

# GREATER LONDON AUTHORITY

[REDACTED]

**Our Ref: MGLA100315-1247**

9<sup>th</sup> April 2015

Dear [REDACTED],

## **EIR information request – Aylesbury Estate Redevelopment**

Thank you for your request for information which the GLA received on 10<sup>th</sup> March 2015. Your request has been dealt with under the Environmental Information Regulations and we can today provide you with a response to your request. You asked for the release of the following information:

*In paragraph 30 of your stage 1 referral for the Aylesbury estate redevelopment planning application (ref: planning report D&P/0306a/01), you requested the applicant submit a financial viability statement. I am writing to request a copy of this financial viability statement under the EIR regulations 2004.*

I can confirm that the GLA holds the information that you have requested. Please find enclosed with this letter a copy of the *Financial Viability Note* for the Aylesbury Regeneration Project from the Notting Hill Housing Trust.

After careful consideration, we have decided that some of the information covered by your request is exempt from our duty to disclose by virtue of the EIR exception provisions under regulation 12(5)(e). I have included an explanation of this decision in the annex to this letter, but this regulation provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

I hope that you find this information of interest. If you have any further questions relating to this matter, please contact me, quoting the reference at the top of this letter.

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Yours sincerely

[REDACTED]

**Senior Strategic Planner**

If you are unhappy with the way the GLA has handled your request, you may complain using the GLA's FOI complaints and internal review procedure, available at:  
<http://www.london.gov.uk/mayor-assembly/gla/governing-organisation/freedom-information>.

## Annex A – Exemption provisions

### EIR Exception provision

*12(5)(e) – A public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.*

### How the exemption applies to this information

#### Is the information commercial or industrial in nature?

The information relates to financial viability information relevant to the Notting Hill Housing Trust (NHHT) and provided to the Greater London Authority (GLA) in respect of the proposed Aylesbury Estate redevelopment in the London Borough of Southwark.

The information in the viability note is clearly commercial in nature as it underpins the commercial terms of the Development Partnership Agreement, which forms the basis of the proposed redevelopment of the Aylesbury Estate. This condition of the exception is therefore satisfied.

#### Is the information confidential under either the common law of confidence, contract, or a statutory bar?

The Financial Viability Note was passed to the GLA under a duty of confidence and consequently under the expectation that they would not be widely accessed, circulated or distributed.

We would also argue that the information is also covered by common-law of confidence – it is not trivial in nature, has the necessary qualities of confidence, and was provided as part of process whereby it was expected by both parties that certain information would be held in confidence.

We are however mindful of the views of the Information Commissioner (ICO) in regards to how this exception provision is engaged and applied, and we have also taken note of the recent decision by the Information Tribunal (EA/2013/0162)<sup>1</sup>, in particular paragraph 42 which states:

*‘The legislature must be taken to intend that it is not always in the public interest for a public authority to choose to keep information confidential. There is no breach of trust when a public authority fulfils its statutory obligation under FoIA or EIR... They recognise in contracts that in an individual case, depending on the circumstances, the public authority may have a duty disclose.’*

In this case, we have decided that limited pieces of information are protected by a legitimate obligation of confidence and that disclosure of this information by the GLA into the public domain would constitute a breach of that confidence.

<sup>1</sup><http://www.informationtribunal.gov.uk/DBFiles/Decision/i1279/London%20Borough%20of%20Southwark%20EA.2013.0162%20%2809.05.14%29.pdf>

Is the confidentiality protecting a legitimate economic interest?

In relation to the legitimate economic interests, we would make reference to the Information Commissioner's guidance, which states:

*'Legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income'.<sup>2</sup>*

Notting Hill Housing Trust feels strongly that the commercial terms of the DPA and the assumptions underpinning the financial viability of this project should not be released into the public domain. NHHT was selected by Southwark Council as its development partner for this project following a lengthy OJEU-compliant competitive dialogue procedure.

We believe that a number of legitimate economic interests of NHHT could be harmed or prejudiced by the release of these details. These include ensuring that their competitors do not gain access to commercially valuable information; protecting their commercial bargaining position in the context of any existing or future negotiations that they might be involved with; avoiding commercially significant reputational damage that might result from disclosure; and avoiding any disclosure which would otherwise result in a loss of revenue or income.

NHHT operates in a competitive marketplace and it would be prejudicial to their commercial interests to release information into the public domain which NHHT had invested time and money in acquiring. This information, once released, could be used by third-parties or competitors of NHHT, in both the public and private sectors, to gain an unfair and unwarranted commercial advantage.

In other words, the ability of NHHT to compete for similar projects in the future would be significantly prejudiced if the financial details from the Financial Viability Note were released into the public domain as it would reveal the detail of their appraisal assumptions, including assumed income and profit levels, which would mean that their competitors could calculate an advantage for future bids.

Furthermore, the disclosure of this viability information into the public domain at this time would be unjustly damaging to NHHT reputation and likely to undermine consumer confidence in NHHT as a provider, potentially leading to an adverse impact on NHHT's future revenue streams.

The confidentiality will be adversely affected by disclosure

The disclosure of truly confidential information into the public domain would inevitably harm the confidential nature of that information by making it publically available. In turn, this will also harm the legitimate economic interests which are set out above, which the confidentiality is there to protect.

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1624/eir\\_confidentiality\\_of\\_commercial\\_or\\_industrial\\_information.pdf](https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf)

## Public interest test

### Considerations favouring disclosure

It is prudent to note the general, underlying rationale for the disclosure of environmental information, as outlined in Directive (2003/4/EC)<sup>3</sup> which gave rise to the Environmental Information Regulations,

*Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision making and, eventually, to a better environment.*

We acknowledge that there is a general public interest in transparency in relation to planning and development matters, particularly in the decision making behind, and progress of, developments of this size and impact. Disclosure of this information would enable the community affected by the development to understand more fully the decision making process.

The disclosure of this information would also inform discussions regarding the number of affordable homes to be provided by this development; an important local issue. Recent decision by the Information Commissioner and the Information Tribunal acknowledge that the public interest in releasing information about the viability of affordable housing carry particular weight.

Furthermore, the public interest is served by the GLA being transparent and open to scrutiny to increase diligence and working to protect the public purse.

### Considerations favouring non-disclosure

There is of course an inbuilt public interest in maintaining commercial confidences. As discussed in the aforementioned Information Tribunal decision (EA/2013/0162), the courts have recognised the enduring strength of the public interest in maintain the confidentiality of negotiations and bidding that take place in relation to public/private sector partnerships.

It is not in the public interest to cause economic harm to organisation operating in a competitive environment.

The best interests of the public are met by the GLA being able to foster relationships of trust with its partners, through which the sharing of confidential, sensitive financial information can be shared to support the redevelopment and regeneration of sites such as the Aylesbury Estate.

Publishing sensitive financial information shared with the GLA under an expectation of confidentiality would deter these partners from sharing similar information with GLA in the future, particularly if they felt that the GLA would not treat information that could harm their economic interests with due care. This would ultimately hinder the ability of the GLA to deliver its stated objectives for London.

As noted in the same Information Tribunal decision:

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<sup>3</sup> <http://ec.europa.eu/environment/aarhus/legislation.htm>

*Once you use private sector profit making organisations in order to help fund regeneration and to deliver infrastructure, social housing and other public goods, then inevitably considerations of commercial confidentiality and the need to avoid harm to commercial interests must be given full weight when assessing the public interests for and against disclosure*

There is a strong public interest in protecting commercially sensitive decisions about price. There is also a specific public interest in preventing others obtaining a developer's knowledge or expertise, or expertise which a developer has paid for, for free.

It is also important to note the importance, and the reliance of local communities, on public/private sector partnerships to deliver affordable housing. There is a strong public interest in these developments succeeding and not being undermined.

Disclosure of the some of the information covered by these provisions would serve to prejudice relations between the GLA and its partners in a situation where that relationship exists to serve the best interest of the public.