5 May 2021
Our ref: 7275536

Thank you for your request received on 2 May 2021, for the following information:

I am specifically interested in any information you can share regarding a pre-planning or planning application for these works and also any information about costs already incurred or to be incurred by the freeholder. The latter point is a recurring issue with this freeholder, which obstructs any request for information regarding how service charge monies are spent, in defiance of the relevant statutory obligations.

The freeholder in question is Wendover and Moreland Court Limited, of 9a Burroughs Garden, London NW4 4AU

We have processed this request under the Environmental Information Regulations 2004.

Response

I can confirm that London Borough of Barnet holds the information you requested. However, we consider that the following exceptions apply to some of the information requested. The remaining information is not withheld and is below

R12 (5) (e) Industrial commercial information

The Council considers that Regulation 12(5)(e) of the Environmental Information Regulations 2004 applies and that disclosure of advice given at pre-application stage, prior to determination of the subsequent planning application, could adversely affect the Council's ability to provide pre-application advice on future development projects.

All EIR exceptions are subject to a public interest test which means that consideration must also be given to whether in all the circumstances of the case the public interest favouring disclosure is greater than the public interest in maintaining the exception.

The public interest means what is in the best interests of the public not what is of interest to the public.

Factors in favour of disclosure

• There is a clear public interest in the work of local government being closely examined to encourage the discharging of public functions in the most efficient and effective way.

• There is an important public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse.

• There is a public interest in public authorities being accountable for their decision making.

• The Council is mindful of its responsibilities to be open with information on the development scheme and will publish details of formal planning application scheme on its website.

Factors in favour of withholding

• There is a weighting in favour of maintaining the exception due to the fact that no planning application has been formally determined.

• Publishing the terms of pre-application advice is likely to deter other developers from wanting to develop

• Releasing the requested information could prejudice the Council's future negotiation capabilities and reduce the confidence third parties have with the Council in order to facilitate the decision making process. Both the Council and any third party contractor would be reluctant to have free and frank discussions if all that is discussed is subject to scrutiny with no safe space for 'confidential communications', the requested information may prejudice pending or future decisions which would be detrimental to the Council and or third parties.

The public interest in withholding the requested information outweighs the public interest in disclosure of the requested information, and this information cannot be supplied to you.

R12(5)(f) Interests of the person who supplied information

The information being withheld relates to sensitive commercial information that has been submitted to the Council on a confidential and voluntary basis. The party who submitted that information to the Council has not consented to its disclosure. The Council considers that disclosure of the withheld information would, or would be likely to, adversely affect legitimate economic interests of third parties. As such, the Council considers that the exception R12(5)(f) applies to the withheld information. I have considered whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Factors in favour of disclosure

• There is a clear public interest in the work of local government being closely examined to encourage the discharging of public functions in the most efficient and effective way

• There is an important public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse

• There is a public interest in public authorities being accountable for their decision making.

• The Council is mindful of its responsibilities to be open with information on the development scheme and will publish details of formal planning application scheme on its website.

Factors in favour of withholding

• Releasing sensitive commercial information could prejudice the Council's future negotiation capabilities and reduce confidence third parties have with the Council in order to facilitate the decision making process. Both the Council and the third party would be reluctant to have free and frank discussions if all that is discussed is subject to scrutiny with no safe space for 'confidential communications', the requested information may prejudice pending or future discussions which would be detrimental to the Council or the third party.

• Preventing others obtaining our contractors and the Council's expertise for free when we have invested significant resources, time, expertise and intellectual property on the same

• Disclosure would erode trust in the Council's ability to protect the confidentiality of information prior to the determination of any future planning application.

The public interest in withholding the requested information outweighs the public interest in disclosure of the requested information and this information cannot be supplied to you.

R13 Personal data

Refusal Notice

Part 1 of Schedule 19 of the Data Protection Act 2018 amends the personal data exception Regulation 13 of the Environmental Information Regulations 2004. These are consequential amendments designed to ensure that the correct provisions of the GDPR and the new Act are referenced instead of the now repealed DPA 1998. They will not fundamentally impact when personal data can, and cannot, be disclosed in response to an EIR request.

We consider the information is subject to Regulation 13 because to release it would be a breach of the Data Protection Act 2018.

Personal Information is governed by the Data Protection legislation and is defined as any information relating to an identified or identifiable natural person ('data subject')". It adds that: an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location number, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

The withheld information is exempt because disclosure would contravene the first data protection principle which requires that personal data is processed fairly and lawfully. Disclosure of the requested information would breach this principle and in particular the requirement of fairness.

Advice and Assistance:

Once the Planning Application has been formally determined, we will be in position to release this information to you.

Further information

If you are interested in the data that the council holds you may wish to visit Open Barnet, the council's data portal. This brings together all our published datasets and other information of interest on one searchable database for anyone, anywhere to access. http://open.barnet.gov.uk/

Advice and Assistance : Direct Marketing

If you are a company that intends to use the names and contact details of council officers (or other officers) provided in this response for direct marketing, you need to be registered with the Information Commissioner to process personal data for this purpose. You must also check that the individual (whom you wish to contact for direct marketing purposes) is not registered with one of the Preference Services to prevent Direct Marketing. If they are you must adhere to this preference.

You must also ensure you comply with the Privacy Electronic and Communications Regulations (PECR). For more information follow this Link www.ico.org.uk

For the avoidance of doubt the provision of council (and other) officer names and contact details under FOI does not give consent to receive direct marketing via any media and expressly does not constitute a 'soft opt-in' under PECR.

Your rights

If you are unhappy with the way your request for information has been handled, you can request a review within the next 40 working days by writing to the Information Management Team at: foi@barnet.gov.uk. Or by post to Information Management Team (FOI) London Borough of Barnet, 2 Bristol Avenue, Colindale, NW9 4EW

If, having exhausted our review procedure, you remain dissatisfied with the handling of your request or complaint, you will have a right to appeal to the Information Commissioner at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF (telephone: 0303 123 1113; website www.ico.org.uk). There is no charge for making an appeal.