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Questions and Answers for Brownfield Registers and Permission in Principle

What do The Town and Country Planning (Brownfield Land Register) Regulations 2017 and The Town and Country Planning (Permission in Principle) Order 2017 do/require?

The Regulations will require local authorities to prepare and maintain registers of brownfield land that is suitable for residential development. The Order provides that sites entered on Part 2 of the new brownfield registers will be granted permission in principle.

What is the timescale for these proposals?

The proposals will come in to force on 16th April 2017. Local authorities will be expected to have compiled their registers by 31/12/2017.

These are new responsibilities, are they being funded?

The Department's rigorous New Burdens assessments ensure local planning authorities receive the relevant resources to meet their statutory obligations. We have written to authorities informing them of the grant funding that they will receive to cover their new responsibilities.

Will the Government be publishing guidance to support the introduction of brownfield registers?

We intend to publish statutory guidance to explain our policy for brownfield registers in more detail by June 2017. It will also set out our expectations for the operation of the policy and the requirements of the secondary legislation.

What is the purpose of brownfield registers?

Brownfield registers will provide up-to-date, publicly available information on brownfield land that is suitable for housing. This will improve the quality and consistency of data held by local planning authorities which will provide certainty for developers and communities, encouraging investment in local areas. Brownfield registers should include all brownfield sites that are suitable for housing development irrespective of their planning status.

Who will prepare brownfield registers?

Local planning authorities who are required to develop a local plan under Part 2 of the Planning and Compulsory Purchase Act 2004 will be required to have a register covering the area of the local plan. This includes National Park Authorities, the Broads Authority and Mayoral Development Corporations with responsibility for producing a local plan.

What information will be included in the register?

Local authorities will be required to include a consistent set of information in their registers. The information to be included is set out in Schedule 2 of The Town and Country Planning (Brownfield Land Register) Regulations 2017. We intend to publish technical guidance on the format of brownfield registers by June 2017.

How will brownfield registers be prepared?

The regulations set a process for identifying suitable sites, including the requirements for keeping a register and the criteria for assessing sites (The regulations also set out the requirements for publicity and consultation where an authority proposes to enter sites on Part 2 of the register). There is a duty on local planning authorities to have regard to the development plan, national policy and advice and guidance when exercising their functions under the brownfield register regulations.

Isn't this a very short timescale to compile registers from scratch?

No, the time scale is realistic. Local authorities already collect and review information on housing land as part of the well established Strategic Housing Land Availability Assessment process and the requirements for preparing registers are aligned to this process as far as possible. 73 local planning authorities have piloted the preparation of brownfield registers and their experience has helped to shape the policy and requirements.

Why is the register in 'two parts'?

Part 1 of the brownfield registers will be a comprehensive list of all brownfield sites in a local authority area that are suitable for housing, irrespective of their planning status. However registers will also be a vehicle for granting permission in principle for suitable sites where authorities have followed the relevant procedures. If the authority considers that permission in principle should be granted for a site the local authority is required to enter that site in Part 2 of their register. Part 2 is therefore a subset of Part 1 and will include only those sites for which have permission in principle has been granted.

Does putting a site on the register automatically grant permission in principle?

No - Putting a site on Part 1 of a register does not mean it will automatically be granted permission in principle. Local planning authorities will be able to enter sites on Part 2 of the register which will trigger a grant of permission in principle for those sites suitable for housing-led development only after they have followed the consultation and publicity requirements, and other procedures set out in the regulations and they remain of the opinion that permission in principle should be granted. Those sites which have permission in principle for housing-led development will be clearly identified by being in Part 2 of the Register.

Are there sites that should not be included on Part 2 of brownfield registers, i.e. sites which should not be granted permission in principle?

Local authorities will need to meet the requirements in relation to environmental impact assessments, habitats protection and protections for other sensitive areas. A site may not be included on Part 2 of the register where development of the site would: fall within Schedule 1 of the EIA Regulations; has been screened as EIA development; or development would be prohibited under habitats protection legislation i.e. those sites may not be granted permission in principle through being placed on the register.

Do sites on brownfield registers count towards the five-year housing supply?

Where a site on a register is considered to be deliverable within five years it can be counted towards the five-year housing supply. Local planning authorities will be required to indicate whether sites are 'deliverable' when entering data on their registers.

Will brownfield registers not undermine the protection of environmentally valuable sites and heritage assets?

No - Local planning authorities must take into account the National Planning Policy Framework when identifying sites to include in their brownfield registers. The Framework has strong policies to protect the natural and built environment and conserve and enhance the historic environment. It also requires authorities to ensure that a residential use is appropriate for the location and that a site can be made suitable for its new use.

Will local authorities be required to carry out a Strategic Environmental Assessment as part of preparing their brownfield registers?

There may be potential for the Environmental Assessment of Plans and Programmes Regulations 2004 to apply depending on the content of brownfield registers. But given the nature of registers the content of any SEA is likely to be limited in scope and it may be appropriate in some cases to use assessments undertaken during the preparation of local plans.

How often will local authorities be required to update/review sites on a brownfield register?

Local authorities will be required to update the information relating to each entry and review the sites on their registers at least once a year. Authorities will be encouraged to conduct more frequent updates of the register where they wish to do so. This will ensure the process is proportionate and allow local authorities to respond to particular local circumstances.

Is the local plan taken into account when a brownfield register is prepared?

Yes - Local authorities are required to have regard to the development plan, including relevant local plans, when making decisions about which sites to include on their registers.

Can sites allocated in local or neighbourhood plans be included on brownfield registers?

Yes – such sites can be included on registers if they meet the criteria set out in the regulations and the local authority has carried out other relevant procedural requirements.

If brownfield registers are used to identify suitable brownfield sites, doesn't this undermine the purpose of Local Plans?

No – brownfield registers complement the existing local plan processes for identifying sites that are suitable for housing. When preparing their plans, local planning authorities are required, through the preparation of Strategic Housing Land Availability Assessments to identify housing sites on brownfield land and other land that is suitable for housing. The Regulations ensure that the process of identifying suitable sites for the brownfield register is aligned to the SHLAA process, and so proactively supports the Plan-making process.

What does granting permission in principle for a brownfield site mean?

Permission in principle will settle the fundamental principles of development (use, location, amount of development) for the brownfield site giving developers/applicants more certainty. A developer cannot proceed with development, however, until they have also obtained technical details consent.

What is Technical Details Consent?

The technical details consent will assess the detailed design, ensure appropriate mitigation of impacts and that any contributions to essential infrastructure are secured. Both the permission in principle and the technical details consent stages must be determined in accordance with the local development plan, the National Planning Policy Framework and other material considerations.

Who decides a permission in principle/Technical Details Consent application?

Decisions about whether permission in principle should be granted for a site through the site being placed on Part 2 of the register and decisions about technical details consent applications will be for local planning authorities to take. Local authorities will have to have regard to the National Planning Policy Framework and development plan policies. They will also have to take into account the advice of any statutory consultees relevant to the proposed development.

Can permission be refused if the local planning authority is not satisfied with the technical details?

Technical details consent can be refused if the detail, including the design of the buildings or any mitigation scheme, is not acceptable. The local planning authority will not be able to revisit the decision on the fundamental principles of development as they have been settled at the permission in principle stage.

Will granting permission in principle on suitable sites in brownfield registers allow local authorities to avoid public scrutiny?

No - local planning authorities are required to undertake statutory consultation and publicity before permission in principle is granted by the entry of a site on Part 2 of the register. On applications for technical details consent local planning authorities are required to undertake publicity and must also consult statutory bodies in cases where they identify the need for further consultation at the permission in principle stage.

Can permission in principle be granted on any site that the local planning authority considers suitable for housing development?

The decision as to whether permission in principle should be granted for suitable sites by entry on Part 2 of a brownfield register will one for local planning authorities to make. Permission in principle may not be granted through a brownfield register for development that falls within Schedule 1 of the EIA Regulations, has been screened as EIA development or would be prohibited under habitats protection legislation.

Can permission in principle be granted for mixed-use sites?

Permission in principle can be granted for housing-led development. Providing the main purpose of the development is the provision of housing, permission in principle can also be granted to other ancillary uses, including commercial, office, and community uses.

Will permission in principle on suitable sites in brownfield registers not undermine the protection of environmentally valuable sites and heritage assets?

No - local planning authorities must take into account the National Planning Policy Framework when identifying sites suitable for granting a permission in principle. The Framework has strong policies to protect the natural and built environment and conserve and enhance the historic environment. It also requires authorities to ensure that a residential use is appropriate for the location and that a site can be made suitable for its new use.

Does granting permission in principle in Brownfield Registers replace existing routes for getting planning permission?

No - permission in principle is a new tool which will work alongside, not replace, existing routes for obtaining planning permission. Permission in principle can only be granted for housing-led developments.

Is this the only way permission in principle can be achieved?

These statutory instruments provide for permission in principle to be granted for suitable sites allocated for housing-led development in brownfield registers. We will be bringing in legislation to allow permission in principle to be granted by application for minor developments later in the year, and through future development plans in due course.

Why do we need a new route for granting permission? Isn't this the same as outline planning permission?

The current planning application process asks developers to provide substantial amounts of information up-front, even as part of an application for outline planning permission. This means that developers will often have to expend significant time and cost prior to achieving certainty that any development will be able to go ahead in principle. Permission in principle offers an alternative route for providing early certainty on the in-principle matters – use, location and amount of development.

Won't progress on local plans be delayed as local planning authorities wait for the Government's regulations on permission in principle through development plans?

No - having up-to-date plans in place is essential to providing communities with the certainty they deserve about where new homes will be built; and ensuring that development is planned rather than the result of speculative applications. This is why we are legislating through the Neighbourhood Planning Bill to require all areas to identify and plan for their strategic priorities. Furthermore, we have been very clear that all authorities should get a plan in place by early 2017. We expect authorities to continue to progress the work required on their plans; ensuring that they're working effectively across boundaries to meet housing need over the wider area and to address strategic matters.

Is a fee payable for granting permission in principle/technical details consent through a brownfield register?

No fee will be payable for permission in principle granted through a brownfield register. There will however be a fee for an application for technical details consent for sites granted permission in principle through the brownfield register. The Government has committed to bring forward legislation to increase planning fees by 20 percent where a local planning authority agrees to use the resources for planning. It is intended that the regulations, subject to parliamentary approval, should bring forward this increase in the Summer. It is our expectation that these regulations will also cover permission in principle (through application).