

28 March 2023

Dear

ATISN 17217 – Gilestone Farm

Information requested

Thank you for your request which I received on 28 February. You asked for:

1. Clarification on our response to you in ATISN 17016 around our use of the phrase “*Welsh Government holds no recorded information that can answer this question.*”
2. All versions of the business plan submitted to WG for the proposed use of Gilestone Farm.
3. Itemised costs incurred at public expense associated with the purchase and subsequent management of Gilestone Farm. including, but not be limited to:
 - Pre-purchase reports by 3rd parties
 - Legal advice
 - Time of ministers and staff
 - Farm management costs
 - Cost of meeting any contractual liabilities in respect of the current lease
4. All advice provided to WG by NRW in respect of Gilestone Farm.
5. The results of the HRA that NRW has advised is required in relation to the proposed lease.
6. If no such HRA has been undertaken, what plans does WG have for undertaking HRA?
7. The planning report referred to in the response to Q3 of ATISN 17016

Our response

A copy of the information I have decided to release is enclosed.

I have decided that some of the information is exempt from disclosure under section(s) 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A to this letter.

1. Clarification on our response to you in ATISN 17016 around our use of the phrase “*Welsh Government holds no recorded information that can answer this question.*”

The Freedom of Information Act gives the public a right to access recorded information that a public authority holds on a matter. If a question can be answered by recorded information that is held by the authority, then that

information is captured by the request. However, where information is not held in any recorded form by the authority, the Act provides not duty on an authority to create new information. That is to say, it does not require that the authority create recorded information based on information that is in the heads of officials, but is not held in recorded form. Thus, where we indicated we held no recorded information in our response to ATISN 17016, that means that there is no recorded information held by us that will answer the questions you have asked.

2. All versions of the business plan submitted to WG for the proposed use of Gilestone Farm.

I have concluded that the information requested is exempt from disclosure under Section 43 (commercial interests) of the Freedom of Information Act 2000. Full reasoning for applying this exemption is given at Annex A to this letter.

3. Itemised costs incurred at public expense associated with the purchase and subsequent management of Gilestone Farm. including, but not be limited to:

- Pre-purchase reports by 3rd parties
 - £24,000 – Pre-purchase report
- Legal advice
 - £27,937.46 – Legal Advice
- Time of ministers and staff
 - No information held
- Farm management costs
 - £15,443.65 – Farm Management Costs
 - £1012.88 – Asbestos Management Survey
 - £1,908.04 – Tree Survey
 - £876 – Fire Risk Assessment for Farmhouse and Outbuildings
- Cost of meeting any contractual liabilities in respect of the current lease

4. All advice provided to WG by NRW in respect of Gilestone Farm.

The Welsh Government holds no information on this matter.

5. The results of the HRA that NRW has advised is required in relation to the proposed lease.

The Welsh Government holds no information on this matter.

6. If no such HRA has been undertaken, what plans does WG have for undertaking HRA?

The Welsh Government holds no information on this matter. As explained above, the FOIA gives the public a right of access to recorded information that we hold but does not require us to create new information to answer a request.

7. The planning report referred to in the response to Q3 of ATISN 17016

This was provided to you in annex 5 of our response to ATISN 17016.

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.

Yours sincerely

ANNEX A

Consideration For and Against Disclosure of Information

Decisions relating to non-disclosure have been taken with due consideration of the exemption identified under Section 43(2), commercial interests, of the Freedom of Information Act 2000 (FOIA).

Section 43 is a qualified (public interest tested) exemption and in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it. I have therefore given consideration to the effects of disclosure of the information to the world at large, as the information is made available to anybody and everybody, not just the requestor. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Section 43(2) – commercial interests

The exemption states:

- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The Welsh Government (WG) is of the view that revealing the information in relation to the business plan or other information relating to the purchase would be likely to prejudice Greenman (as well as WG's) commercial interests should it be disclosed at this point in time. To reveal the information would include the financial information and business case which is directly linked to any valuations and or offers for the land. Disclosure of this information would be likely to prejudice their commercial interests. It would also allow any other potential purchasers an insight into the company's methodology and proprietary information they would otherwise not have considered in their offering. The information would reveal commercially sensitive information not otherwise publicly available and which, if disclosed would be likely to prejudice both our and their service offering and future strategy and development

Disclosing the information would also give WG a disadvantage in future dealings for any potential future purchases. It would place WG at a distinct commercial advantage when negotiating and therefore prejudice our ability to engage in future commercial activities. It would also allow any other potential purchasers an insight into our methodology and proprietary information. We do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest.

Public Interest Test For Disclosure

The Welsh Government recognises the public interest in openness and transparency within government, particularly in terms of ensuring an accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely.

Public Interest Against Disclosure

Disclosure of this information would provide competitors and potential sellers access to a level of information not otherwise available to them. This would be likely to enable them to obtain an advantage when negotiating with Welsh Government. We do not believe facilitating this type of unfair competitive advantage would be in the wider public interest.

To freely disclose the information would give their competitors a distinct commercial advantage and stepping stone which would be likely to prejudice their ability to engage in fair and level playing field for commercial activities. They do not have access to similar information on its competitors as they do not publish it, so would be at a significant disadvantage. We believe the resultant harm should this information be released, would be substantial.

Whilst the withheld information would be of interest to other competitors, we do not believe it would be of sufficient interest to the wider public to countervail the public interest in withholding the information. Release of the information would also allow potential competitors access to a level of detail that they otherwise wouldn't have, so as to enable them to obtain a commercial advantage by understanding and potentially copying the methodology, their processes and business case. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest. For example, disclosure of information would allow land owners to understand previous purchases and potentially negotiate a detrimental position for the Welsh Government. I further do not believe there is a public interest in prejudicing the commercial interests of the Welsh Government or the company by the release of this information.

I am aware that, as a general rule, the sensitivity of information is likely to reduce over time; therefore the age of the information, or timing of the request, may be relevant in determining whether to apply an exemption, or where the public interest may lie. In this case, however, the information captured is very much current information. I believe therefore that the balance of the public interest falls in favour of withholding the information.