



Date: 15 July 2025

Our Ref: RFI5279

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

[REDACTED]
By Email Only

Dear [REDACTED]

RE: Request for Information – RFI5279

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

You requested the following information:

This is a Freedom of Information (FOI) Request concerning the Chattenden Barracks site on the Hoo Peninsula, Rochester, Kent.

Please could you provide me with copies of the most recent (up to the time of responding to my FOI) ecological surveys of the Chattenden Barracks site, including any Nightingale Surveys.

Please confirm if no such surveys exist (up to the time of responding to my FOI).

I have evidence there are Nightingales present on the Chattenden Barracks site and the recent second round of consultation (for the Chattenden Barracks proposals) suggests (via a heat map) there are Nightingales present.

Response

We can confirm that we do hold the requested information. We can confirm we hold an ecological survey of the Land at Lodge Hill, Kent. The survey was completed in June 2024. We are withholding this information from disclosure under the following exception:

Regulation 12(5)(d) – confidentiality of proceedings

Under regulation 12(5)(d) of the EIR, Homes England may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.

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The engagement of the exception requires four questions to be considered:

- 1) What are the proceedings?
 - The proceedings relate to the consideration of a planning application by Medway Council. The consideration of planning applications is part of a formal process to consider planning matters that are within the Local Authority's jurisdiction.
- 2) Is the confidentiality of proceedings 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. Information contained within planning applications is confidential until the consultation stage is reached, at which point the information and proceedings become public.
- 3) Would disclosing the information adversely affect that confidentiality?
 - Disclosing information outside of a recognised planning process would adversely affect the usual function of that planning process. This is because the Local Authority would be unable to accept and validate the information provided to it by the Applicant in planning matters if the information were already in the public domain. The consultation process undertaken by the Local Authority would be adversely affected and less effective if limited information were to be released outside of the proceedings and subject to public scrutiny without full context and outside the regular planning proceedings.
- 4) It must be demonstrated that disclosure would have an adverse effect on the confidentiality of the proceedings.

Public Interest Test

Regulation 12(5)(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.

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.
- Homes England acknowledge that there is a public interest in the protection of nightingales which may be present in the Chattenden Barracks site in Kent.
- Homes England recognises that the requested information will, in due course, be published as part of the consideration of the planning application (the proceedings).





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Factors in favour of withholding

- Some of the information contained in the withheld information will form part of the processing of the planning application that will be submitted to the local council. The outcome of the information contained within the survey may or may not form part of the final planning application. Pre-application advice constitutes as a “proceeding” for the purposes of this regulation; confidentiality at the early stages of the pre-application process holds significant importance where an application is still subject to change, enabling service to identify proposals that could be illegal, unworkable, or inappropriate. Confidentiality is needed to ensure the process is working effectively. It is not in the public interest to disclose information that would undermine the planning process prior to decisions being made;
- Releasing information at this stage prior to this information being in the public domain would undermine the confidentiality and effectiveness of the proceedings, as well as Homes England’s position and ability to deliver against its objectives and targets in our Strategic Plan. This would negatively impact confidence in the proceedings, being the planning pre-application enquiry process as the breach of confidentiality would lead to potential developers no longer engaging with Homes England or the council;
- The survey and supporting documents were conducted in relation to the support of a future planning application for the development of the land at Chattenden Barracks. The outcome of the reports is confidential up until the point that the planning application is submitted to the local council. By disclosing information prior to this could result in unwelcome distractions or result in undue pressure being brought on both Homes England and the council. This disruption would prejudice the proceedings the consideration of planning application and the potential development on the land. Disclosure would be prejudicial to the commercial interests of both the Agency and the local authority as there is reasonable expectation that such advice provided by Homes England would not be disclosed and would not then potentially be relied upon by other parties. This is particularly important where a decision has yet to be reached and it is not in the public interest to give any interested party early access to the information prior to them being formally agreed;
- A previous Decision Notice (IC-115533-Y4T6) issued by the Information Commissioner’s Office concerning the release of this type of information in respect of the pre-application enquiries and associated advice have the necessary formality to constitute proceedings for the purposes of regulation 12(5)(d). It was upheld and recognised that disclosure of the withheld information would be likely to undermine Homes England’s and the councils ability to have free and frank discussions about development on the land; 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)(d) in the legislation can be found via the following link:

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

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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
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Newcastle Helix
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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/>

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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