

Cherwell District Council

Executive

4 December 2017

Brownfield Land Register

Report of Head of Strategic Planning and the Economy and Strategic Lead for Growth

This report is public

Purpose of report

To inform the Executive about the statutory requirement for the Council to produce a Brownfield Land Register, the implications of including land within the Register and associated delegated responsibilities.

1.0 Recommendations

The meeting is recommended:

- 1.1 To note the statutory requirement for the Council to produce a Brownfield Land Register at least annually and the implications of including land within the Register.
- 1.2 To approve the Brownfield Land Register (Part 1) presented at Appendix 1 so that it can be published by 31 December 2017 to meet the statutory requirement, and that the Head of Strategic Planning & the Economy and Strategic Lead for Growth be authorised to make any necessary minor amendments prior to publication.
- 1.3 To note that responsibility for preparing Part 1 of the Brownfield Land Register lies with Planning Policy officers and that annual reviews will be presented to the Executive alongside the Annual Monitoring Report.
- 1.4 To note that responsibility for the optional entering of land into Part 2 of the Brownfield Land Register, and for the consequential grant of 'Permission in Principle', rests with Development Management officers and the Planning Committee.

2.0 Introduction

- 2.1 The Housing and Planning Act 2016 (s.151) amended the Town and Country Planning Act 1990 (s.14A) to provide for the Secretary of State to require Local Planning Authorities to prepare Brownfield Land Registers.

- 2.2 Under the Town and Country Planning (Brownfield Land Register) Regulations 2017 ('the Regulations'), Local Planning Authorities are required to publish a Brownfield Land Register by 31 December 2017 (Reg.3).
- 2.3 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 development in their administrative areas.
- 2.4 In 2016, Planning Policy officers were involved in a national pilot scheme which entailed registering previously developed sites suitable for accommodating five or more dwellings (or covering at least 0.25 hectares of land). The pilot register for Cherwell included qualifying sites with planning permission, those allocated in Local Plans or otherwise where the suitability of the brownfield site for development was clearly evident. The Council secured £10,000 from the Government on publication of the register in June 2016 and for providing feedback to assist the preparation of legislation and guidance. The pilot Register is available at: <https://www.cherwell.gov.uk/info/33/planning-policy/384/brownfield-land-register> .
- 2.5 An updated Brownfield Land Register, the first to be produced under the new legislation, is presented at Appendix 1. It is informed by work for the Annual Monitoring Report (this agenda), the draft Housing and Economic Land Availability Assessment (<https://www.cherwell.gov.uk/HELAA>) and planning permissions granted as at 31 March 2017.
- 2.6 The Register does not include greenfield sites or sites that are not suitable for development. At the present time, there are no Green Belt sites included. Green Belt sites would only be included on Part 1 of the Register if they comprised brownfield land and if the principle of development had been established such as by the grant of planning permission or an adopted Local Plan allocation. In accordance with new Government guidance, the Register does not include any sites where development is already being implemented (a change from the pilot register).
- 2.7 The Housing and Planning Act 2016 (s.150) also amended the 1990 Act (s.58A & 59A) to provide for a new planning approval process associated with Brownfield Land Registers. The process is brought into effect by the above Regulations and the Town and Country Planning (Permission in Principle) Order 2017 ('the PIP Order').
- 2.8 Local Planning Authorities now have the option of entering suitable sites which have been entered into Part 1 of the Brownfield Land Register into Part 2 of the Register. This is referred to as a decision to '*allocate the land for residential development*' (Reg.5). 'Residential development' is defined in the Regulations as '*development the main purpose of which is housing development*' (Reg.2) (emphasis added).
- 2.9 The PIP Order (Article 4) grants 'Permission in Principle' for the development of land allocated in Part 2 of a Brownfield Land Register consisting of:
- '(a) *housing development for the provision of a number of dwellings falling within the range specified in the relevant entry in the brownfield land register; and*
 - (b) *where the relevant entry in the brownfield land register specifies non-housing development of the land, non-housing development of a description falling within the description in that entry*'.

- 2.10 If a Local Planning Authority is minded to consider that land be 'allocated' on Part 2 of the Brownfield Land Register, it must first be subject to a prescribed process of publicity, notification and consultation.
- 2.11 The decision-making process for 'allocation' is not defined by legislation. Should the Council be minded to pursue the allocation of land on Part 2 of the Register, Development Management officers would ensure that the Council meets the publicity and consultation under delegated powers. They would subsequently make a recommendation to Planning Committee as to whether or not the land should be 'allocated for development' in Part 2 of the Register having regard to the representations received. The detailed arrangements for consultation, reporting, and maintaining Part 2 of the Register are a matter for officers of the Legal, Democratic and Development Management teams and the Planning Committee.
- 2.12 A site must receive a grant of 'Technical Details Consent' before development can proceed and Development Management legislation has been amended accordingly (the Town and Country Planning (Development Management Procedure) (England) Order 2015).
- 2.13 Technical Details Consent can be obtained following submission of a valid application to the Council as Local Planning Authority. The application must be in accordance with the specified Permission in Principle. The granting of Technical Details Consent has the effect of granting full planning permission for the development.
- 2.14 The Government intends the future introduction of further secondary legislation to enable Permission in Principle to be granted through the Local Plan site allocation process or by way of an application for non-major development.
- 2.15 The identification of a site in Part 1 of the Brownfield Land Register as presented to Members at Appendix 1 cannot presently lead to a PIP being granted without a resolution of the Planning Committee to enter land into Part 2 of the Register. However, Members are advised that sites might become the subject of applications for Permission in Principle in the future if further enabling legislation follows.

3.0 Report Details

Part 1 of the Register - Requirements

- 3.1 Part 1 of the Brownfield Land Register (Appendix 1) is required to be produced following a prescribed, standardised approach. It includes site plans.
- 3.2 The definition of brownfield land that applies is that for 'previously developed land' within 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’.

- 3.3 The criteria for including land in Part 1 of the Register are defined in the Regulations. In summary they are:
- (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 including
 - if it is already the subject of a Local Plan allocation or planning permission
 - if it is the opinion of the Council as Local Planning Authority that the site is appropriate for residential development having regard to defined adverse impacts
 - (c) the land is **available** for residential development (including that there are no ownership or legal impediments); and
 - (d) residential development of the land is **achievable** (likely to take place within 15 years).
- 3.4 Greenfield land is not appropriate for inclusion in a Brownfield Land Register. Where it is unclear whether the whole site is previously developed land, only the brownfield part of the site should be included.
- 3.5 Local Planning Authorities must also consider the statutory Development Plan, national policies and advice and any guidance issued by the Secretary of State.
- 3.6 Planning Practice Guidance clarifies that Local Planning Authorities are not required to undertake consultation in relation to sites they propose to include in Part 1 of the Register. The Regulations allow authorities to consult if they wish to do so and they must take into account any representations received.
- 3.7 The Register is required to be updated at least once a year. A site should be removed from Part 1 of the Register when that site no longer meets the criteria.
- 3.8 There is no requirement to carry out consultation, publicity or notification before removing a site from Part 1 of the Brownfield Land Register but, again, this can be done on an optional basis.
- 3.9 Planning Practice Guidance states that the preparation of Brownfield Land Registers may require Strategic Environmental Assessment (SEA) 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.

The Cherwell Brownfield Land Register (Part 1)

- 3.10 The Cherwell Register (Part 1) presented at Appendix 1 has been prepared to comply with the new legislation.

- 3.11 Sites have been included in the Register informed by the Council's draft Housing and Economic Land Availability Assessment (HELAA) (<https://www.cherwell.gov.uk/HELAA>) and Annual Monitoring Report (this agenda). Sites with planning permission or which are the subject of Development Plan allocations have already been the subject of consultations. The Council's draft HELAA was published as one of the consultation documents for the Partial Review of the Local Plan (Oxford's Unmet Housing Needs). Consultation responses highlighting the HELAA have been considered.
- 3.12 The Register, in effect, takes the form of a spreadsheet and includes information required by the legislation including the site name and address, its size, ownership status, planning status, site information and number of dwellings. The Register is supported by site location plans.
- 3.13 It is considered that Part 1 Register (Appendix 1) does not comprise a plan or programme and therefore does not require SEA.
- 3.14 Part 1 of the Register will be reviewed each year alongside the Annual Monitoring Report to ensure that sites which no longer meet the criteria for inclusion are removed and so that new sites are assessed and entered if it is appropriate to do so.

Part 2 of the Register

- 3.15 There is no obligation on the Council to 'allocate' land within Part 2 of the Register. The decision making process is a matter for Development Management and the Planning Committee. Land can only be considered for inclusion within Part 2 of the Register where it has been entered into Part 1.
- 3.16 The decision to 'allocate' effectively grants Permission in Principle (PIP). Planning Practice Guidance (PPG) clarifies that '*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 National Planning Policy Framework and national guidance, which indicate otherwise*' (Paragraph: 012 Reference ID: 58-012-20170728).
- 3.17 The scope of Permission in Principle is limited to location, land use and amount of development. Other matters should be considered at the Technical Details Consent stage.
- 3.18 Where land is 'allocated' in Part 2 of the Register, the default duration of that PIP is five years. If the Local Planning Authority considers it appropriate on planning grounds it may shorten or extend that period but should clearly give the justification for doing so.
- 3.19 The Regulations prescribe exemptions for certain types of land which must not be entered into Part 2 of the Register. Examples are where Environmental Impact Assessment is required or where defined habitats would be affected.
- 3.20 Permission in Principle can only be granted for housing-led developments and would establish the use, location, amount of development for the brownfield site concerned. Part 2 of the Register must therefore include the minimum and the maximum net number of dwellings the land is capable of supporting, and, where the

development includes non-housing development, the scale of any such development and the use to which it is to be put.

- 3.21 Should Development Management officers intend to propose a site for Part 2 of the Brownfield Register (potentially granting Permission in Principle), a more detailed report would be presented to Planning Committee including on the process for administering applications for Technical Details Consent.
- 3.22 Considering an application for Technical Details Consent would involve assessing the detailed design of development and ensuring appropriate mitigation of impacts and securing any necessary developer contributions. It is possible to attach planning conditions. If Technical Details Consent is refused, the Permission in Principle would be unaffected. An application may be appealed on grounds of non-determination, refusal or against any condition imposed.
- 3.23 If a site is removed from Part 2 of a Brownfield Land Register, the Permission in Principle or associated Technical Details Consent remains extant, and the associated entry on the planning register remains in place, unless the consents expire or are revoked.

4.0 Conclusion and Reasons for Recommendations

- 4.1 There is a statutory requirement for the Council to publish a Brownfield Land Register by 31 December 2017. Part 1 of the Register is presented at Appendix 1. Part 2 of the Register is a matter for Development Management officers and Planning Committee. Part 1 is informed by the Annual Monitoring Report (this agenda), the draft Housing and Economic Land Availability Study (having regard to consultation responses received) and planning permissions granted as at 31 March 2017. As a new statutory responsibility for the Council, Members are invited to note the Register and its implications.

5.0 Consultation

- 5.1 Internal briefing: Councillor Colin Clarke, Lead Member for Planning

6.0 Alternative Options and Reasons for Rejection

- 6.1 No alternative options identified. Publication of Part 1 of the Register by 31 December 2017 is a statutory requirement.

7.0 Implications

Financial and Resource Implications

- 7.1 The work to prepare and maintain Part 1 of the Brownfield Land Register is met from existing budgets.

Comments checked by:

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Legal Implications

- 7.2 Regulation 3 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 requires all relevant local authorities to publish a Brownfield Land Register by 31 December 2017 in two parts. There is no statutory obligation to enter land into Part 2 of the Register.
- 7.3 Regulation 19 amends the Functions and Responsibilities Regulations 2000 to specifically exclude any decision to enter land in Part 2 of the Brownfield Land Register (and thereby grant Permission in Principle) from being a responsibility of an authority's Executive.
- 7.4 The optional process for considering and entering land into Part 2 of the Register, thereby granting Permission in Principle, is one that would be administered by Development Management reporting to Planning Committee having regard to the Town and Country Planning (Brownfield Land Register) Regulations 2017, the Town and Country Planning (Permission in Principle) Order 2017 and the amended Town and Country Planning (Development Management Procedure) (England) Order 2015.

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8.0 Decision Information

Key Decision:

Financial Threshold Met – No

Community Impact Threshold Met - Yes

Wards Affected

All

Links to Corporate Plan and Policy Framework

Accessible, Value for Money Council
 District of Opportunity
 Safe and Healthy
 Cleaner Greener

Lead Councillor

Councillor Colin Clarke - Lead Member for Planning

Document Information

Appendix No	Title
Appendix 1	Brownfield Land Register (Part 1)
Background Papers	
None	

<https://www.cherwell.gov.uk/info/33/planning-policy/384/brownfield-land-register>
<https://www.cherwell.gov.uk/HELAA>

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