



Homes  
England

Date: 7 September 2023

Our Ref: RFI4242

Tel: 0300 1234 500

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

[REDACTED]  
By Email Only

Dear [REDACTED]

**RE: Request for Information – RFI4242**

Thank you for your request for information, which we have processed in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR).

You requested the following information:

- 1) a copy of the Grant Determination Agreement or, at a minimum, the following information:**
  - (i) current project delivery milestones - noting that the milestones anticipated at the bid stage as set out on page 83 of the business case you shared with us in 2020 have now long since passed);**
  - (ii) current project costs - noting that the estimated total cost of £171,180,000 at the bid stage and set out on page 3 of the same business case are likely now to have been exceeded;**
  - (iii) proposed mitigation for increased project costs in an inflationary environment – noting the public interest in having confidence around deliverability;**
  - (iv) repayment or recovery assumptions in connection HIF grant – to, inter alia, allow for an informed assessment of the development viability appraisal submitted in support of the main planning application;**
  - (v) repayment recovery assumptions in connection with the Sustainable Transport Corridors (which include the Second Stort Crossing, which directly affects our client’s land) – for the same reason as (iv) above and to help assess the deliverability of infrastructure which is critical to allowing the Garden Town development to meet its ambitious modal shift target.**





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### **Statutory Regime**

We have processed your request for a copy of the Grant Determination Agreement in accordance with the FOIA.

Section 39 Freedom of Information Act 2000 (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).

Having considered the other information requested (i – v), we have concluded that it is environmental information and therefore we have processed the remainder of your request in accordance with the EIR.

### **Response (FOIA)**

#### **1) a copy of the Grant Determination Agreement**

We can confirm that we do hold the requested information. However, we have determined that the following exemptions apply to withhold the information 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 it is in the wider public interest for the information to be disclosed.





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Arguments in favour of disclosure:

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

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 is able to attract competitive partners and is 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 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.





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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>

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

Subject to the exemptions above, we can advise that some of the information requested is available elsewhere, and therefore section 21 FOIA also applies to this 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:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/941667/RFI3100 - HIF Grant Determination Agreements.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/941667/RFI3100_-_HIF_Grant_Determination_Agreements.pdf)





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**Response (EIR)**

- (i) current project delivery milestones - noting that the milestones anticipated at the bid stage as set out on page 83 of the business case you shared with us in 2020 have now long since passed);**
- (ii) current project costs - noting that the estimated total cost of £171,180,000 at the bid stage and set out on page 3 of the same business case are likely now to have been exceeded;**
- (iii) proposed mitigation for increased project costs in an inflationary environment – noting the public interest in having confidence around deliverability;**
- (iv) repayment or recovery assumptions in connection HIF grant – to, inter alia, allow for an informed assessment of the development viability appraisal submitted in support of the main planning application;**
- (v) repayment recovery assumptions in connection with the Sustainable Transport Corridors (which include the Second Stort Crossing, which directly affects our client’s land) – for the same reason as (iv) above and to help assess the deliverability of infrastructure which is critical to allowing the Garden Town development to meet its ambitious modal shift target.**

We can confirm that we do hold the requested information. However, we have determined that the exception to withhold from disclosure in regulation 12(5)(e) applies to the information requested.

**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 requested contains financial and performance assessments 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.





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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 confidential 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).

Arguments 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;





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- Homes England acknowledges there is an interest in the arrangements relating to the funding it delivers particularly where these are large funding amounts that have the potential to impact a large amount of people;
- Homes England acknowledges that there is local interest in the proposed development that the funding will deliver and that there has been public engagement in consultations regarding delivery; and
- Homes England acknowledges the public interest arguments put forward individually by the requestor in correspondence regarding this request and confirms that these have been taken into consideration. Homes England also acknowledge that there have been several requests for information from members of the public regarding this site and this funding and therefore acknowledge that there is interest from the public in our involvement.

Arguments in favour of withholding:

- The correspondence between Homes England and the Local Authority sets out appraisals and opinions in relation to ongoing milestones and targets; delivery and operational appraisals; performance criteria, and information relating to payments/repayments of funding in relation to this project. The information contained within the correspondence has gone on to be a part of or directly influence the contractual detail set out in the Grant Determination Agreement (GDA) for the funding;
- 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 correspondence sets out commercial delivery figures provided by the Local Authority which have gone on to influence milestones and funding amounts as set out in the GDA. To release the information to the public domain would be likely to result in the Local Authority facing undue pressure to meet these arrangements as a result of inappropriate commercial and public interventions. 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







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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 Forward Funding (under the Housing Infrastructure Fund (HIF)) and the obligations placed on the Local Authority regarding this funding as contained in the letter, 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 Local Authority's '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





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- 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)

### **Advice and Assistance**

We have a duty to provide advice and assistance in accordance with Regulation 9(1) of the EIR. In accordance with this duty, we can advise that the template Grant Determination Agreement states that the Local Authority is responsible for all cost overruns, please refer to page 30, clause 6.6.4.

### **Internal Review / 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](mailto:infogov@homesengland.gov.uk)

The Information Governance Team  
Homes England  
6<sup>th</sup> Floor  
Windsor House  
42-50 Victoria Street  
London  
SW1H 0TL

6<sup>th</sup> Floor  
Windsor House  
42 - 50 Victoria Street, Westminster  
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0300 1234 500  
@HomesEngland  
[www.gov.uk/homes-england](http://www.gov.uk/homes-england)





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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. 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 FOIA / EIR. Homes England may be required to disclose your request and our response accordingly.

Yours sincerely,

**The Information Governance Team**

For Homes England

