



Homes
England

Date: 27 July 2022

Our Ref: RFI3953

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Making homes happen

██████████
██████████
██
By Email Only

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

Dear Sir/Madam,

RE: Request for Information – RFI3953

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

You requested the following information:

Disposal of "H1" Parcel of Land Chatham Maritime

*I am writing in connection with the disposal of the above parcel of land by Homes England and I am making a request under the Freedom of Information Act in order to obtain an update on the progress of the transfer of this land from Homes England and **whether there were any conditions attached to transfer relating to timescales for the start of its development and delivery of the aforementioned properties.***

In April 2020, it was announced that Countryside were successful in securing the bid to develop this parcel of land.

Following the removal of the previous Chief Executive Officer (CEO) of Countryside in January 2022; and his temporary replacement by the Chairman as Acting CEO, it was announced that an internal review of past and current projects would take place. This was concluded in

*It was our understanding that ground work was planned to commence towards the end of 2022, however given the absence of any outline planning for the development of the site having been presented to Medway City Council, **we wish to know whether you may have been notified of any delay to this intended start date.***

*In the first instance, can you please indicate **if there were conditions in the bid which specified specific milestones for the commencement of the development and if so, what those original deadlines were.***

*Secondly, in the light of the internal review mentioned above, **have you been informed of any proposed rescheduling for the start date of the development, which might materially impact the conditions originally specified in the bid?***

OFFICIAL



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If you have been notified of planned delays to the start of the project, can you confirm whether this has been publicly announced? If so, when was the announcement made and can you supply me with a copy?

If an announcement has not been made thus far; when will one be made?

Response

We can confirm that we do hold some recorded information in the scope of your request. However, in relation to some of your questions recorded information is not held by Homes England and therefore we have addressed each of your questions in turn for clarity.

whether there were any conditions attached to transfer relating to timescales for the start of its development and delivery of the aforementioned properties.

For clarity, we can confirm that there has been no 'transfer' or disposal of this land to a developer by Homes England. We are able to confirm that Homes England has entered into an Agreement for Lease in relation to the land. Homes England remains the freehold owner of this land and has agreed to let the land to the developer dependent on terms and conditions set out in the lease.

we wish to know whether you may have been notified of any delay to this intended start date.

We can confirm that Homes England has entered into contract variation agreements with the developer to amend/extend deadlines set out in the original Agreement for Lease.

if there were conditions in the bid which specified specific milestones for the commencement of the development and if so, what those original deadlines were.

&

have you been informed of any proposed rescheduling for the start date of the development, which might materially impact the conditions originally specified in the bid?

For clarity, we can advise that the 'bid' submitted by the developer contained a proposed programme of works. The Agreement for Lease entered into between Homes England and the developer set out 'conditions' and specific milestones.

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

- a) the agreement for Lease between Countryside & Homes England
- b) Contract Variations to the above Lease

We rely on regulation 12(5)(e) of the EIR to withhold this 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;



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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.

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 agreement between Homes England and the third party 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 agreement. It is imperative that the third party 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



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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 agreement sets out requirements on the third party 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 third party 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 agreement contains confidentiality provisions in relation to the third party'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 Homes England's involvement and the obligations placed on the third party it would be likely to prejudice the ability of the third party to negotiate for and secure other required approvals or sources of funding. This would result in Homes England having to invest resources further than would have otherwise been 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 processes and proposals for our intervention/involvement as potential partners may be deterred from applying to Homes England for assistance if they felt information relating to their commercial and ongoing 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 Homes England's programmes. 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; 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/uksi/2004/1080/rt/12-5-e).

If you have been notified of planned delays to the start of the project, can you confirm whether this has been publicly announced? If so, when was the announcement made and can you supply me with a copy?

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If an announcement has not been made thus far; when will one be made?

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 may wish to contact the local authority.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that Homes England hold no recorded information in relation to a public announcement regarding any planned delays, either already made or planned for the future.

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.

Email: infogov@homesengland.gov.uk

The Information Governance Team
Homes England – 6th Floor
Windsor House
50 Victoria Street
London
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,



Homes
England

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Our Ref: RF13953

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Making homes happen

The Information Governance Team
For Homes England