

[REDACTED]

2 October 2013

**Ref: FOI 13-026**

Dear [REDACTED]

Thank you for your request for information, received on 5 August 2013. You asked us the following question:

*"I am writing to request a copy of the Financial Viability Assessment submitted with the planning application for the redevelopment of Neptune Wharf on Wyke Road in Fish Island (LLDC Ref: 12/00210/OUT) under the Freedom of Information Act and Environmental Information Regulations 2004?"*

We sought an extension of time in relation to your request on 30 August 2013 and extended the time to respond to your request to 1 October 2013.

The London Legacy Development Corporation (the Legacy Corporation) can confirm that we hold the information requested. Please find attached with this letter the documents you requested, however please note that some information has been redacted as some of the information you have requested is being withheld, as it falls under the following exemptions under the Freedom of Information Act and, in the alternative, the remainder of the information requested is also being redacted as it falls under the exception in regulations 12 (5) (e) of the Environmental Information Regulations 2004.

Documents provided:

1. Financial Viability Report – Economic Viability Analysis & Justification in Respect of: The Land at Neptune Wharf, Wyke Road, Box, London E3 2PL. Neptune Group. 29 November 2012. Prepared by GL Hearn. [with redactions]
2. Appendices to the above report – [with redactions]
  - Appendix I – Development Appraisals
  - Appendix III – Calculation of Average Sales Values
  - Appendix IV – Build Cost
  - Appendix V – Calculation of the Cost of Provision of the Commercial Space
3. Appendix II – Plans and Accommodation Schedules is not included. This appendix has not been included as the Legacy Corporation considers it to be exempt under section 21 of the Freedom of Information Act – Information accessible to applicant by other means. This information is available on the Planning site under 12/00210.  
<http://planningforms.newham.gov.uk/online-applications/>

4. Appendix VI – The Planning Inspectorate. Report to Tower Hamlets London Borough Council by Nigel Payne. 13 September 2012. Planning and Compulsory Purchase Act 2004 (as amended) Section 20. Report on the Examination into Fish Island Area Action Plan (AAP).

This report has not been included as the Legacy Corporation considers it to be exempt under section 21 of the Freedom of Information Act – Information accessible to applicant by other means. This report is publically available at

[http://www.towerhamlets.gov.uk/lgs/451-500/494\\_th\\_planning\\_guidance/local\\_plan/managing\\_development.aspx](http://www.towerhamlets.gov.uk/lgs/451-500/494_th_planning_guidance/local_plan/managing_development.aspx)

**Section 41 Information provided in confidence:**

*“(1) Information is exempt information if—*

*(a) it was obtained by the public authority from any other person (including another public authority), and*

*(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”*

There is an understanding of confidentiality around this aspect of the planning process however where applicable in redacting the information under this exemption we have weighed up the balance in being transparent and accountable in respect of our public functions against the need to run a commercial process that is robust in its confidentiality and fairness. It is our view that the public interest is best served by the Legacy Corporation and other stakeholders in the process maintaining the strictest levels of confidentiality on this information at this time.

**Section 43 (2) Commercial Interests:**

*“(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”.*

Where information has been redacted under Section 43 (2) of the Freedom of Information Act 2000 “Commercial Interests: Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”; we can confirm that we have given careful consideration to the public interest in the information contained in your request and in this instance consider that the balance of the public interest in non-disclosure outweighs the public interest in disclosing it.

Disclosure of this information may have the potential to prejudice commercial interests of the Legacy Corporation and the other parties involved because it will reveal detail of fees and rates charged which will prejudice our position, or the position of third parties, in receiving bona fide bids and proposals in future and impact on future negotiations of the Legacy Corporation or other third parties. The public interest is clearly best served by ensuring that the public authorities and other third parties companies are able to achieve maximum value for money in their commercial ventures. We have, therefore, concluded that the balance of the public interest favours non-disclosure of the information at this time.

Under Regulation 12 (5) (e) of the Environmental Information Regulations, a public authority may refuse to provide information in response to a request where the disclosure could adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate interest.

The Legacy Corporation believes that the Regulation 12 (5) (e) applies to parts of the Financial Viability Assessment as they contain information which is commercially sensitive and has a necessary quality of confidence in the view of the circumstances in which it was created and provided. The expectation of the Legacy Corporation is that this information was provided in confidence in order to assist the planning process. As such we have redacted the relevant parts to the sections that apply.

It is noted that the LLDC Planning Policy Decision Team and Applicant entered into a Project Planning Performance Agreement (PPPA) which set out that the LLDC (as Local Planning Authority) and the Applicant agree to be governed by principles which would ensure that they respect 'each others interests and confidentiality'. The document confirms that 'the parties will also share with each other project tools (such as ....development viability information) subject to protecting commercial confidentiality and Freedom of Information considerations'.

The Legacy Corporation has taken into account consideration in favour of maintaining this exemption in this case because public disclosure of the information would likely to:

- Damage the Legacy Corporation business reputation and the confidence that stakeholders, customers, suppliers and other potential parties and investors have in the Legacy Corporation to keep their commercially sensitive information confidential.
- Weaken the Legacy Corporation and other parties' commercial position by revealing market sensitive information or information which may not be commercially appropriate or justifiable.

The exemption is subject to the public interest test, which means the Legacy Corporation, has to consider whether in all the circumstances of the case the public interest in maintaining the exemption in respect of the requested information outweighs the public interest in disclosing the information.

The Legacy Corporation accepts there is a general public interest in transparency and accountability in respect of activities undertaken by the Legacy Corporation, particularly on matters of general public importance, or involving the use of public money. We accept that there is a legitimate public interest in encouraging public participation in decisions affecting the environment. However, in this case we consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information because:

- There is a strong likelihood that the prejudice to the Legacy Corporation and other parties' commercial interests will be suffered if the information is disclosed to the public.
- Disclosure of the information may undermine the ability of the legacy Corporation to perform its statutory functions.
- It is not in the public interest to enable third parties to gain access to strategic commercial and business information providing an unfair advantage in negotiations with the Legacy Corporation or other parties.

Having taken into account the relevant factors we consider that the confidentiality is in place to protect the legitimate economic interests of the Legacy Corporation. The public interest in maintaining the exemption outweighs the public interest in disclosing the information

because disclosure would adversely affect the confidentiality of the information would adversely affect the confidentiality of the information which would give rise to a detriment amounting to damage the Legacy's Corporation's legitimate economic interest and may undermine the ability of the Legacy Corporation to perform its statutory functions.

Please note: You are not permitted to re-use the information provided for publishing, or issuing copies to the public, without the permission of the copyright owner.

If you are unhappy with our response to your request and wish to make a complaint or request a review of our decision, you should write to:

Executive Director of Finance and Corporate Services  
London Legacy Development Corporation  
Level 10  
1 Stratford Place  
Montfichet Road  
London  
E20 1EJ

Please note: complaints and requests for internal review received more than two months after the initial decision will not be handled.

If you are not content with the outcome of the internal review, you may appeal directly to the Information Commissioner at the address given below. You should do this within two months of our final decision. There is no charge for making an appeal.

Further information on the Freedom of Information Act 2000 is available from the Information Commissioner's Office:

Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

Telephone 08456 30 60 60 or 01625 54 57 45

Website [www.ico.gov.uk](http://www.ico.gov.uk)

Yours sincerely

  
FOI Co-ordinator  
London Legacy Development Corporation