



Our Reference:

BY EMAIL ONLY

19 January 014

Dear

Request for Information

Thank you for your letter dated 28 November 2014 requesting information Land at Castlegate Way. For ease we have responded to each of your questions separately below.

1. Names of the companies/businesses/individuals who took part in the competition of the purchase of the Land no 1 and the Land no 2

In respect of Land 1 there was no formal competition. The Homes and Communities Agency (HCA) was approached by Whitbread and their development team 2011 regarding purchase of the land.

Likewise for Land 2 the HCA was also approached by a developer and there was no formal competition. Whilst the HCA intends to sell the land in question, negotiations are on-going and disclosure of the name of the developer would prejudice the commercial interests of the HCA and the third party. Therefore this information is withheld under Section 43(2) of the Freedom of Information Act 2000 (FOIA). A full summary of this exemption and the Public Interest test arguments are provided below following the further questions.

2. If unable to provide the names of the companies/businesses/individuals then please provide information about how many companies took part in each competition

As above there was no formal completion for Land 1 or Land 2. The HCA was approached by one developer in each case.

3. How many companies/businesses/individuals showed interest but not necessarily took part

Please see response to question 2 above.

4. Dates if and when contract, lease or transfer was entered into

The transfer contract of Land 1 was dated 26 October 2012.

The HCA exchanged contracts for Land 2 on 31 October 2014.

5. How were the competing bids assessed and audited?

In respect of Land 1, as disclosed before, there was no competition. However the Heads of Terms were agreed for the site disposal and these were franked by an independent third party HCA panel firm (not the selling agents) confirming that the consideration represented a fair market price for the proposed use at that time.

For Land 2 the proposed works and values proposed by the developers were assessed by appropriately qualified staff and the HCA commissioned and received an independent valuation advice prepared by one of the HCA panel firms (not the marketing agents). This advice confirms that the purchase price to be paid represents market value for the land having regard to the proposed use of the site and site abnormalities.

6. Dates for completion (if applicable)

In respect of Land 1, this was sold on 26 October 2014. In terms of practical completion of the hotel this was June 2013.

Land 2 had no conditional on planning for the completion date.

7. Dates when transfer of interest was registered with Land Registry (if applicable)

The transfer of interest for Land 1 was 26 October 2012.

The transfer of interest for Land 2 was 26 November 2014.

8. Copies of the contracts

We have provided you with the contract for Land 2. Whilst we have been able to make a large amount of the information contained in the contract available to you, some of it has been withheld. Most redactions are made under Section 43(2) of FOIA however Appendix 4 (Ground enabling Works and Specification) is redacted under Section 41 of FOIA. Again, a full summary of these exemptions and any relevant Public Interest test arguments are laid out below.

The contract for Land 1 is reasonably accessible via Land Registry.

9. Information in relation to the advertisement of the sale/disposal of the Land including the time period when and where advertised

By way of background, Castlegate has been marketed since 2002 by way of site boards, sales particulars, originally GVA and now Bulleys our marketing agent's web pages. It was also marketed via the HCA's Land Development and Disposal Plan.

We believe Castlegate also features on via the following websites:

Movehut: <http://www.movehut.co.uk/property/231037-castlegate-business-park-castlegate-dudley>;

WantspacegotSPACE:
http://www.wantspacegotSPACE.co.uk/general_listing/land/castlegate_business_park_castlegate_dudley_dy1_4ta/799/MTlz

PropertySales.Com: <https://www.propertiesales.com/Listing/Dudley-DY1-4TA>

10. If the best value was not obtained, please provide all documentation which includes information that shows the process applied as to not needing to provide the best value in relation to the disposal of the Land no 1 and the Land no 2.

The Agency is satisfied that having regard to the market exposure and independent professional advice obtained that the sites have been sold at market value

Section 43(2) – Commercial Interests

Section 43(2) of the Act permits a public authority to withhold information where disclosure “would, or would be likely to, prejudice the commercial interests of any party,” including the public authority holding the information.

The HCA determines that harm would arise from disclosure of this information as it would compromise our commercial interests. It would impact upon our ability to operate effectively and competitively within the marketplace as disclosure would reveal conditions specific to a particular developer, which would result in other third parties having an advantage in negotiating conditions in future deals. Disclosure of the information could also harm the third party that HCA has entered into a contract with as it would enable competitors to use the information against them resulting in loss of business.

Section 43 of FOIA requires a Public Interest Test to be carried in order to see where the weight of arguments lies in relation to disclosure of the information. The arguments both for and against disclosure are set out below.

Public Interest Test – Factors in favour of disclosure

Disclosing the information requested promotes the accountability transparency of the HCA as well as providing increased information about the application of public funds. This in turn provides a basis for a more informed public debate about the value of money being obtained by the HCA.

Disclosure would also assist the public in understanding the HCA’s position and gain an understanding as to why certain decisions have been made or actions considered. This again helps to assist the public in informed debate around the future of projects, sites and developments.

Public Interest Test – Factors in favour of non-disclosure

Whilst the HCA recognises the need to be transparent, there are strong arguments for maintaining the engaged exception.

Disclosure of information we hold would severely undermine our ability to negotiate competitively and achieve best value for money in future transactions. It would affect our current position on achieving best sale price but would also disclose our negotiating strategies to the world at large which would include those wishing to potentially buy/sell to us in future transactions. To release this would have a negative impact on the HCA and would not be in the public interest considering the public purse is at stake as well hindering the HCA's ability to continue their work in a fair market, for this and all other projects.

We have in this case determined that disclosure would cause harm rather than just create a likelihood of harm. This strongly adds to the factors below of non-disclosure.

Disclosure of the withheld information would indicate the HCA's commercial strategy, including the valuation ranges, to the world at large. This would include any interested parties that were seeking to transact with the HCA. This would therefore significantly damage the HCA's commercial standing in seeking best value for money as well as hindering our ability to make the best decisions and achieve our operational objectives.

It is not in the public interest to diminish a public authority's ability to be competitive in a commercial market by prematurely releasing information as the result of an FOIA request when it is seeking to achieve best value for the public purse.

Lastly, disclosure of information would impact on the third party as it would enable its competitors to use the information against them in order to gain valuable business.

Taking all factors into consideration we have determined that the exception is maintained and the information is withheld at this time as the public interest arguments are weighted more heavily to non-disclosure. We would, however, stress that the public interest is as ever changing concept and the arguments may change over time.

Section 41 – Information provided in confidence

Section 41 of the Act permits an authority to exempt information if the information was obtained by any other person (including another public authority) and if disclosure by the authority that holds the information would constitute a breach of confidence.

Section 41 is a class exemption which means it only relies on its 'fitting the profile' for the exemption to be engaged without requiring a test of prejudice. It is also an absolute exemption meaning that public interest test does not need to be carried out to apply the exemption. We have therefore withheld Appendix 4 (Ground enabling Works and Specification) of the contract for Land 1 under Section 41 as this information was supplied to us by a third party.

If you have any questions regarding this response or any further queries you can contact us at the following addresses and quote your unique reference number found at the top of this letter:

Email: mail@homesandcommunities.co.uk

Homes and Communities Agency
Fry Building, 2 Marsham Street, London, SW1P 4DF

0300 1234 500
homesandcommunities.co.uk

Mail: Information Access Officer
Homes and Communities Agency
Fry Building
2 Marsham Street
London
SW1P 4DF

If you are unhappy with the way Homes and Communities Agency has handled your request you may ask for an internal review. You should contact

Head of Legal Services
Homes and Communities Agency
Fry Building
2 Marsham Street
London
SW1P 4DF

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

Naomi McMaster
Information Access Officer
Homes and Communities Agency