



██████████
By Email Only

Information Governance Team
Homes England
Windsor House – 6th Floor
50 Victoria Street
London
SW1H 0TL

Dear ██████████

RE: Request for Information – RFI3596

Thank you for your recent email, which was processed under the Environmental Information Regulations 2004 (EIR).

You requested the following information:

- 1. What tests and investigations were made prior to the grant being approved for the Bulverhythe Recreation Ground development and what controls have been imposed.*
- 2. What contact has Homes England had with the Environment Agency about the proposed flood alleviation part of the project, which takes the bulk of the grant to Hastings for this project?*
- 3. Has Homes England approached the Environment Agency about their objections to the current flood alleviation proposals and if so with what result?*
- 4. What contact has Homes England had with Sports England, who are objecting to the loss of sports grounds.*
- 5. What has happened about the very tight timetable for the draw down of the grant, originally timed for March 31 2021.*
- 6. Why is Homes England prepared to continue financing site investigations, which appear to duplicate investigations already made?*

Response

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

- 1. What tests and investigations were made prior to the grant being approved for the Bulverhythe Recreation Ground development and what controls have been imposed.***
As part of the assessment process Homes England will go through due diligence on the project to assess its suitability for the programme, this will involve reviewing documentation submitted by the Local Authority but would not cover fresh tests or investigations. These would be picked up as part of the planning process as flooding matters are picked up by the Environment Agency as a statutory body. In terms of controls there are



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conditions and milestones within the Grant Funding Agreement (GFA) that the local authority must meet before they can drawdown funding.

The due diligence report undertaken is being withheld from disclosure under the following exception:

Regulation 12(4)(e) – Internal Communications

Under regulation 12(4)(e) of the EIR, Homes England may refuse to disclose information to the extent the request involves the disclosure of internal communications.

In engaging the exception it is only necessary that the information fall into the defined category, not that disclosure would have an adverse effect. However, under regulation 12(1)(b), the public authority can only withhold the information if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. Furthermore, under regulation 12(2), it must apply a presumption in favour of disclosure.

Public Interest Test

Regulation 12(4)(e) is subject to the public interest test. Once the exception has been engaged it is then necessary to consider the balance of the public interest in maintaining the exception or disclosing the information.

Factors in favour of disclosure

- Homes England acknowledge that there is a presumption in disclosure regarding environmental information as well as a public interest in promoting transparency in how we undertake our work and allocate public money; and
- Homes England acknowledge that there is an interest from the public in how Homes England makes decisions and considers applications to our funding schemes, and that there is a level of transparency required from public servants making these decisions.

Factors in favour of withholding

- It is vital that Homes England have a 'safe space' to assess and deliberate decisions in relation to ongoing funding agreements with third parties. Homes England is responsible for ensuring that a significant amount of public money is allocated to partners effectively and in a way that best ensures value for money and ensures deliverability. The deliberations undertaken by Homes England in the withheld information detail internal decision making processes in relation to ongoing contractual milestones between Homes England and a third party. Disclosure would prejudice the ability of decision makers to make impartial judgements about ongoing contractual negotiations without fear of external scrutiny and undue pressure. This would not be in the public interest as it would be likely to prejudice our position in the market as the government's housing accelerator and effectively manage the public funds entrusted to us;
- The Information Tribunal has confirmed that the need for a safe space will be strongest when the information relates to a 'live' matter. In this case, the information reveals internal deliberations that would reveal ongoing contractual milestones that if not met, would constitute a fundamental default of the contract. If the information were public it would be likely that public pressure and external factors would detrimentally affect the Council's ability to achieve further approvals and measures necessary to meet their contractual obligations. This would be detrimental to the public interest as it could negate a substantial amount of public money already invested; and



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- Disclosure of internal approval decisions would have a 'chilling effect' on Homes England's ability to progress with both current and future decisions and discussions regarding funding of this scheme. As previously stated, these discussions are currently ongoing and in relation to a live process. To disclose the information would result in a loss of frankness and candour in relation to continuing decisions about a large amount of public money and would damage the quality of these discussions. This would lead to poorer decision making which would directly affect spending of public money and decision making in relation to significant infrastructure works that will impact a large number of people. It is vital that the quality of these decisions is as robust as possible to ensure these decisions are made effectively and in the public interest.

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 and there is not a wider public interest in disclosing the information requested.

The full text of Regulation 12(4)(e) in the legislation can be found via the following link: [The Environmental Information Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

The documentation submitted by the local authority for deliberation by Homes England (technical reports) is also exempt from disclosure under the following exception:

Regulation 12(5)(e) – Confidentiality of commercial or industrial information

Under regulation 12(5)(e) of the EIR, Homes England may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

Four elements are required for Regulation 12(5)(e) to be engaged:

- 1) The information is commercial or industrial in nature;
The reports contain financial and economic appraisals, costings and values that relate to an ongoing commercial operation regarding prospective/potential development and procurement activities that are ongoing/under negotiation. Therefore, it is commercial in nature as it relates to commercial activity.
- 2) Confidentiality is provided by law;
The withheld information is subject to confidentiality provided by law under a common law duty of confidence. The information has a common law duty of confidence because it is not trivial and not in the public domain. The information was shared between parties who have entered into Legal agreements that contain contractually binding confidentially terms. These show that the parties had the intention that a duty of confidentiality would be created between them. Homes England therefore recognises that this information was intended to be held in confidence between the parties.
- 3) The confidentiality is providing a legitimate economic interest;
The withheld information relates to financial and economic appraisals of a site that is subject to development proposals. If the confidentiality of this information was breached it would harm the ability of Homes England and third parties to receive value for money for land and services at this site. There is a legitimate economic interest



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in protecting the ability of Homes England and third parties to negotiate in current and future commercial agreements.

- 4) The confidentiality would be adversely affected by disclosure; Disclosure would result in third parties gaining access to commercially valuable information. Disclosure of the confidential information would harm the ability of Homes England to achieve good value for public money.

Public Interest Test

Regulation 12(5)(e) is subject to the public interest test. Once the exception has been engaged it is then necessary to consider the balance of the public interest in maintaining the exception or disclosing the information.

Under regulation 12(2) the public authority must apply a presumption in favour of disclosure, in both engaging the exception and carrying out the public interest test. In relation to engaging the exception, this means that there must be clear evidence that disclosure would have the adverse effect listed in 12(5).

Factors in favour of disclosure

- Homes England acknowledge that there is a presumption in disclosure regarding environmental information as well as a public interest in promoting transparency in how we undertake our work and allocate public money; and
- Homes England acknowledge that there is a public interest in large scale development processes and the robustness of the applications for funding submitted to the Housing Infrastructure Fund (HIF).

Factors in favour of withholding

- Releasing the information would reveal financial information of a third party which may in turn affect their commercial interests. The consequences of releasing data that is part of a wider ongoing matter could damage our relationships with partners and put other potential funding allocations at risk. This would not be in the public interest as this could put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan;
- The information relates to a site where a third party (the Local Authority) will be procuring/undertaking works. If this information were released it would be likely to disadvantage the third party's commercial position and have a negative impact on the third party's ability to procure works for ongoing development at this site. The Local Authority would not be able to negotiate effectively as this information could be used by third parties to distort or otherwise prejudice the ability of the Local Authority to secure works for market value, resulting in damage to the public purse. This would also be likely to have the same negative effect on future commercial activity and other Homes England funding. This would not be in the public interest as it would put development at risk, inflate prices and damage Homes England's reputation as a partner. This would negatively affect public money and nullify work already undertaken;
- The information is still subject to change and options contained within not yet finalised. The consequences of releasing data that is part of a wider ongoing proposal could damage our relationships with partners and put potential negotiations and planning at risk. The interests of the third parties involved would also be similarly affected by disclosure, as this would reveal financial strategies and analysis disclosed to Homes England that were not meant for release into the public domain. If released, their interests would be adversely affected as it could be used against them in negotiations for similar matters as other parties would have this prior knowledge of their business' operating models, forecasts and financial information. To release this information would undermine future bids for similar works as it would reveal what has been



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agreed in this instance which could be used as a basis for obtaining an unfair advantage by other third parties. This would put them at a commercial disadvantage which would not be in the public interest as it would hinder their ability to conduct business in a competitive market if their bidding and pricing strategies were revealed in this way. This could put potential homes in jeopardy and would undermine Homes England's position and ability to deliver against its objectives and targets in our Strategic Plan;

- Disclosure would result in local authorities being deterred from including commercially sensitive information in future bids for grant funding. This will mean that Homes England would have to evaluate bids that are less comprehensive than would otherwise have been the case, meaning that Homes England's ability to undertake due diligence on the bids will be impaired. This would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds, meaning the decisions will be less robust and less likely to deliver value for money; 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 Regulation 12(5)(e) in the legislation can be found via the following link: [The Environmental Information Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk).

2. *What contact has Homes England had with the Environment Agency about the proposed flood alleviation part of the project, which takes the bulk of the grant to Hastings for this project?*

Regulation 12(4)(a) – Information not Held

Under regulation 12(4)(a) of the EIR, Homes England may refuse to disclose information if the requested information is not held by that public authority.

When relying on Regulation 12(4)(a), Homes England must also advise details of any other public authority to whom the requestor could redirect their request to, and in accordance with this we can advise that you contact the Environment Agency.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that as part of the planning process the environment agency as statutory body will be consulted by the Local Planning Authority on matters such as flood alleviation. As it is not Homes England's role to interfere in this process, we do not hold any information that falls within the scope of this question.

The full text of Regulation 12(4)(a) in the legislation can be found via the following link: [The Environmental Information Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk).



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3. *Has Homes England approached the Environment Agency about their objections to the current flood alleviation proposals and if so with what result?*

Regulation 12(4)(a) – Information not Held

Under regulation 12(4)(a) of the EIR, Homes England may refuse to disclose information if the requested information is not held by that public authority.

When relying on Regulation 12(4)(a), Homes England must also advise details of any other public authority to whom the requestor could redirect their request to, and in accordance with this we can advise that you contact the Local Authority, Hastings Borough Council.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that this is not a matter for Homes England. This is a matter for the Local Authority as applicant, and more widely, in their role as Local Planning Authority.

4. *What contact has Homes England had with Sports England, who are objecting to the loss of sports grounds.*

Regulation 12(4)(a) – Information not Held

Under regulation 12(4)(a) of the EIR, Homes England may refuse to disclose information if the requested information is not held by that public authority.

When relying on Regulation 12(4)(a), Homes England must also advise details of any other public authority to whom the requestor could redirect their request to, and in accordance with this we can advise that you contact the Local Authority, Hastings Borough Council.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that this is not a matter for Homes England. As per question 3, this is a matter for the Local Authority as applicant, and more widely, in their role as Local Planning Authority.

5. *What has happened about the very tight timetable for the draw down of the grant, originally timed for March 31 2021.*

There was a programme-wide extension to the Housing Infrastructure Fund (HIF) due to external factors, which extended the funding availability period to applicants.

6. *Why is Homes England prepared to continue financing site investigations, which appear to duplicate investigations already made?*

As part of the Funding Agreement the Local Authority is entitled to draw down funding for remediation, demolition, site investigation, ecological and infrastructure works; as part of this the updating of site investigations may be necessary to bring the housing forward.



Homes
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Making homes happen

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Right to make Representations

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 a reconsideration of our response (Internal Review). You can make this representation by writing to Homes England via the details below, quoting the reference number at the top of this letter.

Email: infogov@homesengland.gov.uk

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Your request for reconsideration must be made in writing, explain why you wish to appeal, and be received within 40 working days of the date of this response (Reg 11(2)). Failure to meet this criteria may lead to your request being refused.

Upon receipt, your request for reconsideration will be passed to an independent party not involved in your original request. We aim to issue a response within 20 working days.

You may also complain to the Information Commissioner's Office (ICO) 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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