



Homes
England

Making homes happen

Date: 1 March 2022

Our Ref: RFI3761 & RFI3762

Tel: 0300 1234 500

Email: infogov@homesengland.gov.uk

Fews Lane Consortium Ltd
By Email Only

Information Governance Team
Homes England
Windsor House – 6th Floor
50 Victoria Street
London
SW1H 0TL

Dear Fews Lane Consortium

RE: Request for Information – RFI3761 & RFI3762

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

You requested the following information:

RFI3761: *I am writing to request all correspondence and documented communications between Homes England and Cambridge Water concerning the proposed developments known as Northstowe Phase 3A and Northstowe Phase 3B.*

RFI3762: *I am writing to request all correspondence and documented communications between Homes England and Anglian Water concerning the proposed developments known as Northstowe Phase 3A and Northstowe Phase 3B.*

Response

We can confirm that we do hold the requested information, which is provided as the following annexes:

RFI3761 (Cambridge) – Annex

RFI3762 (Anglian) – Annex

We have redacted information contained within these annexes from disclosure under the following exceptions:

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.

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The full text in the legislation can be found on the following link;
<http://www.legislation.gov.uk/uksi/2004/3391/regulation/13/made>

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 relates to pricing for services or works. 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 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;
If the confidentiality of this information was breached it would harm the ability of Homes England and third parties to secure works for market value. 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 our commercial arrangements with third parties and how we work to progress these given it involves the spending of public money and the development of services that will affect the public.

Factors in favour of withholding

- The information relates to a site where Homes England and third parties are still procuring/undertaking works. If this information were released it would be likely to disadvantage the commercial position and have a negative impact on Homes England and the third parties in their ability to procure works for ongoing development at this site. Involved parties would not be able to negotiate effectively as this information could be used by other third parties to distort or otherwise prejudice the ability of the involved parties being able to secure works for market value, resulting in damage to the public purse. 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 in relation to this site;
- If information regarding value for works that has been/will be undertaken were in the public domain there could be expectations from the public and potential future partners about the value of the site and the value of potential works. This would mean that prices could be inflated and negotiating positions put at risk. This would not be in the public interest as it would be likely to result in poorer value for public money;
- Releasing the information could reveal financial information of a third party which may in turn affect their commercial interests. The consequences of releasing data that is part of a wider ongoing matter could damage our relationships with partners and put other potential development works at risk. This would not be in the public interest as this could put potential homes in jeopardy and affect Homes England's ability to deliver against its objectives in our strategic plan;
- Disclosing business positions, details of negotiations or a third party'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. Releasing information in relation to a third party in a competitive market would be likely to distort competition, making it a less competitive process. This would not be in the public interest as it would be likely to lead to third parties being unable to secure works for market value, resulting in damage to the public purse. This would be likely to have a negative effect on future commercial activity and other partners; 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/ukreg/2004/12/12/125e).

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 advise that Northstowe Phases 3A and 3B are subject of outline planning applications that are currently under consideration (References: 20/02171/OUT and 20/02142/OUT). Application documents including



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Flood Risk Assessments, Utility Reports, Environmental Statements and consultation responses may be of interest and can be viewed via the Greater Cambridge Online Planning Register.

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 – 6th Floor
Windsor House
50 Victoria Street
London
SW1H 0TL

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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