



London Borough of Barnet,  
2 Bristol Avenue,  
Colindale,  
London NW9 4EW  
3 August 2021  
Our ref: 7465032

Thank you for your request received on 3 July 2021, for the following information:

**Further to your internal review of how this request has been handled there have been significant developments that you should be aware of.**

**These garages are to be included in an auction for public sale on 14 July 2021 at Mchugh and Co.**

**In the sales particulars, as well as noting the public planning consents, the agent also states that the site is 'possible for other uses subject to Planning Permissions'.**

**I have asked you directly if you have given guidance on a possibility for another use. You have acknowledged that you have. Given how this site is being marketed, I would suggest you are morally obliged to disclose this information regardless of whether you are duty bound to do so.**

**I am therefore formally submitting a second request to receive the information I have asked for. This is now time critical.**

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.

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#### **R12(5)(e) Confidentiality of commercial or industrial information /**

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

Regulation 12 of the Environmental Information Regulations 2004 ('the Regulations') sets out two relevant exceptions that must be considered in this instance. Firstly regulation 12(5)(e) provides that the Council may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial and industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

Secondly regulation 12(5)(f) provides that the Council may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the person who provided the information to the public authority, where that person (i) was not under a legal obligation to provide it, (ii) did not supply it in circumstances such that the Council or any other public authority is entitled apart from the Regulations to disclose it; and (iii) has not consented to its disclosure.

The exceptions in regulations 12(5)(e) and (f) have been applied in this instance because the information sought relates to pre-application advice held on discussions between the Council around the potential for development of the site. No formal application for a change of use or further development on the site has been made. If a planning application were to be forthcoming the Council will meet its openness and transparency objectives through public consultation of the proposed scheme where the local community will be given the opportunity to formally comment on the proposals.

#### **Factors in favour of disclosing**

- \* 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

## Regulation 13 Personal data

[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.

## 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](http://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](mailto: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](http://www.ico.org.uk)). There is no charge for making an appeal.