



Homes  
England

Date: 4 August 2020

Our Ref: RFI3042

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████  
By Email Only

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

Dear ██████████

**RE: Request for Information – RFI3042**

Thank you for your request for information which was processed in accordance the Freedom of Information Act 2000 (FOIA).

You requested the following information:

*I am writing to request the following further information under the Freedom of Information Act 2000 on the sale of this site by Homes England to Fairview Homes, which was completed on 3 January 2019:*

- 1. Are Government/public bodies required to include an overage or 'clawback' clause in any sale of land with development potential to the private sector.*
- 2. Was such a clause included in the agreement for sale of this site (or in a related document) between Homes England and Fairview Homes.*
- 3. If a copy of the agreement for sale for this site may now be released, given that eighteen months have since elapsed and, if not, the reasons why not.*
- 4. As the Government's asset vendors please advise to which party/parties Homes England has a duty of care and what that duty is.*

**Response**

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

- 1. Are Government/public bodies required to include an overage or 'clawback' clause in any sale of land with development potential to the private sector.***

We can confirm that Homes England does not hold the information detailed in your request.

In order to conclude that the information is not held, we have searched with our Land Disposals and Legal Team who would have the requested information if held.

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The FOIA does not oblige a public authority to create information to answer a request if the requested information is not held. The duty under section 1(1) is only to provide the recorded information held.

The full text of section 1 in the legislation can be found here:

<https://www.legislation.gov.uk/ukpga/2000/36/section/1>

We have a duty to provide advice and assistance in accordance with section 16 of the FOIA. To comply with this duty we are able to confirm that in disposing of its land Homes England must comply with section 10(2) Housing and Regeneration Act 2008 including any general or specific consents issued by the Secretary of State, and must also have regard to Managing Public Money and the parameters of the programmes it is commissioned by the Ministry of Housing, Communities and Local Government (MHCLG) to deliver.

2. ***Was such a clause included in the agreement for sale of this site (or in a related document) between Homes England and Fairview Homes.***  
and
3. ***If a copy of the agreement for sale for this site may now be released, given that eighteen months have since elapsed and, if not, the reasons why not.***

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.

The information requested relating to the agreement for sale and the details contained within 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 effective relationship between Homes England and our partners.

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 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 acknowledges that there is some interest in the purchase details and development of homes at this site.



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### Arguments in favour of withholding

- Planning applications for the site are currently ongoing. Therefore, releasing the information would be likely to prejudice the council and the developer's ability to proceed with their proposals for the site. Disclosure 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 proper planning process and be seen to do so;
- The terms of the sale agreement and the obligations on the parties are ongoing until development is completed. Therefore, the information relates to ongoing commercial and contractual obligations between the parties and release whilst these are current would not be in the public interest. Homes England must effectively manage relationships with both current and potential partners in order to achieve best value for public money. If the information were to be released, it would be likely to negatively affect the perception of Homes England as a partner in the industry and our ability to work competitively. If partners felt that Homes England would share commercial details that are not concluded they may not be willing to work with us. This would mean that Homes England would not have access to the most competitive terms and arrangements which would not be in the public interest as it could lead to poorer value for public money. Therefore, release of this information would also undermine Homes England's position and ability to deliver against its objectives and targets in our Strategic Plan; 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 the legislation can be found on the following link:

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

Whilst we consider the details contained within the agreement for sale to be sensitive at this time, we are happy to provide the following information as a discretionary disclosure regarding the site.

The Blood Centre was transferred from The Department of Health under Other Government Departments (OGD) transfer model at the end of March 2017 to Homes England for £2,600,000.

In the summer of 2018, Strutt and Parker were appointed to market the property by way of an open market campaign seeking unconditional offers.

A planning brief was prepared in March 2018 by Wood PLC and their conclusion stated there was an excellent development opportunity with strong planning certainty for a scheme of approximately 55 units. Brentwood Borough Council are supportive of the development opportunity.

Homes England Transferred the freehold on the 3 January 2019 to Fairview for £7,023,000.



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We have a duty to provide advice and assistance in accordance with section 16 of the FOIA. Homes England is the trading name of the Homes and Communities Agency, a statutory corporation created by the Housing and Regeneration Act 2008. It is a non-departmental public body (NDPB), sponsored by the Ministry of Housing, Communities and Local Government.

The Secretary of State for Housing, Communities and Local Government (the "Secretary of State") is accountable to Parliament for Homes England's activities. Responsibility may be delegated by the Secretary of State to another minister within the Ministry of Housing, Communities and Local Government. The Department's Permanent Secretary is its Principal Accounting Officer and is the person accountable to Parliament for the stewardship of the Department's resources. The Principal Accounting Officer is responsible for oversight of Homes England.

The Principal Accounting Officer has designated the Chief Executive of Homes England as its Accounting Officer. The Chief Executive as Accounting Officer is personally responsible for safeguarding the public funds for which he or she has charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of Homes England. In addition, he or she shall ensure that Homes England as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management that are set out in Box 3.1 of Managing Public Money, and which are also described in the Accounting Officer's letter of appointment (which is issued by the Permanent Secretary when the Chief Executive takes up the post).

Like any natural or legal person in the UK, Homes England is of course subject to the duties of care imposed on it by law, including for example the Health and Safety at Work Act 1974.



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

Or by email: [infogov@homesengland.gov.uk](mailto:infogov@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,

**The Information Governance Team**

For Homes England

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