



Homes
England

The Housing and Regeneration Agency

Date: 24 November 2023

Our Ref: RFI4531

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

By Email Only

Information Governance Team
Homes England
Windsor House
6th Floor
42-50 Victoria Street
London
SW1H 0TL
United Kingdom

Dear [REDACTED]

RE: Request for Information – RFI4531

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

You requested the following information:

- 1. I am specifically looking for information relating to the Section 106 Agreement dated 13th August 2004 between Dover District Council, the South East England Development Agency (SEEDA) and Kent County Council. I have a copy of the S106 Agreement, so fortunately I don't need this. In this regard, I would like all information, including emails, between SEEDA and Dover District Council which relate to the S106 Agreement and the designation of the colliery spoil site as a Local Nature Reserve (referred to in the S106 Agreement as 'Nature Reserve Land'). I imagine the information I am requesting is likely to be for the approximate period 2007 to 2009.**
- 2. I am aware of a letter dated 13 June 2008 from Mr Tim Flisher, Development Control Manager at Dover District Council to Mr G Harris, Senior Project Manager at SEEDA, that refers to an email dated 27 May 2008 from Mr Flisher to Mr Harris regarding the expiry of planning permission for the visitors' centre and the section 106 Agreement. I would be most grateful to receive a copy of this email should you have it on file.**

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3. The Draft Nature Conservation Management Plan, Issue 2, dated April 2007, and submitted to Dover District Council accompanying Glyn Tully's letter of 27 July 2007, identifies in para 1.4.3 further works to be completed on the former spoil site as follows:

- **Badger fencing must be brought up to a height of 1.3m and the barbed wire along the top removed.**
- **Completion of a litter pick on top of the spoil heap.**
- **Further works to create wetlands that retain water and to establish potential bird breeding, aquatic macro invertebrate and amphibian habitat.**
- **Removal of stockpiles associated with the boiler house works from the reptile capture area located to the eastern boundary of the pit head.**
- **Closure of access to a section of footpath that passes through the lichen heath. removal of the footpath (under ecological supervision) is recommended to establish bare ground within which lichen heath can re-establish.**
- **Removal of any planting within marshy land so that the area can recolonise naturally.**
- **It should also be noted that the BMX track is to be remodelled to accord with international design standards.**

I would like all information, letters, emails etc., between SEEDA and Dover District Council relating to the above works and their completion. Again, I imagine this will be around the 2007 to 2009 time period?

It is possible that the information I have requested may be in the file labelled 'Betteshanger Colliery Regeneration - General Correspondence. File Ref: EP3097987 SKP Box. 000004045, or the file labelled 'Planning Issues - EP309786 SKP Box. 000004045?

Response

We can confirm that we do hold the requested environmental information.

We can advise that the environmental information that we hold consists of the 9,538 digital documents and emails regarding this site. In addition, we also have 2 large hard copy files that consists of hundreds of pages which relates to the nature reserve land at the Betteshanger Colliery.

We are therefore withholding this information from disclosure under the following exception:



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Regulation 12(4)(b) – Manifestly unreasonable

Regulation 12(4)(b) of the EIR provides an exception to the duty to disclose environmental information where the request is manifestly unreasonable. The information requested engages this exception because the documents requested concerning the Betteshanger Colliery represent a substantial volume of information which we consider would cause a disproportionate burden on Homes England's resources.

We have identified at least 9,538 digital files that might fall within the scope of your request as they relate to the Betteshanger Colliery site. These files consist of a number of different emails and documents, which are not individually indexed. In addition, each hard copy file contains approximately 500-1000 pages of information relating to the Betteshanger Colliery.

Due to the nature of the documents that contain the environmental information requested, commercially confidential information which may fall under regulation 12(5)(e) would be woven intrinsically throughout each document.

Furthermore, we recognise that the documents contain information which can identify individuals. We cannot identify a lawful basis for processing this information for the purpose of disclosure under the EIR and we are therefore required to withhold it from disclosure under regulation 13. As many of the documents contain correspondence, we consider that personal information will be present in all files.

We consider that it would present a disproportionate burden on our resources to consider regulation 12(5)(e) and regulation 13 in each document.

We have considered whether it would be appropriate to rely on regulation 7(1) of the EIR, which would permit Homes England to extend the time limit for compliance to a maximum of 40 working days in order to facilitate compliance with the request. However, we still consider that the complexity and volume of information requested means that it is impracticable to comply with the request within 40 working days.

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Public Interest Test

Regulation 12(4)(b) 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) Homes England 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 regulation 12(4)(b).

Public interest in favour of disclosure:

- Homes England acknowledges that there is a presumption in favour of 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 development processes and the robustness of the applications and planning in such developments.

Public interest in maintaining the exception:

- Homes England is a small public authority with limited resources. Identifying the environmental information that would engage regulation 12(5)(e) and regulation 13 in all of the documents identified in scope of this request would place a disproportionate burden on our resources and would prevent us from answering other requests.
- Much of the requested environmental information consists of information that was provided to Homes England by third parties. Homes England would be required to consult with involved third parties about the disclosure of the environmental information and considers that the review of this information would place a disproportionate burden on the other third parties involved.
- The documents consists of text, data and plans relating to redevelopment of Betteshanger Colliery. We estimate that reviewing the information held would take in excess of 5,000 hours staff time to review, determine, and extract the requested information. This is calculated at five minutes per page and includes identifying any environmental information that would engage regulation 12(5)(e) and regulation 13, conducting the Public Interest Test and applying redactions if appropriate. We





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do not consider that this is a proportionate use of our limited resources and will impact our ability to respond to other requests and disrupt the delivery of Homes England's work.

- Homes England has been unable to identify a wider public interest in disclosing the information requested.

Having considered the argument 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.

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 you may wish to consider narrowing the scope of your request by asking for more specific questions. In addition, you may also wish to consider limiting the scope of your request to a shorter time frame.

As previously outlined, we do not have information pertaining to Betteshanger Colliery indexed at a document level. If you could provide us with a clearer and more defined question this would help us know what keywords and documents we are looking for and this would assist us in locating the information. For example, in Question 3 you have asked for "all information, letters, emails" regarding a series of topics. If there was a specific question you would like answered (for example, if a specific piece of work was completed or not) this would help us search for the relevant information.

Please note that due to the broad scope of your request we cannot confirm that any further request would not also be considered manifestly unreasonable pursuant to regulation 12(4)(b) EIR.

For further assistance the Information Commissioner's Office have some useful information online that you might find helpful:

<https://ico.org.uk/for-the-public/official-information/how-to-write-an-effective-request-for-information/>

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

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representation by writing to Homes England via the details below, quoting the reference number at the top of this letter.

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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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