



Level 10
1 Stratford Place
Montfichet Road
London
E20 1EJ



16 September 2015

INFORMATION REQUEST REFERENCE 15-044

Dear Sirs,

Thank you for your information request, received on 29 July 2015. You asked the London Legacy Development Corporation (Legacy Corporation) to provide the following information:

“Please can you provide me with a full copy of the Viability Study for planning application 15/00278/FUL for the proposed development at Bream Street, Fish Island on the Lee Navigation, expounding the applicant’s market and financial analysis for:

1. the basis for the scale and mix of the development;
2. the grounds for the proposed quantities of social and affordable housing.”

Please find enclosed the Affordable Housing & Viability Report (the "Report") for the Bream Street development (the "Development") produced for London & Quadrant Housing Trust ("L&Q").

Please note that the full Report was provided to the Legacy Corporation on a strictly confidential basis. The Report was intended to be provided in confidence and therefore a number of material provisions have, in accordance with the exemptions to disclosure permitted by the Freedom of Information Act 2000 (FOIA), and the exceptions to disclosure under the Environmental Information Regulations 2004 (EIR), been redacted.

In so far as the FOIA applies, certain information has been withheld under Section 40 – personal information, Section 41 – information provided in confidence, Section 43(1) – trade secrets and Section 43(2) – commercially sensitive information.

As the Report is in relation to planning the EIR exceptions were also considered. In so far as the EIR applies, specific information has been redacted under regulation 12(5)(e) – confidentiality of commercial or industrial information and regulations 12(3) and 13 relating to personal data.

FOIA s.41 - Information provided in confidence

41(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.*

Although the FOIA section 41 exemption is an absolute exemption and as such does not require a public interest test, the other exemptions and exceptions applied do require this assessment. As such the public interest assessment for and against disclosing the information that has been specifically redacted from the Report is detailed below and a schedule of redactions is attached in Annex B.

FOIA s.43 - Commercial interests.

43(1) Information is exempt information if it constitutes a trade secret.

This exemption is qualified by the public interest test. The public interest assessment for the use of this exemption is below.

FOIA s.43 - Commercial interests

43(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).

This exemption is qualified by the public interest test. The public interest assessment for the use of this exemption is below.

EIR Reg. 12(5)(e) - confidentiality of commercial information

*12(5) - For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;*

EIR exceptions must assess the public interest in disclosing the information. The public interest assessment for the use of these exceptions is below.

The key factors considered by the public interest assessment have been broken down into the relevant areas:

Sale prices and rental charges

The sale prices and rental charges for the properties within the Development have been redacted as these details are of significant interest to future purchasers, tenants and funders. The accessibility to such information would provide third parties with an unfair advantage in future negotiations with L&Q.

Whilst valuations can change over time, it is a simple exercise for any third party to 'index link' such figures to produce an accurate estimate of L&Q's perception on retail prices and rental charges. The commercial consequences of disclosure of such figures for L&Q in this case are both real and significant.

Vector figures

The disclosure of vector figures, such as yield percentages and ground rents, would also have significant commercial consequences for L&Q.

Any such disclosure would assist third parties to calculate rental charges or purchase prices which would be acceptable to L&Q thereby providing an unfair advantage in future negotiations with them. This would ultimately obstruct L&Q from making lawful profit on its commercial development.

These figures are also integral to L&Q's business model and if disclosed would provide its competitors with an unfair advantage in any future competitive tender processes in which it is involved by providing it with knowledge which could be used to 'undercut' L&Q.

Furthermore, if in the future L&Q wishes to sell its interest in the freehold reversions of the properties at the Development, once again, if the vector figures were to be disclosed this would have significant commercial ramifications for L&Q by revealing the value of the reversions thereby prejudicing L&Q's ability to negotiate with third parties.

Profit Margins

The disclosure of L&Q's profit margins (in any form) would have significant and adverse impacts on the Development as well as on L&Q's wider business interests.

The disclosure of these details would allow L&Q's competitors to determine the profit levels within which L&Q is or is not willing to operate thereby providing competitors with commercially sensitive knowledge which they can use to their advantage when participating in competitive tendering or procurement processes in the future.

The information, if disclosed, would also allow the institutions with which L&Q deals to take advantage of the profit margins revealed by charging higher interest rates thereby causing significant commercial ramifications on L&Q's business.

Construction costs, contingency monies and professional fees

As the construction at the Development has not yet commenced any disclosure of the construction costs within the Report will prejudice L&Q's position in any future construction tendering process. Building contractors will benefit from any disclosure of the construction budget and contingency for the Development by being able to increase their prices and inhibiting L&Q from being able to negotiate competitive rates.

Financial Model

The financial model which L&Q has used to calculate the financial viability of the Development is a trade secret as it:

- i) is used in L&Q's trade of developing land;
- ii) if it were disclosed it would harm L&Q's business; and
- iii) L&Q does not disseminate details of the way in which it calculates financial viability other than in circumstances where the information is provided in the strictest of confidence.

The financial model used by L&Q was disclosed to the public authority under the strictest of confidence.

Disclosure of any such information may be reverse-engineered by competitors to enable them to calculate how L&Q's financial model works. This will allow L&Q's competitors to gain a significant commercial advantage in any future negotiations or tendering processes to which L&Q is party by, for example, undercutting proposals in key areas.

Disclosure of the land value figures will provide competitors and other third parties with insight into how L&Q values its commercial property which again would prejudice L&Q's ability to negotiate terms in the future. The valuation also contains details of existing leases,

the terms of which are private and confidential between L&Q and its tenants and should not be disclosed.

Affordable Housing

L&Q is a registered provider of affordable housing. The disclosure of the pricing of affordable units would adversely affect its ability to negotiate with third party providers to obtain a competitive contract on other projects.

Public interest assessment

As the local planning authority, the Legacy Corporation planning application process is an open one that is notified to the public. The public have the opportunity to comment on and object or support all planning applications should they wish to do so. While L&Q have provided the Report as part of the planning process, withholding the redacted information will not adversely affect the public's ability to participate in the planning decisions regarding this Development. Representations about elements of the Development's viability can be made satisfactorily in the absence of the redacted material. Points may be made by those wishing to raise them by reference to assumed inputs or example inputs, and no prejudice is caused to those commenting as the local planning authority will be able to understand and have regard to any representations, and give them appropriate weight, in the same way that it would, had the information not been redacted.

However, disclosing this information would cause harm to the commercial interests of L&Q and beyond this specific application, would be likely to harm the effectiveness of the planning process.

The Legacy Corporation owes the applicant a common law duty of confidence in relation to the Report, submitted as part of the planning process, due to the nature of the information itself, its sensitivity and commercial nature. The redacted information is not widely known or in the public domain and so has the necessary quality of confidence on which a duty of confidence is owed to the applicant.

Disclosure of the redacted information would make L&Q and future developers wary about freely providing confidential information in the future for similar schemes. It is plainly in the public interest for developers to share with public authorities as much information as possible, including commercially sensitive financial information, to enable public authorities to make good, well informed decisions in relation to planning and development projects in their local area. Disclosure of such information would also act as a deterrent to public/private cooperation in the sphere of housing developments generally, given the commercial risks to which developers would potentially expose themselves. Such partnerships are crucial to ensuring a plentiful supply of affordable housing stock, which is clearly in the public interest.

The Legacy Corporation acknowledge that there is strong public interest in the general principles of transparency and accountability. More specifically there is a public interest in understanding how decisions are made and ensuring judgments relating to planning are fair and balanced. However, in this instance the Legacy Corporation believe that the balance of the public interest is in withholding the redacted information and not disclosing it. Disclosing the redacted information at this time would damage the commercial interests of L&Q and would lead to negative consequences to the Legacy Corporation as planning authority.

The summary attached in Annex B sets out each redaction in the Report, brief reasons for non-disclosure and the FOIA exemption(s) applicable and the EIR exceptions applicable.

Section 40(2) – personal information

40(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

The section 40 exemption is absolute and is not subject to the public interest test. It is the standard practice of the Legacy Corporation to redact personal information unless consent to release the information has been received.

In this instance, the relevant condition that applies is section 40(2) whereby the information is defined as personal data within Section 1(1)(a) of the Data Protection Act 1998. The redacted information includes the names of the authors of the reports. As we have not received consent of the data subjects, release of the requested information at this time would contravene the first data principle under Schedule 2(1) of the Data Protection Act 1998.

Reg. 13(1) - Personal data

13(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

(2) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—

(i) any of the data protection principles;

It is the standard practice of the Legacy Corporation to redact personal information unless consent to release has been received. As such, names and other personal data have been redacted in line with regulation 13(1) of the Environmental Information Regulations 2004 regarding personal data. This Regulation states that a public authority shall not disclose personal data, to the extent that the requested information includes personal data of which the applicant is not the data subject and as respects which the conditions in either Regulation 13(2) or Regulation 13(3) apply. In this instance, the relevant condition that applies is Regulation 13(2)(a)(i), whereby the information is defined as personal data within Section 1(1)(a) of the Data Protection Act 1998. As we have not received consent of the data subjects, release of the requested information at this time would contravene the first data principle under Schedule 2(1).

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 response 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

Yours sincerely



FOI / EIR Co-ordinator
London Legacy Development Corporation