out in the Appendix to this decision in each row labelled 'Tribunal's finding'. To the extent that the Council did not adequately answer some of the Specific Questions, or failed to provide the Appellant with the most up-to-date documents that the Council held at the date of the request, or failed to advise and assist, we find that the Commissioner's decision notice is not in accordance with the law and we allow the appeal by substituting the following notice:

**In respect of Specific Questions 2, 3, 4, 6, 7, 9, 12, 17, 18, 19 and 22, the Council is required to comply with the steps set out in the Appendix within 10 working days.**

24. Our decision is unanimous.

Judge Taylor

25 November 2015

Promulgated 27 November 2015

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<sup>5</sup> See paragraph 2 of this decision.



**The Appendix:**  
**Specific Questions**

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| Appellant's Question      | <b>Question 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.</b>  |
| Council's Response        | <p><b>The Council's original response:</b> Planning application 10/04487/FUL was received on 23/12/2010 and granted planning permission on 20/12/2011. It provided the name and address of the applicant and its agent as listed on the planning application form; and the name and address of the person submitting discharge of condition applications and his agent.</p> <p>It stated that "details of the current owner of the site are publically accessible from Official Land Registry. Land Registry data is considered reasonably accessible to the public under the Freedom of Information Act 2000 (the Act) and, as such, the details of the owner are considered exempt under Section 21 of the Act. A link to the Land Registry website is included below: <a href="http://www.landregistry.gov.uk/public/property-ownership">http://www.landregistry.gov.uk/public/property-ownership</a>"</p> |
| Appellant's submission    | The Appellant accepts this position and has not appealed it.  |
| <u>Tribunal's finding</u> | <b>The Appellant has accepted this position and there are no further steps to be taken.</b>   |
| Appellant's Question      | <b>Question 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?</b>  |
| Council's Response        | <p>There is no requirement for the Local Planning Authority to carry out consultation meetings in advance of submission of a planning application. The Council can confirm that no consultation meetings were carried out by the Local Planning Authority in advance of submission of the planning application (ref: 10/04487/FUL).</p> <p>Details of the applicant's pre-application consultation with neighbours are contained within the submitted planning statement by Turley Associates (see Document 07 enclosed with this response).</p> <p>The Council were not party to the pre-application consultation meetings and is unable to provide any further details in response to this question as no information is held by the authority in relation to this part of your request.</p>  |
| Appellant's submissions   | The Appellant claimed there had been a meeting held by the Council, where residents were invited, and this is what they were referring to.  |

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|                         | The panel thought this might be a council planning committee meeting rather than a consultation meeting. The Appellant claimed that since under the EIR, the Council had a duty to advise and assist, they should have been consulted to ascertain which meetings the Appellant meant.  |
| Tribunal's finding      | <b>We consider that, given that the Council did not have consultation meetings, and the Appellant may not have been aware of the distinction between consultation meetings and committee meetings or of the correct use of terminology, the Council should have consulted the Appellant in accordance with its duty to advise and assist to determine whether the Appellant required copies of details of committee meetings where residents may have been present and able to make comments to the committee. <u>The Council is required within 10 working days to provide details of the council planning committee meetings relating to the development in accordance with terms of the request.</u></b> |
| Appellant's Question    | <b><i>Question 3: A list of names of all those that attended consultation meetings regarding the proposals of the Wavertree Garages Developers.</i></b>   |
| Council's Response      | As with question 2  |
| Appellant's submissions | As with question 2  |
| Tribunal's finding      | <b><u>As with question 2, the Council are required within 10 working days to provide details of the names of the persons who attended council planning committee meetings in relation to the development.</u></b>   |
| Appellant's Question    | <b><i>Question 4: What information was given to those that attended the meetings?</i></b>   |
| Council's Response      | As with question 2  |
| Appellant's submissions | As with question 2  |
| Tribunal's finding      | <b><u>As with question 2, the Council are required within 10 working days to provide the information given to those who attended planning committee meetings in relation to the development.</u></b>  |
| Appellant's Question    | <b><i>Question 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.</i></b>  |
| Council's Response      |   |
| Appellant's submissions | The Appellant does not appeal the response to this question.  |

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| Tribunal's finding      | This question is outside the scope of this appeal.   |
| Appellant's Question    | <b>Question 6: The date and time that the required notifications were placed on display making local residents particularly those whose gardens back onto the site.</b>  |
| Council's Response      | The Local Planning Authorities statutory consultation is detailed within the published officer report presented to Planning Applications Committee. This is attached to this response as Document 01 for ease of reference. This document is a public document and is available for download on the council's Planning Applications Database by navigating to the following location: <a href="http://modern.gov.lambeth.gov.uk/ieListDocuments.aspx?CId=600&amp;MIId=7598">http://modern.gov.lambeth.gov.uk/ieListDocuments.aspx?CId=600&amp;MIId=7598</a><br>The time that the site notices were posted is not detailed within the officer report as this is not a statutory requirement. No information is held by the authority in relation to this part of your request |
| Appellant's submissions | The Appellant has stated that they did not receive Document 01, and the link produced a page on Lambeth's site stating 'Access denied Page does not exist.' The Appellant further claimed that the Town and Country Planning Act (TCPA) requires notifications.  |
| Tribunal's finding      | <ol style="list-style-type: none"> <li>1. <b>Since Document 01 was not in the bundle, and the link does not work, we have no reason to doubt the Appellant's submissions. <u>The Council is required to provide this document within 15 working days.</u></b></li> <li>2. <b>Whilst the Appellant stated that they would look to provide proof that the TCPA required the public authority to keep records such that material in relation to Questions 6 and 7 must be held, the Appellant did not provide these. Accordingly, we have no reason to find that aside from the material in Document 01, the Council held any other information.</b></li> </ol>   |
| Appellant's Question    | <b>Question 7: What form did notification of local residents take? Was it leaflets, emails, letters, newspaper notices... How many were printed/sent?</b>  |
| Council's Response      | See response to question 6.  |
| Appellant's submission  |  |
| Tribunal's finding      | See our findings at point 2 in question 6, <b>which also apply to this question.</b>   |
| Appellant's Question    | <b>Question 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?</b>   |
| Council's Response      | Details of the number of site notices posted is contained within the published officer report. The site notices were placed 'near to the site' as outlined by the case officer. The exact locations are not recorded   |

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|                         | on the application file. No information is held by the authority in relation to this part of your request.  |
| Appellant's submissions | The Appellant did not believe that no information was held.   |
| Tribunal's finding      | <b>The Appellant did not believe that no information was held. Since the Council did not attend the hearing, and the Appellant had not wanted it to, there was no way for the Tribunal to probe whether the information was held. In view of this, we have not been given compelling reason to be able to find that the information is held, and save for providing the document as set out in our finding in question 6, no steps are required to be taken.</b>  |
| Appellant's Question    | <b><i>Question 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?</i></b>   |
| Council's Response      | <p>An officer assessment of car parking is detailed within Section 7.7 of the published officer report, which is a publically accessible document. Further officer commentary on parking is detailed within the published PAC minutes, which is attached as Document 03 for ease of reference.</p> <p>This document is a public document and is available for download on the council's Planning Applications Database by navigating to the following location:<br/> <a href="http://modern.gov.lambeth.gov.uk/ieListDocuments.aspx?CId=600&amp;MId=7598">http://modern.gov.lambeth.gov.uk/ieListDocuments.aspx?CId=600&amp;MId=7598</a></p> <p>The officer report advises that no parking survey was submitted with the planning application (see paragraph 7.7.4). A copy of the Transport Statement submitted by the applicant is attached as Document 08 for ease of reference.</p> <p>This document is a public document and is available for download on the council's Planning Applications Database by navigating to the following location:<br/> <a href="http://planning.lambeth.gov.uk/online-applications/search.do?action=simple&amp;searchType=Application">http://planning.lambeth.gov.uk/online-applications/search.do?action=simple&amp;searchType=Application</a></p> |
| Appellant's submissions | The Appellant did not dispute that they had received Documents 03 and 08.   |
| Tribunal's finding      | <p><b>Since the Tribunal has not been showed any of the documents mentioned in the Council's response, it is not clear to the Tribunal that the Council has fully answered the question as to whether it held information in relation to this question. We understand from the Appellant that the answer is that the Council had undertaken an impact assessment for another area and the results of this were duplicated for this development.</b></p> <p><b><u>The Council must respond within 10 working days as to whether it holds further information to complete the response to this request and provide it, or otherwise confirm that the complete</u></b></p>   |

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|                         | <b><u>answer is that the Council had undertaken an impact assessment for another area and the results of this were duplicated for this development.</u></b>   |
| Appellant's Question    | <b><i>Question 10: Please specify the impact these proposed developments will have on current local parking. Along with an explanation of how the impact was calculated.</i></b>  |
| Council's Response      | An officer assessment of car parking is detailed within Section 7.7 of the published officer report, which is a publically accessible document. Further officer commentary on parking is detailed within the published PAC minutes, which is attached as Document 03 for ease of reference.<br>A copy of the Transport Statement submitted by the applicant is attached as Document 08 for ease of reference.   |
| Appellant's submissions | The Appellant refuted Lambeth's findings that the development would not have a detrimental impact on local parking, as most residents find that they can't currently find anywhere to park on their road.   |
| Tribunal's finding      | <b>We have not been shown a copy of the published officer report. However, the Appellant has not disputed that it has not been given an answer to this request, albeit the Appellant may not agree with the answer. No steps are required to be taken.</b>  |
| Appellant's Question    | <b><i>Question 11: Please list exactly who - which of the residents - were contacted to make them aware of the proposed plans for developing the Wavertree site</i></b>   |
| Council's Response      | Attached Document 10 contains a list of all neighbours consulted as part of the Local Planning Authority's statutory consultation. A map is included at the end of this document with all consulted properties denoted with an 'X'.   |
| Appellant's submissions | Lambeth provided a fraudulent list as literally not one of the residents mentioned on the list Lambeth provided received a letter. It looks as if Lambeth merely went on to Google maps and typed up a list. We are ALL prepared to swear and affidavit/oath to the fact that we did NOT receive a letter! We know because we checked with them ALL i.e. knocked on literally EVERY door. We'd also like to see a copy of the letter Lambeth claim to have sent. We'd also like to know the date the letter was sent and the method of post used. |
| Tribunal's finding      | <b>The Appellant provided Document 10 after the hearing. We found no reason to doubt its authenticity from reviewing it, although the list is confusing because the title seems at one place to suggest that it is a list of neighbours who were consulted, and elsewhere that it is a list of neighbours who submitted responses (which, we assume, also means that they were consulted).</b>  |
| Appellant's Question    | <b><i>Question 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.</i></b>   |

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| Council's Response      | Details of the Local Planning Authority's statutory consultation is detailed within the published officer report presented to Planning Applications Committee. This is attached to this response as Document 01 for ease of reference.  |
| Appellant's submissions | Lambeth failed to respond to this question.   |
| Tribunal's finding      | <b>See our findings at point 2 under Question 6, which also apply to this question.</b>   |
| Appellant's Question    | <b><i>Question 13: Please supply examples of the notifications that were sent.</i></b>  |
| Council's Response      | Copies of the neighbour consultation letter, site notice and press advert are attached as follows:<br>Document 11 - Neighbour consultation letter<br>Document 12 - Copy of site notice<br>Document 13 - Copy of press advert  |
| Appellant's submissions | The Appellant received these documents but thinks they are bogus as they did not come on Council headed paper.  |
| Tribunal's finding      | <b>We were not provided with evidence to be able to find that there was information held that the Council had not supplied, and the Council were not present for us to examine the situation further. No steps are required to be taken.</b>  |
| Appellant's Question    | <b><i>Question 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.</i></b>      |
| Council's Response      | The Council does not hold information on employee details of third party companies or organisations. No information is held by the authority in relation to this part of your request.  |
| Appellant's submissions |   |
| Tribunal's finding      | <b>We were not provided with evidence to be able to find that there was information held that the Council had not supplied, and the Council were not present for us to examine the situation further. No steps are required to be taken.</b>  |
| Appellant's Question    | <b><i>Question 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?</i></b> |
| Council's Response      | N/A   |
| Appellant's submissions | The Appellant does not appeal the response to this question.  |
| Tribunal's              | <b>This question is outside the scope of this appeal.</b>   |

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| finding                 |  |
| Appellant's Question    | <b>Question 16: When did Wavertree Garage developers inform the *local residents of their proposed plans for schedule of works?</b>  |
| Council's Response      | This information isn't held by the council. We would advise you to direct this question to the developer.  |
| Appellant's submissions | The Appellant did not believe the information was not held by the Council.   |
| Tribunal's finding      | <b>We were not provided with evidence to be able to find that there was information held that the Council had not supplied, and the Council were not present for us to examine the situation further. No steps are required to be taken.</b>   |
| Appellant's Question    | <b>Question 17: How will the proposed development affect the houses/dwellings surrounding it enjoyment of daylight and sunlight?</b>   |
| Council's Response      | An officer assessment of residential amenity impacts including daylight and sunlight is detailed within Section 7.4 of the published officer report, which is a publically accessible document. An Overshadowing Report was submitted by the applicant as part of the planning application submission. This is a public document and is available for download on the Council's Planning Applications Database by navigating to the following location:<br><br><a href="http://planning.lambeth.gov.uk/onlineapplications/search.do?action=simple&amp;searchType=Application">http://planning.lambeth.gov.uk/onlineapplications/search.do?action=simple&amp;searchType=Application</a> |
| Appellant's submissions | The Council supplied a report that was from 2010-2011. The Appellant claimed that a Councillor for the Green Party told the Appellant that he had visited Lambeth's offices and a more up to date report exists.   |
| Tribunal's finding      | <b>After the hearing we were provided with additional documents: A letter from R Thackray and an email from Scott Ainslee. Neither of these documents indicate that the report they saw was more up to date than 2010-2011. We therefore have no reason to conclude that the Council did not provide the most up to date report that existed at the time of the request. However the Council did not make clear whether it supplied the most up to date report in accordance with EIR</b><br><br><b><u>The Council are required to confirm within 10 working days whether a more up to date report existed at the date of the request, and if so to provide it.</u></b>                |
| Appellant's Question    | <b>Question 18: What impact will the proposed development have on the privacy of the dwellings surrounding the site?</b>   |
| Council's Response      | An officer assessment of residential amenity impacts including privacy impacts is detailed within Section 7.4 of the published officer report, which is a publically accessible document.  |
| Appellant's             | As with their submissions for Question 17.   |

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| submission             |   |
| Tribunal's finding     | <b>See our findings for Question 17, which also apply to this question.</b>   |
| Appellant's Question   | <b><i>Question 19: When will the developers of the site begin communicating with local residents? Plan and schedule</i></b>   |
| Council's Response     | <p>This is a question that should be directed to the developer (Hambridge Homes) as the Council is unable to respond on behalf of, or pre-empt the actions of, a third party.</p> <p>It is noted that the Council's Chief Executive was copied into a recent e-mail correspondence between Mr James Overton (Hambridge Homes) and a representative of WPRRG. This correspondence documents Mr Overton's offer to enter into dialogue with WPRRG either by telephone or an on-site meeting. A copy of this correspondence is attached as Document 14.</p> <p>It should also be noted that the Council's Environmental Health teams have carried out investigations into the current construction activity on the site in response to concerns expressed by local residents. This has included site visits to the property and dialogue with the developers</p> |
| Appellant's submission | The Appellants stated that they had contacted Hambridge Homes who referred them back to the Council. They claimed that given the agreement between Hambridge Homes and the Council required the former to communicate with local residents, it must hold the requested information in order to know whether Hambridge Homes was complying.  |
| Tribunal's finding     | <b><u>The Council have not addressed this question in terms required under the EIR. They should respond as to what information they hold in relation to the question and provide the requested information with 10 working days.</u></b>  |
| Appellant's Question   | <b><i>Question 20: How many other developments from this particular development company/organisation within this borough has Lambeth 'green lit'.</i></b>   |
| Council's Response     | N/A   |
| Appellant's submission | The Appellant does not appeal the response to this question.  |
| Tribunal's finding     | <b>This question is outside the scope of this appeal.</b>   |
| Appellant's Question   | <b><i>Question 21: What relationship does Lambeth have with the developers of Wavertree Garages?</i></b>  |
| Council's Response     | The London Borough of Lambeth is the local planning authority that is empowered by law to exercise statutory town planning functions within its administrative area. As detailed in the previous response, the Local Planning Authority has determined 47 planning applications submitted by Hambridge Homes Limited.   |
| Appellant's submission | Lambeth provided another cagey seriously vague 'legal' answer, as in<br>to  |



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|                        | their knowledge’.  |
| Tribunal's finding     | <b>The Council has responded that Hambridge Homes Limited is a planning applicant and we have no reason to find that this is not a comprehensive response to the question.</b>   |
| Appellant's Question   | <b><i>Question 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.</i></b>  |
| Council's Response     | The Council is unable to provide a response to this question due to its speculative nature. In general terms, the builder has a duty of care not to damage adjoining buildings, but this does not fall within the Building Regulations, instead being a common law issue. Any damage claimed to be caused by the builder will of course have to be fully justified. This would have to be by way of documented evidence of the current state of a building prior to the works commencing and what has caused the purported damage because of works being undertaken on site. |
| Appellant's submission | The Appellant states that given three garden walls had fallen down they consider information on this must be held. If the question was too speculative, the Council has a duty to advise and assist to help make the question more understandable.   |
| Tribunal's finding     | <b>The Council has not responded as to whether it holds any information that would respond to this question. <u>They should respond as to what information they hold in relation to the question and provide the requested information with 10 working days.</u></b>   |