

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2015

Public Authority: Ascham Homes
Address: Willow Homes
869 Forest Road
London
E17 4UH

Decision (including any steps ordered)

1. The complainant has requested building permission for a specified address from Ascham Homes, which is an Arm's Length Management Organisation ("an ALMO") that manages housing stock owned by the London Borough of Waltham Forest ("the council"). The ALMO responded that the information was not held, which the complainant subsequently contested.
2. The Commissioner's decision is that on the balance of probabilities the ALMO does not hold the requested information. However, in failing to provide a response within the time for compliance, the ALMO breached section 10(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 10 March 2014, the complainant wrote to the ALMO and requested information in the following terms:

"The information I am seeking is reference to my stage 2 complaint with the Chief Executive Department, the response included reference to permission being given by Ascham Homes for the unauthorised building alterations ([REDACTED ADDRESS]) which I reported over 2 years ago to Ascham Homes. The unauthorised works was in and outside of a shared building. The

officer dealing with my complaint was [REDACTED NAME]. [REDACTED NAME] kindly informed me that the decision not to have the authorised alterations removed was based on individual facts and on its merits. I requested details of when decision(s) was made, the facts and merits of the case. I stated that I had a right to know the full details of the decision and its facts, as the decision had adversely effected the shared building I live in and my own enjoyment of my property ([REDACTED ADDRESS]). [REDACTED NAME] declined to offer full details of the decision. Under FOIA Act I would like to request full and transparent details of the decision and its supporting facts. I await your confirmation of receipt of this request."

5. The ALMO responded on 22 April 2014 and explained that it was ascertaining whether any relevant information was held.
6. The complainant subsequently wrote to the ALMO on 30 April 2014 and clarified that he sought the presumed building permission that the ALMO had issued. The Commissioner understands that the ALMO did not respond.

Scope of the case

7. The complainant contacted the Commissioner on 27 May 2014 to complain about the way his request for information had been handled. At this time the complainant explained that he is a leaseholder in a shared building, and that a third party, who is also a leaseholder, had allegedly undertaken building alterations without receiving building permission from the ALMO. The complainant explained that they understood the ALMO had since decided against taking enforcement action against the third party, and that on this basis he understood that retrospective building permission must have been granted.
8. The ALMO subsequently confirmed its position to the Commissioner on 12 June 2014 and explained that it did not consider the requested building permission to be held.
9. The Commissioner therefore considers the scope of this case to be the determination of whether the ALMO, on the balance of probabilities, is likely to hold the requested building permission.

Reasons for decision

Section 1(1) – Duty to make information available on request

10. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.

The complainant's position

11. The complainant has advised the Commissioner that he considers specific correspondence he has received refers to retrospective building permission being given by the ALMO. This correspondence includes the outcome of a Stage 2 complaint to the council, and emails from the council on the 3 and 5 March 2014 that allude to the ALMO deciding not to undertake enforcement action about the building alterations.

The ALMO's position

12. The ALMO has advised the Commissioner that at the time of the complainant's request it did not hold the requested building permissions. To support this, the ALMO has provided the Commissioner with correspondence between itself and the third party which refers to the ALMO being aware of no such permissions being granted.
13. The ALMO has also confirmed that to ensure its position is correct, it has undertaken an electronic search of the leasehold files for both the complainant and the third party, which it would expect to contain such information should it be held.
14. The ALMO has further confirmed that it has reached its position having consulted with relevant officers, who have only begun enquiries with the third party following the complainant bringing the matter to their attention.

The Commissioner's conclusion

15. In the circumstances of this complaint, the Commissioner must decide on the balance of probabilities whether the building permission is likely to be held by the ALMO.
16. In reaching a decision, the Commissioner has first considered the content of the correspondence between the complainant and the ALMO. However, having reviewed this correspondence, there is no reference to any building permission being held, only that the ALMO had decided not to undertake enforcement action. While the Commissioner understands

the complainant's logic for raising this detail, he does not consider that this is evidence that the building permission must automatically be held.

17. Secondly, the Commissioner has considered the ALMO's own searches for information, in addition to the provided correspondence between the ALMO and the third party. Having considered the breadth of these searches, and the ALMO's own background correspondence with the third party that the Commissioner has had sight of, there remains no clear indication that the building permission is held. It is evident to the Commission that the ALMO is not the public authority that would be responsible for issuing any such planning permission, and there is no indication that it has either applied for such permission, or instructed the third party to do so.
18. Having considered the above, the Commissioner has therefore concluded that the requested information is unlikely to be held.

Section 10(1) – Time for compliance

19. Section 10(1) requires that where a public authority has a duty under section 1(1), it must comply with that duty within twenty working days following receipt of the request.
20. In this case, the Commissioner has identified that the ALMO did not respond during the time for compliance. The ALMO therefore breached section 10(1).

Right of appeal

21. 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

22. 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.
23. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF