

Key Decision Required:	Yes	In the Forward Plan:	Yes
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CABINET

9 NOVEMBER 2018

REPORT OF THE PORTFOLIO HOLDER FOR CORPORATE ENFORCEMENT

A. 2 BROWNFIELD LAND REGISTER – PART 1

(Report prepared by Ashley Wood)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To inform Cabinet of the legal requirement for local planning authorities to prepare, publish and maintain a 'Brownfield Land Register' (the Register) and to seek formal approval for the publication of Part 1 of the Register and delegation for future updates.

EXECUTIVE SUMMARY

Under the Housing and Planning Act 2016, the Council is required to prepare, maintain and publish a 'Brownfield Land Register' comprising two parts.

Part 1 of the Register is simply a list of sites within the district that qualify as 'Brownfield' (i.e. previously developed) and that are considered to be suitable for development, when assessed against certain criteria.

Part 2 is a subset of Part 1 of the Register and comprises certain sites on the Register that by virtue of the inclusion on Part 2, grants 'planning permission in principle', avoiding the need for landowners and developers to apply for outline planning permission and enabling them to progress through the planning process more swiftly, with only matters of detail requiring Council approval.

Requiring Councils to produce a Brownfield Land Register is one of the government's measures to speed up the planning process and boost the supply of new housing.

In line with government requirements, the Council published its Part 1 Register before the deadline of 31 December 2017. However, Officers have learnt that the publication of Part 1 should have been approved by the Cabinet. This report seeks the Cabinet's retrospective approval to delegate this responsibility to the Head of Planning. The Part 1 register published by the Council last year only includes sites that have either already obtained planning permission in the past or have been allocated in the emerging Local Plan – i.e. sites where the principle of development has already been accepted by the Council.

The authority for approving Part 2 of the register lies with the Planning Committee who will be invited to grant planning permission in principle for certain sites, as appropriate, in due course.

RECOMMENDATION

- a) That the Cabinet approves the publication of Part 1 of the Council's Brownfield Land Register as attached at Appendix 1; and
- b) Authority is delegated to the Head of Planning Services to publish, review and maintain Part 1 of the Brownfield Land Register in accordance with the criteria set out within the report.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

- The Brownfield Land Register helps to implement place shaping priorities in the Corporate Plan 2016-2020 for Tendring District Council through:
- Health and Housing through providing opportunities for local regeneration, by enabling the redevelopment of brownfield sites to deliver a quality living environment.

RESOURCES AND RISK

There are no particular financial and resource implications for the preparation and publication of the Brownfield Land Register, particularly as the Council was awarded £14,645 in 2016/17 in New Burdens monies from MHCLG to cover the costs of the first Brownfield Land Register. (Local planning authorities will receive further grant payments from MHCLG 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 relating to the granting of Permission in Principle for those sites included on Part 2 of the Brownfield Land Register, in particular applications for Technical Details Consent.

The production of a Brownfield Land Register is a legislative requirement under the Town & Country Planning (Brownfield Land Register) Regulations 2017. Whilst at the current time it is unclear what sanctions would be placed on the Council if it does not produce a Brownfield Land Register, the Council would be in breach of its legislative duties.

LEGAL

The Town and Country Planning (Brownfield Land Register) 2017 Regulations, in particular Regulation 3, place a duty on local planning authorities with responsibility for housing development, to prepare (by 31st December 2017) and maintain (review at least once a year) a register of previously developed land (brownfield land) that meets the following 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
- (d) residential development of the land is achievable.

These functions for Part 1 of the Brownfield Register remain the responsibility of Cabinet.

OTHER IMPLICATIONS

Area or Ward affected: All wards.

Consultation/Public Engagement: Part 1 of the Brownfield Land Register to be published on the Council's website.

Implications of the New Legislation

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 on Part 1 of the Register on Part 2, and in so doing grant Permission in Principle (PiP) to those sites. This new requirement although not especially onerous, even with the consultation requirements associated with Part 2 of the Register, it does introduce a new burden on the Council, for which a New Burdens Grant has been given to the Council.

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 would be similar to the approval of reserved matters following the grant of outline planning permission.

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 Technical Details Consent. There is a need to consider appropriate delegations for dealing with Technical Details Consent 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 Technical Details Consent applications within the required timescales is that they will automatically be granted.

PART 3 – SUPPORTING INFORMATION

Background

In April 2017 The Town and Country Planning (Brownfield Land Register) Regulations 2017 ("the Regulations") and The Town and Country Planning (Permission in Principle) Order 2017 ("the Order") came into force.

The Regulations require local planning authorities to prepare and maintain a Brownfield Land Register of previously developed land in their area, which meets specific criteria in relation to residential development, and to publish their first Register by 31 December 2017. The Register is to be made up of 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

(d) residential development of the land is achievable.

Part 2 comprises those sites on Part 1 that the Council has decided 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. Only very basic details of the development proposal are required at PiP stage, including a site plan and the number of housing units the site could accommodate.

In order to include a site on Part 2, the Council 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 on 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.

When deciding which sites to enter on the Register and exercising their functions under the Regulations, the Council must have regard to the development plan (i.e. the Local Plan), national policies and advice and any guidance issued by the Secretary of State for the purpose of the Regulations.

Part 1 of the Register

The Council's Brownfield Land Register (Appendix 1) lists 46 previously developed sites that have been assessed as suitable and available for residential development, of which 29 already have planning permission. These are automatically entered on Part 1 of the Register. Of the remaining sites, 16 are currently without permission (previous planning permission having expired on three sites, 12 are allocated sites within the emerging Local Plan and one is pending a decision). All of these sites have been assessed against the four criteria listed above and found to be deliverable for residential development within the next 15 years.

Part 1 of the Register was compiled 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 Land Availability Assessment (SHLAA). The preparation and publication of Part 1 of the Register is simply a reflection of facts and information available to the Council.

Whilst the publication of Part 1 of the Register has already taken place, the Council's solicitor has identified that Cabinet approval should have been sought. The Cabinet is therefore asked to endorse the Part 1 Register retrospectively. As explained above, all sites included within the list have either already been deemed suitable for development through current or historic planning permissions, or through allocation in the emerging Local Plan.

Part 2 of the Register

Government guidance indicates that local planning authorities should consider the suitability of all relevant sites on Part 1 of 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.

The decision to include sites on Part 2 of the Register, based on the sites included on Part 1 of the Register, 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.

The decision to enter sites onto Part 2 of the Register and grant PiP to those sites is delegated to the Planning Committee. A developer cannot proceed with development, however, until they have also obtained Technical Details Consent.

The requirements for a valid Technical Details Consent application are the same as those for an application for full planning permission. A fee is payable for applications for Technical Details Consent. An application for Technical Details Consent must be decided in accordance with the terms of the PiP granted for the site. The requirements that apply to decisions on other types of application for planning permission also apply. When granting PiP, the Council can provide information on the relevant entry on the Register about what they expect the detailed proposals to include at the Technical Details Consent stage.

In relation to making decisions on applications for Technical Details Consent on sites granted PiP, it is recommended that decision-making on Technical Details Consent applications is delegated to the Head of Planning.

The inclusion of sites on Part 2 of the Register is a regulatory function delegated to Planning Committee and will be dealt with via separate reports to that Committee, as appropriate, in due course.

APPENDICES

Appendix 1 – Tendring District Council Brownfield Land Register