

Brownfield Land Registers and Permission in Principle

Briefing Note

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Background

Following initial introduction in the Housing and Planning Act 2016, the Government has provided new guidance on Brownfield Land Registers and 'Permission in Principle' (PiP) a new planning consent route for previously developed sites. Updates to the Planning Practice Guidance (PPG) were published by the Department for Communities and Local Government (DCLG) on Friday 28th July 2017.

Brownfield Land Register

The Town and Country Planning (Brownfield Land Register) Regulations 2017 require local planning authorities (LPA) to prepare and maintain registers of brownfield land that are suitable for residential development. The register is split into 2 parts:

- **Part 1** comprises all brownfield sites appropriate for residential development
- **Part 2** includes those sites granted PiP.

Part 1 of a brownfield land register will comprise all brownfield sites with extant full planning permission, outline planning permission and PiP as well as sites without planning permission. It can also include any other sites the LPA have assessed as being appropriate i.e. it meets the following criteria:

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

Part 2 of a Brownfield Land Register is a subset of Part 1. Part 2 will comprise only those sites in Part 1 that the local planning authority has decided that the land would be suitable for a grant of PiP for residential development.

The information that must be submitted to the LPA is details regarding the site, the type of development and an indication of the amount of development the site has PiP for.

As a minimum the LPA must publicise any site that has been entered on the brownfield land register with a site notice and an online notice.

Permission in Principle

PiP is automatically granted once a site is entered onto Part 2 of their brownfield land registers (subject to publicity, notification and consultation).

There are 2 stages: the first stage (or PiP stage) establishes whether a site is suitable in principle for residential development (i.e. development in which the residential use occupies the majority of the floorspace).

The scope of PiP is limited to location, land use and amount of development. Issues relevant to these 'in principle' matters should be considered at the PiP stage. Other matters should be considered at the technical details consent stage.

As a PiP is only available where residential uses occupy the majority of the development, the permission must state the amount of development expressed as a range, indicating the minimum and maximum net number of dwellings (i.e. taking in to account any existing dwellings on the site) which are, in principle, permitted. Where non-residential development is proposed alongside residential, LPAs 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. This information should be provided on the entry on the brownfield land register.

The default duration of PiP is 5 years.

Following a grant of PiP, the site must receive a grant of technical details consent (stage 2) before development can proceed.

Contact us:

4 Abbey Court, Fraser Road, Priory Business Park, Bedford, MK44 3WH
t 01234 832 740 f 01234 831 266 e bedford@dlpconsultants.co.uk

www.dlpconsultants.co.uk

The statutory time limits for a technical details consent application are 10 weeks for major development, and 5 weeks for minor development (unless an Environmental Impact Assessment is required then the time limit is 16 weeks). Once granted technical details consent has the effect of granting planning permission for the development.

Planning Conditions & Obligations

It is not possible for planning conditions to be attached to a grant of PiP although LPAs can inform applicants about what they expect to see at the technical details consent stage.

It is however possible for the LPA to attach planning conditions to a technical details consent provided that they meet the existing requirements around the use of conditions.

Planning obligations cannot be secured at the PiP stage. Obligations may be applied at the technical details consent stage where the statutory tests have been met. CIL charges will become due from the date that a chargeable development is commenced.

Appeals

In terms of appealing a decision, there is no right of appeal where a LPA decides not to enter a site in Part 2 of a brownfield land register and trigger the grant of PiP. A person with an interest in the site has the option of submitting a planning application to the LPA.

An application for technical details consent may be appealed on grounds of non-determination, refusal or against any condition imposed. The procedures in place for appeals against other types of planning application apply. If the technical details consent application is refused, the PiP still stands and there is the option to submit a new technical details consent application. However, a technical details consent application cannot be made by an applicant if the PiP has expired.

The Secretary of State has no power to call in a decision on whether to enter a site in Part 2 of a brownfield land register and trigger the grant of PiP. The Secretary of State does however have the power to call in technical details consent applications.

Implications

The Government's theory behind the introduction of the Brownfield Register and PiP is that it will reduce the burden of information required up-front (i.e. for outline planning consent) before there is any reliable certainty that an LPA will accept the principle of a development. It is intended to reduce initial costs for developers, uncertainty and aid investment decisions.

Indeed PiP may have some benefits for land promoters looking to secure a quick confirmation of suitability with a view to increasing value and passing onto a developer to deal with the detailed matters.

However, in reality it is hard to see how adding yet another layer of complexity and bureaucracy to the planning system will help speed up planning decisions. Applicants will be required to go through two processes to obtain a developable, as opposed to one, so it remains to be seen whether this offers a preferential route for most site promoters over the mainstream planning route.

DLP's experience is that most available and suitable brownfield sites are already identified in Local or Neighbourhood Plans for development (effectively granting them PiP already) or would inherently been seen as acceptable in principle in accordance with one of the Core Planning Principles set out in paragraph 17 of the NPPF.

With Local Authorities already resources already stretched, it is hard to see how they will be able to ensure the system delivers the speed and efficiency of decision making the Government is hoping for.

More information regarding this new guidance can be found at: www.gov.uk/guidance/permission-in-principle