



## OLD OAK NEIGHBOURHOOD FORUM

Ian Lister  
Information Governance Manager & Data Protection Officer  
Greater London Authority  
(by email)

30<sup>th</sup> July 2019

Dear Mr Lister,

### **OPDC application for HIF funding: EIR Internal Review**

Thank you for your letter of July 24<sup>th</sup>, setting out your conclusions on the GLA 'internal review' of the decision of the OPDC to refuse to provide items 2, 3 and 4 as listed in our original FoI/EiR request of March 6<sup>th</sup> 2019.

The request for this review was made in our letter of April 30<sup>th</sup> 2019. In your email of 29<sup>th</sup> May you said that a response would be provided '*no later than 40 workings days following the receipt of your request for this review; in this case, no later than Thursday 27 June 2019*'. For the record, your response was provided (with apologies) almost a month later. This was despite two email requests pointing out why the information was needed by the Forum as being relevant to the Examination in Public of the OPDC Local Plan.

### **Regulation 12(4)(b) and the OPDC ground for refusal**

Your latest letter explains your view that you support the ground for refusal of the original request, as given by OPDC, that '*under regulation 12(4)(b) of the EIR because the time and resources required to comply with the request would place an unreasonable burden upon OPDC*'.

Your letter explains that '*as part of the searches in relation to part 2 of your request, OPDC identified 76 attachments that were submitted in support of its HIF bid (which was itself a sizeable document), each of which is itself a complex and substantial document*'.

The original March 6<sup>th</sup> request from the Forum did not ask for copies of attachments to the HIF bid. It asked for a copy of '*The Expression of Interest for £250m of HIF resources as submitted by the GLA to Homes England in September 2017*'.

The MHCLG Housing Infrastructure Fund website includes an [explanatory leaflet](#) for Forward Funding which refers to an online application form (termed an 'expression of interest') which was available to download at the time when the bidding round was live. This is the document which was specified with precision as item 2 on the list in the Forum's original FoI/EiR request of March 6<sup>th</sup> 2019.

It is hard to accept that such a Government application form can be so sizable as to make it an unreasonable task for OPDC officers to review its content and to redact any information that was/is genuinely commercially confidential or exempt for other reasons. In terms of the 76 attachments to this Expression of Interest, we did not ask for these. It may well be that many of these attachments

are amongst the 63 'supporting documents' published by OPDC as the evidence base for their Draft Local Plan. If so, these documents are already in the public domain and we are familiar with them.

My letter of April 30<sup>th</sup> set out our view of the strong public interest case for openness on the content of a £250m funding application. As must surely be relevant to public interest considerations, this was an application for government funds submitted from a public body (A Mayoral Development Corporation) to a Government agency (Homes England). Whose interests are being protected by non-disclosure?

Local residents impacted on by OPDC proposals for Old Oak North wish to understand how the £250m of HIF funds will be applied and what public benefits will result. OPDC public reports and on the £250m HIF funding provide only limited information. The press statement issued by OPDC stated that the HIF funding *'is a catalyst to deliver:*

- *10,000 new homes and 5,500 jobs for Londoners by early 2030s*
- *£8.6bn of development value*
- *£50% affordable housing on public land' (sic)*

Much doubt has been cast on these claims, at public sessions of the Local Plan EIP at which the Forum has given evidence. The EIP has again been adjourned following a July 18<sup>th</sup> session and is not concluded. Planning Inspector Paul Clark is weighing up all the evidence provided to him as a result of differing views from OPDC and from Cargiant as to the viability and 'effectiveness' of proposals for Old Oak North, given that these proposals are key to providing 25% of all housing proposed in the OPDC Draft Local Plan.

In addition to the public interest case set out in our letter of 30<sup>th</sup> April, we ask that you take account of further information that has emerged as a result of questions and answers at the London Assembly Budget and Performance Committee on June 11<sup>th</sup> and at the London Assembly Plenary session on July 4<sup>th</sup> 2019.

These sessions have heightened public concerns as to whether expenditure of this £250m of HIF resources will in reality achieve anything resembling the outcomes which OPDC claimed when applying for funding in 2017.

Importantly it has become clear that the HIF funding is subject to OPDC meeting a series of conditions that have been acknowledged by OPDC Board Chair Liz Peace and OPDC Interim Chief Executive David Lunts as challenging and with no certainty that they can be met.

It has also emerged that the GLA will need to underwrite the full £250m insofar as relevant spending is undertaken before final award of the MHCLG funding is signed off. Several Assembly Members have queried at these Assembly meetings what potential risks are attached.

The transcript of the Assembly's Budget and Performance Committee session on OPDC risks, as held on June 11<sup>th</sup> can be found at

<https://www.london.gov.uk/moderngov/documents/s77924/Draft%20Minutes%20-%20Appendix%201%20-%20OPDC%20Risks.pdf>

Mayoral Decision 2493 (copy attached) has recently given approval for the provision of a supplementary budget of £10m *'for the OPDC to support the Corporation in securing the Government's HIF allocation of £250m for Old Oak North'*.

Decisions on the drawdown of these funds have been delegated to GLA officers. When added to the £29.417m of expenditure already incurred by OPFC since April 2015, these are very large sums of public money. Local residents want to be satisfied that these funds are being spent to good effect in delivering clear public benefit.

### **Refusal on grounds of commercially sensitive information**

Residents in the area do not have an interest in the commercial issues related to possible future compulsory purchase of Cargiant land at Old Oak North, other than in respect of overall viability of the OPDC Draft Local Plan. We accept that the HIF Expression of Interest pro-forma may include some assumptions on land values which are commercially sensitive. As restated several times, we have no problem in such information being redacted before a copy of the document is provided.

### **Refusal on grounds of other potentially exempt information**

Your letter of 24<sup>th</sup> July lists a number of reasons, apart from commercial confidentiality, why OPDC concluded that our FoI/EIR request might involve the release of potentially exempt information where other grounds for EIR disclosure exemption apply. These were:

- Regulation 12(4)(e) – internal communications and correspondence;
- Regulation 12(5)(f) – the interests of the persons who provided the information to the public authority;
- Regulation 13 – personal information

We have not asked to see copies of *'internal communications and correspondence'*. We have asked to see a pro-forma application form for central government funding, submitted by OPDC/GLA. We think it unlikely that this would include *'personal information'* or content affecting *'the interests of persons who provided information to the public authority'*. Were such information to have been included within the Expression of Interest pro forma, we cannot see a problem with redaction.

### **Refusal under 12(4)(b) identified as the sole ground**

Your letter contains a concluding statement on which we would welcome further clarification. You say *'It is also important that I clarify that, while OPDC has identified that the information they hold contains considerable amounts of exempt information – such as the commercially sensitive information as discussed in Mr Wilson's letter of 15 April – and information potentially caught by the disclosure exception provisions discussed above, OPDC has not relied on any specific exemption provisions at this time. For the reasons discussed above, the provisions of regulation 12(4)(b) have been engaged because of the volume of work required to review and identify potentially exempt information'*.

As I understand, this is saying that OPDC is currently relying solely on regulation 12(4)(b) and *'time and resources required'* as the ground for refusal of our request? This was not at all clear from Doug Wilson's letter of 15<sup>th</sup> April which started by saying *'The Housing Infrastructure Fund Expression of Interest and Outline Business Case, and the Part 2 of MD2401 are all commercially sensitive'*. This appeared to us to be the main ground for refusal of our request.

Refusal on grounds of 12(4)(b) alone seems to us a weak case, and one which we will pursue if necessary with the Information Commissioner.

Your letter of 24<sup>th</sup> July explains why you consider that the burden of work on the OPDC in meeting our request would be unreasonable, in that it would involve allocating two members of staff (for an unspecified period) from within an organisation of 'just 47 members of staff'. This assumes the necessity to review all the 77 attachments to the HIF Expression of Interest which, as made clear above, we have not asked to see.

**Hence we repeat our request to see a copy of the Expression of Interest proforma, as submitted by the GLA to Homes England in September 2017, with any redactions of commercially confidential information as are needed provided that these redactions comply with Information Commission criteria for withholding commercial information from the public.**

**Please treat this as a formal refinement of our March 6<sup>th</sup> Fol/EIR request. For the time being we will set aside our original request to see two further documents:**

- **The '5 case' Outline Business Case as submitted by GLA to Homes England on September 10th 2018.**
- **The Part 2 Mayoral Decision report MD2355.**

Given what has emerged at the recent Assembly sessions, the St Quintin and Woodlands Neighbourhood Forum will be making a separate and further Fol/EIR request for sight of:

- MHCLG and/or Homes England letters/emails setting out the conditions attached to the award of £250m of Housing Infrastructure Funds to the GLA in relation to Old Oak North
- Any MHCLG and/or Homes England advice to the GLA or OPDC that the GLA HIF Expression of Interest proforma application (or the conditions attached to this bid) should not be made public (such advice having been referred to in responses by Liz Peace and David Lunts at the London Assembly sessions on June 13<sup>th</sup> and 3<sup>rd</sup> July)

**We request that you on behalf of the GLA, and David Lunts on behalf of OPDC, reconsider the position taken on non-disclosure of the HIF Expression of Interest before we pursue this matter further with the Information Commissioner.**

Yours sincerely

Henry Peterson  
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0207 460 1743

cc Andy Slaughter MP  
Assembly Members Caroline Pidgeon, Navin Shah, Onkar Sahota. Tony Devenish, Sian Berry  
Cllr Steve Cowan, Leader LBHF  
Cllr Wesley Harcourt LBHF  
Liz Peace, Chair OPDC Board  
David Lunts, OPDC Interim Chief Executive Officer  
Charlotte Glancy, EIP Programme Officer  
Mark Walker, Chair Old Oak Neighbourhood Forum