

TO THE INFORMATION COMMISSIONER

**Complaint on refusal by the Old Oak and Park Royal Development Corporation and Greater London Authority to release information relating the Corporation's bid for Housing Infrastructure Funding and the conditions attached by MHCLG to the provisional award of £250m of HIF.**

I am writing on behalf of the Old Oak Neighbourhood Forum and the St Quintin and Woodlands Neighbourhood Forum, to submit a complaint about decisions of the Old Oak and Park Royal Development Corporation and the GLA to refuse publication of documents relating to a £250m award of Housing Infrastructure Funding from MHCLG/Homes England to the Development Corporation.

The St Quintin and Woodlands Neighbourhood Forum was designated by RB Kensington and Chelsea in 2013 and has 420 members and a neighbourhood plan 'made' (adopted as part of the Borough's Development Plan) in 2018. The Old Oak Neighbourhood Forum was designated in 2018, has 105 members and is preparing a neighbourhood plan. I chair the former body and act as an unpaid adviser (as a MHCLG 'neighbourhood champion') to the latter body.

Both these neighbourhood areas are impacted on, very significantly, by the OPDC proposals for regeneration at Old Oak. Both forums have been heavily involved in all stages of preparation of the OPDC Draft Local Plan (with its long term target of 25,500 new homes and 60,000 jobs). I gave evidence on behalf of both forums at the Examination in Public of the OPDC Draft Local Plan during the first half of 2019.

Two separate FoI/EIR requests are the subject of this complaint. Copies of all the correspondence involved are attached and are listed below with a brief commentary. On both requests significant delays were experienced on receipt of responses from OPDC/GLA within required timescales, for which apologies were given. We are not making an issue of these delays.

**Request of 6<sup>th</sup> March 2019 from Old Oak Neighbourhood Forum (OONF) for a copy of the OPDC Expression of Interest for Housing Infrastructure Funding**

**Doc 1.** Letter of 6<sup>th</sup> March 2019 from St Quintin and Woodlands Neighbourhood Forum (Henry Peterson) to Liz Peace CBE requesting under FoI/EIR copies of documents relating to OPDC delivery plans for Old Oak North including an Expression of Interest for Housing Infrastructure Funding.

**Doc 2.** Reply from OPDC (Doug Wilson) of 15<sup>th</sup> April refusing to provide the second and third of the documents requested. This letter stated that *The Housing Infrastructure Fund Expression of Interest and Outline Business Case, and the Part 2 of MD2401 are all commercially sensitive. Given the size and nature of the documents that you have requested be redacted, the work required to provide the information you have requested would impose an unreasonable burden upon OPDC and it is likely that the redacted documents would provide you with no meaningful information in any event.*

**Doc 3.** Letter of 30<sup>th</sup> April from OONF to OPDC (Doug Wilson) requesting an internal review of this decision and setting out the public interest case for disclosure as viewed by the Forum, along with clarification that we had no problem with redaction of commercially sensitive information.

**Doc 4.** Letter of 24<sup>th</sup> July from GLA (Ian Lister) endorsing the decision to refuse to release these documents citing *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.*

**Doc 5.** Letter of 30<sup>th</sup> July 2019 from OONF (Henry Peterson) to GLA (Ian Lister) questioning the use of this ground for refusal and clarifying that the Forum did not need to see the 70 supporting documents to the OPDC Expression of Interest for HIF funding, merely a copy of the proforma application form as submitted to MHCLG/Homes England with any redactions required to protect commercial sensitivity.

**Doc 6.** Letter of 18<sup>th</sup> September from OONF (Henry Peterson) to GLA (Ian Lister) pointing out that no response had been received to HP's 30<sup>th</sup> July letter and that the public interest case for disclosure had become stronger following discussions at the Examination of the OPDC Draft Local Plan.

**Doc 7.** Letter of 3<sup>rd</sup> October from GLA (Ian Lister) to Henry Peterson saying in relation to the refusal to disclose the HIF Expression of Interest *As we explained previously, this is principally due to the amount of time it would take to review and redact the requested information and the distraction of resources that this would involve for OPDC staff.*

### **Request of St Quintin and Woodlands Neighbourhood Forum of 30<sup>th</sup> July 2019 for sight of the conditions attached by Government to the provisional award of £250m of HIF funding**

This FoI/EIR request was made using the What do they Know platform. All correspondence can be found at [https://www.whatdotheyknow.com/request/information\\_on\\_housing\\_infrastru#incoming-1477965](https://www.whatdotheyknow.com/request/information_on_housing_infrastru#incoming-1477965). This includes emails from acknowledging requests and chasing responses. All substantive correspondence is listed below.

**Doc 8.** Letter of 30<sup>th</sup> July 2019 from StQW Forum (Henry Peterson) to OPDC requesting copies of

*1. Documents (letters, emails) from MHCLG and/or Homes England setting out the conditions under which the Corporation's bid for £250m of Housing Infrastructure Funds was approved by Government in March 2019.*

*2. Any written advice (letter, email) from Government departments or agencies advising or directing that the content of the OPDC 'expression of interest' in Housing Infrastructure Funding should not be made available to the public.*

**Doc 9.** Response letter from OPDC of 4<sup>th</sup> October 2019 stating that *OPDC continue to maintain its decision not to release information directly related to the HIF conditions under regulation 12(4)(b) of the Environmental Information Regulations on grounds that the request is considered to be manifestly unreasonable.*

**Doc 10.** Request of 4<sup>th</sup> October from StQW (Henry Peterson) requesting an internal review of this decision

**Doc 11.** Reminder from StQW (HP) of 29<sup>th</sup> November to OPDC that no response had been received to the request for an internal review.

**Doc 12.** Response letter from OPDC of 29<sup>th</sup> November following internal review stating that *For the reasons that have (been) explained in the correspondence with you on your earlier requests, a considerable amount of work would be required to identify, isolate, extract, collate and review the information you are requesting. And again, there are limited resources available within the authority with the necessary knowledge to conduct this work to identify and consider the specific information you are requesting. So, in this regard, I am satisfied nothing has changed since your initial request.*

## **Our questioning of the grounds for refusal of these requests**

The correspondence listed above and attached sets out the OPDC grounds for refusal of these Fol/EIR requests. 'Commercial sensitivity' is referred to in the initial OPDC response, but the ground subsequently relied on in the decision letters on internal reviews is that the requests are 'manifestly unreasonable' under regulation 12(4)(b) of the Environmental Information Regulations.

Both the StQW Neighbourhood Forum and the Old Oak Neighbourhood Forum cannot see how refusal on this ground can be sustained. We have read the ICO note on 'manifestly unreasonable requests' and cannot see that the grounds of 'vexatious' requests or of 'diversion of resources' apply in this case.

As clarified in the correspondence and the requests for internal reviews, only two documents are being sought and earlier requests for other material have been dropped. These two documents are:

- The original Expression of Interest proforma application for Housing Infrastructure Funding as submitted by OPDC/GLA to the Ministry of Housing and Local Government in September 2018 (with no supplementary documents and redacted as necessary in terms of commercially sensitive information)
- The conditions imposed by Government at the time of the provisional award of the £250m of funding provisionally awarded in March 2019. We assume that these conditions were set out by MHCLG in a letter or email to GLA/OPDC at the time of the decision to award the funds.

Both these documents form part of a bidding exercise for funds between London's regional authority and Central Government. They involve an allocation of substantial public funds between central and regional government, on a conditional basis. It is very hard to see why information relating to this funding decision should be kept secret from the public?

In terms of the time and effort required from OPDC to assemble, review and make any necessary redactions to these documents, the scale of the task would seem to be modest. By the standards of London planning authorities, the OPDC is considered to be well resourced with staff.

### **Public interest case for disclosure**

There have been no published reports to the OPDC Board since March 2019 which explain how this £250m of public funding is to be applied by OPDC. It became clear at the Examination in Public of the OPDC Local Plan (and particularly at the session conducted by Planning Inspector Paul Clark on July 18<sup>th</sup>) that OPDC aim to apply these funds to infrastructure works at Old Oak North and to pursuing its plans for 'Phase 1A' of delivery of new housing at 'Old Oak North' including potential compulsory purchase of land owned by Cargiant Ltd.

In answers to questions given by OPDC Chair Liz Peace CBE and David Lunts (Interim CEO) to the London Assembly Budget and Performance Committee on June 11<sup>th</sup> and at a Plenary session of the Assembly on July 4<sup>th</sup> that the GLA will be required to underwrite the £250m of HIF funding, should the conditions imposed by Government fail to be met. GLA transcripts of both session are attached.

Assembly Members at both these sessions asked questions about the content of the HIF bid and the conditions attached by Central Government to a provisional grant award of £250m. The funding award had been announced by OPDC in March 2019 with no mention of conditions being attached.

Members of the Assembly's Budget and Performance Committee subsequently became sufficiently concerned as to the financial risks to which the GLA was being exposed in underwriting this funding that the Committee at its meeting on 26<sup>th</sup> September 2019 issued a formal summons on Liz Peace and David Lunts.

This required OPDC under sections 61(2)(a) and 61(2)(b) of the Greater London Authority Act 1999 (as amended) to provide the Assembly with the following documents in their possession and/or control relating to the Old Oak and Park Royal Development Corporation's (OPDC) Housing Infrastructure Fund (HIF) bid:

- The full OPDC HIF bid, including the '5 case' Business Case;
- The conditions attached to receipt of the £250 million HIF funding;
- The Old Oak North Business Plan; and
- The OPDC's assessment of the Car Giant/Arup alternative road alignment for Union Way

The relevant GLA committee report 8a on the agenda for this meeting can be found at <https://www.london.gov.uk/moderngov/ieListDocuments.aspx?Cid=129&MID=6699#AI30236>. The first two of this set of documents include (and go beyond) the subject of the FoI/EIR requests submitted in March and July 2019 by the StQW and Old Oak Neighbourhood Forums.

It is understood that this material was provided by OPDC to the Budget and Performance Committee within the two week deadline set. It is therefore very hard to understand why the task of assembling and reviewing /redacting only a small part of the same material can be described as a '*manifestly unreasonable*' burden on OPDC staff time, and can remain a justifiable ground for refusal of the two FoI/EIR requests which are the subject of this complaint?

It is not yet known whether the Assembly's Budget and Performance Committee will see fit to publish, in whole or in part, the documentation now in its possession as a result of its summons on the OPDC. Meetings of this committee have been cancelled until after the General Election and we are told that the committee members have been advised that the documents should remain confidential in the meantime.

### **Commercial sensitivity**

In relation to 'commercial sensitivity' of this HIF documentation Liz Peace stated at the Budget and Performance Committee on June 10<sup>th</sup> that *The HIF bid, the way we have positioned it -- I think we are allowed to talk about this. By the way, any coyness on revealing details of the HIF bid is very much because we have to take our lead from MHCLG, who have been quite clear that this is a commercially sensitive document and are very concerned that we hold that close, otherwise it puts them in a very difficult position (see GLA transcript at <https://www.london.gov.uk/moderngov/documents/s77759/Minutes%20-%20Appendix%201%20-%20OPDC%20Risks.pdf>*

In its response to the FoI/EIR request from the Old Oak Neighbourhood Forum, OPDC has since stated in its letter of 4<sup>th</sup> October 2019 (Doc 9) that *In response to part 2 of this, OPDC can confirm that it does not hold any written advice from Government departments or agencies advising or directing that the content of the OPDC 'expression of interest' in Housing Infrastructure Funding should not be made available to the public.*

It remains unclear whether MHCLG or OPDC has decided that both the HIF Expression of Interest and the conditions attached are commercially sensitive, and for what reasons? If this is a MHCLG view, as stated by Liz Peace, it seems that this requirement for confidentiality has been conveyed to OPDC in some non-documented way. We do not understand the '*difficult position*' that MHCLG might be placed in by releasing a copy of a funding application from a public body for the use of Housing Infrastructure Funding?

It is widely known as a result of discussion at the EIP hearing in July 2019, on the OPDC Draft Local Plan, that OPDC and Cargiant Ltd have held different views on land values at Old Oak North and take a different view on the prospects of compulsory purchase by OPDC of land owned by Cargiant. Detailed analyses and viability assessments were provided at that time to Planning Inspector Paul Clark.

In a set of 'interim findings' published in September 2019, the Planning Inspector sided largely with the analysis provided by Cargiant. As result he directed that the major part of the Cargiant land be removed from the current draft OPDC Local Plan, with housing and employment targets adjusted downwards accordingly. Major modifications to the Draft Local Plan are now being prepared by by OPDC and are due to be published for a further round of public consultation in early 2020.

Debate between Cargiant and OPDC was held in public at the EIP hearing, and the viability material provided by both bodies to the Inspector was published in the Examination Library on the OPDC website some months ago. This makes it hard to see how financial information included in the HIF Expression of Interest, and especially in the Conditions applied to the funding award, can be so extensive and of such commercial sensitivity to justify non-disclosure of the two specific documents which are the subject of this FoI/EIR complaint (with any redaction justifiable).

### **Public interest case for disclosure**

Reasons why there is a strong public interest on the disclosure of these two documents are set out in the correspondence leading up to this complaint. They are summarised below:

a) as local residents, the members of both neighbourhood forums have followed closely the plans of the OPDC. For those most affected by these highly ambitious regeneration proposals, major parts of their lives are on hold as a result of uncertainties as to their future housing prospects, their property values, the physical impact of HS2 construction works and housing developments already underway, and their future public transport options.

b) the OPDC's consultation processes for preparing its Draft Local Plan are generally not well regarded by the two neighbourhood forums. Three rounds of public consultation at Regulation 18, 19.1 and 19.2 stage have already been required. A fourth is now due in early 2020, after substantial changes to the Draft have been ordered by the Planning Inspector. The timetable for adoption is running three years late from that envisaged in 2015 when the OPDC took over planning responsibilities from the Boroughs.

c) it is accepted that the OPDC has had a challenging task in planning within a climate of uncertainty (with delays on Crossrail, a review of HS2 as yet unresolved, and a shifting London market for residential and industrial land). But local people see the Corporation as having been over ambitious and unrealistic on a number of its aspirations. Two new Overground stations have been promised as public transport enhancements, but one is now 'off the table' and the second very uncertain, through lack of TfL funding.

d) the two neighbourhood forums, and another long established network of local community organisations (the Grand Union Alliance) have worked hard to discover all that we can about OPDC 'delivery' proposals at Old Oak (where almost all the 25,500 new homes are due to be built, over several decades). As a Mayoral Development Corporation, the OPDC has a substantive 'delivery arm' as well as a sizable part of the organisation that acts as a planning authority.

e) the inherent tensions of a delivery body charged by the Mayor of London with very high housing targets, and a planning authority expected to prepare a Local Plan that meets NPPF requirements in an objective and well evidenced fashion, have become increasingly apparent since 2015. The activities and proposals of the OPDC 'delivery arm' have become increasingly non-transparent in the last 18 months and are seen as dictating Local Plan policies and site allocations. Previous commitments to 'engagement' and public consultation on the OPDC 'masterplan' for Old Oak North have not been fulfilled and are now very much up in the air as a result of the Inspector's interim findings.

f) Overall, the OPDC is seen as having become increasingly reluctant to be open and transparent about the challenges that it faces. Major issues are not aired or discussed at Board meetings, nor at the OPDC Planning Committee. There is evidence of discussions being held and important decisions being made in informal briefing sessions, away from public scrutiny.

g) we believe that a growing number of London Assembly Members share these concerns, along with reservations that the GLA should enter into commitments on the use of £250m of Housing Infrastructure Funding when there is little information available on the outcomes to which this funding will be applied, and on the risks of Government conditions not being met.

h) As a result of the September 2019 'summons' on the OPDC, Assembly Members may now have access to more information on the HIF bid and these funding conditions. We believe that London's public has a right to this information also. We believe that OPDC and GLA officers (and possibly the OPDC Chair and Mayor's Office) have been resisting the release of this information mainly because it will prompt questions over whether the Corporation is achieving the outcomes and targets that were promised at the time of its inauguration in 2015.

i) Londoners are entitled to have information on which to base their own assessment on whether the OPDC will have the necessary resources to carry through its plans. The HIF funding (we understand) is time limited. It is known that one of the basic conditions imposed by Government on release of these funds is the adoption of the OPDC Local Plan. From our experience of the EIP hearings we do not see this event as a foregone conclusion or as happening anytime soon.

j) In correspondence with the OPDC over the past 18 months we have flagged up what we see as perceived governance weaknesses in the way that the Corporation operates. Much of this correspondence is available in 2019 posts on the OONF website at <http://oldoakneighbourhoodforum.org/>

k) Cargiant Ltd asked many months ago for a public inquiry into the activities and expenditure of the OPDC. We share their view that significantly greater transparency is needed over the realism and viability of OPDC 'delivery' plans. We wish to see the two documents which are the subject of these FoI/ER requests because we have lost confidence that the Corporation is currently spending public money wisely. Oversight of its activities seems limited (with only one Board meeting taking place between 26<sup>th</sup> September 2019 and 30<sup>th</sup> January 2020).

l) As noted in previous correspondence with the OPDC and Assembly Members, we see some parallels in the workings of the OPDC with those of the Garden Bridge Trust. While the legal status of the two bodies has been different, both have involved an appointed board, arms length oversight from the Mayor's Office, and a greater level of delegation of decisions to officers than would be found in London planning authorities. The Garden Bridge saga led to the loss of over £40m of public money for no measurable public benefit. The measurable benefits of the work of the OPDC to date remain modest (in our view) with LB Ealing rather than the Corporation having made the planning decisions on new development at North Acton and a set of OPDC Local Plan draft documents which yet to be put into effect.

As we understand, the consideration of a complaint to the Information Commissioner can take several months. Should the London Assembly take steps in the meantime to publish the documents that we have requested under Fol/EIR, or to publish and discuss a report that gives an adequate account of their contents, we will review the need for our request to be investigated and determined.

This letter and attachments is being copied to the Assembly's Budget and Performance Committee, and the Committee Chair is aware of our interest in seeing the material on the OPDC HIF bid brought into the public domain.

I hope that we have included with this letter all the relevant correspondence and background information needed for this complaint to be investigated.

Yours sincerely

Henry Peterson

Chair St Quintin and Woodlands Neighbourhood Forum and Adviser to the Old Oak Neighbourhood Forum

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Enclosures

Correspondence between OONF and OPDC on Fol/EIR request of 6<sup>th</sup> March 2019

Correspondence between StQW and OPDC on Fol/EIR request of 30<sup>th</sup> July 2019

GLA transcript of London Assembly Budget and Performance Committee 11<sup>th</sup> June 2019

GLA transcript of London Assembly Plenary session 4<sup>th</sup> July 2019