

14 November 2024

Dear

ATISN 22032 – Planning Application in Heol y Cefn, Blackwood

Thank you for your request submitted on 18 October, which I received on the 21 October.

Your request asked for:

- All correspondence sent and received by Officials and Ministers during 2024 relating to the planning application in Heol y Cefn, Blackwood.
- The report compiled by Planning and Environment Decisions Wales (PEDW) regarding the redetermination of the site in Heol y Cefn, Blackwood, following the Planning Inspector's visit in 2022.

I interpreted your request as asking for all correspondence sent and received by Planning Directorate officials and Ministers during 2024 in respect of the site in Heol y Cefn, Blackwood and a copy of the PEDW Inspectors Report into the redetermination of the planning appeal.

The information caught by your request constitutes environmental information and has been considered for disclosure under the Environmental Information Regulations (“EIRs”). I have decided some of the information described in the enclosed list is exempt from disclosure under Regulations 12(4)e and 13 of the EIRs. The reason for applying these exemptions is set out in full in the Annex to this letter.

Next steps

If you are dissatisfied with the Welsh Government’s handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government’s Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ

or Email: Freedom.ofinformation@gov.wales

Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner’s Office,

Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <https://gov.wales/about/open-government/freedom-of-information/responses/?lang=en>).

Yours sincerely,

Annex

Regulation 12(4)(e) – Disclosure of internal communications

Regulation 12(4)(e) of the EIRs sets out an exception from the right to know for information contained within documents considered to be internal communications. Where an official prepares advice for the Welsh Ministers into a planning decision, including an appointed planning Inspector they offer conclusions on the main issues and make a recommendation to the Welsh Ministers. The Welsh Ministers consider those recommendations, which they may choose to accept or reject. Until the Welsh Ministers make a decision the conclusions and recommendation by the appointed planning Inspector for the proposed development, remain undetermined, the advice provided forms part of internal advice, and, as such, falls within the scope of the exception. The advice caught by this request will, therefore, continue to form part of internal advice.

This exception is subject to the public interest test, and I must determine whether the public interest favours releasing or withholding these documents. This Annex sets out our subsequent consideration of the Public Interest Test.

Public interest arguments in favour of disclosure

The proposals to erect residential development (up to 300 dwellings) together with associated open space, landscaping and parking provision and seek approval of access and scale at land at Heol y Cefn, Cefn Fforest, Bedwellty, Caerphilly, are controversial with a strong public campaign against the proposals and a strong public and media interest in the proposals. Disclosure would allow the public to better understand the government's internal decision making process and the steps taken by government in considering such proposals, taking account of both short and long term potential benefits and negative impacts to the local communities and the local environment, in order to make decisions in the best interests of Wales.

Public interest arguments in favour of withholding

The fact that this exception exists shows there is an inherent public interest in maintaining that free space where officials can freely discuss matters away from the public gaze, particularly where the discussions and deliberations are ongoing. The advice provided to the Minister is conducive to the public interest which is to have an efficient and transparent planning system, which is fair to all. If the conclusions and recommendations of the officials contained within this advice are released before a final decision is issued, there is a risk it will undermine the efficiency, transparency and impartiality of the planning process.

It is in the wider public interest that officials and Ministers fully weigh up the competing cases and for Ministers to reach a considered decision. Disclosure during such deliberations would only serve to encourage both proponents for and those against the proposal to delay the decision making by re-submitting their case.

Balance of public interest test

On balance I have found that the public interest lies in withholding the information.

Regulation 13– Personal data

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Regulation 13(1) of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

1. Legitimate interests

We have been unable to identify a legitimate interest the requester may have in accessing the personal data of those mentioned in the advice to the Minister.

2. Necessity test

We do not believe it is necessary to release the personal data for the advice to the Minister to be understood.

3. Balancing test

As we don't believe there is neither a legitimate interest nor is it necessary to release the personal data, we are of the view that disclosure would breach the GDPRs and, as such, should be withheld under Reg 13.