



Homes
England

The Housing and Regeneration Agency

Date: 9 February 2024

Our Ref: RFI4593

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

[REDACTED]
By Email Only

Dear [REDACTED]

RE: Request for Information – RFI4593

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

You requested the following information:

Under the Freedom of Information Act, please provide the following information associated with the Coulby Newham housing allocation

- 1. a copy of the viability assessment undertaken on the land**
- 2. copy of the masterplan developed with Middlesbrough Council**
- 3. a copy of the appraisal information provided to Middlesbrough Council**
- 4. full schedule of site development and abnormal costs issues, together with the specific costs of each element**
- 5. copy of the proposed development scenarios including those deemed to be economically unviable**

Response

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

- 1. a copy of the viability assessment undertaken on the land**
- 3. a copy of the appraisal information provided to Middlesbrough Council**

We can confirm that we do hold the information you have requested. However, we rely on the following exception to withhold some of the information from disclosure.

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Windsor House
42 - 50 Victoria Street, Westminster
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Regulation 12(4)(d) - Material in the course of completion, unfinished documents and incomplete data

Regulation 12(4)(d) of the EIR provides an exception to the duty to disclose environmental information where the material is still in the course of completion, an unfinished document or incomplete data. The Viability Assessment and Appraisals engages this exception because they were still in the process of being formally approved when Homes England's involvement with the development in Newham Hall ceased.

Public Interest Test

Regulation 12(4)(d) 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. 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.

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 acknowledge that there is a public interest in the information collected and compiled regarding viability at this site and that even draft documentation may be of interest to the public regarding the proposals for development at Coulby Newham.

Factors in favour of withholding

- Viability assessments and appraisals are created as part of the process by which Homes England reaches decisions. It is necessary that Homes England is able to have a 'safe space' in which to gather and appraise information away from public scrutiny or intervention and disclosing the information at this time would harm Homes England's and Middlesbrough Councils 'safe space'. Despite this information still being in draft form, release of the information could lead to lobbying that could impact the impartiality of the decision maker (or give rise to concerns on the part of others that impartiality could be adversely affected). It is essential that decision makers make decisions based on the information produced as part of the official process and also be seen to do so;
- These documents were created as part of the wider planning process for the Newham Hall development in Middlesbrough. In order to make informed decisions about the environmental impact, consequences or opportunities of a site we continuously seek new information, update the information we hold and use it to consider options to make decisions about land use that are in the public interest.





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It is necessary that Homes England is able to have a 'safe space' in which to gather and appraise information away from public scrutiny or intervention and disclosing the information at this time would harm Homes England's 'safe space'. Furthermore, as the information was still in draft form, it was being updated and amended continuously;

- There is a 'chilling effect' argument regarding release of the Viability Assessment and Appraisals. The chilling effect is that the information contained within the documents still relates to ongoing discussions and approvals by Middlesbrough Council that are only at this stage, proposed. There is a specific need for the decision makers to have frank discussions regarding this information in order to fully and adequately appraise the information contained within. To disclose the information would harm the ability of decision makers to robustly and adequately reach a decision regarding the collated information. This would not be in the public interest as it could lead to detriment to the public purse;
- There is also a 'chilling effect' argument regarding future information of a similar nature if disclosed. If the information were released it would prejudice the quality of information contained within future documents of a similar nature if those drafting thought that the information would be disclosed before it had been approved and finalised for publication. There is a specific need for the decision makers to have frank discussions regarding this type of information in order to fully and adequately appraise the information contained within. This would affect the ability of decision makers to make effective, informed decisions. Any decision based on incomplete information could lead to poorer outcomes which would not be in the public interest as it would not be an effective use of public money;
- Disclosing details of the Council's business proposals, processes and information not in the public domain may affect their relationship with other parties, including Homes England, and affect a party's reputation in the market. This would be likely to have a negative impact on the third Council's ability to procure works or funding for the ongoing 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 disclosure of the information would have an adverse effect on Homes England and Middlesbrough Council. The balance of the public interest favours non-disclosure.

The full text of Regulation 12(4)(d) in the legislation can be found via the following link: [The Environmental Information Regulations 2004 \(legislation.gov.uk\)](#).





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2. **copy of the masterplan developed with Middlesbrough Council**
4. **full schedule of site development and abnormal costs issues, together with the specific costs of each element**
5. **copy of the proposed development scenarios including those deemed to be economically unviable**

We can confirm that we do hold the information you have requested. However, we rely on the following exception to withhold some of 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 schedule of site development and abnormal costs (which is set out in the Technical Due Diligence) contains financial appraisals, costing and values that relate to commercial activity regarding a prospective development that is ongoing. The Masterplan is also detailed within the Technical Due Diligence. Therefore, these are commercial in nature as they relate 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. There is no need for the public authority to have obtained the information from another or a third party for this duty to apply. The information has a common law duty of confidence because it is not trivial and not in the public domain. The information was created in circumstances creating an obligation of confidence; it has been created internally to assist an internal decision making/approval process. Homes England therefore recognises that this information was intended to be held in confidence within the organisation.
- 3) The confidentiality is providing a legitimate economic interest;
The withheld information relates to financial 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 in current and future commercial agreements.



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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 acknowledge that there is a public interest in the financial information in relation to the proposed development at Coulby Newham.

Factors in favour of withholding

- 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/were 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;
- The information includes figures that were still under negotiation and had not been finalised or agreed. If this information were released it could allow third parties to undermine future processes and procedures and negatively affect Homes England's negotiating position with third parties. This would not be in the public interest as it would negatively affect the public purse, and put Homes England at risk of State Aid;





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- The consequences of releasing data at a time when negotiations/proposals are ongoing would significantly prejudice the Council's ability to deliver the proposed development. Failure to deliver could lead to significant planning harm to the local area and affect the Council's ability to achieve the targets set out in their Local Plan. Therefore, release would be likely to put potential homes in jeopardy and subsequently affect Homes England's ability to deliver against its objectives in our strategic plan, which is not in the public interest;
- The information relates to a site where the Council is still procuring/undertaking works. If this information were released it would be likely to disadvantage the Council's commercial position and have a negative impact on the Council's ability to procure works for ongoing development at this site. The Council 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 Council being able 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;
- Releasing this sort of information would be likely to negatively impact future development processes and proposals as interested parties may feel unable to provide all the relevant information necessary for fear of disclosure. This would impact the ability of Government officials to make effective, informed decisions regarding allocation of public funds; 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).

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.

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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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