



[Redacted]  
[Redacted]  
By Email only

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

Dear [Redacted],

**RE: Request for Information – RFI3681**

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

You requested the following information:

1. *A copy of the GDA made between Wiltshire Council and Homes England in respect of the "Future Chippenham" proposed development*
2. *If the completed GDA cannot be provided, then please provide the following:-*
  - 2.1 *A copy of the template GDA entered into*
  - 2.2 *Details of the number of dwellings to be delivered or facilitated as a result of the HIF funding (the Housing Output)*
  - 2.3 *Details of the infrastructure works to be funded by the HIF funding (the Infrastructure Works)*
  - 2.4 *Details of the milestones which Wiltshire Council was expected to meet by which dates.*
3. *Details of any alternative and/or amended scheme, in terms of amended Infrastructure Works and/or Housing Outputs and/or delivery programme submitted by Wiltshire Council to Homes England as part of any request to vary the terms of the GDA*
4. *Whether any variations to the GDA have been formally agreed by Homes England.*

**Response**

**Statutory Regime**

Section 39 FOIA explains that where information is "environmental" in nature, then the request should be handled in accordance with the EIR rather than FOIA. Regulation 2(1) of the EIR sets out the definition of "environmental information" which can be found here: [The Environmental Information Regulations 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukreg/2004/2004001/2004001).

Homes England has determined that information that falls within the scope of your request falls under both regimes and therefore we have advised in our response to each point raised which of the regimes has been applied to that part of your request.



Date: 11 January 2022

Our Ref: RFI3681

Tel: 0300 1234 500

Email: [infogov@homesengland.gov.uk](mailto:infogov@homesengland.gov.uk)

**1) *A copy of the GDA made between Wiltshire Council and Homes England in respect of the "Future Chippenham" proposed development***

We can confirm that we do hold the requested information. Some of this information is already publicly available, however some of the information is exempt from disclosure. The reasons for this are explained below.

**Grant Determination Agreement – FOIA**

**Section 21 - Information accessible to applicant by other means**

We rely on Section 21 FOIA exemption where information is available to the applicant elsewhere, and therefore section 21 applies to part of your request.

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

<https://www.legislation.gov.uk/ukpga/2000/36/section/21>

**Advice and Assistance**

We have a duty to provide advice and assistance in accordance with Section 16 of the FOIA. Therefore, we can advise that the template Grant Determination Agreement for Forward Funding has been published in response to previous FOI requests and is available on our disclosure log via the following link: [RFI3100 - HIF Grant Determination Agreements.pdf \(publishing.service.gov.uk\)](#)

We also rely on Section 43(2) and Section 41 FOIA to withhold the information not in the published template agreement from disclosure.

**Section 43 - Commercial interests**

Information contained within the Grant Determination Agreement (GDA) 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 operation of the project and the Housing Infrastructure Fund (HIF) funding programme.

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; and
- Homes England acknowledges there is an interest in the terms of the funding it delivers and the arrangements between the organisation and our partners.



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Arguments in favour of withholding:

- The GDA between Homes England and the Local Authority sets out performance criteria in relation to ongoing milestones and targets, delivery and operational obligations, performance criteria, and information relating to payments/repayments. To release the detail of these ongoing contractual obligations between the parties would be likely to prejudice their ability to fulfil the requirements agreed between the parties in the GDA. It is imperative that the local authority be able to work to achieve the obligations set out in the contract without undue influence from third parties that could disrupt the development, contracting process, or prejudice other funding sources that could put the overall scheme at risk. This would affect value for public money and prejudice new homes which would not be in line with the strategic objectives set out by government that Homes England is tasked with achieving as per our strategic plan;
- The GDA sets out requirements on the Local Authority and furthermore failure to meet the agreed deadlines could result in a material breach of contract. This would have significant cost implications on both the Local Authority and Homes England. This would directly nullify public funds already spent and would be likely to inflate the cost of future spend on the site, which would not be in the public interest as it would directly affect the public purse;
- The GDA contains confidentiality provisions in relation to the Local Authority's obligations and release of the information would breach these undertakings. This would be likely to cause significant detriment to Homes England in our relationship with a partner. As the government's housing accelerator Homes England has to support relationships with partners in order to achieve our strategic objectives and support home delivery with best value for public money. If partners felt that Homes England would reveal confidential commercial information in relation to projects where we are collaborating it would be likely that future partners would be unwilling to work with us or be wary of being open and transparent. This would cause significant risk in Homes England being able to invest public money and resources in the widest possible net of partners in order to achieve best value for money. It is imperative that Homes England are able to attract competitive partners and are respected in the market as a positive force;
- The requested information relates to a current and ongoing project where all opportunities/proposals have not yet been determined or concluded. If other potential or confirmed sources of funding became aware of the terms of the HIF funding and the obligations placed on the Local Authority regarding this funding as contained in the GDA, it would be likely to prejudice the ability of the Local Authority to negotiate for and secure other sources of funding. This would result in Homes England having to pay a higher grant than would have otherwise be the case, meaning greater cost to the public purse which would not be in the public interest;
- Releasing the information would be likely to negatively impact future funding processes and proposals to our funding schemes as potential partners may be deterred from applying to Homes England for grant funding if they felt information relating to their commercial and ongoing funding commitments would then be released to the public domain. This would be likely to result in a substantial impact on potential financial outcomes and delivery of the HIF. Furthermore, this would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds. This would not be in the public interest as public funds could be allocated in a way that would distort regional need for development;
- The consequences of releasing data at a time when negotiations/proposals are ongoing would significantly prejudice the council's ability to deliver the program. The program is a key scheme and failure to deliver could lead to significant planning harm to the local area and affect the Local Authority's ability to achieve the targets set out in their Local Plan. Therefore, release would be likely to put potential homes in jeopardy



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and affect Homes England's ability to deliver against its objectives in our strategic plan, which is not in the public interest; 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>

#### Section 41 – Information provided in confidence

Under section 41(1)(b) of the FOIA Homes England is not obliged to disclose information to the public if it would constitute a breach of confidence.

Given that the Grant Determination Agreement (GDA) is subject to confidentiality provisions, section 41 of the FOIA is engaged. Information contained within the GDA includes information for the HIF funding scheme that has been provided to Homes England in confidence and with the expectation that it will not be publicly disclosed. We rely on this exemption to withhold from disclosure the financial and technical information contained in the GDA only.

Although section 41 of the FOIA is an absolute exemption and there is no requirement to conduct a full public interest test, we can confirm that we have considered the balance of the public interest, as a breach of confidence may not be actionable if there is an overriding public interest in disclosure. In this case, we feel that there is no overriding public interest in favour of disclosure.

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

<https://www.legislation.gov.uk/ukpga/2000/36/section/41>

## **2. If the completed GDA cannot be provided, then please provide the following:-**

### **2.1 A copy of the template GDA entered into**

A link to the template GDA for forward funding has been provided in our response to question 1 in your request.

### **2.2 Details of the number of dwellings to be delivered or facilitated as a result of the HIF funding (the Housing Output)**

We can confirm that the infrastructure unlocks the potential of up to 7,500 units.

### **2.3 Details of the infrastructure works to be funded by the HIF funding (the Infrastructure Works)**

The details of works are set out in the GDA, which was considered for release in question 1.



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**2.4 Details of the milestones which Wiltshire Council was expected to meet by which dates.**

The milestones the council are expected to meet are set out in the GDA, which was considered for release in question 1.

**3. Details of any alternative and/or amended scheme, in terms of amended Infrastructure Works and/or Housing Outputs and/or delivery programme submitted by Wiltshire Council to Homes England as part of any request to vary the terms of the GDA**

We can confirm that we do hold recorded information that falls in scope of your request, being:

- a) Extension Letters to the original HIF GDA
- b) Correspondence

We rely on regulation 12(5)(e) of the EIR to withhold the information from disclosure:

**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 information contains financial and performance milestones that relate to an ongoing commercial operation regarding prospective/potential development that is 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 created by two parties who have entered into 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 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 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.



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#### 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 acknowledges there is an interest in the terms of the funding it delivers and the arrangements between the organisation and our partners.

#### Factors in favour of withholding

- The GDA between Homes England and the Local Authority sets out performance criteria in relation to ongoing milestones and targets, delivery and operational obligations, performance criteria, and information relating to payments/repayments. To release the detail of these ongoing contractual obligations between the parties would be likely to prejudice their ability to fulfil the requirements agreed between the parties in the GDA. It is imperative that the Local Authority be able to work to achieve the obligations set out in the contract without undue influence from third parties that could disrupt the development, contracting process, or prejudice other funding sources that could put the overall scheme at risk. This would affect value for public money and prejudice new homes which would not be in line with the strategic objectives set out by government that Homes England is tasked with achieving as per our strategic plan;
- The GDA sets out requirements on the Local Authority and furthermore failure to meet the agreed deadlines could result in a material breach of contract. This would have significant cost implications on both the Local Authority and Homes England. This would directly nullify public funds already spent and would be likely to inflate the cost of future spend on the site, which would not be in the public interest as it would directly affect the public purse;
- The GDA contains confidentiality provisions in relation to the Local Authority's obligations and release of the information would breach these undertakings. This would be likely to cause significant detriment to Homes England in our relationship with a partner. As the government's housing accelerator Homes England has to support relationships with partners in order to achieve our strategic objectives and support home delivery with best value for public money. If partners felt that Homes England would reveal confidential commercial information in relation to projects where we are collaborating it would be likely that future partners would be unwilling to work with us or be wary of being open and transparent. This would cause significant risk in Homes England being able to invest public money and resources in the widest possible net of partners in order to achieve best value for money. It is imperative that Homes England are able to attract competitive partners and are respected in the market as a positive force;



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- The requested information relates to a current and ongoing project where all opportunities/proposals have not yet been determined or concluded. If other potential or confirmed sources of funding became aware of the terms of the HIF funding and the obligations placed on the Local Authority regarding this funding as contained in the GDA, it would be likely to prejudice the ability of the Local Authority to negotiate for and secure other sources of funding. This would result in Homes England having to pay a higher grant than would have otherwise be the case, meaning greater cost to the public purse which would not be in the public interest;
- Releasing the information would be likely to negatively impact future funding processes and proposals to our funding schemes as potential partners may be deterred from applying to Homes England for grant funding if they felt information relating to their commercial and ongoing funding commitments would then be released to the public domain. This would be likely to result in a substantial impact on potential financial outcomes and delivery of the HIF. Furthermore, this would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds. This would not be in the public interest as public funds could be allocated in a way that would distort regional need for development;
- The consequences of releasing data at a time when negotiations/proposals are ongoing would significantly prejudice the council's ability to deliver the program. The program is a key scheme and failure to deliver could lead to significant planning harm to the local area and affect the Local Authority's ability to achieve the targets set out in their Local Plan. Therefore release would be likely to put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan, which is not in the public interest; 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).

#### **4. *Whether any variations to the GDA have been formally agreed by Homes England.***

##### 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.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that we have interpreted 'variations' in your request to refer to any decision that would require a Deed of Variation between the parties to vary the terms of the GDA. As advised in our response to question 3 above, there have been extension letters to vary the dates of some milestones, however, there has been no Deed of Variation agreed between the parties.

#### **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. You can request an internal review by writing to Homes England via the details below, quoting the reference number at the top of this letter.



Homes  
England

Making homes happen

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SW1H 0TL

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

Upon receipt, your request for review 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

OFFICIAL