

Date: 17/10/2019  
Our Ref: RFI2764  
Your Ref: FOI Request – Cowling Farm  
Tel: 0300 1234 500  
Email: foi@homesengland.gov.uk



Homes  
England

██████████  
By Email Only

Windsor House  
Homes England – 6<sup>th</sup> Floor  
50 Victoria Street  
London  
SW1H 0TL

Dear ██████████,

**RE: Request for Information – RFI2764**

Thank you for your recent email, which was processed under the Freedom of Information Act 2000 (FOIA). For clarification, you requested the following information:

*1 copies of all emails and correspondence between Homes England and Chorley Borough council regarding the Cowling Farm site from 1st June 2019 and 10th August 2019*

*2 A copy of the report produced following the public consultation regarding the Cowling Farm site in late 2018*

**Response**

We can confirm that we do hold the requested information. We will address each of your points in turn.

**1) *Copies of all emails and correspondence between Homes England and Chorley Borough council regarding the Cowling Farm site from 1st June 2019 and 10th August 2019***

Please find attached as Annex A all email correspondence between Homes England and Chorley Borough Council between the requested dates.

**Section 40 – Personal information**

We have redacted information on the grounds that it constitutes third party personal data and therefore engages section 40(2) of the FOIA.

To disclose personal data, such as names, contact details, addresses, email addresses and personal opinions could lead to the identification of third parties and would breach one or more of the data protection principles.

Section 40 is an absolute exemption which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exemption is engaged.

The full text in the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/40>

**Section 43 - Commercial interests**

Under section 43(2) Homes England is not obliged to disclose information that would, or would be likely to, prejudice the commercial interests of any party.



We have redacted information contained within Annex A that engages section 43(2) of the FOIA as it is commercial in nature and its release would be likely to prejudice the commercial interests of Homes England and other interested parties to the information.

Homes England has identified that the information requested, if released, would be likely to prejudice the development as proposed in the local plan for this site.

The information that has been requested relates to work which has been undertaken on behalf of both Homes England and Chorley Borough Council and is not in the public domain. It also contains appraisals/discussions with consultants which, if shared, would affect the commercial and contractual relationship between Homes England and the third parties involved in the development of the site. The release of this information could cause harm to nearby commercial interests and those interests within the site itself.

Section 43 is a qualified exemption. This means that once we have decided that the exemption is engaged, Homes England must carry out a public interest test to assess whether or not it is in the wider public interest for the information to be disclosed.

Arguments in favour of disclosure:

- Homes England acknowledges there is a general public interest in promoting accountability, transparency, public understanding and involvement in how Homes England undertakes its work and how it spends public money;
- Homes England acknowledge there is some local public interest in the development at Chorley and the potential plans for the site;
- Homes England acknowledge that decision-making regarding the Local Plan process is of interest to the public; and
- Homes England acknowledge that information relating to consultants and third parties for this site and how they were procured is of interest to the public.

Arguments in favour of withholding:

- Releasing the information would be likely to negatively impact future Local Plan processes as interested parties may feel unable to provide all necessary information for fear of disclosure, which would impact the ability of Government officials and ministers to make effective, informed decisions;
- Release of the information could lead to lobbying that could impact the impartiality of the decision maker (or give rise to concerns on the part of others that impartiality could be adversely affected). It is essential that decision makers must make decisions based on the information provided via the Local Plan process and also be seen to do so;
- Any decision based on incomplete information could lead to poorer outcomes which would not be an effective use of public money;
- Releasing the information could reveal financial information of third parties which may in turn affect their commercial interests;
- Releasing information in relation to one party in a competitive market would be likely to distort competition, making it a less competitive process, which would not be in the public interest;



- Disclosure would result in local authorities being deterred from discussing commercially sensitive information. This will mean that Homes England has to evaluate Local Plans that are less comprehensive than would otherwise have been the case, meaning that Homes England's ability to undertake due diligence will be impaired. This will result in decision makers not taking all relevant information into account, meaning the decisions will be less robust and less likely to deliver value for public money;
- The consequences of releasing data that is part of a wider ongoing Local Plan could damage our relationships with partners and put these potential developments at risk. This would not be in the public interest as this could put potential homes in jeopardy;
- Homes England have to support our relationships with councils in order to achieve best value for public money and best possible delivery of Homes. Releasing working information ahead of the proper Local Plan process could prejudice Chorley Borough Council's statutory role as a local authority;
- Releasing information at this stage prior to this information being in the public domain would undermine Homes England's position and ability to deliver against its objectives and targets in our Strategic Plan;
- Sharing of information on land outside of Homes England control could give commercial advantage to landowners and therefore put Homes England at risk of State Aid;
- Releasing the information would be likely to negatively impact future Local Plan processes and proposals as interested parties may feel unable to provide all the relevant information necessary for fear of disclosure, which would impact the ability of Government officials to make effective, informed decisions; and,
- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the arguments for and against disclosure of the information, we have concluded that at this time, the balance of the public interest favours non-disclosure.

The full text of in the legislation can be found on the following link;

<https://www.legislation.gov.uk/ukpga/2000/36/section/43>

#### **Not in Scope**

We have also redacted information contained within Annex A that does not fall within the scope of your request.

#### **2) *A copy of the report produced following the public consultation regarding the Cowling Farm site in late 2018***

We are able to inform you that we do hold the information that you have requested. However, we rely on section 22, exemption where information is intended for future publication under the FOIA.

The full text of the legislation can be found on the following link and we have quoted section 22 below for ease.

<https://www.legislation.gov.uk/ukpga/2000/36/section/22>



Section 22 - Information intended for future publication.

(1) Information is exempt information if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which falls within subsection (1).

Section 22 is a qualified exemption. This means that in order to withhold information under this exemption, we must consider the public interest in disclosure.

Public Interest Test – Factors in favour of disclosure

- Homes England is compliant with the government agenda of transparency and recognises the benefit of publishing the information, particularly when it concerns how Homes England undertakes its work.

Public Interest Test – Factors in favour of non-disclosure

- Homes England support transparency and engagement with local residents and endeavour to share as much information as possible, and will be publishing the report produced following the public consultation events regarding development at Cowling Farm;
- Information surrounding this matter will be shared as it is produced following these consultations and will also be posted online once any commercial sensitivities have been resolved;
- Releasing the requested information before it has been collated and prepared for release may result in inaccurate or misleading information being in the public domain. Without proper verification of the data we would be unable to provide context to ensure that it is not misunderstood;
- Though we acknowledge the public interest in the information requested, we cannot identify a wider public interest in publishing the information ahead of schedule.

Therefore after careful consideration we have concluded that at this time, the balance of the public interest favours the non-disclosure.

**Advice and Assistance**

In compliance with the Section 45 Code of Practice (Paragraph 14) and to offer advice and assistance under section 16 of the Freedom of Information Act 2000 we can advise that all documents relating to Public Consultation can be found through Chorley Borough Council's website (<https://chorley.gov.uk/Pages/AtoZ/Consultations.aspx>).

The report that is being drafted following the Public Consultation will be made publicly available as part of the Planning Application Submission at the end of October 2019. The report is currently being finalised.

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Homes  
England

### **Right to Appeal**

If you are not happy with the information that has been provided or the way in which your request has been handled you may request an internal review by writing to;

The Information Access Team  
Homes England – 6<sup>th</sup> Floor  
Windsor House  
50 Victoria Street  
London  
SW1H 0TL

Or by email to [foi@homesengland.gov.uk](mailto:foi@homesengland.gov.uk)

You may also complain to the Information Commissioner however, the Information Commissioner does usually expect the internal review procedure to be exhausted in the first instance.

The Information Commissioner's details can be found via the following link

<https://ico.org.uk/>

Please note that the contents of your request and this response are also subject to the Freedom of Information Act 2000. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

**Information Access Team**

For Homes England