

ANALYSIS OF PARA 9 & 10 OF SCHEDULE 12A OF LGA 1972

This document summarises relevant changes to the Local Government Act 1972 (LGA 1972) over time relating to Schedule 12A. The purpose of this analysis is to explain why it is unlawful for Barnet Council to continue to withhold information related to the Outline Business Case and the Full Business Case for the proposed Hendon Hub.

Note #1. Unlawful use of Schedule 12A of LGA to withhold information is a separate summary criminal offence compared to the unlawful use of EIR to withhold the same information. These are two different summary crimes, and the associated sanctions are also distinct and separate.

Note #2: It may be helpful if the reader understood that amendments to primary legislation are often implemented by way of a “Statutory Instrument” (SI). Each SI is given a year and reference number to uniquely identify the change. The benefit of an SI is that it avoids the need to completely re-publish the whole of the legislation.

Conclusion

Reasons restricted

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

Explanation of Reasons

- By Virtue of Paragraph 3

Information relating to the financial or business affairs of any particular person (including the authority holding that information)

Condition:

Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under-(a)the Companies Acts (as defined in section 2 of the Companies Act 2006); (b)the Friendly Societies Act 1974; (c)the Friendly Societies Act 1992; (d)the Industrial and Provident Societies Acts 1965 to 1978; (e)the Building Societies Act 1986; or (f)the Charities Act 1993

Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992

Information which-(a)falls within any of paragraphs 1 to 7 above; and (b)is not prevented from being exempt by virtue of paragraph 8 or 9 above, is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

The wording of Barnet’s “Reason Restricted” notice is clear and unambiguous. It is taken as a direct quote from the [Para 9 of Schedule 12A of LGA](#):

“9. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission [or permission in principle] pursuant to regulation 3 of the Town and Country Planning General Regulations 1992”

Para 9 of Schedule 12A is an absolute (i.e. not qualified) non-exemption that prevents a Local Authority from invoking any part of Part 1 of Schedule 12A when they are both Developer and also the Planning Authority.

Para 9 was added to LGA in 1992 as a safeguard to ensure information transparency in this one specific circumstance. Any unlawful use of Schedule 12A to exempt information is a criminal offence under 100H of LGA (See below)

Changes to LGA by means of SI’s over time

To understand why any other interpretation of Para 9 of Schedule 12A is invalid, I explain when and why the primary LGA legislation was changed to include this additional legal obligation. The current form of wording for Para 9 is the outcome of two Statutory Instruments (a) one in 1992 – the most relevant, and (b) one in 2006 – modifications of Part 1 of Schedule 12A and clarifications inserted into Part 2 to align with FOI/EIR legislation.

For the benefit of non-legal readers, the Government website for primary legislation has a timeline to see what amendments were made over time. By clicking on the links below, you can see the changes yourself.

Schedule 12A of LGA (as of Dec 2021). See here: [Schedule 12A: access to information: exempt information](#).

This is the URL to the main Schedule 12A page. The time-scale slider can be moved to each point in time where there has been a change in the legislation. The current wording of Para 9 is:

“Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission [or permission in principle] pursuant to regulation 3 of the Town and Country Planning General Regulations 1992”

If we go back in time (to say Feb 1991) there was no reference to this form of wording. This form of wording was added in Jan 1992.

Schedule 12A of LGA (as of Jan 1992). See here: [The Local Government \(Access to Information\) \(Variation\) Order 1992](#) (SI 1992 no 1497).

This SI introduced the following absolute non-exemption:

*“7. Information falling within any paragraph of Part 1 above is not exempt information by virtue of that paragraph if it relates to proposed development for which the local planning authority **can** grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992”*

Schedule 12A of LGA (as of Mar 2006). See here: [The Local Government \(Access to Information\) \(Variation\) Order 2006](#) (SI 2006 no. 88).

This SI changed the wording of (a) exempt items in Part 1 of Schedule 12A, (b) modified the wording of the paragraph of interest from “can” to “may” and (c) also added an additional clarification in the form of Para 10:

*9. “Information is not exempt information if it relates to proposed development for which the local planning authority **may** grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992”*

10. Information which—

(a) falls within any of paragraphs 1 to 7 above; and

(b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Note: The wording of Para 10 is slightly confusing but is intended to distinguish an absolute non-exemption [10(a)] from a qualified-exemption [10(b)]. These revisions ensure that Schedule 12A is aligned with FOI/EIR legislation.

Relationship between LGA legislation and FOI/EIR legislation

The [EIR legislation](#) came into force in Jan 2005, therefore the Mar 2006 change to LGA legislation was introduced after EIR legislation became law. We can legitimately conclude that Parliament considers the wording of Para 9 and 10 of Schedule 12A to be consistent and not in conflict with the language of EIR legislation.

Summary offence of unlawfully invoking Schedule 12A

100H of LGA “Supplemental provisions and offences” lists the offences triggered when any part of LGA legislation is breached. 100H (4) is the most relevant:

100H of LGA 1972 (as of now). See here: [100H Supplemental provisions and offences.](#)

(4) If, without reasonable excuse, a person having the custody of a document which is required by section 100B(1) [F12, 100C(1) or 100EA(2)] above to be open to inspection by the public—

(a) intentionally obstructs any person exercising a right conferred by this Part to inspect, or to make a copy of or extracts from, the document, or

(b) refuses to furnish copies to any person entitled to obtain them under any provision of this Part, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Note

- 100B(1) = [Access to agenda and connected reports.](#)
- 100C(1) = [Inspection and publication of minutes and other documents after meetings.](#)
- 100EA(2) = [Inspection of records relating to functions exercisable by members](#)

In Summary: Sec 100H(4) confirms that withholding information under LGA (i.e. unlawfully invoking Schedule 12A) is a summary criminal offence similar to Reg. 19 of EIR.