

"Planning in Principle" for housing developments – Commencement of brownfield land register provisions

The Government is bringing into force part of the new Planning in Principle ("PiP") regime in England later this month. Secondary legislation has been introduced enabling a new route to obtain planning permission for housing sites through the designation of land within a new "brownfield land register".

Following a consultation in February 2016, the Government has now published its response along with The Town and Country Planning (Permission in Principle) Order 2017 and The Town and Country Planning (Brownfield Land Register) Regulations 2017 (which come into force on 15 and 16 April 2017 respectively). The Government's response confirms that legislation introducing PiP for local plan designations and applications will be brought forward at a later date.

The Brownfield Land Register

A site is eligible for placing on the Register where the following conditions are met:

- It is 0.25 hectares or larger, or can support at least 5 dwellings; and
- **The land is suitable for residential development²**, meaning that it is either allocated in a local plan, has planning permission or PiP already, or the local planning authority ("LPA") believes that it is otherwise appropriate for residential development based on likely impacts or constraints (e.g. heritage controls) and relevant representations;

What is Permission in Principle?

The Housing and Planning Act 2016 includes a new route to obtaining planning permission for certain housing-led developments through Planning in Principle ("PiP"). PiP will establish the principle for development on a specific site. It will apply where a site is either designated by a local planning authority (LPA) on a new brownfield land register as suitable for housing, or where a site is allocated for housing in the local plan. In each case, the document must identify that the site has the benefit of PiP. An alternative and separate process will be established allowing applications to be made for PiP for small sites

A PiP will not in itself be a planning permission; however, a subsequent Technical Details Consent ("TDC") would need to be granted in accordance with the PiP. Granting of the TDC will constitute the grant of planning permission. At the TDC stage, the LPA could add conditions and negotiate a planning agreement, and Community Infrastructure Levy would apply.

The PiP / TDC route will be an alternative to obtaining planning permission through the usual town & country planning process. For more detail on the PiP regime, see our client briefing.¹

¹ [Housing and Planning Bill – More detail on "Permission in Principle" and other reforms – February 2016.](#)

² Residential Developments means development for which the main purpose is housing.

- **The land is available for residential development**, based on relevant expressions of intent from the owner (to sell or develop it), or from a developer in control of the land (to develop it); or otherwise that the LPA believes that there are no ownership constraints preventing upon development; and
- **Redevelopment is achievable**: meaning development is likely to take place within 15 years.

All LPAs must produce a Brownfield Land Register by the end of this year. The Register must include all eligible land in Part 1 of the Register. The LPA may carry out consultation at this stage if it so wishes. The Register must specify:

- the minimum and maximum net number of dwellings which the LPA believes the site can support; and
- The scale and use of any non-housing development.

(the "Permitted Level of Development")

In our original briefing, we highlighted concerns about applying the PiP regime to development which is subject to Environmental Impact Assessment ("EIA") or Habitats Assessment ("HA"). The Government now appears to have acknowledged these difficulties and, as result, the regime will not apply to EIA or HA development. This will reduce the scope of the PiP regime considerably.

Granting PiP

If the LPA wishes to grant PiP in relation to an eligible site, it must also enter the relevant land on Part 2 of the register, specifying also the Permitted Level of Development. Before it does this, the LPA must publicise proposal and consult widely with relevant bodies including all those normally consulted in relation to a planning application for similar development.

The inclusion of a site in Part 2 of the Register constitutes grant of PiP for the Permitted Level of Development. Registers must be reviewed at least annually.

Technical Details Consent ("TDC") applications

Once PiP has been granted for a site, any person will be able to apply for Technical Details Consent ("TDC") in relation to that site. The LPA will be able to ask for supplementary information upon receipt of the application. Due to stakeholder representations following the February 2016 consultation, the Government has decided that additional consultation requirements will apply at this stage.

The LPA must then determine any TDC application within 10 weeks for major development (5 weeks for minor development). Applications for TDC (see box inset) must be granted in accordance with the PiP, although the LPA has more discretion in relation to an application where 5 years has passed since grant of PiP and there has been a material change in circumstances. The TDC will fix all remaining detail necessary to grant planning permission, including detailed design, layout and affordable housing, and the TDC may be granted subject to planning conditions and a Section 106 Agreement.

Final Comments

One of the most important difficult questions surrounding the PiP regime is determining how strictly the LPA will have to fix the parameters for permitted development at the PiP stage, as opposed to the TDC stage. Whilst the secondary legislation assists to a degree, this is still uncertain. The question is less important since the removal of EIA and HA from the regime but still merits further explanation. The Government intends to provide further assistance on this in Guidance on the PiP regime to be published in June 2017.

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