

Brownfield Land Register – Consideration of the Need for a Strategic Environmental Assessment (SEA) and Habitats Regulation Assessment (HRA)

Introduction to Brownfield Land Register

- 1.1 The Town and Country Planning (Brownfield Land Register) Regulations 2017¹ requires local planning authorities to prepare, maintain and publish a brownfield land register for each calendar year. The register comprises a list of sites on Previously Developed Land (known as ‘Brownfield’ sites) that are considered suitable for residential development.
- 1.2 The brownfield land register is split into two parts named ‘Part 1’ and ‘Part 2’ respectively. ‘Part 1’ of the brownfield land register comprises all brownfield sites that a local planning authority has assessed as appropriate for residential development and this will include sites with extant full planning permission, outline planning permission, permission in principle as well as sites without planning permission that are considered suitable by the local planning authority. ‘Part 2’ of the brownfield land register is effectively a subset of ‘Part 1’ of the brownfield land register and includes those sites that are considered suitable for the granting of ‘permission in principle (PiP)’. When sites are granted PiP, it must then be followed by an application for technical detail consent to agree the details of the scheme before obtaining full planning permission.
- 1.3 Whilst ‘Part 1’ of the brownfield land register contains all sites that are considered suitable for residential development regardless of planning status, ‘Part 1’ of the brownfield land register does not provide a mechanism in order to deliver such residential development. This can only be delivered through Part 2 of the brownfield land register as described above. There is no obligation for Wealden District Council to grant ‘PiP’ to sites identified within Part 1 by entering them onto Part 2 of the brownfield land register. Wealden District Council is not intending to enter any sites onto Part 2 of the brownfield land register for this calendar year. It should be noted that the majority of sites included in ‘Part 1’ of the brownfield land register have already obtained planning permission and only a single site is identified without planning permission. This single site is however contained within the Submission Wealden Local Plan (January, 2019)².

The Strategic Environmental Assessment (SEA), the Habitats Directive and the Brownfield Land Register

- 1.4 The Planning Practice Guidance (PPG)³ confirms that the preparation of a brownfield land register may require a 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. Where this is the case, the proposed register may fall within the scope

¹ [The Town and Country Planning \(Brownfield Land Register\) Regulations 2017](#)

² The Submission Wealden Local Plan (January, 2019) was submitted to the Planning Inspectorate in January 2019. At the time of writing, Stage 1 of the Examination in Public has taken place (in May and July), but there has been no response from the Planning Inspectorate on the matters considered.

³ [Paragraph 022 – Reference ID: 59-022-20170728](#)

of the Environmental Assessment of Plans and Programmes Regulations 2004 (known as the SEA Regulations). Where a local planning authority considers that the 'SEA Regulations' apply, the SEA is likely to be limited in scope, and it may be appropriate to use assessments undertaken during the preparation of relevant development plan documents.

- 1.5 As considered above, Wealden District Council seeks to publish 'Part 1' of the brownfield land register, which does not provide a mechanism in order to deliver such residential development (i.e. the site is not allocated for residential development or granted planning permission for residential development by the register). Given that Wealden District Council only seeks to publish 'Part 1' of the brownfield land register, it is considered that the register would not set a framework for future development consent for development that is likely to have a significant effect on the environment.
- 1.6 The latest PPG confirms that PiP must not be granted for development which is considered 'habitats development'⁴. In this context, habitats development means development which is likely to have a significant effect on a qualifying European site or a European offshore marine site (either alone or in combination with other plans or projects), and is not directly connected with or necessary to the management of the site. It is only where, following a habitats assessment, the local planning authority is satisfied that the site is not then 'habitats development', and subject to compliance with other statutory requirements regarding the PiP process, it can then grant a PiP. As stated above, Wealden District Council is not seeking to publish Part 2 of the brownfield land register, and therefore no sites will be subject to PiP at present. It is therefore considered that the publication of only Part 1 of the register would not lead to granting of residential development that is considered 'habitats development'.

Scope of the sites on 'Part 1' of the Brownfield Land Register

- 1.7 As discussed above, the majority of the sites included within Part 1 of the brownfield land register already benefit from an extant planning permission for the number of dwellings specified within Part 1 of the brownfield land register. This means that such specific proposals for residential development have already been formally assessed by the local planning authority with regards to their suitability, which would have included an assessment of any significant environmental constraints and the Habitats Regulations. The term 'suitable' has been defined under regulation 4 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 and includes those sites that have planning permission for residential development. It is considered that those sites on Part 1 of the brownfield land register would therefore meet 'suitability' criteria defined under those regulations.
- 1.8 Furthermore, those sites with planning permission for residential development have also been considered through the current Wealden Local Plan process as part of the

⁴ [The Conservation of Habitats and Species Regulations 2017](#)

Habitats Regulation Assessment⁵ and the SEA⁶ that accompanied the Submission Wealden Local Plan (January, 2019). Such extant planning permissions have been considered as commitments through the Wealden Local Plan process and have therefore been assessed as part of the plan-making process.

- 1.9 As noted above, Part 1 of the brownfield land register also includes a single allocation within the Submission Wealden Local Plan (January, 2019) that does not currently benefit from planning permission. However, this site has been considered as suitable through the current Wealden Local Plan process as part of the Habitats Regulation Assessment and the SEA that accompanied the Submission Wealden Local Plan (January, 2019). This site is a draft allocation within the Submission Wealden Local Plan (January, 2019) and has already been assessed by the local planning authority through the SEA and HRA regulations.

Conclusion and Review

- 1.10 It is the Council's position that the identification of sites on Part 1 of the brownfield land register does not provide a mechanism in order to deliver such residential development (i.e. the site is not allocated for residential development or granted planning permission for residential development). Given the above, it is considered that neither an SEA nor an HRA is formally required for this element of the brownfield land register.
- 1.11 Notwithstanding this, the sites included within Part 1 of the brownfield land register do, in all cases except one, benefit from extant planning permissions and have therefore been considered through the formal planning process and have been considered suitable by the local planning authority. The single exception is a site contained within the Submission Wealden Local Plan (January, 2019). This site has been considered suitable through the current Wealden Local Plan process and significantly, the HRA and SEA that accompanies the Wealden Local Plan. Given the above, even though it is considered that the Council's brownfield land register does not fall within the scope of either the SEA regulations or the HRA regulations and therefore the brownfield land register does not require an SEA or HRA, the sites contained within Part 1 of the brownfield land register have nonetheless been subject to SEA and HRA, through the Submission Wealden Local Plan process.
- 1.12 Lastly, Regulation 17 of the Town and Country Planning (Brownfield Land Register) Regulations 2017 requires local planning authorities to update at least annually the brownfield land register. The PPG⁷ states that whilst 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. Should the Council seek to publish

⁵ [Wealden Local Plan Habitats Regulations Assessment – Submission Document \(January, 2019\) – A35](#)

⁶ [Wealden Local Plan Sustainability Appraisal Report – Submission Document \(January, 2019\) – A4 to A8](#)

⁷ [Paragraph 025 – Reference ID: 59-025-20170728](#)

Part 2 of the brownfield land register in forthcoming years, it will likely be necessary to review whether an SEA or HRA is required at that stage.