



Homes
England

The Housing and Regeneration Agency

Date: 21 March 2024

Our Ref: RFI4646

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

██████████
By Email Only

Dear ██████████

RE: Request for Information – RFI4646

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

You requested the following information:

Four to five years ago Colchester City Council was granted a £5.5m Marginal Viability Assessment Grant for the provision of circa 560 new homes on their land known as Colchester Northern Gateway.

Over the years the Grant Agreement Milestone dates have been constantly pushed back and reset.

Can you please supply me under this FOI the current agreed Milestone dates for the delivery of the circa 560 new Homes with Colchester City Council.

Response

We can confirm that we do hold the requested information. However, we are withholding this information from disclosure under the following exception:

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 relates to an ongoing commercial operation regarding an ongoing development. 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 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 commercial environmental information relating to milestones is contained in the Grant Funding Agreement between Homes England and Colchester City Council. This site, and the milestones associated with delivery, 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 parties to negotiate effectively and receive value for money for land and services at the 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



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- Homes England acknowledge 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

- The requested environmental information is contained within the GFA between Homes England and Colchester City Council and sets out performance criteria in relation to ongoing milestones and targets, delivery and operational obligations. 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 GFA. It is imperative that the Council 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 agreement 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 agreement sets out requirements on the Council 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 Council 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 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 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;

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- 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:

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

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 confirm that the Colchester City Council HIF GFA was created using the template GFA which we have previously made available. You can access this template via the below link. The milestones are set out in schedule 3.

[https://assets.publishing.service.gov.uk/media/6065ab2bd3bf7f0c854ce260/RFI3351 -
_HIF_Land_East_of_Otley.pdf](https://assets.publishing.service.gov.uk/media/6065ab2bd3bf7f0c854ce260/RFI3351_-_HIF_Land_East_of_Otley.pdf)

Additionally, we are able to advise that the delivery of housing has been delayed due to a planning condition set out in the GFA which states that the delivery of the 560 homes cannot be occupied until the required highway works to the A12 and J28 have been completed.

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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