HEYCA Brownfield Housing Fund:

Subsidy Control Process Framework

Contents

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1 Purpose of this document

This document sets out a practical process for managing subsidy control for single-project Brownfield Housing Fund applications administered by Humber East Yorkshire Combined Authority (HEYCA). It is designed as an internal guide and working toolkit for colleagues handling project development, appraisal, approvals, legal review, grant agreement drafting, record keeping, and post-award compliance.

The framework assumes HEYCA is assessing individual applications on a case-by-case basis rather than, at this stage, relying on a wider subsidy scheme structure. It explains what subsidy control means, what must happen at each stage, who should normally lead each step internally, and when specialist legal or other external advice should be brought in to reduce risk.

This document should be read in conjunction with the Brownfield Housing Assessment Criteria.

2 Statutory basis

HEYCA, as a public authority, must comply with the Subsidy Control Act 2022 when awarding financial assistance that amounts to a subsidy. The UK subsidy control regime is supported by statutory guidance issued by Government, transparency reporting requirements, and the Competition and Markets Authority (CMA) Subsidy Advice Unit process, for certain larger or more sensitive subsidies.

For operational purposes, the key legal and guidance sources for this process are:

- Subsidy Control Act 2022.
- Explanatory Notes to the Subsidy Control Act 2022.
- UK subsidy control statutory guidance.
- GOV.UK guidance on the subsidy control regime and public authority responsibilities.
- Subsidy database reporting requirements and associated regulations.

This documents limitations are that of a management framework to help officers identify when routine internal handling is appropriate and when HEYCA should escalate to legal or technical specialists.

2.1 What subsidy control means

Subsidy control is the set of legal rules that applies when a public authority gives financial support that benefits a business in a way that could affect competition or investment. It is broader than grants and can include loans, guarantees, land disposals at undervalue, write-offs, or any other arrangement that gives a commercial advantage on better-than-market terms.

For Brownfield Housing Fund purposes, the practical starting point is when HEYCA gives funding or another financial benefit to a developer, landowner, housebuilder, registered provider, or delivery vehicle, and that support helps them do something on terms they would not obtain through the market alone, there is a strong possibility that the support is a subsidy.

A measure is likely to be a subsidy where all the following are present:

- The support comes from public resources and is given by, or through, a public authority.
- The recipient is an enterprise, meaning an entity engaged in economic activity, regardless of legal form.
- The measure gives that enterprise an economic advantage that is not available on normal market terms.
- The support is specific, meaning it favours one or more enterprises, sectors, projects, places, or classes of recipient rather than applying generally across the whole economy.
- The support has, or could have, an effect on competition, investment within the UK, or trade or investment internationally.

It is anticipated that many of the Brownfield Housing Fund awards to developers will meet this test unless the authority can clearly show that the arrangement is fully commercial or otherwise outside scope for Subsidy Control.

2.2 Operating principles for HEYCA

To manage risk robustly, HEYCA will operate on the basis that subsidy control is an embedded part of project appraisal and grant administration rather than a late legal check immediately before award. Good practice is to identify potential subsidy issues at the point an application is received, carry the assessment through project appraisal and approvals, and keep a documented audit trail through to payment, monitoring, and transparency reporting.

The process should also be proportionate to the application request. Routine and lower-risk cases can be led internally using standard templates, checklists, viability evidence, and legal review at defined gateway points. More complex, unique, high-value, or challenge-prone cases should be escalated early to specialist legal advisers and, where required, subsidy economists, valuers, or viability specialists.

2.3 Roles and accountability

2.3.1 Internal HEYCA roles

The following internal functions are allocated clear responsibilities in the process:

Function	Core accountability

F1: Project / programme lead	Coordinates the application, gathers evidence from the promoter, manages timetable, and ensures gateway progression.
F2: Technical / housing regeneration officer	Reviews deliverability, funding gap evidence, outputs, additionality, and scheme rationale.
F3: Finance officer	Reviews value for money, subsidy amount, affordability, and payment structure; supports transparency reporting values.
F4: Internal legal officer / monitoring officer function	Reviews whether legal escalation is required, supports drafting instructions, and oversees grant agreement protections.
F5: Governance / assurance lead	Confirms decision route, records approvals, and ensures assurance framework compliance.
F6: Senior responsible officer / director	Provides approval at the appropriate delegated level and confirms risk acceptance on behalf of HEYCA.

2.3.2 External specialist advisers

External advisers should not be used for every application, but should be engaged where the case is legally complex, unusually structured, high value, contentious, or likely to set a precedent. The main categories are:

1. **External subsidy control legal advisers**: for legal interpretation, drafting or reviewing the principles assessment, and advising on challenge risk.
2. **Viability, valuation, or development appraisal consultants**: where funding-gap evidence or market comparator evidence is technically complex or disputed.
3. **Subsidy economists or specialist consultants**: where there is a need for deeper analysis of competition effects, distortions, or balancing impacts in larger cases.

3 Step by step process

3.1 Stage 1: Application received and basic triage

3.1.1 Purpose

To establish, at the earliest point, whether the proposal could involve subsidy control issues and whether the application should proceed into formal appraisal.

3.1.2 What happens at this stage

The promoter submits an application with core project information, site details, delivery entity details, funding requested, proposed outputs, programme, and evidence of need using the standard HEYCA application form and process. At this point, HEYCA will carry out an initial screen to identify whether public financial assistance is likely to confer an economic advantage on an enterprise.

3.1.3 Key internal actions

- Confirm the identity of the applicant and all delivery entities involved.
- Identify the immediate and ultimate beneficiaries of the funding.
- Record the form of support proposed, for example grant, recoverable grant, loan, deferred land receipt, infrastructure contribution, or another mechanism.
- Ask whether the applicant is carrying out economic activity.
- Ask whether the project appears commercially unviable without support and, in accordance with the eligibility criteria.
- Flag whether the case appears straightforward or potentially unusual / complex.

3.1.4 Questions for officers

- Who is receiving the money or benefit?
- Is that recipient acting like a business in this project?
- Is HEYCA offering something on better-than-market terms?
- Is this support aimed at a specific project or developer rather than everyone?
- Could this help one developer move ahead when competitors do not receive the same support?

3.1.5 Accountability

- **Lead:** project / programme lead with input from technical appraisal and finance colleagues.
- **Oversight:** governance / assurance lead.
- **Escalation point:** internal legal officer if there is uncertainty over who the beneficiary is, whether the activity is economic, or whether the arrangement may be commercial rather than subsidised.

3.1.6 When to engage external advisers

External legal input is usually not needed at this first screen unless the structure is unusual, for example multiple linked entities, indirect beneficiaries, joint ventures, land transactions, or mixed grant and investment models.

3.2 Stage 2: Formal determination - is it a subsidy?

3.2.1 Purpose

To make and record HEYCA's formal view on whether the proposed support is a subsidy for the purposes of the Act.

3.2.2 What happens at this stage

HEYCA completes a structured written assessment against the legal elements of a subsidy. This should be recorded in a standard template and signed off before the project moves to award design or approvals.

3.2.3 Required assessment points

HEYCA will document:

- The public authority and public resources involved.
- The enterprise or enterprises benefiting, including any indirect beneficiaries.
- The nature of the economic advantage and why it is or is not available on market terms.
- The specificity of the measure.
- The actual or potential effect on competition, investment, or trade.

3.2.4 Evidence to collect

- Application form and funding request.
- Company and group structure of the promoter.
- Site ownership or control details.
- Heads of terms or financial offer details.
- Initial viability evidence or explanation of the funding gap.
- Any market testing, valuation, or benchmark information.

3.2.5 Accountability

- **Lead:** internal legal officer or designated subsidy control lead, supported by project, finance, and appraisal colleagues.
- **Approval:** senior responsible officer before progression.

3.2.6 When to engage external advisers

HEYCA will consider external legal advice where any of the following apply:

- The support is not a simple grant.
- There are indirect beneficiaries or pass-through arrangements.
- The case involves loans, guarantees, or equity-like features.
- The authority wants to categorise the arrangement as fully commercial and therefore not a subsidy.
- The value or profile of the case creates material challenge risk.

3.3 Stage 3: Check whether an exemption applies

3.3.1 Purpose

To establish whether the proposed support is exempt from some or all of the substantive subsidy control requirements, so that HEYCA applies the correct level of assessment and documentation.

3.3.2 What happens at this stage

Once HEYCA has concluded that support is, or may be, a subsidy, officers must test whether any applicable exemption applies. For a single Brownfield Housing Fund application, the most relevant exemption is anticipated to be Minimal Financial Assistance (MFA), which permits support up to £315,000 over a rolling three-year period to the same enterprise without the full principles assessment, provided the MFA conditions are met.

Other exemptions may exist in law, but many will not be routinely relevant to brownfield housing interventions. HEYCA must robustly evidence and record why an exemption does or does not apply.

3.3.3 Key internal actions

- Ask the applicant to declare all other MFA or equivalent subsidy support received over the relevant period.
- Confirm whether the applicant is a single enterprise with linked entities whose receipts must be aggregated.
- Record the total amount previously received and the new amount proposed.
- Confirm whether the measure falls below the relevant threshold and all exemption conditions are met.
- Record the outcome in writing.

3.3.4 Explanation of the main exemption

Minimal Financial Assistance is a small-value route. In practical terms, if the recipient and linked enterprises have not exceeded the legal cap over the rolling three-year period, HEYCA may award support without having to work through the seven subsidy control principles in full. However, HEYCA still needs evidence, records, and the correct notifications to the beneficiary.

3.3.5 Accountability

- **Lead:** project / programme lead and finance officer.
- **Review:** designated subsidy control lead or internal legal officer.

3.3.6 When to engage external advisers

External legal advice is usually not required for straightforward MFA cases, but it may be needed where there is doubt about linked enterprises, prior aid history, interaction with other public support, or whether another exemption route is genuinely available.

3.4 Stage 4: Screen for prohibited or restricted subsidies and high-risk categories

3.4.1 Purpose

To make sure HEYCA does not proceed with a subsidy that is prohibited, restricted, or subject to additional controls under the Act.

3.4.2 What happens at this stage

Before carrying out the full subsidy principles assessment, HEYCA will complete a 'gateway' check against prohibited and restricted categories and identify whether the case may qualify as a 'Subsidy of Interest' or 'Subsidy of Particular Interest', which may trigger additional handling and potentially referral to the CMA Subsidy Advice Unit.

3.4.3 Matters to check

- Whether the subsidy is contingent on export performance or use of domestic goods or services in a prohibited way.
- Whether the support resembles an unlimited guarantee or another prohibited form.
- Whether the case involves a failing or insolvent enterprise, which requires careful handling under the Act and guidance.
- Whether the size, sector, or structure of the case means it may be a Subsidy of Interest or Subsidy of Particular Interest.

3.4.4 Accountability

- **Lead:** designated subsidy control lead or internal legal officer.
- **Support:** finance and appraisal officers.

3.4.5 When to engage external advisers

HEYCA should obtain external legal advice where there is any possibility that the case falls within a prohibited or restricted area, involves financial distress, or approaches thresholds or characteristics associated with a Subsidy of Interest or Subsidy of Particular Interest.

3.5 Stage 5: Gather the evidence needed for the principles assessment

3.5.1 Purpose

To compile the factual, financial, and strategic evidence that will support a legally defensible principles assessment.

3.5.2 What happens at this stage

HEYCA assembles a clear evidence base from the promoter and from internal appraisal work using the information provided through the application process. The quality of this stage is critical because the later legal assessment depends on the evidence being specific, quantified where possible, and tied to the individual project rather than general statements about brownfield need.

3.5.3 Evidence normally required

- Site description, delivery context, and barriers to development.
- Planning status and key constraints.
- Detailed development appraisal showing costs, revenues, assumptions, and funding gap.
- Evidence of abnormal costs such as remediation, servicing, infrastructure, demolition, flood mitigation, or utilities diversion.
- Evidence of outputs and outcomes, such as homes delivered, tenure mix, regeneration effects, and wider public benefits.
- Delivery programme and milestones.
- Funding package showing all other public and private contributions.
- Statement from the promoter explaining what would happen without support.

3.5.4 Accountability

- **Lead:** technical / housing regeneration appraisal officer.
- **Support:** finance officer and project lead.

3.5.5 When to engage external advisers

HEYCA should bring in external viability, valuation, or appraisal specialists where:

- the financial model is complex or disputed;
- the abnormal-cost case is material;
- the funding gap appears large relative to outputs;
- the promoter's evidence is weak or internally inconsistent; or
- a stronger independent evidence base is needed to defend challenge risk.

3.6 Stage 6: Assess the proposal against the seven subsidy control principles

3.6.1 Purpose

To complete the core substantive assessment required for non-exempt subsidies and record why HEYCA is satisfied the proposed subsidy is lawful.

3.6.2 What happens at this stage

HEYCA completes a principle-by-principle assessment tailored to the project. This should not be generic wording copied between cases. The analysis should explain the specific market failure, the amount of subsidy required, the output expected, the alternatives considered, the competition effects, and why the overall balance supports award.

3.6.3 Principle-by-principle officer questions

3.6.3.1 Principle A - common interest

The subsidy should pursue a specific policy objective in order to remedy an identified market failure or address an equity rationale:

Questions:

- What specific market failure or equity issue does this project present?
- Is the issue evidenced for this site rather than assumed generally?
- How does the proposed subsidy directly address that issue?

3.6.3.2 Principle B - proportionate and necessary

The subsidy should be proportionate and limited to what is necessary to achieve the policy objective.

Questions:

- What is the minimum amount of support needed to make the project proceed?
- Has the funding gap been evidenced through a robust appraisal?
- Is any part of the proposed award more than is necessary?

3.6.3.3 *Principle C - change of economic behaviour*

The subsidy should bring about a change in the economic behaviour of the beneficiary that is conducive to achieving the policy objective and that would not happen without the subsidy.

Questions:

- What will the promoter do because of the subsidy that it would not otherwise do?
- Would the project proceed anyway, or at the same pace, on the same scale, or with the same outputs?
- What evidence supports the claim of additionality?

3.6.3.4 *Principle D - costs that would be funded anyway*

The subsidy should not normally compensate for costs the beneficiary would have funded in the absence of the subsidy.

Questions:

- Is HEYCA funding future action rather than reimbursing unavoidable sunk costs?
- Which costs would the promoter have incurred anyway?
- How has HEYCA excluded ineligible or already-committed expenditure from support?

3.6.3.5 *Principle E - appropriate policy instrument and minimising distortion*

The subsidy should be an appropriate policy instrument to achieve the objective and the objective cannot be achieved through other less distortive means.

Questions:

- Why is subsidy the right intervention rather than a planning, land, loan, or other tool?
- Were less distortive alternatives considered?
- Why is the chosen form and structure of assistance justified?

3.6.3.6 *Principle F - minimising harmful effects on competition and investment within the UK*

The subsidy's positive effects should outweigh any negative effects, particularly negative effects on competition or investment within the UK.

Questions:

- Could this support unfairly advantage the recipient over other developers?
- Could the project displace other investment or housing delivery elsewhere?
- What features of the award help minimise distortion, such as cap, clawback, milestone payments, or open eligibility?

3.6.3.7 Principle G - overall balancing judgement

HEYCA must consider whether the beneficial effects of the subsidy outweigh any negative effects on competition, investment, or trade.

Questions:

- What are the project's public benefits in concrete terms?
- What are the potential negative market effects?
- Taking both sides together, is the case for support stronger than the risk of distortion, and is that conclusion clearly reasoned?

3.6.4 Accountability

- Lead for evidence and first draft: technical appraisal officer with finance support.
- Lead for legal sufficiency and finalisation: designated subsidy control lead or internal legal officer.
- Approval: senior responsible officer or delegated director, with legal and finance clearance.

3.6.5 When to engage external advisers

HEYCA should normally seek external legal review of the principles assessment where the subsidy is high value, unusual, potentially contentious, or vulnerable to challenge. External viability or economic specialists should be used where the justification depends heavily on complex appraisal evidence or on more sophisticated analysis of competition and distortion effects.

3.7 Stage 7: Determine whether referral to the CMA Subsidy Advice Unit is required or advisable

3.7.1 Purpose

To identify whether HEYCA must refer the case to the Subsidy Advice Unit before award, or whether voluntary referral should be considered in a higher-risk case.

3.7.2 What happens at this stage

Using the legislation and statutory guidance, HEYCA should check whether the proposal falls within the category of a ‘Subsidy of Particular Interest ‘or another category requiring referral. HEYCA should also consider whether the scale or sensitivity of the case justifies more intensive legal handling even where referral is not mandatory.

3.7.3 Accountability

- **Lead:** internal legal officer / designated subsidy control lead.
- **Decision support:** governance lead, finance, and senior responsible officer.

3.7.4 When to engage external advisers

External legal support should generally be assumed for any case where referral is required or seriously in contemplation, because the submission must be technically robust and because the case is likely to involve increased scrutiny and challenge sensitivity.

3.8 Stage 8: Internal approvals and decision-making

3.8.1 Purpose

To ensure the subsidy decision is taken by the correct HEYCA decision-maker, supported by an assurance-compliant record.

3.8.2 What happens at this stage

The project proceeds through HEYCA's internal governance route with a clear decision report / record. The report should summarise the project, the subsidy analysis, exemption status if relevant, the principles assessment outcome, legal advice obtained, key risks, mitigations, and the proposed approval sought.

3.8.3 Minimum decision record content

- Description of the project and support requested.
- Formal conclusion on whether the measure is a subsidy.
- Details of any exemption relied upon, if applicable.
- Summary of the seven-principles assessment, where required.
- Summary of legal, financial, and technical review.
- Risks, mitigations, and conditions precedent.
- Delegation and approval route.

3.8.4 Accountability

- **Report author:** project / programme lead.
- **Contributors:** appraisal, finance, legal, and governance officers.

- **Approval:** relevant director, accountable officer, committee, or other delegated decision-maker in line with HEYCA's delegations, overarching approval and assurance framework.

3.8.5 When to engage external advisers

Where external legal advice has been commissioned, it should be completed before final decision. In higher-risk cases, the advice should be expressly referenced in the decision report and retained on file.

3.9 Stage 9: Draft and execute the funding agreement

3.9.1 Purpose

To translate the subsidy assessment and risk mitigations into enforceable contractual controls.

3.9.2 What happens at this stage

HEYCA prepares the funding agreement or equivalent award document. This is one of the main tools for controlling subsidy risk after approval. The agreement should mirror the basis on which the subsidy was justified and should include conditions that prevent overcompensation or misuse.

3.9.3 Key contractual protections

- Defined purpose of the funding.
- Eligible expenditure and excluded expenditure.
- Milestones and evidence requirements for drawdown.
- Clawback, repayment, or adjustment where outputs are not delivered or overcompensation arises.
- Subsidy declarations and information warranties from the recipient.
- Record-keeping obligations on the recipient.
- Restrictions on assignment, onward transfer, or material project change without consent.
- Audit and access rights.
- State of delivery / default provisions.

3.9.4 Accountability

- **Lead:** internal legal officer with project and finance input.
- **Approval to complete**: authorised HEYCA signatory under delegated authority.

3.9.5 When to engage external advisers

External legal drafting or review is recommended where the award structure is not a simple grant, where clawback mechanics are material, where land/value-sharing provisions are included, or where the recipient's corporate structure or security package is complex.

3.10 Stage 10: Transparency reporting and statutory notifications

3.10.1 Purpose

To fulfil post-award legal transparency requirements.

3.10.2 What happens at this stage

After the funding agreement is awarded, HEYCA must ensure the required information is uploaded to the **UK subsidy transparency database** within the statutory deadline where the reporting rules apply. HEYCA must also give the recipient any required notification where an exemption such as MFA has been used.

3.10.3 Key internal actions

- Confirm the date of binding commitment.
- Confirm whether the award meets the reporting threshold and category.
- Prepare and upload the required information within the applicable deadline.
- Retain proof of submission and database reference.
- Issue any beneficiary notification required by the route used.

3.10.4 Accountability

- **Lead:** finance officer or designated subsidy control administrator.
- **Review:** legal or subsidy control lead for accuracy of classification and values.

3.10.5 When to engage external advisers

This step is usually handled internally. External advice may be needed if there is uncertainty over valuation methodology, beneficiary identity, or the correct reporting category.

3.11 Stage 11: Payment, monitoring, and ongoing compliance

3.11.1 Purpose

To ensure the subsidy remains within the approved basis after award and that HEYCA can evidence compliance throughout the life of the project.

3.11.2 What happens at this stage

Payments should only be released in line with the approved agreement, milestones, and evidence requirements. HEYCA should monitor delivery, outputs, and financial position to identify whether overcompensation, project change, delay, or restructuring creates subsidy control implications that require action.

3.11.3 Monitoring actions

- Verify drawdown evidence before payment.
- Track outputs and milestones.
- Review material project changes and assess whether they affect the subsidy analysis.
- Trigger clawback or variation procedures where required.
- Maintain a complete audit file.

3.11.4 Accountability

- Lead: project / programme lead.
- Support: finance, legal, and assurance officers.
- Oversight: senior responsible officer.

3.11.5 When to engage external advisers

External legal or technical advice should be taken if the project materially changes, if the recipient seeks variation to the commercial or delivery structure, if overcompensation may have arisen, or if dispute or recovery action is likely.

3.12 Stage 12: Record retention and challenge readiness

3.12.1 Purpose

To make sure HEYCA can justify its decision and evidence compliance if challenged or audited.

3.12.2 What happens at this stage

HEYCA should maintain a complete audit trail from first triage through to final payment and closure. The file should be organised so that an internal auditor, external auditor, legal reviewer, or court could understand the basis of the decision without reconstructing it from emails.

3.12.3 Core file contents

- Application and promoter submissions.
- Subsidy determination template.

- Exemption assessment, where relevant.
- Principles assessment and supporting evidence.
- Legal advice and technical consultant reports.
- Approval papers and decision records.
- Executed funding agreement.
- Transparency reporting confirmation.
- Monitoring records, variations, and closure documentation.

3.12.4 Accountability

- Lead: governance / assurance lead.
- Contributors: all relevant officers.

3.12.5 When to engage external advisers

This stage is generally internal, but external support may be required where a challenge emerges, pre-action correspondence is received, or HEYCA needs to prepare for litigation, investigation, or formal audit.

3.13 Recommended escalation triggers for external legal review

HEYCA should consider a standing rule that external legal review is required where one or more of the following applies:

- the case is not a straightforward grant;
- the proposed support is high value;
- the assessment depends on complex or marginal arguments about market terms;
- there are indirect or multiple beneficiaries;
- the promoter is in financial difficulty;
- the project is likely to be visible, controversial, or challenge-prone;
- the case may require Subsidy Advice Unit referral; or
- the decision could set a precedent for future Brownfield Housing Fund awards.

3.14 Internal toolkit and templates alignment

To make this process operational, HEYCA will maintain and align set of standard documents and require their use on every case:

- Subsidy triage checklist.
- Formal "is it a subsidy?" assessment template.
- MFA declaration form and linked-enterprise statement.
- Seven-principles assessment template.
- External legal referral checklist.
- Decision report template with subsidy control section.
- Grant agreement drafting checklist.
- Transparency reporting log.
- Post-award monitoring and variation checklist.

3.15 Practical decision map for colleagues

Stage	Main question	Normally led by HEYCA?	External support usually needed?
1. Triage	Could this involve subsidy control?	Yes	Rarely
2. Is it a subsidy?	Does the legal definition apply?	Yes, with internal legal input	Sometimes
3. Exemptions	Is MFA or another exemption available?	Yes	Occasionally
4. Prohibited / high-risk screen	Is anything prohibited, restricted, or referral-sensitive?	Yes, with legal lead	Often for risk cases
5. Evidence gathering	Is the factual and financial case robust?	Yes	Sometimes for viability / valuation
6. Seven principles	Can HEYCA justify the subsidy on the evidence?	Yes	Often for complex or high-risk cases
7. SAU referral check	Is referral required or advisable?	Yes, with legal lead	Usually
8. Approvals	Has the right decision-maker approved on a proper record?	Yes	Not usually
9. Funding agreement	Are the subsidy controls reflected in contract terms?	Yes	Sometimes / often for complex deals

10. Transparency	Have statutory publication requirements been met?	Yes	Rarely
11. Monitoring	Is the project still compliant after award?	Yes	Sometimes if issues arise
12. Audit / challenge readiness	Can HEYCA defend the decision later?	Yes	If challenged