

<b>Report of</b>	<b>Head of Policy and Corporate</b>	<b>Author</b>	<b>Sean Tofts</b>
<b>Title</b>	<b>Brownfield Land Register</b>		<b>508639</b>
<b>Wards affected</b>	All		

## 1. Executive Summary

1.1 The Town and Country Planning (Brownfield Land Register) Regulations places a responsibility on the Council to prepare and maintain a register of brownfield sites. The Regulations state that the Council's Register must be published by 31st December 2017 and that the Register must be in two parts:

- Part 1 - all sites which are 'suitable', 'available', and 'achievable' for residential development which could be delivered within 15 years. This, however, does not affect a site's status; in other words, for any development to take place, planning permission would still need to be granted.
- Part 2 - any sites which are given 'permission in principle'. Inclusion on part 2 grants planning permission in principle for residential development (the scale is determined by the Council) and the land owner/developer will have to apply for 'technical details consent' before any development can commence.

1.2 The Council participated in pilot scheme for brownfield land registers and has used the data from the existing pilot to inform the current updated register taking into account the change in planning status of sites within the Borough, completions and commencements of sites within the register along with changes in the regulations since the pilot scheme was undertaken. No sites currently within the register are being considered for entry into Part 2 of the register, reflecting the need for further clarification from the government in relation to the requirements for supporting environmental and health assessment work.

## 2. Recommended Decision

2.1 The Committee is asked to note the contents of the report and agree the publication of the Brownfield Land Register.

## 3. Reason for Recommended Decision

3.1 The decision is required to comply with The Town and Country Planning (Brownfield Land Register) Regulations.

## 4. Alternative Options

4.1 There is a national requirement to produce a brownfield land register. The DCLG are considering putting sanctions in place for those local authorities that do not publish the register by the 31<sup>st</sup> of December 2017.

## **5. Background Information**

### **Brownfield Land Registers**

- 5.1 Brownfield Land Registers are intended to provide up-to-date and consistent information on brownfield sites that local authorities consider to be appropriate for residential led development. Registers will be in two parts, Part 1 will comprise all brownfield sites appropriate for residential development and Part 2 those sites granted Permission in Principle. Registers should be published locally as open data and will provide transparent information about suitable and available sites.
- 5.2 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 (SHLAA) 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.
- 5.3 Brownfield land registers must include all sites which meet the relevant criteria regardless of their planning status. This includes sites that have extant planning permission for development that has not been implemented.
- 5.4 Land must be entered onto Part 1 of the register where it meets the following criteria;
  - land falls within the local authority area and meets the definition of previously developed land as set out in Annex 2 of the National Planning Policy Framework (NPPF);
  - has an area of at least 0.25 hectares (or is capable of supporting at least 5 dwellings); and
  - is considered suitable; available and achievable for residential development (definitions of each are provided).
- 5.5 The legislation states that local planning authorities must have regard to the development plan, national policies and advice and any guidance issued by the Secretary of State when preparing brownfield land registers.
- 5.6 Local planning authorities may but are not required to consult on sites they propose to include in Part 1 of the register. If they do consult then they must take into account any representations received.
- 5.7 Local planning authorities can decide to grant sites 'permission in principle' and enter them onto Part 2 of the register where:
  - The site meets the criteria for entry of Part 1 of the register; and
  - The necessary requirements for publicity, notification and consultation have been undertaken.
- 5.8 Land must not be entered onto Part 2 of the register where residential development of that land could be;
  - Schedule 1 Environmental Impact Assessment (EIA) development (this will not apply as this schedule refers to very large scale development). Or
  - Schedule 2 EIA development unless an EIA Screening Opinion has been adopted and concludes that the proposed development is not EIA development. Or
  - Habitats development. ie. Conservation of Habitats and Species Regulations 2010.

- 5.9 The register must be kept available for public inspection at the principal office of the local planning authority. The local planning authority may make the register available for inspection on a website maintained by the authority. The intention is for the register to be made available on the Council website.
- 5.10 The local planning authority must review the entries in the register at least a year. Where a site on a register is considered to be deliverable within 5 years it can be counted towards the 5-year housing supply. Local planning authorities will be required to indicate whether sites are 'deliverable' when entering data on their registers.

### **Permission in Principle**

- 5.11 The Permission in Principle (PiP) consent route is an alternative way of obtaining planning permission which separates the consideration of matters of principle for proposed development from the technical detail of the development. The permission in principle consent route has 2 stages: the first stage or 'permission in principle' stage establishes whether a site is suitable in-principle for residential development (similar to gaining outline planning consent), and the second 'technical details consent' stage is when the detailed development proposals are assessed (similar to a full planning application).
- 5.12 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.
- 5.13 Once the necessary secondary legislation has been introduced, it will also be possible to obtain permission in principle through the local plan site allocation process or by an application for non-major development.
- 5.14 A decision on whether to grant permission in principle 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 NPPF and national guidance, which indicate otherwise.
- 5.15 Bodies with an interest in the land proposed for a grant of permission in principle may volunteer additional information to support decision-making, in particular, to give more certainty about how many dwellings the site is capable of supporting and whether mitigation of likely impacts that may result from development is possible.
- 5.16 There is no right of appeal where a local planning authority decides not to enter a site in Part 2 of a brownfield land register and trigger the grant of permission in principle. Instead a person with an interest in a site has the option of submitting a planning application to the local planning authority.
- 5.17 Local planning authorities must specify the site, the type of development and provide an indication of the amount of development the site has permission in principle for. As permission in principle is only available for residential led development, the permission must state the amount of development expressed as a range, indicating the minimum and maximum net number of dwellings which are, in principle, permitted. Where non-residential development is proposed, local planning authorities are required to provide a description of the type of development (e.g. by indicating the use classes of the buildings or land) and the scale of development permitted.
- 5.18 Local planning authorities are encouraged to consider the environmental implications of registers at an early stage, and to consider whether the Environmental Assessment of Plans and Programmes Regulations 2004 are likely to apply.

- 5.19 Where permission in Principle is granted through allocation on Part 2 of a brownfield land register, the default duration of that permission is 5 years. The scope of permission in principle is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the permission in principle stage; other matters should be considered at the technical details consent stage.

### **Technical Details Consent**

- 5.20 Following a grant of Permission in Principle, the site must receive a grant of technical details consent before development can proceed. The granting of technical details consent has the effect of granting planning permission for the development and other statutory requirements may apply at this stage e.g. relating to protected species or listed buildings. Technical details consent can be obtained following submission of a valid application to the local planning authority.
- 5.21 The requirements for a valid technical details consent application are akin to those for an application for full planning permission. An application for technical details consent must be decided in accordance with the terms of the permission in principle granted for the site. A fee is payable for technical details consent.
- 5.22 Local planning authorities should take a proportionate approach to any information they request in support of applications for technical details consent, which should be relevant, necessary and material to the application in question.
- 5.23 Before granting technical details consent, the local planning authority must consult bodies identified in Schedule 4 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 where they have notified the local planning authority, before it granted permission in principle to the site, that they wish to be consulted on the technical details consent application. Local planning authorities must also consult anybody (not on Schedule 4) that they would have been required to consult in relation to an application for planning permission, for example under relevant consultation or safeguarding directions.
- 5.24 Once a valid application for technical details consent has been received, the local planning authority should make a decision on the proposal as quickly as possible, and in any event within the statutory time limit unless a longer period is agreed in writing with the applicant. The statutory time limits are 10 weeks for major development and 5 weeks for minor development (unless an application is subject to an Environmental Impact Assessment in which case a 16 week limit applies).
- 5.25 It is possible for the local planning authority to attach planning conditions to technical details consent providing they meet existing requirements around the use of conditions.
- 5.26 Local planning authorities may agree planning obligations at the technical details consent stage where the statutory tests have been met. Planning obligations cannot be secured at the permission in principle stage.
- 5.27 The technical details consent will provide the opportunity to assess the detailed design, ensure appropriate mitigation of impacts and that contributions to essential infrastructure are secured (through the use of section 106 agreements for example). Any Community Infrastructure Levy (CIL) contributions will still be payable. If the technical details are not acceptable then refusal on this basis would be justified.

### **The current context in Colchester**

- 5.28 Currently Colchester has a published Brownfield Land Register and this includes 34 sites that are entered on Part 1 of the register. These sites have been included in the register since August 2016 and have been reviewed to address any changes in circumstance with the sites included. Since there has been three changes in permissions. COL/22, 28 the Hythe Quay, has been permissioned and constructed and to reflect this the site has been deleted from the register. COL/14, Land North of Magdalen Street, has been granted planning permission for 58 apartments (152730). RHE/01, Rowhedge Port, has also been given planning permission and construction is underway (160551 & 144693). The change in permissions has been reflected within the Brownfield Register.
- 5.29 Since the publication of the Brownfield Land Register the government has requested an amended standardised format for the table and the table has been reformatted to comply with this request.
- 5.30 The August 2016 Register was publicised and several sites were submitted. It has been publicly available since that date and additional sites could have been added. The new register has recently considered new sites for inclusion and it is therefore suggested that no 'call for sites' type process is required at this stage. However, a new dedicated brownfield register webpage makes it clear that the Council will receive submissions throughout the year for annual review and highlights the requirements for the type of site that is potentially suitable for inclusion on the register; as set out in paragraph 5.4.
- 5.31 The webpage also includes a link through to the public access mapping data which shows the location of all sites entered. There is also a link to a brownfield land register submission form that has been produced to ensure that all the information for officers to consider the sites appropriately can be gathered efficiently.
- 5.32 No sites currently within the register are being considered for entry into Part 2 of the register and this is partially as the Council would like to have further clarification from the Government in relation to the requirements for EIA and HA.
- 5.33 There is something of a misconception that there are lots of brownfield sites in the Borough suitable for development. However, as noted in the previous committee report the relatively low level of sites entered into the register reflects the limited number of sites that remain and how effective the Council has been previously at redeveloping brownfield sites within the Borough.
- 5.34 Although this route to planning permission is new, the Scheme of Delegation requires no amendment as the terminology within the document refers to 'All applications'. This terminology applies to applications for both full and outline planning permission, so permission in principle and technical details consent are able to be considered under the current wording.

## **6. Equality, Diversity and Human Rights implications**

- 6.1 An Equality Impact Assessment has been prepared for the Local Plan and is available to view by clicking on this link:- <http://www.colchester.gov.uk/article/12745/Policy-and-Corporate>

## **7. Standard References**

- 7.1 There are no particular community safety; health and safety or risk management implications.

## **8. Strategic Plan References**

- 8.1 Effective strategic planning supports the Strategic Plan Action Plan which includes a commitment to make Colchester a vibrant, prosperous, thriving and welcoming place.

## **9. Consultation**

- 9.1 Consultation on Brownfield Land Registers will be discretionary and for each local authority to decide how and if it is undertaken. CBC will signpost users of its website to the Brownfield Register. The website will indicate to users that brownfield sites maybe submitted to the Council at anytime for consideration however these will be reviewed yearly as part of the Authority Monitoring Report.
- 9.2 Local planning authorities may but are not required to consult on sites they propose to include in Part 1 of the register. If they do consult then they must take into account any representations received.
- 9.3 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.
- 9.4 Currently the Council is not proposing any of the sites to be entered into Part 2 of the brownfield land register and therefore no public consultation is required to publicise the council considering this option. In a change of circumstances the Council will follow the government guidance by giving requisite notice by site display in at least one place on or near the land to which the application relates for not less than 21 days (notice to include the information shown in appendix 2).

## **10. Publicity Considerations**

- 10.1 There may be publicity as a result of the report and further sites may be put forward which will be considered accordingly.

## **11. Financial implications**

- 12.1 The council has been designated further funding from the government to undertake the work and was awarded funding for participating in the pilot scheme. It is unclear as to whether this funding will be ongoing.

## **Appendices**

Brownfield Register in DCLG requested standard format.

## **Background Papers**

None