

7 August 2014
Our ref: 1062864

Thank you for your request received on 14 July 2014, for the following information:

I request a copy of the original Planning Development Agreement (PDA) appertaining to the West Hendon (Estate) Regeneration, original Pledge 2002/ 2003.

I believe it was originally agreed between Barnet Council and the Developers in 2006/ 2007.

I would also like all the subsequent changes to the above mentioned PDA and all the Amendments and Amendments up to and including today's date of Wednesday 09/07/2014.

We have processed this request under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

Response

Your request refers to a "Planning Development Agreement", but we have assumed that you are seeking a copy of the Principal Development Agreement relating to the regeneration of West Hendon.

I can confirm that the Council holds the following information relating to your request:

- West Hendon Principal Development Agreement dated 11 August 2006 ("the 2006 PDA");
- Deed of Variation to the West Hendon Principal Development Agreement dated 10 August 2009;
- Deed of Variation for the Initial Phase relating to the West Hendon Principal Development Agreement dated 29 April 2010; and
- Deed of Variation of the West Hendon Principal Development Agreement (as amended) dated 5 February 2014 ("the 2014 PDA")

Background Information

Both the 2006 PDA (as varied) and the 2014 PDA set out the commercial arrangements between the Council and its development partners for the regeneration of the West Hendon Estate and the Broadway ("the Regeneration Scheme"). The 2014 PDA is a restated version of the 2006 PDA (as amended in 2009 & 2010) with some variation.

Your request has been considered in accordance with the Freedom of Information Act 2000 (“the Act”). To the extent that all or any part of the information may be considered to be environmental information the Council has also had regard to the Environmental Information Regulations 2004 (“the Regulations”).

The Council's Decision

The requested information falls within the following exemptions (and where applicable exceptions) and is being withheld:

1. Section 41 (Information provided in confidence)

Section 41 of the Act provides an exemption from disclosure where information is provided to the Council by a third party and disclosure of that information to the public would result in a breach of confidence actionable in the courts.

Both the 2006 PDA (as amended) and the 2014 PDA contain information such as financial models which were provided to the Council by its development partners in relation to the Regeneration Scheme. The information provided in confidence relates to financial projections and was obtained by the Council under an implicit duty of confidence.

2. Section 43 (Prejudicial to commercial interests)

Under section 43 of the Act the Council may withhold the requested information if its disclosure would prejudice the commercial interests of any person. To the extent that the Regulations apply, the Council applies the exception set out in regulation 12(5)(e) – confidentiality of commercial information for withholding the information.

The requested information relates to the commercial activities for the delivery of the Regeneration Scheme. Those commercial activities are conducted in a competitive market with developers vying against one another for redevelopment opportunities and if the information were to be disclosed it would have a significant impact on the Council's relationship with its development partners across a number of regeneration schemes currently being promoted.

The commercial interests of the Council and its development partners are likely to be prejudiced by any such disclosure. A number of regeneration schemes are currently being undertaken by the Council in partnership with various development partners in order to secure the delivery of sustainable homes and communities throughout the Borough. The Council has entered into principal development agreements in respect of its other regeneration schemes and the disclosure of the 2006 PDA (as amended) and/or the 2014 PDA would impact the Council's bargaining position with regard to future negotiations with private sector partners.

The Council's development partners were asked to comment on the request to disclose the 2006 PDA and/or the 2014 PDA and have confirmed that they do not consent to its disclosure on the basis that the information is commercially sensitive and its disclosure would prejudice their commercial interests.

The requested information is commercially sensitive. It specifies how the Regeneration Scheme is to be delivered and the financial arrangements between the Council and its development partners.

In applying the exemption / exception the Council has also considered the following public interest test:

Factors in favour of disclosure

- The Regeneration Scheme comprises the construction of up to 2000 new residential units and as a result the existing residential units will be demolished. Existing residents may wish to ensure that there is transparency and accountability in the Council's decision making.

Factors in favour of withholding the information

- The regeneration of the West Hendon Estate and the wider area is a key policy objective for the Council. The homes on the estate do not meet current decent homes standards and having looked at various options the Council decided to appoint a private sector development partner to secure the regeneration of the area;
- The Council's development partner was appointed following a competitive tendering exercise in 2002;
- The Council and its development partners have consistently engaged with residents on the regeneration proposals and how those proposals might affect them;
- The disclosure of the 2006 PDA and/or the 2014 PDA would prejudice the commercial interests of the Council and its development partners. The Regeneration Scheme is a complex redevelopment proposal which is to be phased over a number of years with completion due in 2029. To disclose the commercial arrangements at this stage (15 years ahead of completion) would provide the development partners' competitors in the market place with a commercial advantage; The disclosure would also damage the Council's reputation and/or affect its ability to compete competitively in the market place. As already stated the Council is currently undertaking a number of regeneration schemes across the Borough in partnership with private sector developers. Principal development agreements have also been entered into in respect of those regeneration schemes – the commercial terms will vary in respect of each scheme.

In all the circumstances of the case, the public interest test in maintaining the exemption outweighs the public interest in favour of disclosure.

Advice and Assistance

You may find it helpful to look at the public reports on West Hendon, which do refer to the outline terms of the PDA and any changes that were made. The reports can be found via the following link:

<http://barnet.moderngov.co.uk/documents/s8380/West%20Hendon%20Regeneration%20Scheme.pdf>

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 FOI Officer at: The London Borough of Barnet, North London Business Park, Oakleigh Road South, London, N11 1NP (email foi@barnet.gov.uk).

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.