



CABINET: 12 September 2017

COUNCIL: 18 October 2017

Report of: Director of Development and Regeneration

Relevant Portfolio Holder: Councillor J Hodson

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SUBJECT: BROWNFIELD LAND REGISTER AND PERMISSION IN PRINCIPLE

Wards affected: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To inform Cabinet of new Regulations which impose a requirement on the Council to prepare and maintain a Brownfield Land Register, the consequences of placing land on Part 2 of that Register, the resulting implications for the Council and to make provision in the Council's constitution for effective decision making.

2.0 RECOMMENDATIONS TO CABINET

2.1 That authority is delegated to the Director of Development and Regeneration, in consultation with the Portfolio Holder for Planning, to publish, review and maintain Part 1 of the Brownfield Land Register and to propose land for inclusion in Part 2 of the Register.

2.2 That authority is delegated to the Director of Development and Regeneration to carry out all necessary publication, notification and consultation procedures pursuant to recommendation 2.1 above.

3.0 RECOMMENDATIONS TO COUNCIL

3.1 That the following functions are delegated to the Planning Committee:

3.1.1 Power to approve sites for entry into Part 2 of the Brownfield Land Register and so grant Permission in Principle;

- 3.1.2 Power to decline to approve sites for entry into Part 2 of the Brownfield Land Register;
 - 3.1.3 Power to determine applications for Permission in Principle; and
 - 3.1.4 Power to determine applications for Technical Details Consent.
- 3.2 That authority is fully delegated to the Director of Development and Regeneration to determine applications for Technical Details Consent.
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4.0 NEW LEGISLATION

4.1 In April 2017 the following two new pieces of legislation came into force:

- The Town and Country Planning (Brownfield Land Register) Regulations 2017 (to be referred to as “the Regulations” in this report) - <http://www.legislation.gov.uk/ukxi/2017/403/contents/made>
- The Town and Country Planning (Permission in Principle) Order 2017 (to be referred to as “the Order” in this report) - <http://www.legislation.gov.uk/ukxi/2017/402/made>

4.2 The Regulations require local planning authorities to prepare and maintain a Brownfield Land Register of previously developed land in their area which meet four criteria related to residential development and to publish their first such Register by 31st December 2017. The Register should have two parts. Part 1 includes all previously developed land in the local planning authority’s area that meets the following four criteria:

- (a) the land has an area of at least 0.25 hectares or is capable of supporting at least 5 dwellings;
- (b) the land is suitable for residential development;
- (c) the land is available for residential development; and
- (d) residential development of the land is achievable.

The criteria are defined further in Regulation 4, with the terms “suitable”, “available” and “achievable” specifically defined to aid the local planning authority in discerning which sites should be included on the Register.

4.3 Part 2 of the Register is a subset of Part 1. Part 2 will comprise only those sites in Part 1 that the LPA has decided that the land would be suitable for a grant of "Permission in Principle" (PiP) for residential development under Article 4 of the Order. PiP is similar to an outline planning permission in that further details must be submitted to and approved by the Council before any development can proceed, although only very basic details of the development proposal are required at PiP stage, including a red-line boundary plan for the site and a range for the number of housing units that the site could accommodate.

- 4.4 In order to include a site in Part 2, the local planning authority must first comply with Regulations 6 to 13 of the Regulations in that it must publicise, notify and consult on the intention to include sites in Part 2. The Regulations include exemptions for certain types of land where residential development of that land would be Schedule 1 or Schedule 2 development under the Environmental Impact Assessment Regulations 2011.
- 4.5 When deciding which sites to enter on the Register and exercising their functions under the Regulations a local planning authority must have regard to the Development Plan, national policies and advice and any guidance issued by the Secretary of State for the purpose of the Regulations.

5.0 IMPLICATIONS OF THAT NEW LEGISLATION

- 5.1 The Council has an obligation to prepare a Brownfield Land Register and update it at least once a year. In doing so, it must consider whether to place any of the sites in Part 1 of the Register on Part 2, and in so doing grant PiP to those sites. This new requirement is not especially onerous, even with the consultation requirements associated with Part 2 of the Register, but it does introduce a new burden on the Council, for which a New Burdens Grant has been given to the Council.
- 5.2 The Council will need to ensure its constitution provides for effective decision-making under the Regulations and the Order and some of the time periods for decisions are very short. The decision to grant planning permission is a non-executive function under the Local Authorities (Functions & Responsibilities) Regulations 2000, and the new Regulations provide for an amendment to the 2000 Regulations to the effect that the decision to enter sites on Part 2 of the Register is a non-executive function, as entering sites on Part 2 grants those sites PiP. The authority for making decisions on traditional planning applications rests with the Planning Committee, and so this report recommends to Council that the starting point for decision-making on those sites to be entered on Part 2 of the Register should be delegated to the Planning Committee.
- 5.3 Once sites have been entered on to Part 2 of the Register and have PiP, it is possible for applicants to bring forward applications for Technical Details Consent. Technical Details Consent (TDC) would be similar to the approval of reserved matters following the grant of outline planning permission.
- 5.4 The new procedures under the Regulations and the Order will ultimately create additional work for the Council in considering those sites that should be placed on the Register and dealing with any applications for TDC. There is a need to consider appropriate delegations for dealing with TDC applications given the short timescales required by the Order to determine such applications (10 weeks for a major development and 5 weeks for a development not considered to be major, compared to 13 weeks and 8 weeks respectively for a standard planning application), especially given that the implication of not determining TDC applications within the required timescales is that they will automatically be granted.

- 5.5 Further to the above, it is expected that, in due course, there will be two other routes created to granting PiP. The first will be through the allocation of sites in a Local Plan document, where local planning authorities will be able to choose to grant PiP to sites allocated in a newly adopted Local Plan document if they wish. The second will be through independent applications for PiP for non-major development made to local planning authorities.

6.0 PROPOSED ACTIONS AND NEXT STEPS

- 6.1 The preparation of the Brownfield Land Register (Parts 1 and 2), the publication of Part 1 and the consultation on proposals to include sites on Part 2 are all executive functions and are the subject of the recommendations to Cabinet in this report
- 6.2 It was hoped that a proposed Part 1 of the Register would be available for Cabinet to approve as part of this report, but DCLG only made Authorities aware in July of the very specific way in which they will require all Brownfield Land Registers to be published as part of their open data agenda, and the requirements will involve a significant level of work for authorities to prepare their first Register. As such, only a draft version in the Council's own format can be shared for information with Cabinet at the current time (see Appendix A).
- 6.3 This draft includes 32 previously developed sites that have been assessed as suitable and available for residential development, of which 21 already have planning permission or benefit from a Local Development Order. These must automatically be placed on Part 1 of the Register. The remaining 11 sites do not currently benefit from a planning permission (although one is the subject of a current application and several have recently expired permissions) but have been assessed against the four criteria listed at paragraph 4.2 above and found to be deliverable for residential development within the next 15 years. This draft gives an idea of what Part 1 of the Register will include in its first edition this year. By comparison, only 8 previously developed sites were assessed as not suitable and/or not available for residential development and have been excluded from the draft Part 1 of the Register.
- 6.4 Aside from DCLG's requirements for publication, the preparation of Part 1 of the Register is fairly straight forward, drawing from the Council's existing information on previously developed land contained within the Council's databases of sites with planning permission and from the Council's Strategic Housing and Employment Land Availability Assessment (SHELAA) which is updated each year and supported by frequent Call for Sites exercises. As such, the preparation and publication of Part 1 of the Register is not controversial and simply a reflection of facts and information available to the Council. To this end, recommendation 2.1 includes for the delegation of the authority to publish Part 1 of the Register each year to the Director of Development and Regeneration.
- 6.5 Government guidance indicates that local planning authorities should consider the suitability of all relevant sites on their Register for a grant of PiP, taking into account relevant policies in the development plan and other material considerations. A decision on whether to grant PiP to a site must be made in accordance with relevant policies in the development plan unless there are

material considerations, such as those in the National Planning Policy Framework and national guidance, which indicate otherwise.

- 6.6 The decision to include sites on part 2 of the Register, based on the sites included in the Part 1 of the Register as proposed, would be relatively uncontroversial, as all the sites would, in principle, be acceptable for residential development under the current Local Plan and be likely to gain outline planning permission if applied for. Therefore, recommendation 2.2 also includes for the delegation of the authority to consult on Part 2 of the Register, and on those sites to be entered on Part 2 of the Register, to the Director of Development and Regeneration.
- 6.7 With regard to the decision to enter sites into Part 2 and so grant PiP to those sites, it is considered that the final decision on this should be delegated by Council to the Planning Committee.
- 6.8 The requirements for a valid TDC application are the same as those for an application for full planning permission. A fee is payable for applications for TDC. An application for TDC must be decided in accordance with the terms of the permission in principle granted for the site. The requirements that apply to decisions on other types of application for planning permission also apply. When granting PiP to a site, local planning authorities can provide information on the relevant entry on the Register about what they expect the detailed proposals to include at the TDC stage.
- 6.9 In relation to making decisions regarding applications for TDC on sites granted PiP, it is recommended that decision-making on TDC applications is fully delegated to the Director of Development and Regeneration due to the short timescales for determining such applications (10 weeks for major developments and 5 weeks for non-major developments) and so these applications will not be able to be called-in by, or referred to, Planning Committee.

7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 7.1 The creation of a Brownfield Land Register is intended to facilitate the development of previously developed sites for residential uses where appropriate by, in essence, fast-tracking them through the planning process. To this end, the re-use of previously developed sites for new development, in principle, is sustainable and any negative implications of such a development should either be planned out through the TDC application process or the site should not even make it onto Part 1 of the Register in the first place.

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 8.1 The preparation and publication of a Brownfield Land Register, in itself, does not create a particular financial or resource implication for the Council, particularly as the Council has been awarded £14,645 in New Burdens monies from DCLG to cover the costs of the first Brownfield Land Register. (Local planning authorities will receive further grant payments from DCLG for the 2017/18, 2018/19 and 2019/20 Brownfield Land Registers; the amount of funding for these years is yet

to be determined.) However, there may well be financial and resource implications of Permission in Principle, in particular applications for Technical Details Consent, unless new guidance / legislation that is yet to be published allows local planning authorities to charge for dealing with such applications (and that charge covers the costs of dealing with those applications).

9.0 RISK ASSESSMENT

- 9.1 There is minimal risk with the preparation and publication of Part 1 of the Brownfield Land Register and only a slight risk with preparing and publishing a Part 2 of the Register, other than the potential financial and resource implications discussed above in relation to dealing with applications for Technical Details Consent.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision Cabinet are being asked to make is simply related to the delegation of authority in relation to Brownfield Land Registers and so there is no direct impact on members of the public, employees, elected members and / or stakeholders. Therefore, an Equality Impact Assessment is not required.

Appendices

Appendix A – Draft Part 1 of the Brownfield Land Register 2017 (Council's format)
Appendix B – Minute of Cabinet 12 September 2017 (Council only) – to follow