

Extract from National Planning Practice Guidance, the Department for Communities and Local Government (DCLG), July 2017

Brownfield land registers

What is the purpose of brownfield land registers?

Brownfield land registers will provide up-to-date and consistent information on sites that local authorities consider to be appropriate for residential development having regard to the criteria set out in regulation 4 of the Town and Country Planning (Brownfield Land Register) Regulations 2017. Local planning authorities will be able to trigger a grant of permission in principle for residential development for sites in their registers where they follow the required procedures. 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.

What are local planning authorities required to do?

Regulation 3 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 requires local planning authorities in England to prepare, maintain and publish registers of previously developed (brownfield) land by 31 December 2017. Brownfield sites that meet the relevant criteria must be entered in Part 1 of brownfield land registers. Sites entered in Part 2 of the brownfield land registers are granted permission in principle. Regulation 17 requires local planning authorities to review their registers at least once a year.

What is previously developed (brownfield) land?

Previously developed land has the same meaning as land of that description in Annex 2 of the National Planning Policy Framework. Previously developed land is referred to as brownfield land.

Which authorities are required to keep a register of brownfield land suitable for housing?

Those local planning authorities specified in section 37 of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) are required to have a brownfield land register covering their area. These are district councils; London borough councils; metropolitan district councils; county councils in relation to any area in England for which there is no district council; the Broads Authority; a National Park authority and a Mayoral Development Corporation where it is the local planning authority for the purposes of Part 2 of the 2004 Act.

What is Part 1 of a brownfield land register?

Part 1 of a brownfield land register will comprise all brownfield sites that a local planning authority has assessed as appropriate for residential development, having carried out any procedures such as consultation which they consider appropriate. This will include sites with extant full planning permission, outline planning permission and permission in principle as well as sites without planning permission.

What is Part 2 of a brownfield land register?

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 permission in principle for residential development.

What is the process for granting permission in principle for a site in Part 1 of a brownfield land register?

Prior to entering a site in Part 2 local planning authorities must undertake the necessary requirements for publicity, notification and consultation. Article 4 of the Town and Country Planning (Permission in Principle) Order 2017 grants permission in principle for the development of land that is entered in Part 2 of a brownfield land register. Permission in principle will be granted for the provision of a number of dwellings falling within the range specified in the relevant entry in Part 2 (paragraph 2 of Schedule 2 to the Town and Country Planning (Brownfield Land Register) Regulations 2017) and for any non-residential development described in the entry. New sites can be entered in Part 2 at any time providing the procedures for reviewing sites on the register have been followed.

Can full or outline planning permission be granted for a site once it has been entered on Part 1 or Part 2 of a brownfield land register?

Outline or full planning permission can be granted for sites in Part 1 or Part 2 of a brownfield land register.

What do local planning authorities need to take into account when deciding which sites to enter in registers?

In addition to the criteria set out in regulation 4, section 14A of the Planning and Compulsory Purchase Act 2004 requires local planning authorities to have regard to:

- (a) the development plan;
- (b) national policies and advice;
- (c) any guidance issued by the Secretary of State.

This includes development plan documents, the London Plan and Spatial Development Strategies any relevant neighbourhood plans, the National Planning Policy Framework, Planning Practice Guidance, any other guidance published by the Secretary of State, any other relevant statutory requirements and guidance.

Can registers include sites that already have planning permission?

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.

How should local planning authorities deal with any greenfield land within the curtilage of a brownfield site?

Greenfield land is not appropriate for inclusion in a brownfield land register. Where a potential site includes greenfield land within the curtilage, local planning authorities should consider whether the site falls within the definition of previously developed (brownfield) land in the National Planning Policy Framework. Where it is unclear whether the whole site is previously developed land, only the brownfield part of the site should be included in Part 1 of the register and considered for permission in principle.

Should brownfield land registers include windfall sites?

Local planning authorities are required to review the sites in registers at least once a year. Windfall sites should be considered for inclusion as part of that annual review process.

Do windfall sites in brownfield land registers count towards the 5-year land supply?

Where a windfall site is deliverable it would count towards the 5-year land supply. The information to be included in brownfield land registers is intended to complement the requirements set out in the National Planning Policy Framework for the 5-year land supply. Having an up-to-date register will assist local planning authorities in updating their Strategic Housing Land Availability Assessments and 5-year land supply.

Should sites that straddle local planning authority boundaries be included in brownfield land registers?

Brownfield sites that straddle local authority boundaries can be included in brownfield land registers provided that they have been assessed against the relevant criteria. Such sites may be granted permission in principle provided that the required procedures have been undertaken. Local planning authorities may decide to work together to assess the amount of development that would be appropriate on each part of a site which straddles local authority boundaries. Each local planning authority will enter on their register just the area of land which is within their own boundary; although they may also wish to flag that it forms part of a larger site.

Should local planning authorities carry out a call for sites to identify new potential brownfield sites for their registers?

Local planning authorities are already advised to carry out a call for potential sites as part of their Strategic Housing Land Availability Assessment and to update their assessments annually. Authorities should consider how they can integrate these well-established processes to identify sites that may be suitable for inclusion in brownfield land registers.

Can developers and landowners submit sites to local planning authorities to consider for inclusion in brownfield land registers?

Local authorities already have established processes for identifying sites as part of their Strategic Housing Land Availability Assessment and advertise any opportunities, such as a call for sites, to promote sites for consideration. Local authorities should consider whether any additional procedures would help identify sites which could potentially be included in their register. Landowners and developers should submit sites in accordance with the procedures promoted by their local planning authority.

How should a local planning authority assess whether a site is suitable, available and achievable?

Regulation 4 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 sets out the criteria against which sites should be assessed. In making their assessment authorities should have regard to the requirements set out in ‘What do local authorities need to take into account when deciding which sites to enter in registers?’ They should have regard to the policies set out in the National Planning Policy Framework. Local planning authorities should utilise work undertaken as part of the Strategic Housing Land Availability Assessment process to identify potential sites. Where sites meet the relevant criteria they must be included in Part 1 of the brownfield land registers.

Can sites below the minimum site size or capacity threshold be included in brownfield land registers?

Regulation 5(3) of the Town and Country Planning (Brownfield Land Register) Regulations 2017 allows local planning authorities to enter sites below the minimum site size or capacity threshold of 0.25 hectares, or capable of supporting at least 5 dwellings in brownfield land

registers, where the site meets the criteria referred to in paragraphs (1)(b) to (d) of regulation 4 of the Town and Country Planning (Brownfield Land Register) Regulations 2017.

How should a local planning authority assess whether a site has an adverse impact on the built, natural and historic environment or local amenity?

In assessing potential brownfield sites, local planning authorities must take into account the National Planning Policy Framework. The Framework has strong policies for protecting the built, natural and historic environment. 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. Local planning authorities must also have regard to relevant policies in their development plan documents. Local planning authorities should draw on of all relevant available information sources in making assessments on the suitability of potential sites.

Are there sites that cannot be included in Part 1 of brownfield land registers?

Local planning authorities must only include sites that have been assessed against the relevant criteria and are considered to be appropriate to enter in Part 1 of the brownfield land registers.

Are there sites that cannot be included in Part 2 of brownfield land registers?

Local planning authorities must not enter sites in Part 2 of a register (triggering a grant of permission in principle) for certain types of land.

Is Strategic Environmental Assessment required for the preparation of brownfield land registers?

The preparation of brownfield land registers may require Strategic Environmental Assessment if a register is considered to be a plan or programme which sets the framework for future development consent for development which is likely to have a significant effect on the environment. Where this is the case, the proposed register may fall within the scope of the Environmental Assessment of Plans and Programmes Regulations 2004. Local planning authorities are strongly 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. Where a local planning authority considers that the Environmental Assessment of Plans and Programmes Regulations apply, the Strategic Environmental Assessment is likely to be limited in scope, and it may be appropriate to use assessments undertaken during the preparation of relevant development plan documents.

A further environmental assessment may only be needed when registers are reviewed if it is considered that the addition of new sites would lead to significant effects on the environment, taking into account cumulative effects. These decisions will be for local authorities to make, taking into account the particular circumstances.

What consultation, publicity and notification procedures should the local planning authority undertake before a site can be placed on the register?

Local planning authorities are not required to undertake consultation in relation to sites they propose to include only in Part 1 of registers. Regulation 5(6) of the Town and Country Planning (Brownfield Land Register) Regulations 2017 allows authorities to consult if they wish to do so and they must take into account any representations received.

Where authorities intend to trigger a grant of permission in principle for a site in Part 1 they must carry out the consultation, notification and publicity procedures set out in regulations 6-13 of the Town and Country Planning (Brownfield Land Register) Regulations 2017.

Updating and reviewing entries on registers

How often should local planning authorities review the sites on registers?

Local planning authorities are required to review their registers at least once a year. Reviews will ensure that sites which no longer meet the criteria for inclusion are removed and new sites are assessed and entered if it is appropriate to do so.

How often should local planning authorities update the entries on the register?

Regulation 17 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 requires local planning authorities to update the information relating to existing entries in their registers at least once a year. While this is the minimum legal requirement, local planning authorities may wish to consider whether it would be more transparent to update their registers more frequently to keep the register up to date, for example, to reflect changes of planning status.

Can there be more than one permission in principle for a site in Part 1 of a brownfield land register?

Local authorities may grant more than one permission in principle for a site provided that they follow the relevant procedures. Where there is more than one grant of permission in principle for the site, the local planning authority should decide an application for technical details consent in accordance with the grant of permission in principle that has been specified by the applicant on the technical details consent application form.

Can local planning authorities amend an entry in Part 2 of their brownfield land registers?

If this should occur local planning authorities are not permitted to amend an entry in Part 2 of their register relating to the matters that have been decided under a grant of permission in principle, i.e. the amount of residential development or the scale or use of non-residential development. If a local planning authority considers that an entry in Part 2 should be amended it must completely remove the entry from Part 2 and amend the relevant information in Part 1 of the register. The authority must then comply with the requirements in the Town and Country Planning (Brownfield Land Register) Regulations 2017 for the grant of a new permission in principle and putting the site on Part 2 of the register.

Does a grant of permission in principle remain extant if an entry is removed from Part 2 of the register?

If a site is removed from Part 2 of a brownfield land register, the permission in principle or an associated technical details consent remains extant, and the associated entry on the planning register remains in place, unless the consents expire or are revoked under section 97 of the Town and Country Planning Act 1990.

In what circumstances should local planning authorities remove sites from brownfield land registers?

Local planning authorities should remove a site from Part 1, and if applicable from Part 2, of a register when that site no longer meets the criteria set out in regulation 4 of the Town and Country Planning (Brownfield Land Register) Regulations 2017.

Are there any consultation, publicity and notification procedures that local planning authorities should undertake before removing a site from a brownfield land register?

There is no requirement for local planning authorities to carry out consultation, publicity or notification before they remove a site from a brownfield land register but they are free to carry out these procedures if they wish and they must take into account any representation received in accordance with regulation 17(7) of the Town and Country Planning (Brownfield Land Register) Regulations 2017.

What information should be included in brownfield land registers?

The information to be included in Part 1 and Part 2 of brownfield land registers is set out in Schedule 2 of the Town and Country Planning (Brownfield Land Register) Regulations 2017.

Provision of information to the Secretary of State

What information should be provided to the Secretary of State under regulation 18?

Under regulation 18(2) of the Town and Country Planning (Brownfield Land Register) Regulations 2017 local planning authorities may be required to provide the information in their brownfield land registers in a particular format to the Secretary of State. The format will be that of the set out in the brownfield land register data standard published by the Department for Communities and Local Government. Local planning authorities are encouraged to make their registers available in this format when they are published locally so that they can easily meet the requirements of any request for information issued by the Secretary of State.