OPDC
OLD OAK AND PARK ROYAL DEVELOPMENT CORPORATION

[redacted]
Sent via e- mail

Reference: MGLA081220-1628
Date: 16 February 2021

Dear [redacted]

I write on behalf of the Old Oak and Park Royal Development Corporation (OPDC) in relation to your request for information dated 7 December 2020 for information concerning the 'outputs' provided to OPDC by consultants Prior + Partners. Your request has been considered under the Environmental Information Regulations 2004 (EIR) and we can today provide you with our response.

Your request of 7 December 2020 asked for the following information:

The outputs from Prior + Partners including:

- *Six workshop presentations– to trial, test and gain stakeholder buy-in to the evolving strategy and support ongoing discussions with stakeholders including senior government agencies.*
- *Materials to support discussions/workshops with the Steering Group of public sector landowners and senior OPDC officers on commercial development opportunities.*
- *A short draft action plan and next steps summary.*
- *Any further email exchanges, letters, or other documents generated as part of this consultancy commission including Prior + Partners invoices for payment from the £100,000 budget approved for this project.*

I can confirm that OPDC holds information in-scope of your request.

We can today release the majority of the information held by OPDC in relation to the first three parts of your request. This information accompanies this letter.

After careful consideration, we have decided that some of the information covered by your request is exempt information by virtue of the disclosure-exception provisions found under regulations 12(4)(d) and 12(5)(e) of the EIR, and we have made a number of limited redactions to the information we are releasing to you.

Regulation 12(4)(d) is engaged when the request relates to material that is still in the course of completion, unfinished documents or incomplete data. If the information in question falls into one of these categories, then the exception is engaged.

In this particular case, OPDC is relying on two limbs of regulation 12(4)(b) – information which is still in the course of completion, and unfinished documents.

On the first limb, ICO guidance[1] clarifies:

> *The fact that the exception refers to both **material** in the course of completion and unfinished **documents** implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion. An example of this could be where a public authority is formulating and developing policy.*

The same guidance also clarifies that material which is still in the course of completion can include information created as part of the process of formulating and developing a policy, proposal, decision or recommendation. In this regard, this EIR regulation acknowledges that public authorities should have the necessary space to think in private, to develop and explore the full range of options relevant to a particular policy or process in a "safe space"; protecting the integrity of the decision-making process, and the free and frank exchange of ideas, options and suggestions that form part of that process.

Moving on the second limb of the exception, unfinished document, the ICO's guidance clarifies;

> *A document may be unfinished because the authority is still working on it at the time of the request or because work on it ceased before it was finalised and there is no intention to finalise it. Furthermore, draft documents will engage the exception because a draft of a document is by its nature an unfinished form of that document. Furthermore… a draft version of a document is still an unfinished document, even if the final version of the document has been published.*

The ICO guidance also explains that, unlike other exemption provisions under the EIR, it is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception, but any adverse effects of disclosure may be relevant to the public interest test.

Under the first limb of regulation 12(4)(d), we have made redactions to withhold certain plans and illustrations. These explore concepts or strategies that contradict the strategies that OPDC have decided to pursue, including policies that will be published for public consultation in the coming months.

OPDC is in the process of developing its approach on the Western Lands. The disclosure of this information at this stage would make it difficult to bring the process to a proper conclusion and potentially lead to our strategy being misconstrued when our Local Plan modifications are submitted to the Planning Inspector in March 2021, followed thereafter by public consultation which is anticipated to take place in the Summer of 2021.

Returning to information covered by the second limb of the exception, some of the information was clearly identified as being a 'draft' version and is therefore unfinished. The Prior + Partners work generated ideas that were mooted in early stages of the Western Lands strategy formulation, for officer consideration, but ultimately rejected and not pursued further.

Four draft documents have been withheld in full under this limb of regulation 12(4)(b).

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[1] https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

Regulation 12(5)(e) applies when disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law. For information to be commercial in nature, it will need to relate to a commercial activity, either of the public authority or a third party.

This provision has been used to withhold commercial information such as predictions, assertions or information about land and sites which are not currently in OPDC's ownership, including speculation on the dates when certain sites might come to the market and estimates of development quantum and composition.

Some of the exempt information also includes speculation on the quantum of development and type of development that might come forward on privately owned sites, which has a direct bearing on the market value of the sites.

All land and property has an existing use value which is a figure of what it is worth in its current form. Anything that might change the status of that land and gives greater certainty about potential future development prospects will add to the value of that land. This 'hope value' will inevitably increase as the likelihood of new alternative, more profitable, uses for that land become more and more certain.

In other words, the release of such information could unfairly influence the market to inflate land prices. This presents a significant risk to the affordability and deliverability of the Western Lands, putting the taxpayer at a potential disadvantage if the public sector ever sought to purchase one of those sites. It could prejudice our commercial interest or that of another party.

Public interest test considerations

ODPC is required to balance the public interest consideration favouring releasing the exempt information against those favouring maintaining the exemption. Under regulation 12(1)(b), a public authority can only withhold the information if, in all the circumstances of that case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

There is an inherent and strong public interest argument in the release of information that would inform and engage public debate on issues pertinent to the Western Lands. The release of the information covered by these provisions would also therefore help reassure the public that OPDC is considering the most appropriate options for the Western Lands.

There is a general public interest in transparency in relation to planning and development matters, particularly in the decision making relating to areas 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.

Furthermore, the public interest is served by OPDC being transparent and open to scrutiny to increase diligence.

Effective policy and decision making should be informed by engaging with the public and key stakeholders. However, this engagement needs to be structured to be effective. The release of this information at this time would divert attention and resources away from the task at hand and towards responding to external enquiries or input outside of the formal forums for consultation and engagement already in place. This in turn would also be likely to have an adverse effect on OPDC's ability to engage in free-flowing and honest exchanges of views in the future.

OPDC considers that the best interests of the public – i.e. the public interest – in this case, and at this time, are served by ensuring that it can continue to deliberate robustly and comprehensively, considering all options and their potential impacts, in order to identify the best possible policy option to be incorporated as part of the Local Plan modifications. The public interest would not be satisfied by OPDC releasing incomplete or draft information into the public domain directly prior to the Local Plan modifications being submitted to the Planning Inspector in March 2021, followed thereafter by public consultation, which is anticipated to take place in the Summer of 2021.

The best interests of the public are met by OPDC being able to foster relationships of trust with its partners, through which the sharing of confidential, sensitive commercial information can be shared to support the development of a strategy for areas such as the Western Lands.

We do not consider it to be in the public interest – i.e. the best interests of all the individuals and communities that would benefit from the delivery of the Western Lands strategy – to release information which would create a significant risk to the affordability and deliverability of any future development.

Were we to release this information into the public domain at this crucial stage of the project we would be providing the property market with details of land that the project may need but does not currently have statutory protection to acquire.

We do not believe the public interest would be served by releasing information which would unnecessarily and unjustifiably inflate the costs of a project at a time which aims to improve the lives of Londoners by:

- capitalising on the new HS2, Crossrail and National Rail interchange to regenerate the area and contribute significantly to London's competitiveness
- creating a new urban neighbourhood at Old Oak, supporting a minimum of 24,000 new homes and an additional 1,500 homes in non-industrial locations in Park Royal
- supporting the creation of 55,000 new jobs at Old Oak and a further 10,000 at Park Royal
- protecting and enhancing Park Royal as a strategic industrial location
- ensuring new development safeguards nearby amenity assets such as Wormwood Scrubs and the Grand Union Canal

We feel that the balance of the public interest at this time favours maintaining these disclosure exception provisions, and that this information is exempt for the reasons discussed in this letter.

Finally, the fourth bullet point of your request falls under the exception to disclose because it is considered to be 'manifestly unreasonable' under regulation 12(4)(b) of the EIR. This provision allows public authorities to refuse requests which are obviously or clearly unreasonable or when the estimated cost of compliance is too great.

While this provision applies to request as a whole, to help meet the legitimate public interest in this matter, we have sought to release the information in-scope of the first three parts of your request which was readily available; we have only engaged this exception to the last part of your request, where a considerable amount of time would be required to identify, locate, retrieve and collate all the information that would be potentially covered by this element of your request.

In reaching this decision we have considered the views of the Upper (Information Rights) Tribunal in *'Craven v IC & DECCC [2012] UKUT442 (AAC)'* in respect of the EIR exception under regulation 12(4)(b), the formal guidance issued by the Information Commissioner's

Office1, along with Decision Notices regarding this EIR exception, such as FS505859262, amongst others, which all acknowledge that public authorities may use the FoIA Fees Regulations as the basis of considering the cost and time of complying with a request.

In this instance, we have decided this part of your request falls within the parameters of regulation 12(4)(b) because of the considerable amount of time that would be required to collate and review the requested information.

This element of your request is quite broad, and the scope of information potentially covered by it is arguably open-ended and liable to subjective interpretations. As such, this would require a disproportionate amount of time required to locate potentially relevant information, without it being clear whether or not that information would be relevant to your request.

A public authority can only withhold information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. We are mindful of the general public interest in transparency and accountability, and of the presumption in favour of disclosure and to read exceptions restrictively.

A sizeable proportion of the information would likely engage one or more of the disclosure-exception provisions of the EIR, such as:

- Regulation 12(4)(d): Material in the course of completion, unfinished documents and incomplete data
- Regulation 12(4)(e): Internal communications
- Regulation 12(5)(e): Confidentiality of commercial or industrial information

We would consequentially have to spend a considerable amount of time reviewing each piece of information individually and consulting with a number of third parties to consider whether or not it would be exempt from disclosure.

The time and resources required to review this information would be unreasonable given the potential for it to remain exempt information, and the work carried out to comply with the other element of your request

On balance, it is our view that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.

If you have any questions regarding this letter, please write to info@opdc.london.gov.uk quoting the reference at the top of this letter.

Yours sincerely,

[redacted]
Information Governance Manager & Data Protection Officer
Greater London Authority