

Brownfield Land & Permitted Development Rights

Briefing Note

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Introduction

On 13th February 2023, the Department for Levelling Up, Housing and Communities (DLUHC) announced a raft of proposed new planning policy measures intended to stimulate development of brownfield land, particularly in urban centres.

The press release stated that “building homes on brownfield land will be turbocharged under a major shake-up to planning rules to boost housebuilding while protecting the Green Belt”.

This briefing note examines how these proposed changes, along with a number of other measures announced on the same day, might affect the delivery of housing in the UK.

Proposed Policy Changes

Paragraph 124(c) of the NPPF already gives “substantial weight” to the value of using suitable brownfield land within settlements for homes and other identified needs.

The proposed amendments to Paragraph 129(c) go a step further, adding that “significant weight” should be given to the benefits of delivering “as many homes as possible”. The proposed wording is set out below:

“local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework, especially where this involves land which is previously developed. In this context, when considering applications for housing, authorities should give significant weight to the benefits of delivering as many homes as possible and take a flexible approach in applying planning policies or guidance relating to daylight and sunlight and internal layouts of development, where they would otherwise inhibit making the most efficient use of a site (as long as the resulting scheme would provide acceptable living standards).”

The proposed wording gives further weight to the use of brownfield land where the proposals would deliver “as many homes as possible”. The drive to deliver the highest possible number of dwellings on a previously developed site may conflict with local planning policies that place restrictions on building heights or housing mix, particularly in urban areas.

However, LPAs are encouraged to take a flexible approach when it comes to local policies relating to daylight/sunlight and internal layouts. It is unclear whether this also relates to internal space standards.

Not only that, but local planning authorities are also directed to refuse any applications which, in their view, fail to make efficient use of land.

Brownfield Presumption

The announcement also sets out that Local Planning Authorities in England’s 20 largest cities and towns will be made to follow a “brownfield presumption”, if housebuilding drops below expected levels.

This presumption would apply a ‘tilted balance’ to those towns and cities that are already subject to the urban uplift, where their housing delivery is below 95% of the housing requirement over the previous three years.

The recommendation for a presumption in favour of residential development on brownfield land was put forward by a panel of expert advisers in their review of the London Plan commissioned by the Secretary of State.

Whilst the London Plan Review focused solely on housing delivery across the London Boroughs, the presumption is now likely to be extended across the country. The review suggests that that this could result in an additional 11,500 homes per annum in the capital alone.

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Recent analysis by CPRE suggests that the amount of previously developed land identified in brownfield land registers across the country has the capacity to provide 1.2m homes.

Public Consultation

A consultation on the proposed measures is currently running until 26th March 2024, and the Government intends to implement these changes as soon as possible.

Regardless of the outcome of the consultation, and whether these changes to the NPPF are implemented, the Secretary of State has already written to all Local Authorities in England instructing them to prioritise brownfield developments and be *“less bureaucratic and more flexible”* on policies that restrict development on brownfield land.

How Local Authorities respond to this where brownfield proposals conflict with local planning policy remains to be seen.

Permitted Development Rights

Somewhat buried within the announcements were significant changes to Permitted Development Rights (PDR).

New legislation, which comes into force on 5th March 2024, will extend current Class MA PDR, so that commercial buildings of any size will have the potential to be converted into new homes without planning permission.

Under current legislation, for a building to be eligible for Class MA, the following requirements must be met:

- Building must have been in Class E use for a continuous period of at least 2 years during any time prior to the date of the application.
- Building must have been vacant for a continuous period of at least 3 months prior to the date of the application.
- Cumulative floorspace of the building changing use must not exceed 1,500sqm.

The new legislation will remove both the floorspace threshold and the 3-month vacancy requirement. Prior Approval must still be sought from the Local Planning Authority

The removal of the floorspace threshold will mean that large, redundant office buildings are now once again available for conversion to residential use through PDR.

Other proposed changes include PDR amendments to allow for householder development, building upwards to create new homes, the demolition of certain buildings and rebuild as homes, electric vehicle charge points and air source heat pumps. A consultation on the proposed changes is currently running until 9th April 2024.

Conclusion

This briefing note relates to proposed changes to national planning policy and PDR announced by DLUHC on 13th February.

The Government has long supported the development of brownfield sites for housing in urban areas, and it is positive that the proposed amendments to planning policy add further weight to the use of previously developed land.

However, brownfield sites are notoriously challenging to develop due to potentially unknown below-ground obstructions or voids, land contamination, poor ground conditions, archaeological features, and buried services.

In addition, the recent implementation of mandatory Biodiversity Net Gain may render the development of some brownfield sites unviable, particularly where Open Mosaic Habitats have established on-site.

Further funding from Central Government’s Brownfield Land Release Fund is likely to be required to unlock some of these sites.

Whilst the further relaxation of Permitted Development Rights is welcomed, the measures announced this week will not be a silver bullet when it comes to solving the housing crisis.

If you wish to find out more about these changes and how they might affect any of your projects, please get in touch via: enquiries@dlpconsultants.co.uk