



Homes
England

Date: 11 December 2024

Our Ref: RFI4943

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

[REDACTED]
By Email Only

Dear [REDACTED]

RE: Request for Information – RFI4943

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

You requested the following information:

We write in respect of planning permission 20/00028/FUL dated 20 November 2020 which granted permission for 28 dwellings (the "Planning Permission"). Magenta is the developer of the Planning Permission which we understand is subject to Homes England grant funding.

Magenta applied to the Council for a non-material amendment with planning reference 24/00062/NMA dated 27 September 2024 (the "NMA") which sought to discharge the requirement to provide an acoustic barrier required under condition 15 of the Planning Permission.

AMP has made an application for judicial review, filed on 6 November 2024, in respect of the decision to grant the NMA. The Council have in pre-action correspondence consented to judgement in respect of the first ground of the judicial review, confirming that the decision to grant the NMA was unlawful (the remaining grounds are still to be considered by the Court). Compliance with condition 15 of the Planning Permission is a pre-occupation requirement.

We write in respect of Alex Whittle's email to Glen Henry (in the chain below) of 13 September 2024 (revealed to us in a freedom of information request response made to the Council). Alex's email (as outlined below) seeks a letter from the Council to Homes England in the format outlined which seeks an exception which permits occupation of the development (and the release of grant funding to Magenta).

2nd Floor
The Lumen
St James Boulevard, Newcastle Helix
Newcastle upon Tyne, NE4 5BZ

0300 1234 500
[@HomesEngland](https://www.gov.uk/homes-england)
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We seek information from Homes England in respect of the correspondence below, these requests for information are made pursuant to the Freedom of Information Act 2000 ("FOI") and Environmental Information Regulations 2004 (The "Regulations"):

1. We request a copy of any correspondence from Alex Whittle and/or Magenta (or their advisors) in respect of compliance with condition 15 of the Planning Permission and/or the NMA; and
2. We seek a copy of any letter from the Council addressed to Homes England regarding compliance with the Planning Permission. In particular, we seek a copy of the letter requested by Alex Whittle in the email below.

Response

We can confirm that we do hold some of the requested information. We will respond to each question in turn.

We request a copy of any correspondence from Alex Whittle and/or Magenta (or their advisors) in respect of compliance with condition 15 of the Planning Permission and/or the NMA;

We can confirm that we do hold the information. Please see Annex A below for a copy of an email sent from Magenta Living to Homes England on 9 September 2024.

We have redacted some information contained within 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 redacted information relates to ongoing commercial operations of Homes England and third parties. Therefore, it is commercial in nature as it relates to commercial activity.
- 2) Confidentiality is provided by law;





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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.

- 3) The confidentiality is providing a legitimate economic interest;
The withheld information relates to ongoing financial arrangements between Homes England and third parties. If the confidentiality of this information was breached it would harm the commercial position of Homes England and third parties. 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.

Factors in favour of withholding

- If this information were to be released it would be likely to disadvantage Homes England's and the third party's commercial position and have a negative impact on ongoing discussions. 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 future developments at risk, inflate prices and damage Homes England's reputation as a partner;

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- Information of this nature revealed to a wider audience would affect future negotiations for the same or similar services. Homes England needs to attract the contractors who will deliver the homes that the market needs. Contractors would be deterred from working with us if they thought that their sensitive commercial and financial information would be disclosed. That would not be in the public interest;
- Disclosure would adversely affect the relationship between Homes England and potential partners. There would be significant reputational, commercial and financial loss to Homes England and for their own gain; 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>

Regulation 13 – Personal Data

We have redacted information on the grounds that it constitutes third party personal data and therefore engages Regulation 13 of the EIR.

To disclose personal data, such as names, contact details, addresses, email addresses and personal opinions could lead to the identification of third parties and would breach one or more of the data protection principles.

Regulation 13 is an absolute exception which means that we do not need to consider the public interest in disclosure. Once it is established that the information is personal data of a third party and release would breach one or more of the data protection principles, then the exception is engaged.

The full text in the legislation can be found on the following link:

<http://www.legislation.gov.uk/ukxi/2004/3391/regulation/13/made>

We seek a copy of any letter from the Council addressed to Homes England regarding compliance with the Planning Permission. In particular, we seek a copy of the letter requested by Alex Whittle in the email below.

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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. Homes England does not hold the information requested under point (2).

Regulation 9(1) provides that an authority must provide advice and assistance to applicants and in accordance with this we can advise that Homes England has not received a letter from the Council.

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

The Information Governance Team

Homes England

2nd Floor

The Lumen

St James Boulevard

Newcastle Helix

Newcastle upon Tyne

NE4 5BZ

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/>

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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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From: reg. 13
To: reg. 13
Subject: Halton Canal Site - discharge of planning condition
Date: 09 September 2024 14:01:29

Hi reg. 13

Many thanks for your time earlier today.

As discussed, please can you advise whether Option 1, proposed by Halton Borough Planning Department, would be acceptable to Homes England in lieu of formal Planning Condition discharge prior to PC claim.

Background:

- The final planning condition to be discharged is the requirement for a 3m acoustic fence on the boundary between the homes at Halton Canal Site and the Generator on the adjacent site to reduce the decibel levels.
- In July, the Planning Department gave approval to remove the condition from the 12 homes based on the opposite side of the site as the decibel levels are within tolerances.
- It has been established, through on-site measurement, that the generator sound levels in the garden areas of the closest properties are 72 dB L_{Aeq} (façade sound level) with an internal sound level, in an upper floor bedroom, of approximately 45 dB L_{Aeq} (with windows closed and trickle vents open).
- The BS 8233/WHO guideline value of 55 dB $L_{Aeq, 16h}$, for external amenity areas, is unlikely to be achievable.
- The results of computer noise modelling indicate a 3 or 4 metre barrier (as proposed in the planning condition) provides less than 1 dB of sound attenuation i.e. the impact is negligible. This is largely because the generator site is circa 1.5m higher than Canal Site and as such, the fence does little to provide a barrier against noise emanating from the stacks (the output for the generator). The fence would need to be 7-8m tall to mitigate against the noise from the stacks, but advise is that a fence of that height isn't feasible from a structural point of view taking into considerations the wind calcs etc.

Meeting on 9th September with Halton Borough Council Planning and Public Health:

- The Environmental Health Officer (EHO), in attendance at the meeting accepted that we are not going to be able to achieve the BS 8233/WHO guideline value of 55 dB $L_{Aeq, 16h}$, but did advise that we need to be able to demonstrate Best Practical Means which would be a potential defence against any prosecution for statutory noise nuisance
- The 3 metre boundary fencing is enshrined in the planning condition and is unlikely to be able to be simply removed but there may be options for non-material amendments to allow for innovative solutions which need to be explored. E.g. in order to totally rule out the effectiveness of an acoustic fence (only desktop modelling undertaken thus far), there is an option to create a temporary structure and apply an echo barrier to replicate the effect the acoustic fence would have on reducing decibel levels. We are going to explore this avenue first. Clean Amp Energy (owners of the generator site) advise there is unlikely to be any measures to be taken that could reduce the level of noise at source however they will speak to their

manufacturers about any potential options.

- The EHO advised that the homes can be lived in whilst further investigation into noise mitigations is on-going. However, due to the outstanding planning condition Magenta is unable to take handover.
- There are two main concerns regarding further delays to handovers:
 1. Homes England – This scheme forms part of the SOAHP programme and handovers are already significantly delayed from original forecasts.
 2. reg. 12(5)(e) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- The planning officer presented 2 options:
 1. HBC Planning provide a letter to Homes England to advise that although the is a Planning condition outstanding, they consider the homes habitable, and Magenta will continue to work with Public Health and Planning to find a suitable mitigation for noise disturbance. As discussed, I am concerned that this isn't compliant with CFG and would like to enquire whether an exception would be considered.
 2. The Planning Officer seeks consent from more senior colleagues to discharge the planning condition on the basis that the acoustic fence it asks for does not appear to be a suitable mitigation and on the proviso that Magenta Living continue to work with Public Health and Planning to find an alternative mitigation for noise disturbance.

I advised I would ask the question about option 1 although, as discussed, I have concerns about being non-compliant with the CFG.

If you have any queries, or need me to clarify anything, please let me know.

Kind regards,

reg. 13 [REDACTED]

reg. 13 [REDACTED]

reg. 13 [REDACTED]

reg. 13 [REDACTED]
reg. 13 [REDACTED]



To find out more visit www.magentaliving.org.uk/who-we-are

Magenta Living is a not-for-profit housing provider, owning and managing nearly 13,000 homes. We are the largest affordable housing provider in Wirral and also operating across the North West region.

Magenta Living is a registered company in England and Wales: number 4912562
A registered charity: number 1106969
Registered with the Regulator of Social Housing: number L4435
Registered office: Partnership Building, Hamilton Street, Wirral CH41 5AA

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