

Full Council

28 January 2018

Implementation of the Brownfield Land Register

For Decision

Portfolio Holder

Cllr David Walsh - Planning

Senior Leadership Team Contact:

S Hill, Strategic Director

Report Author:

N Cardnell, Senior Planning Officer

Statutory Authority

Following the Housing and Planning Act 2016, the Town and Country Planning (Brownfield Land Register) Regulations 2017 came into force on 16th April 2017, initiating the requirement for councils to produce Brownfield Land Registers. The Brownfield Land Register regulations follow the introduction of the Town and Country Planning (Permission in Principle) Order on the 15th April 2017 which will allow an 'in principle' determination of proposals on sites contained on the register.

Purpose of Report

- 1 The brownfield land register is a new duty on local planning authorities, and the first register needs to be published by 31 December 2017. The purpose of this report is to establish the approach to be taken on decisions in relation to the maintenance and addition of sites to the brownfield land register.

Officer Recommendations

- 2 To recommend the following to Council;

That this Council considers the the comments of Planning Policy Panel and agrees:

- (a) the amendments to delegated powers of committees and officers as set out in the appendix 1 attached to this report; and
- (b) that power be delegated to the Monitoring Officer to amend the Constitution to reflect the principles and changes set out in the appendix.

Reason for Decision

- 3 The report on the Implementation of the Brownfield Land Register was considered at Cabinet on 18 September 2017. At Cabinet, Members expressed concerns with the current arrangement of delegated powers in the determination of planning applications. Members decided to recommend the Report to Full Council, subject to the proviso that the proposals should first be examined by Planning Policy Panel, whose comments should be considered by Council.
- 4 The report on the Implementation of the Brownfield Land Register was subsequently considered at Planning Policy Panel on the 25 October 2017 (Appendix 2) .The Planning Policy Panel recommended to Council that the amendments to delegated powers of committees and officers as set out in the appendix 1 to the report; and that power be delegated to the Monitoring Officer to amend the Constitution to reflect the principles and changes set out in the appendix 1 to the report.
- 5 Regulations require local planning authorities to prepare, maintain and publish registers of previously developed (brownfield) land by 31 December 2017, and then review the register at least once a year thereafter. Brownfield sites that the local planning authority considers meeting the relevant criteria must be entered in Part 1 of the register.
- 6 Local authorities can grant 'permission in principle' for a site in Part 1 by following additional procedures and entering on Part 2 of the register. Following permission in principle, a site must be granted 'technical details consent' by the local planning authority before development can proceed.
- 7 As these are new duties, they are not currently covered in the council's scheme of delegation, and so a change to the Constitution is required. The recommended delegations are consistent with those already applying to other planning decisions.

Background and Reason Decision Needed

Brownfield Land Register

- 8 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.
- 9 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.

- 10 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.
- 11 Land must be entered onto Part 1 of the register where it meets the following criteria;
 - a) 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);
 - b) has an area of at least 0.25 hectares (or is capable of supporting at least 5 dwellings); and
 - c) is considered suitable; available and achievable for residential development.
- 12 The NPPF definition of previously developed land: 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.
- 13 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.
- 14 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.
- 15 Local planning authorities can decide to grant sites 'permission in principle' and enter them onto Part 2 of the register where:
 - a) The site meets the criteria for entry of Part 1 of the register; and
 - b) The necessary requirements for publicity, notification and consultation have been undertaken.
- 16 Land must not be entered onto Part 2 of the register where residential development of that land could be;
 - c) Schedule 1 Environmental Impact Assessment (EIA) development (this will not apply as this schedule refers to very large scale development). Or
 - d) Schedule 2 EIA development unless an EIA Screening Opinion has been adopted and concludes that the proposed development is not EIA development. Or

e) Habitats development. i.e. Conservation of Habitats and Species Regulations 2010

- 17 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.
- 18 The local planning authority must review the entries in the register at least once within each register year.
- 19 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

- 20 The permission in principle 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).
- 21 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.
- 22 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.
- 23 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.
- 24 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.
- 25 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. A person with an interest in a site has the option of submitting a planning application to the local planning authority.

- 26 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.
- 27 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.
- 28 Where permission in principle is granted through allocation on a brownfield land register, the default duration of that permission is 5 years.
- 29 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.
- 30 Other matters should be considered at the technical details consent stage.

Technical Details Consent

- 31 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.
- 32 An application for technical details consent must be decided in accordance with the terms of the permission in principle granted for the site.
- 33 A fee is payable for technical details consent.
- 34 The requirements for a valid technical details consent application are the same as those for an application for full planning permission.
- 35 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.
- 36 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 any body

(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.

- 37 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).
- 38 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.
- 39 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.
- 40 The Community Infrastructure Levy (CIL) may apply to development consented through the permission in principle route if technical details consent has been granted. Charges will become due from the date that a chargeable development is commenced.

Conclusion

- 41 As the duties in respect of brownfield land registers are new, they are not covered by the scheme of delegation set out in the Constitution, and a change to the Constitution is required. The recommended approach is in keeping with the existing scheme of delegation for other planning decisions.
- 42 Part 1 of the register would be a factual list, similar to the existing Strategic Housing Land Availability Assessment, and its preparation is therefore proposed to be delegated to the Corporate Manager, Planning (Community & Policy Development). Decisions about the inclusion of sites on Part 2, and the granting of technical details consents, are akin to the granting of outline and reserved matters planning applications. It is therefore proposed that the same scheme of delegation to the Head of Planning (Development Management & Building Control), that already applies to the determination of planning applications, should also apply to these decisions.

Implications

Corporate Plan

- 43 Increase the number of new homes built within the district.

Financial

- 44 New statutory instruments will require local planning authorities to prepare and maintain registers of previously developed land suitable for housing (brownfield land registers) and allow for the granting of permission in

principle for sites allocated for housing-led development. Local planning authorities will receive new burdens grant payments to fulfil the new requirements.

45 Each local authority responsible for making planning decisions will receive a new burdens grant payment of £14,645 for 2016/17. Local planning authorities will receive further grant payments for 2017/18, 2018/19 and 2019/20; the amount of funding from 2016/17 onwards will be kept under review.

46 There may be consequential implications for planning application fee income. These implications are currently unknown but will be kept under review as the new system begins to be implemented.

Equalities

47 The brownfield land register and planning in principle will expand the supply of housing land and routes available for planning permission in the District increasing choice within the housing market.

Environmental

48 Local planning authorities must take into account the National Planning Policy Framework in identifying sites for inclusion onto the brownfield register and in granting permission in principle for suitable sites. The National Planning Policy Framework has strong policies to protect the natural and built environment. It makes clear that planning policies and decisions should encourage the effective use of land by re-using brownfield land provided that it is not of high environmental value; 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.

Economic Development

49 Making brownfield land registers publicly available will increase transparency for developers and communities and help to encourage investment in local areas.

Risk Management (including Health & Safety)

50 No risks identified,

Human Resources

51 The on-going running of the brownfield land register will be provided from existing planning policy staff resources.

52 Planning in principle and technical details consent are considered processes similar to granting of outline and full permission and a function that can be carried out by existing development management staff.

Consultation and Engagement

53 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.

Appendices

Appendix 1 - Proposed changes to Constitution

Appendix 2 – Minutes of Planning Policy Panel 25 Oct 2017 (Extract of Item 6)

Background Papers

None

Footnote

Issues relating to financial, environmental, and economic and equalities implications have been considered and any information relevant to the decision is included within the report.

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Appendix 1

1. Amend delegations to powers of Planning Committee to make clear such committee can exercise all the functions of the Council including any relevant determinations relating to:
 - (a) any application for a permission in principle; and
 - (b) any application for technical details consent;but only to the extent that these are not executive functions (in the case of North Dorset District Council) or would not fall to be executive functions if the Councils were operating a Leader/Executive model (in the case of West Dorset District Council and Weymouth and Portland Borough Council)
2. Amend delegations to the Management Committee / Strategy Committee to make clear committee can exercise all the functions of the Council including any relevant determinations relating to:
 - (a) its duties to operate and maintain a brownfield land register including all relevant assessments and determinations relating thereto but only to extent these would fall to be executive functions (in the case of North Dorset District Council) or fall to be executive functions if the Councils were operating a Leader/Executive model (in the case of West Dorset District Council and Weymouth and Portland Borough Council)
3. Amend Officer scheme of delegation as follows.
 - a. Add new power to Corporate Manager (Community and Policy Development as follows):

Subject as provided for below, to undertake all action relating to the creation and maintenance of the Council's register of previously development land (Brownfield Land Register), including without prejudice to the generality of the foregoing:

- (a) all determinations associated with whether to enter land on to Part 1 of the Brownfield Land Register (for the avoidance of doubt including all relevant assessments as to whether land meets all the criteria for the purposes of being entered);
- (b) all necessary actions for the purposes of reviewing, amending, adding and removing entries from the Brownfield Land Register;
- (c) considering and determining:
 - (i) the nature and extent of any consultation, publicity and procedures (to the extent that the relevant legislation provides any discretion in relation to such matters) to be undertaken in relation to the entering and / or maintaining land on Part 1 of the Brownfield Land Register; and
 - (ii) how to proceed having regard to any representation received in relation to any such consultation, publicity and procedures; and
- (d) determining whether to propose land for residential development for a purpose (in whole or part) of enabling such land to be entered on to Part 2 of the Brownfield Land Register.

- b. Add the following new powers to Head of Planning (Development Management & Building Control):
 - A. For the purposes of the Town and Country Planning Legislation and all other relevant legislation, in relation to:
 - (a) any application for a permission in principle to consider and determine whether to decline to accept any:
 - (i) subsequent application;
 - (ii) similar and/or overlapping application; and/or
 - (iii) retrospective application; and
 - (b) any grant of a permission in principle to consider and determine whether to issue and the content of a direction as to when such permission in principle shall take effect.
- c. Amend the first part existing delegated power 28 of Head of Planning (Development Manager and Building Control) to read as follows:

“To consider and determine any application (including for the avoidance of doubt but without prejudice to the generality of the foregoing any reserved matter application, applications under section 73 or section 73A of the Town and Country Planning Act 1990, any application for listed building consent, any application for permission in principle and any application for technical details consent) submitted pursuant to the Town and Country Planning Legislation and all other relevant legislation (including any[*continue as previous*])”

Appendix 2

NORTH DORSET DISTRICT COUNCIL PLANNING POLICY PANEL

MINUTES OF MEETING HELD ON WEDNESDAY 25 OCTOBER 2017

Present: Cllrs D Walsh (Chairman), B Batty-Smith MBE, A Cattaway, B Cooper, J Francis, M Gould, S Jespersen, A Kerby, C Langham, V Potheary, B Ridout, D Skipwith, J Somper, Jackie Stayt, John Stayt, J Tanner and P Williams MBE

Apologies: Cllrs S Pritchard and J Westbrook

Also present: Cllr P Brown, Cllr A Burch, Cllr D Croney, Cllr V Fox and Cllr G Jefferson

Officers present (for all or part of the meeting):

Hilary Jordan (Head of Planning Community & Policy Development), Ed Gerry (Principal Planning Policy Team Leader), Nicola Laszlo (Senior Planning Policy Officer) and Sandra Deary (Committee Services Officer)

Extract of Item 6

Implementing the Brownfield Land Register

The Head of Planning (Community & Policy Development) introduced the report advising that Cabinet had considered the report and were happy with the recommendations once the report had been considered by the Planning Policy Panel.

She advised that the Brownfield Land Register was a new duty on local planning authorities and the first register needed to be published by 31 December 2017. The Brownfield Land Register regulations followed the introduction of the Town and Country Planning (Permission in Principle) Order on the 15 April 2017 which would allow an 'in principle' determination of proposals on site contained on the register.

Cllr Somper enquired who currently made the 'in principle' decision. The Head of Planning (Community & Policy Development) advised that officers made the decision, however, triggers were in place for applications to go before the Planning Committee. Cllr Somper advised that this report had been considered by the Overview & Scrutiny Committee who had requested a change to the Scheme of Delegation to allow Members to have the power to make the decision.

The Chairman advised that it was illegal to delegate the decision to Members, the decision had to be made by officers in consultation with Members. Cllr Cattaway felt that the role of the local member should be strengthened, he asked that local members be consulted before a decision was taken. Cllr Jespersen advised that local members were consulted and their opinions would be heard if they responded within the set times. It was proposed by Cllr Walsh and seconded by Cllr Batty-Smith

Recommendations to Council

- That the amendments to delegated powers of committees and officers as set out in the appendix to the report; and
- That power be delegated to the Monitoring Officer to amend the Constitution to reflect the principles and changes set out in the appendix to the report.

Reason for Decision

- 1 The report on the Implementation of the Brownfield Land Register was considered at Cabinet on 18 September 2017. At Cabinet, Members expressed concerns with the current arrangement of delegated powers in the determination of planning applications. Members decided to recommend the Report to Full Council, subject to the proviso that the proposals should first be examined by Planning Policy Panel, whose comments should be considered by Council.
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