



Homes England

Date: 16 April 2024

Our Ref: RFI4676

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

[REDACTED]
By Email Only

Dear [REDACTED]

RE: Request for Information – RFI4676

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

You requested the following information:

Under the Freedom of Information Act, I would like to request the following information:

The contract for funding from the Greater London Authority and Homes England to Berkeley Group, which gives them access to a £125m loan to undertake infrastructure works across; Twelvetrees Park, Newham, Bermondsey Place, Southwark and Beckton Riverside, Newham.

To further specify, we are requesting the terms and conditions of the GFA/loan, from the following press release by Homes England on 13th February 2024 (<https://www.gov.uk/government/news/major-regeneration-investment-to-accelerate-8000-new-homes-in-newham-and-southwark>) including, but not limited to;

- name of the fund
- terms that each project is subject to
- duration of the loan
- allocation of funding to the schemes

Response

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

6th Floor
Windsor House
42 - 50 Victoria Street, Westminster
London, SW1H 0TL

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name of the fund

The name of the fund is the Home Building Fund (HBF) – Infrastructure Loans.

duration of the loan

We can confirm that the duration of the loan is for 10 years.

The contract for funding from the Greater London Authority and Homes England to Berkeley Group.... we are requesting the terms and conditions of the GFA/loan... including... terms that each project is subject to

We can confirm that we do hold the requested information. We can confirm that the contract made between Homes England and the Berkeley Group is not already publicly available.

We have determined that Regulation 12(5)(e) – Confidentiality of commercial or industrial information applies to the information requested. We have considered whether or not it is possible to separate the commercial information from other information contained in the contract and have determined that the commercially sensitive information represents a ‘golden thread’ throughout the document and that it is not possible to separate the information contained within the contract.

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 contract contains information concerning the financial and contractual commitments between the parties that relate to live commercial activity regarding prospective development and procurement. 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





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the public domain. The information contained within the contract was created by two parties who have entered into contractually binding confidentially terms. These terms 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 contained in the contract relates to the financial and contractual obligations, milestones, and targets 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 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 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 large scale development processes and the robustness of the applications for funding submitted to the HBF.





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Factors in favour of withholding

- The contract between Homes England and the Berkley Group 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 contract. It is imperative that third parties be able to work to achieve the obligations set out in the contract without undue influence 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 our strategic objectives set out by Government that Homes England is tasked with achieving as per our strategic plan;
- The contract sets out requirements placed upon the Berkley Group and failure to meet the agreed deadlines could result in a material breach of contract. This would have significant cost implications on both parties 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 contract contains confidentiality provisions in relation to the third parties' 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 the delivery of homes 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;
- 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 HBF and the obligations placed on the Berkley Group regarding this funding as contained in the contract, it would be likely to prejudice the ability of the Berkley Group to negotiate for and secure other sources of funding. This would result in Homes England having to pay a higher





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loan than would have otherwise been 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 HBF. 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>

allocation of funding to the schemes

Regulation 12(4)(a) – Information not Held

Under regulation 12(4)(a) of the EIR, Homes England may refuse to disclose information if the requested information is not held by that public authority.

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that there is not an allocation of funding to each scheme.

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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The Information Governance Team

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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,

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For Homes England

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