



Homes
England

Date: 21 December 2022

Our Ref: RFI4113

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 [REDACTED]

RE: Request for Information – RFI4113

Thank you for your request for information which was processed in accordance with the Environmental Information Regulations 2004 (EIR).

You requested the following information:

could you please provide copies of the following information and correspondence leading to funding award:

- *Business case and associated supporting documentation*
- *General correspondence relating to:*
 - *due diligence*
 - *reports submitted as part of the business case documentation*
 - *appraisals of business case documentation*
 - *assessment / suitability*

Response

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

Business case and associated supporting documentation

We can confirm that we do hold the requested information.

Please find enclosed with this response, the following documents:

- Annex A – HIF Business Case
- Appendix A - Site Masterplan Drawings
- Appendix B - Scheme Key Assumption Document
- Appendix C - Area Schedule
- Appendix D - Civil Engineering

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- Appendix E - Odour Zone Report
- Appendix F - Transport Strategy
- Appendix G - Education Approach
- Appendix H - Health Care Provision Supporting Information
- Appendix I - STP Supporting Information
- Appendix K - Land Assembly Strategy
- Appendix L - Options and strategic objectives
- Appendix O - Masterplan Procurement Strategy
- Appendix P - Land Remediation Methodology
- Appendix Q - Anglian Water Governance Structure
- Appendix V – Dependencies
- Appendix W – Organograms
- Appendix X - Project Resourcing
- Appendix Y - Housing and Infrastructure Delivery
- Appendix Z - Strategic Programme
- Appendix AA - Project Milestones
- Appendix AB - Stakeholder Mapping

Information contained within the HIF (Housing Infrastructure Fund) Business Case (Business Case) and appendices has been redacted and is being withheld from disclosure in accordance with Regulation 13 and 12(5)(e) of the EIR.

Furthermore, the following appendices are being withheld in their entirety in accordance with Regulation 12(5)(e) EIR:

- Appendix J - Funding
- Appendix M - Economic Impact
- Appendix N - Market Analysis
- Appendices R / S - Cost Plans
- Appendix T - Development Appraisal
- Appendix U - Land Compensation
- Appendix AC - Risk Register
- Appendix AD - Developer Case Study

Regulation 13 – Personal Data

We have redacted information on the grounds that it constitutes third party personal data and therefore engages Regulation 13 of the EIR.

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.

Regulation 13 is an absolute exception 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 exception is engaged.

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



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<http://www.legislation.gov.uk/ukxi/2004/3391/regulation/13/made>

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 Business Case contains 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 in protecting the ability of Homes England and third parties to negotiate 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



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- Homes England acknowledges 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 that there is a public interest in large scale development processes and the robustness of the applications for funding submitted to the 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 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 continues to favour non-disclosure.



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The full text of Regulation 12(5)(e) in the legislation can be found via the following link:

<https://www.legislation.gov.uk/ukxi/2004/3391/regulation/12/made>.

General correspondence relating to:

- **due diligence**
- **reports submitted as part of the business case documentation**
- **appraisals of business case documentation**
- **assessment / suitability**

Homes England completed an approval process which included due diligence, appraisals and assessment of the bid and reports (the Annex and appendices referred to above) submitted by the Council before approving the submission to the HIF. Homes England's internal evaluation and correspondence regarding this scheme is exempt from disclosure under the following EIR 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 acknowledges 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 has 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



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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
- 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:

<https://www.legislation.gov.uk/ukSI/2004/3391/regulation/12/made>.

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
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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.



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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

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