

WAVERLEY BOROUGH COUNCIL

EXECUTIVE - 28 NOVEMBER 2017

Title:

BROWNFIELD LAND REGISTER

[Portfolio Holder: Cllr Chris Storey]

[Wards Affected: All]

Summary and purpose:

This report is to inform members about the Town and Country Planning (Brownfield Land Register) Regulations 2017 and the Town and Country Planning (Permission in Principle (PiP)) Order 2017.

The Regulations place a duty on local planning authorities to prepare, publish and maintain a register of previously developed land, known commonly as “brownfield land” which is suitable for residential development. Preparation of a Brownfield Land Register is a statutory obligation and Waverley Borough Council must publish at least a Part 1 register by 31 December 2017. This report discusses the implications of the new legislation.

The Order enables local authorities to grant PiP on suitable sites by entering them on Part 2 of the register. There is currently no statutory requirement for sites to be entered on Part 2. A report will be made to the Executive at a later date setting out the process for dealing with Part 2.

How this report relates to the Council’s Corporate Priorities:

Preparation and maintenance of the Brownfield Land Register will assist with the delivery of new homes and will help with the redevelopment of previously developed land. The development of brownfield sites to deliver housing will contribute to the wellbeing of Waverley’s communities by considering their potential to meet housing needs, including the provision of affordable housing. Developing brownfield sites will help protect the Borough’s attractive environment by improving existing sites through their redevelopment and will reduce pressure for housing to be built on greenfield sites.

Financial Implications:

Preparation of the Brownfield Land Register is considered a new burden by central government, therefore costs of the additional resourcing required have been funded by a grant. Maintenance of the register will be met from existing resources. There are unlikely to be further material financial implications resulting from Part 1 of the Register.

Legal Implications:

The Council must prepare and publish a Brownfield Land Register by 31 December 2017 in accordance with the Town and Country Planning (Brownfield Land Register) Regulations 2017 (“the Regulations”). The enabling statute for these Regulations is the Planning and Compulsory Purchase Act 2004. The Council must thereafter maintain that register in accordance with the same regulations.

The requirements set out in the Regulations are mandatory. If the Council fails to comply with the statutory duty imposed by the Regulations, S.78 appeal inspectors may attach weight to the Council's lack of a Brownfield Land Register when making their determination with regard to particular sites which have been argued should have been included or have facilitated a grant of Permission in Principle. Furthermore, failure to publish and maintain a Brownfield Land Register in accordance with the Regulations would put the Council at risk of being Judicially Reviewed for declaration that the Council has failed in its obligations to prepare a Register etc. and possibly a mandatory order, to compel it to carry out this function.

There is no statutory appeal within the new legislation for Part 1 of the Register. There would always be the possibility of a party bringing judicial review proceedings if they believed the Council had incorrectly placed, or not placed, a site onto the Part 1 of the Register. There is no right of appeal where the Council decides not to enter a site in Part 2 of its 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. An application for technical details consent, however, may be appealed on grounds of non-determination, refusal or against any condition imposed.

The Council's Scheme of Delegation authorises the Head of Planning to make all decisions, take all actions and exercise all powers in respect of the Council's Planning Policy functions in accordance with, amongst others, the Planning and Compulsory Purchase Act 2004. The Town and Country Planning (Brownfield Land Register) Regulations 2017 were made by the Secretary of State pursuant to sections 14A and 122 (1)(a)(3) of the Planning Compulsory Purchase Act 2004. For this reason, the Head of Planning has delegated powers to exercise all functions conferred by the Regulations to the Council.

Background

1. In April 2017, The Town and Country Planning (Brownfield Land Register) Regulations 2017 and The Town and Country Planning (Permission in Principle) Order 2017 came into force. Further planning practice guidance was published on the 28th July 2017.
2. Brownfield Land refers to land which has previously been developed and is or has been occupied by a permanent structure. The Government set out the following definition of previously developed land in the glossary at Annex 2 of the National Planning Policy Framework (NPPF):

“Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.”

3. The Regulations require local planning authorities to prepare and maintain a Brownfield Land Register. The Register should have two parts (Part 1 and Part 2); Part 1 must be published by 31 December 2017. In July 2017, DCLG published a prescribed format that all local authorities must use to publish their data.
4. Part 1 of the Register should include all previously developed land in the local planning authority's area that meets the following criteria, irrespective of planning status:
 - 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 terms "suitable", "available" and "achievable" are defined further in Regulation 4, to aid the local planning authority in discerning which sites should be included on the Register.

5. 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. PiP will settle the fundamental principles of development (use, location, amount of development) for the brownfield site giving developers more certainty about what is appropriate. However, full planning permission, and therefore development, cannot proceed until Technical Details Consent (TDC) has been obtained. TDC will assess the detailed design, ensure appropriate mitigation of impacts and secure planning contributions.
6. In order to include a site in Part 2, and thus grant PiP, the local planning authority must publicise, notify and consult on the intention to include sites in Part 2, similar to the way in which planning applications are consulted on. A site must not be entered onto Part 2 of the Register where residential development of that land could be EIA Schedule 1 or 2 development, or where it would have a likely significant effect on a European Site under the Habitats Regulations.
7. As with planning applications, PiP and TDC must be determined in accordance with the Local Development Plan, national policies and advice and any guidance issued by the Secretary of State for the purpose of the Regulations. Account must also be taken of the consultation responses. However, there is no appeal mechanism for non-inclusion on Part 2 of the Register. Landowners and developers of sites not included on the Register would be able to submit a planning application and then appeal any refusal if that wanted to challenge 'non-inclusion'.
8. No fee will be payable for PiP granted through a BLR. There will however be a fee for an application for technical details consent for sites granted PiP through placement on Part 2 of the Register.
9. Local authorities are required to update the information relating to each entry and review the sites on their Register at least once a year. On review, any sites no longer meeting the Register criteria, set out in paragraph 4 of this report, must be removed from Part 1, and if applicable Part 2.

10. Members should be aware that the creation of Part 1 of the Register and the subsequent addition of sites to it is a fairly uncontroversial process. Part 2 will potentially involve the addition of sites under PiP and will therefore potentially be of greater, wider interest and significance.
11. 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

Implications of the new legislation

12. The Council has an obligation to prepare a Part 1 Brownfield Land Register by the 31st of December 2017. Preparation, maintenance and publication of the Register is a statutory requirement, the sites to be included in Part 1 of the Register will be assessed against the criteria identified in the Regulations.
 13. The Regulations require Part 1 of the Register to be updated at least once a year; it is proposed that the Register is updated on a case-by-case basis to ensure the information provided by the Brownfield Land Register is accurate and up-to-date. For Part 1 of the Register this may involve:
 - updating the status of existing sites in Part 1 by checking availability of expired permission sites and removing sites where development is completed or no longer available;
 - review of sources and identification of new sites to be included in Part 1;
 - publication of a revised Brownfield Land Register Part 1.
 14. The Scheme of Delegation gives delegated authority to the Head of Planning to approve sites entering Part 1 of the Register and to make any subsequent revisions.
 15. The following sources will be used to consider sites suitable for inclusion on Part 1 of the Register:
 - Brownfield sites with extant planning permission;
 - Brownfield housing allocations within the adopted Local and Neighbourhood Plans;
 - Brownfield sites identified within the Land Availability Assessment (LAA) 2016;
 - expired consents on Brownfield sites where the principle of housing development was considered acceptable as having potential for housing development.
 16. The finalised Brownfield Land Register Part 1 will be published on the Council's website by the 31st December 2017.
 17. There is currently no statutory deadline for publishing Part 2 of the Register. However, the Council must consider in the future 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. A report will be taken to the Executive and Council setting out the process for Part 2 of the Register at a later date.
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Recommendation

It is recommended that members note the contents of this report, which details the statutory requirement for the Council to prepare and compile a Part 1 of the Brownfield Land Register by 31 December 2017.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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