

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING & PARKING PANEL – 5 OCTOBER 2017
REPORT OF THE EXECUTIVE DIRECTOR (PUBLIC PROTECTION, PLANNING AND
GOVERNANCE)

REQUIREMENT TO PREPARE A BROWNFIELD LAND REGISTER

1 Executive Summary

- 1.1 In April 2017 the Government introduced new legislation requiring planning authorities to prepare a Brownfield Land Register, although only published detailed guidance on how to go about doing so and the data requirements on 28 July 2017. The Brownfield Land Register is intended to provide a clear and consistent picture of the amount of previously developed land on which new housing can be delivered within each local authority area. The preparation of the Brownfield Land Register is essentially a technical process, but the new legislation also introduces a new form of planning consent – Permission in Principle. This allows sites on a Brownfield Land Register to be granted planning permission, albeit solely covering the acceptability of a residential use and not any more technical details.
- 1.2 This report summarises the requirements of the legislation, the intended form that Welwyn Hatfield’s Brownfield Land Register will take, and next steps. Because of short timescale to publish the Brownfield Land Register by 31 December 2017 and the need to concentrate resources on the examination of the Local Plan, it is not intended to grant Permission in Principle to any sites this year.

2 Recommendation(s)

- 2.1 That the Panel notes the Council’s new duty to prepare a Brownfield Land Register and the proposed process for doing so set out in the report, including the site screening and site information templates in Appendix 1 and 3.

3 Background

- 3.1 Successive governments have introduced changes to the planning system, with the intention of boosting the supply of housing land across the country. In common with this Council, the Government has been particularly keen to maximise the delivery of housing on previously developed land (commonly referred to as ‘brownfield land’). As part of this, the Government has pledged that 90% of suitable brownfield sites will have planning permission for housing by 2020.
- 3.2 The Housing and Planning Act 2016 makes provision for local authorities to prepare and maintain a Brownfield Land Register (BLR), with the Town and Country Planning (Brownfield Land Register) Regulations 2017 then introducing a requirement for authorities to publish their BLR by 31 December 2017. The Government hopes that BLRs will enable a better understanding of the quantum and availability of previously developed land within each local authority area. This

evidence will assist in the calculation of an authority's five year housing land supply, and is therefore is an incentive for an authority to include as many sites in their BLR as possible.

- 3.3 Another new mechanism intended to increase the supply of housing is 'Permission in Principle' (PiP). As the name suggests, PiP allows the principle of development on a site to be established, without any need for the level of detail and evidence typically required when granting a conventional outline or full planning permission. Sites receiving PiP would then only subsequently need to seek a 'Technical Details Consent', where more detailed issues aside from the principle of development would be considered. In due course there are expected to be several means by which PiP can be given, but the Town and Country Planning (Permission in Principle) Order 2017 provides a mechanism to do so through the BLR.

4 Explanation

- 4.1 The Town and Country Planning (Brownfield Land Register) Regulations 2017 require each local authority to publish their first BLR by 31 December 2017, and to update it at least one each year thereafter. The regulations stipulate a range of criteria for the types of site which should be included in the BLR, as well as requirements on the information relating to each site which will need to be published.
- 4.2 BLRs apply to previously developed land – whilst this *generally* encompasses all land which has previously been occupied by built development, there are some exceptions. For example land occupied by agricultural buildings such as barns is not classed as previously developed; and neither is land which has returned to a more natural state over the passage of time, despite once having been developed. It is also important to note that brownfield land is not simply the opposite of the Green Belt – this can be a common public misconception. Some Green Belt land *is* previously developed (the former research and development facility at The Frythe in Welwyn would be a notable local example), whilst conversely there are parts of the borough's urban areas which have never been built on and are not brownfield land.
- 4.3 The Regulations stipulate that BLRs should have two parts. Part 1 is effectively a list of brownfield sites within a local authority area which are likely to be able to come forward for development within a 15 year period, by virtue of meeting certain criteria (see paragraph 4.4). Any of these sites can then be included in Part 2 of the BLR, which forms the mechanism for granting them PiP (see paragraph 4.8). The inclusion of sites in Part 2 is not mandatory, and it is entirely at the local authority's discretion whether or not to grant PiP to Part 1 sites – there is no review or appeal mechanism for landowners and developers. However, the potential need for 90% of brownfield sites to have planning permission by 2020 would be a strong incentive.
- 4.4 The criteria for the inclusion of a site in Part 1 of the BLR are numerous, but essentially form three main tests – whether or not a site is *suitable* for development, whether or not a site is *available* for development, and whether or not development on a site is likely to be *achievable*. Sites must also be at least 0.25ha in size, or otherwise be considered able to accommodate 5 or more dwellings. A local authority must finally be satisfied that representations received do not create doubt around suitability, availability or achievability – the Regulations offer the opportunity to actively publicise Part 1 of the BLR in order to seek such representations, but there is no requirement to do so.

- 4.5 The criteria for including sites in Part 1 of the BLR are very similar to the criteria by which sites were assessed in the Council's 2016 Housing and Economic Land Availability Assessment (HELAA), although Part 1 will also need to include sites which already have a form of planning permission. As such the preparation of Part 1 will be a primarily technical exercise involving the pooling of existing information and data, although it will require some new evidence-gathering (for example the BLR considers leaseholders and tenants with a remaining lease or tenancy in excess of 15 years to be a site 'owner', whereas the HELAA did not). Because of the requirement for site owners or developers to actively express an intention to develop their land, which has already been taking place over many years as part of the preparation of the new Local Plan, it is not intended to carry out a fresh 'call for sites' until future years. It is therefore unlikely that Part 1 of the BLR will result in the identification of any significant number of 'new' brownfield sites within Welwyn Hatfield at this stage.
- 4.6 There is no requirement in the Regulations to indicate how or why an authority has reached a decision on which sites to include in Part 1. However, there are a large number of factors to consider in doing so. It is therefore intended that the template included as Appendix 1 to this report will be completed by officers when assessing which sites to include in Part 1 – this will ensure that decisions being taken are robust, and will also provide an audit trail if required.
- 4.7 In terms of the actual content of Part 1 of the BLR, the requirements in Schedule 2 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 are relatively straightforward. They primarily relate to a site's location and delivery status, as well as its potential dwelling capacity. The Government has now also issued guidance on the technical data format in which authorities should publish their BLRs, including a validation routine to ensure that data has been entered correctly into a spreadsheet. The criteria for the data standard are listed in Appendix 2.
- 4.8 However, this form of data presentation will inevitably be somewhat 'dry' – it is technical and jargon-heavy, as Appendix 2 demonstrates. The prescribed standard may therefore be off-putting to those with a more casual interest in the BLR for an area, such as local residents. Officers consider that in the future it will be worthwhile for this Council to also prepare a single page site information template for each site on the BLR – an example is included as Appendix 3 to this report. By showing a map of the site alongside information about it, it is likely to be far easier to understand at a glance and thus make the BLR more effective. However, it may not be possible to prepare such a template this year given the number of sites that such a template will be required for in the first instance.
- 4.9 In order to include a site in Part 2 of the register and grant PiP, a local authority must undertake publicity for a period of 21 days. This is very similar to the type of engagement required for planning applications; including the posting of site notices, notification of Parish Councils, and to consult neighbours and technical consultees (such as the Local Highway Authority). The decision on whether to include a site within Part 2 of the BLR must then take account of any representations received.
- 4.10 The only differing requirements in the Regulations for the content of Part 2 of the Register are the need to include both the minimum and maximum number of dwellings a site could accommodate, and the potential need to include information

about hazardous substances. The Part 2 register entry for a site must also state that PiP has been granted.

- 4.11 As noted elsewhere in this report, the government intends that 90% of suitable brownfield sites will have planning permission in place by 2020. It has previously proposed that authorities failing to achieve this will be designated as 'poorly performing', which has the potential to restrict their ability to raise planning fees or to enable developers to make planning applications directly to the Planning Inspectorate.
- 4.12 The Council has received one expression of interest in the PiP process from the owner of a brownfield site. However, it is not intended to place any sites in Part 2 of the register this year. This is primarily because of the relatively short timescales involved – to meet the Council's committee deadlines would effectively require the finalisation of the final BLR in mid-November in order for it to be agreed for publication by the end of the year:
- Entering sites in Part 2 of the BLR will necessitate public consultation and the need to subsequently consider an unpredictable level of response – there would be very little time to do this and publish the BLR on time;
 - The ongoing examination of the Local Plan and need to prepare for hearing sessions has restricted the amount of time that officers have been able to spend working on the preparation of the BLR;
 - Entering a large number of sites in Part 2 could have a significant resource implication, and at this stage it is not clear whether fees for the subsequent Technical Details Consent stage will also cover the costs involved in granting PiP (see paragraph 6.2 below);
 - There is not yet any requirement for the Council to enter sites in Part 2 of the BLR – taking all of the above into account, a large-scale granting of PiP is therefore an unnecessary risk at this stage.
- 4.13 The BLR is a new process; with aspects which are most similar to the technical work typical normally associated with the Local Plan and its evidence base, and aspects which are most similar to the Development Management process. This raises certain governance considerations.
- 4.14 Because of the links to plan-making and housing land supply, the BLR and subsequent updates will be reported to this Panel. It is anticipated that the list of sites to be included in the first BLR will be reported at the 14 December 2017 meeting.
- 4.15 However, the Regulations also stipulate that decisions on which sites to include in Part 2 of the BLR and to grant PiP to must be 'non-executive'. As such they will fall under the responsibility of the Development Management Committee and delegated powers granted to the Executive Member (Public Protection, Planning and Governance), the Head of Planning and other suitably qualified officers.

Implications

5 Legal Implication(s)

5.1 The Council has a statutory requirement under the Town and Country Planning (Brownfield Land Register) Regulations 2017 to publish a BLR by 31 December 2017. This will be a relatively challenging timescale to meet, especially given that the Government did not publish guidance on the technical data standards for the BLR until relatively recently. However, it is anticipated that by focussing on Part 1 only for this year it will be possible to meet this deadline.

5.2 It should be noted that there is no formal mechanism for a landowner or developer to appeal their site's non-inclusion on the BLR (particularly likely to be an issue for Part 2), nor to contend individual conclusions made in the BLR (such as on the dwelling capacity of a site) even if a site is included. There is therefore a possibility that aggrieved landowners or developers would seek a full judicial review of the Council's approach. However, landowners' ability to still make a separate planning application through existing processes for a scheme of their choosing means that such an outcome should in practice be relatively unlikely.

6 Financial Implication(s)

6.1 The publication of a BLR is a new duty imposed on the Council. Whilst Part 1 of the BLR will largely involve the pooling of existing information, the production of Part 2 and any granting of PiP would involve a relatively large amount of work, particularly around public consultation and the need to consider responses in the same way as for a conventional planning application. However, unlike a conventional planning application the Council will not have any mechanism to charge fees to the recipients of PiP to reflect the work involved and the benefit they receive.

6.2 The Government has indicated that the subsequent Technical Details Consent following a grant of PiP will require applicants to pay a fee, although it is not yet known what the fee structure will be. The cost of preparing the BLR will therefore need to be met within existing budgets at least for the time being, with the resource implication becoming more significant the more sites are entered into Part 2.

6.3 The additional staffing resource provided by funding linked to the new Self-Build and Custom Housebuilding Register may however be able to assist in resourcing the work associated with Part 2 of the BLR.

7 Risk Management Implications

7.1 There are no identified risk management implications as a direct of producing the BLR.

8 Security & Terrorism Implication(s)

8.1 There are no security and terrorism implications as a result of producing the BLR.

9 Procurement Implication(s)

9.1 There are no procurement implications arising as a result of producing the BLR.

10 Climate Change Implication(s)

10.1 There are no climate change implications arising as a result of producing the BLR.

11 Policy Implication(s)

11.1 Unlike some other means introduced by the government to try and boost the supply of housing, the BLR allows existing Local Plan policies to be considered in a normal way (both for the inclusion of sites in Part 1 and in determining whether to grant PiP to sites by including them in Part 2). There are therefore no policy implications as a direct result of producing the BLR.

12 Link to Corporate Priorities

12.1 The production of the BLR is linked to Priority 3 (meet the borough's housing needs).

13 Equality and Diversity

13.1 Because the preparation of a BLR follows a prescribed process and is not the Council's own policy, an Equalities Impact Assessment has not been carried out. The Department for Communities and Local Government's February 2016 Technical Consultation on the introduction of BLRs and PiP did consider the equalities impacts of the proposals, and judged that they would not be adverse.

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Appendices:

Appendix 1 – Proposed site screening template to include sites in Part 1 of the BLR

Appendix 2 – Prescribed data standard for the BLR

Appendix 3 – Proposed site information template forming Part 1 of the BLR