

Mr Donald Summers
Sent Via E-mail

Our ref: WIR34643
Your ref:
Date: 13 January 2011

Dear Mr Summers,

**RE: Request for information under the Freedom of Information Act 2000 (FOIA) /
Environmental Information Regulations 2004 (EIR)**

We refer to your request for information of 28 December 2010 for a copy of 2007 Faber Maunsell report on the Grove airfield.

Requests for information that is recorded are generally governed by the Freedom of Information Act 2000 (FOIA). The information you have requested is environmental and it is therefore exempted from the provisions of FOIA by FOIA s.39(1). We have therefore considered your request under the provisions of the Environmental Information Regulations 2004 (EIR). EIR regulation 12 allows a public authority to refuse to disclose environmental information if an exception to disclosure applies under paragraphs (4) or (5) and in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. A public authority shall apply a presumption in favour of disclosure.

Information withheld

We have withheld the document "2007 Faber-Maunsell report of the Baseline Study of the development site at Grove, Oxon".

Relevant exceptions

The exceptions that apply to this information are:
Regulation 12 (4)(d) and 12 (5)(f) of the Environmental Information Regulations 2004.

EIR Regulation 12(4)(d) applies because the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data. To release information at this stage would be misleading.

'EIR Regulation 12(5)(f) applies because disclosure would adversely affect the interests of the person who provided the information where that person was not under, and could not have been put under, any legal obligation to supply it to the Environment Agency or any other public authority; they did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and they have not consented to its disclosure.

The Public Interest Test

We have weighed the public interest factors in favour of maintaining the exceptions and find that they outweigh the public interest factors in disclosing the information. In carrying out the public interest test we have considered:

1. Factors in favour of releasing the information:

General presumption of openness. The Environment Agency would only withhold information if it is sure that disclosure would cause substantial harm. In relation to the application of Environmental Information Regulations (EIR) Regulation 12(5)(f), it is clear that Persimmon Homes and Taylor Wimpey were providing information to us in a situation where they were seeking assistance and providing sensitive information to us. The information was of a confidential nature and was provided in circumstances where there was a legitimate expectation on the part of Persimmon Homes and Taylor Wimpey that discussions and information submitted were confidential.

With regard to Environmental Information Regulations (EIR) Regulation 12(5)(d), elements of the document have been superseded by more recent work. When a formal application is submitted this work will form part of the application. Release of this preliminary issued data may raise unnecessary concern and mislead the public.

- **General need to promote accountability and transparency.**

We have made efforts to influence the submission of this document to you. The transparency for this document has been conditionally agreed for viewing in the proposed meeting of the 18 January 2011. Within this meeting you would have an opportunity to discuss what is considered to be the draft content of the document.

- **Whether the information is already public.**

To our knowledge this document has not been formally released into the public domain.

- **Contribution to public debate of issues.**

As mentioned above there will be an opportunity for assessment and discussion in the proposed meeting of 18 January

2. Factors in favour of withholding the information:

- **'Strength' (and number) of grounds in the legislation.**

Regulation (12)(5)(f) The interests of the supplier of the information. The cases envisaged are those where the information was supplied on a voluntary basis in the expectation that it would not be disclosed to a third party and where the supplier has not consented to disclosure. In effect information which is protected by the common law duty of confidence.

In your previous e-mail of the 20 December 2010 to my colleague Jon Mansbridge, Major Projects Officer, Thames West you requested the above document. Although we hold a copy of the document we do not hold the intellectual property rights. Jon Mansbridge contacted Persimmon Homes and Taylor Wimpey on the 22 December 2010 to ask for permission to release it. On the 23 December 2010 it was confirmed that the document may not be released.

A common law duty of confidence arises between the parties that the Environment Agency would breach if the information is disclosed. There is a public interest in ensuring that public authorities do not breach their legal obligations even where the EA as a public body is subject to the overriding effect of the EIR and the need always to consider requests for information in accordance with that legislation. In considering the application of EIR 12(5)(f) this

confidentiality is relevant in so far as were it not for the EIR, the EA would not be entitled to disclose this information, which was volunteered; the EA could not require its production; and Persimmon Homes and Taylor Wimpey have not consented to release.

As indicated, upon assessing the factors in the public interest test, we have assessed that in relation to common law duty and in relation to the draft content, we find that the factors in favour of withholding information outweigh the public interest factors in disclosing the information.

We understand that this may not meet your expectations, however due to the above legislation we are not in a position to provide a copy of this document. We can only suggest you make direct contact with Persimmon Homes and Taylor Wimpey to ask for this information or wait until the scheme becomes a formal application as all supporting documents will be available within the public domain.

The meeting of the 18 January 2011 may be the opportunity for you to discuss the points in this letter and certainly will certainly be the time to discuss particular questions relating to the content of the report.

Rights of appeal

If you are not satisfied with our response to your request for information, you can contact us to ask for our decision to be reviewed. If you are still not satisfied following this, you can make an appeal to the Information Commissioner, who is the statutory regulator for Freedom of Information. The address is: Office of the Information Commissioner, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF .

Tel: 01625 545700.

Fax: 01625 524 510.

E-mail: mail@ico.gsi.gov.uk.

Website: <http://www.informationcommissioner.gov.uk>

Yours sincerely



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