

Dear Information Officer,

I am writing to you under the Environmental Information Regulations 2004 to request the following from Bristol City Council, along with representations to support disclosure:

- 1) Any viability report held by the authority prepared on behalf of the applicant in relation to planning application reference 16/05376/F **AND** 16/05398/LA (Blackberry Hill redevelopment).
- 2) Any Viability report prepared on behalf of the local authority in relation to the same.

Context:

In September 2012, the Homes and Communities Agency [awarded Galliford Try](#) (the developer) a contract to deliver affordable homes at the Blackberry Hill site, in partnership with Curo Housing Association. Curo is no longer a partner in the development. On 4th and 6th of October 2016 applications were submitted by the developer to the Local Authority for permission to develop 305 homes, with zero affordable units.

Arguments to support disclosure:

I maintain that the public interest in full disclosure supersedes any exemptions or non-disclosure regulations for the following reasons:

1) Application of the EIR:

Request to be treated as an Environmental Information Regulation. It is widely held that the EIR will apply to such requests. Specifically Regulation 2(1) states that:

“(1) In these Regulations—

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;”

2) Recent General Regulatory Chamber (Information Rights)

decisions:

First Tier Tribunal General Regulatory Chamber (Information Rights) ruling EA/2016/0012: *Clyne AND Information Commissioner AND London Borough of Lambeth*

In a decision promulgated on 14.06.2016, the First Tier Tribunal unanimously upheld a appeal by Mr Clyne regarding the failure of the council and subsequently the Information Commissioner’s Office to disclose both the developer and the Council commissioned viability studies following the submission of an Environmental Information Request. The Council did not appeal.

The Tribunal dealt with the following pursuant to their findings and relevant to the present request:

12(5)(e)EIR (Commercial confidentiality) and 12(5)(f)EIR (Interests of data holder)

In considering possible reasons to disrupt the EIR’s presumption in favour of disclosure the Tribunal turned to EIR regulations 12(5)(e) and (f). Considering

extensive representations from the Council regarding specific redactions of data and submissions by the ICO, the Tribunal stated that “In short, we have not seen anything that we can accept supports the Council’s conclusion that disclosure of the information would have imperilled London Square’s proposed redevelopment of the Megabowl site by weakening its commercial position.”
PARA 56.

This finding is supported by a previous case that found “that the exception statements that harm 'could' or 'may' be caused were insufficient evidence of harm or prejudice.” *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd (EA/2010/0106 - at Paragraph 24)*.

The Tribunal found that 12(5)(e)EIR was engaged, however “consider[ed] the adverse effect to be limited extent.” PARA 61.

This outcome is also in line with a preceding case: *Royal Borough of Greenwich v IC Additional Party Shane Brownie obo Greenwich Peninsula Residents EA/2014/0122*

The public interest test

Despite the engagement of 12(5)(e)EIR overall, the Tribunal unanimously found that “the public interest in disclosing the requested information significantly outweighs that in disclosure for these reasons. The public interests that favour disclosure are: Transparency and participating in Decision Process” PARA 63 & 64.

The judgement highlighted key aspects that directly apply to this present request:

Timeliness:

At PARA 64 i) “The EIR objective is to allow the affected community to have relevant information in time to participate effectively in environmental decision-making, which would include before the planning permission was finalised.”

In this present case, having full and timely access (well prior to planning decision) to the unredacted viability assessments is the only option for fulfilling the intention of the law. The fact that the council may be presently exploring options for customary publication of Viability Reports must not hinder the response to this request, lest the need to hold the “relevant information in time to participate effectively” (Judge Taylor at PARA 71) is itself jeopardised.

Full disclosure:

At PARA 64 ii) Responding to Council representations about the need for redaction of key data, the Tribunal clearly stated that “...there is a strong public interest in understanding why the policy in general is falling short of its targets. Redacting data would not provide the full picture.”

The public’s right to know:

At PARA 64 iii) The Tribunal found that all information should be disclosed in order that the public can make of it what it will, stating that “There is a deficit if only developers and planning departments have access to the information needed to form an opinion.” Continuing at **PARA 64 iv)** “There is no doubt that

affordable housing is of high public interest, and a premise of Information Rights is that there is value in the public having full opportunity to receive and review the information underlying policy choices and decisions”

Importance of site and community response:

At PARA 64 vi) The Tribunal found that public interest to disclose was strengthened when “The site is of importance and interest to the community and will have a significant impact on it and the local environment. The proposed development in its current form was not universally welcomed.”

In the present case the application has already received a significant number of objections and a community campaign has formed around the application.

2) Other representations of the current information requester:

Significance of change and Legitimate Expectation:

As stated, the original award of land to the developer by the Homes and Communities Agency was for an affordable housing development. The present application contains no affordable housing. As in the *Greenwich* and *Lambeth* cases, there is a Legitimate Expectation on behalf of the public to at the very least understand the reasons for a major change in previous plans. This can be only be achieved through full disclosure.

Transparency in local authorities:

Greenwich and Lambeth Councils are now introducing policies to require the full unredacted disclosure of Viability Reports in the event of an application not meeting the Local Authority's affordable housing requirements. These developments support the position that the public interest routinely outweighs non-disclosure. In lieu of such an active policy at Bristol City Council, the applicant requests the full and timely disclosure.

In accordance with Regulation 9 please can you provide any advice and assistance that may help my request to be more effective. In any case if my request is too general please provide advice and assistance as to how it can be refined.

I look forward to your response within 20 working days, as stipulated by Regulation 5.

If you have any queries please don't hesitate to contact me via email or phone, my details are outlined below.

Best wishes,

Adam