The Introduction of Brownfield Land Registers in England

Abstract
This review examines recent planning policy and legislation regarding the regeneration of brownfield land in England. The study is centred on housing and England’s West Midlands region with a focus on the Black Country. The Housing and Planning Act 2016 introduced provisions to grant permission in principle for housing-led development in England and mandated the assembly of brownfield planning registers. The Brownfield Land Register Regulations 2017 requirements and their implementation is explored. The review concludes that this legislation has led to the mapping of almost 18,000 brownfield sites. In addition, capacity for 1.3 million homes on 21,000 sites covering 25,000 hectares has been identified on local authority brownfield registers.

Keywords – brownfield land registers, brownfield regeneration, housing, National Planning Policy Framework, planning legislation.
**Introduction**

This study investigates planning policy and legislation concerning the regeneration of brownfield land in England. The constraints and planning law applicable to brownfield development are examined followed by a focus on brownfield land in England’s West Midlands region. The National Planning Policy Framework and the Housing and Planning Act 2016, which includes provisions to grant permission in principle for housing-led development in England, are critiqued. Brownfield Land Register Regulations 2017 requirements, guidance and their implementation are then explored. The themes are then illustrated in a Black Country context. The review concludes that local planning authorities have organized brownfield registers leading to the mapping of almost 18,000 brownfield sites. In addition, capacity for 1.3 million homes on 21,000 sites covering 25,000 hectares has been identified on local authority brownfield registers.

**Background**

Previous research has investigated the interaction between planning legislation and house building. Baker (2013) criticised decentralised planning decision-making in England, under the Localism Act 2011, as unlikely to improve the provision of housing for poor and low income individuals. However, Adshead (2014) recognised that the Localism Act 2011 has had a significant impact on public participation in planning matters. Lees and Shepherd (2015) examined the new structures of planning law introduced under the Localism Act 2011 and the National Planning Policy Framework. Neighbourhood planning, as enabled by the Localism Act 2011, has been investigated by Parker and Salter (2017) and its impact on housebuilding reported by Bailey (2017). Bogusz (2018) argues that neighbourhood planning has created a paradigm whereby local planning preferences fail to align with the overarching public policy objective to build homes in suitable locations.

**Brownfield Development**

Charlson (2018) researched the environmental law challenges to the regeneration of brownfield land with a focus on housing. Although Layard (2019) mentions the Housing and Planning Act 2016 requirement for local authorities to create brownfield registers to speed up housebuilding, articles on brownfield planning legislation and policy is limited. This review therefore addresses the knowledge gap.

The Campaign to Protect Rural England (CPRE) promotes itself as the countryside charity. One of the CPRE’s campaigns is ‘What gets built and where’ (CPRE, 2020a) which includes a focus on advocating for housing to be developed on brownfield rather than greenfield sites. The CPRE calculated a figure for housing capacity on suitable brownfield land and specified how such land might be brought forward for development. The report (CPRE, 2014) highlighted that ‘councils have identified capacity for at least 1 million new homes on brownfield land and sites with existing planning permission can accommodate more than
An example of strategic post-industrial regeneration is the urban legacy of London’s 2012 Olympic Games with the provision of housing (Davis, 2019). Lauermann (2020) recognises that aspiring Olympic hosts regularly experiment with large-scale environmental restoration projects.

**Constraints**
The CPRE report (2014) identified that the cost of brownfield site remediation, lack of accurate data on brownfield land and local planning provision are the barriers to new and small and medium sized construction firms. However, the availability of cheaper greenfield sites for development is the most serious concern. Brown (2016) reports that austerity has impacted upon the planning system and development, contributing to the problem of the under-resourcing of local authorities and voluntary remediation by developers, resulting in future decrease of contaminated land clean-up. Latios and Abel (2013, p.139) explain that “Brownfield development can be economically practical only if the financial benefits of reclamation outweigh the physical and financial costs of preparing the land for reuse.” They argue that to encourage sustainable brownfield development, there must be a commitment to providing incentives for private investors to engage in the cleanup.

**Planning law**
Regeneration of brownfield has its roots in the emergence of modern planning as a response to the consequences of the late industrial revolution (Lennon, 2017). Schulze Baing and Wong (2018) recognise that reusing brownfield land has been a significant factor in planning and regeneration policy in England for decades. Erwin et al. (2015) examined the planning tools used within urban regeneration projects in the UK. They advocate that local planning authorities interact with private organisations to build capacity to realise urban regeneration projects. They explain that as a consequence, new concepts about development policies and limitations are generated enabling planners to develop policies, visions, plans and regulatory frameworks matching market opportunities.

Pocock et al. (2006) surveyed nearly 30% of the UK volume housebuilding sector to discover that housebuilding on brownfield was widespread in the UK. A subsequent CPRE report (2016) analysed the Government’s brownfield registers pilot scheme and found that brownfield sites have a general ability to meet five-year housing supply targets.

**West Midlands Brownfield land**
The West Midlands is one of the nine English regions (Office for National Statistics, 2020) and was chosen for brownfield land scrutiny because of its industrial heritage. The West Midlands benefits from nearly 560 miles of canals which were at the heart of the industrial revolution (Canal & River Trust, 2020). An example of a brownfield site is a derelict building at the junction with the Birmingham Main Line and Essington and Wyrley Canals, Wolverhampton (photograph 1).
The West Midlands Land Commission’s Final Report (2017) highlighted that ‘In relation to housing, there would need to be a 60% increase on the current annual level of completions to meet anticipated population growth’. In March 2018, the Chancellor announced a £350million Housing Deal with the West Midlands Combined Authority (WMCA, 2018a). The Housing Deal included approval for the £250 million West Midlands bid into the Housing Infrastructure Fund. The fund will be used to buy and clean up land around priority sites to deliver at least 8,000 homes. Andy Street, Mayor of the West Midlands, stated that the funding will help to remediate brownfield sites, to build homes and install essential infrastructure to accommodate growth. As part of its drive to use brownfield land first, the WMCA (2018b) has set aside £200 million to prepare former industrial sites for development. Andy Street said, to meet the future housing and economic needs, 215,000 new homes need to be built by 2031.

**NPPF, Housing and Planning Act 2016 and Brownfield Land Register Regulations 2017**

This section explains England’s housing crisis and critiques the National Planning Policy Framework and the Housing and Planning Act 2016. House building and brownfield regeneration aspirations, including granting automatic planning permission in principle on brownfield sites, are examined. Brownfield Land Register Regulations 2017 requirements, guidance and their implementation are then explored.

**England’s Housing Crisis**

Gallent et al. (2018, p.125) explain that “England is in the grip of a housing crisis marked by rising property prices, declining affordability (relative to earnings), falling rates of homeownership and rising levels of long-term renting, homelessness and general housing inequality.” The authors’ critical perspective on England’s housing crisis is that there is a concentration of wealth in residential property and considers how housing’s ‘home’ and ‘asset’ functions could be separated through land-use policy. Gallent (2015-16) identifies the popular diagnosis of the ‘housing crisis’ afflicting England as acute housing under-supply. Homes England (2018) acknowledges the government’s ambition to increase the levels of housebuilding with the aim of delivering 300,000 new homes a year on average. The government’s strategic plan notes there are 26,000 hectares of brownfield land available, with capacity for one million homes.

**National Planning Policy Framework (NPPF)**

The NPPF, which applies only to England, was first published in 2012. It provides the framework for producing Local Plans for housing and other development, which in turn provide the background against which applications for planning permission are decided (Garton Grimwood, 2019). Local Plans are prepared by Local Planning Authorities, usually the Council or the national park authority for the area. (Planning Inspectorate, 2020).

An updated NPPF (Ministry of Housing, Communities & Local Government, 2018a), published on 24 July 2018, had the aim of supporting the UK government’s housebuilding targets (Pinsent Masons, 2018). Kate Brock of Pinsent Masons said ‘The new NPPF largely reflects the consultation version incorporating the policy proposals previously consulted on by
the government in its housing white paper (Ministry of Housing, Communities & Local Government, 2017a) and its “planning for the right homes in the right places” consultation (Ministry of Housing, Communities & Local Government, 2018b).’

The current NPPF (Ministry of Housing, Communities & Local Government, 2019a), published in February 2019, sets out government’s planning policies for England and how these are expected to be applied. A briefing (Garton Grimwood, 2019) examines some of the main changes in the current NPPF including the standard method for calculating housing need and five-year land supply. The framework requires strategic planning to ensure housing and related infrastructure can be delivered and contains the following policies in Chapter 5 ‘Delivering a sufficient supply of homes’ and Chapter 11 ’Making effective use of land’ regarding brownfield development:

Para 73 – ‘Local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of five years’ worth of housing.’

This obligation has twice been subject to judicial review in 2019: Tewkesbury BC (Bowes, 2019) and Harrogate BC (Kohli, 2019).

Para 117 – ‘Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or ‘brownfield’ land.’

Para 118 – ‘Planning policies and decisions should:

   c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land;

   d) promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively’

There is therefore policy support for the identification of housing deliverable sites and brownfield development but still stops short of requiring that suitable brownfield land is prioritised for development over greenfield sites. Moreover, brownfield sites are subject to the same constraints as greenfield sites for example, section 1061 obligations and the Community Infrastructure Levy².

Housing and Planning Act 2016
On publication of the Housing and Planning Bill 2015-16, the Government said it would kick-start a ‘national crusade to get 1 million homes built by 2020” and that the Bill’s measures

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1 Town and Country Planning Act 1990, c. 8
2 The Community Infrastructure Levy Regulations 2010, SI2010/948
include “automatic planning permission in principle on brownfield sites – to bring forward more land to build new homes quicker, while protecting the green belt’ (Ministry of Housing, Communities & Local Government, 2015).

Part 6 of the Housing and Planning Act 2016 addresses ‘Planning in England’. Section 150, which came into effect on 12 July 2016, concerns ‘Permission in principle for development of land’ and contains provisions to grant permission in principle for housing-led development of land in England. House of Commons (2018) explains ‘Traditional planning permission applications require a significant amount of work to be invested by a developer before permission is given. Permission in principle is a way of quickly ascertaining if, in principle, a developer will be able to develop a plot of land. The developer will still need to obtain a ‘technical details consent’ to go ahead, although at this stage a LPA will not be able to refuse permission unless there is a significant, unconsidered technical problem.’ This section inserts a new section into the Town and Country Planning Act 1990 giving the Secretary of State the power, by development order, to grant planning permission in principle to land that is allocated for development in a ‘qualifying document’. Qualifying documents are expected to include: ‘land on a brownfield register, development plan documents and neighbourhood plans’ (House of Commons, 2018).

Section 151, which came into force on 12 May 2016, covers ‘Local planning authority to keep register of particular kinds of land’. The Section authorises the Secretary of State to make regulations requiring a local planning authority in England to prepare, maintain and publish a register of land within the authority’s area which is of a prescribed description or satisfies prescribes criteria. The regulations may require or authorise the local authority to carry out consultation in relation to entries in the register and specify a description of land by reference to a description in national policy or advice. Furthermore, in exercising their functions under the regulations, a local planning authority must have regard to the development plan, national policies and advice and any guidance issued by the Secretary of State. House of Commons (2018) advises that ‘The Government intends to use this power to require LPAs to compile lists of brownfield land in their area to encourage the development of this land.’

However, neither section 150 nor 151 specifically refers to brownfield land. So, secondary legislation and statutory guidance was essential for implementation regarding brownfield sites. Department for Communities and Local Government (2016) contains explanatory notes relating to the Act.

In 2016, there was a technical consultation on the implementation of planning changes (Ministry of Housing, Communities and Local Government, 2016) which considered both planning in principle and brownfield registers. The Government response was published in March 2017 (Department for Communities and Local Government, 2017). The Government’s responses include (3.24) ‘A flow of planning permissions on suitable brownfield sites will play an important role in helping to deliver much needed housing. We are therefore keen to ensure

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3 Housing and Planning Act 2016, c.22.
4 Town and Country Planning Act 1990, c. 8
that local planning authorities make good progress in preparing and keeping their brownfield registers up to date with a positive approach to granting permission in principle on suitable sites. We will consider possible measures to drive progress, including incentives and sanctions, to drive up local authority performance.’

Two statutory instruments were subsequently made: the Town and Country Planning (Permission in Principle) Order 2017\(^5\) and the Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017\(^6\). These were followed by the Neighbourhood Planning Act 2017\(^7\) which is intended to strengthen neighbourhood planning by ensuring that planning decision-makers take account of well-advanced neighbourhood development plans (Local Government Association, 2017)

**Brownfield Land Regulations 2017**

The Town and Country Planning (Brownfield Land Register) Regulations 2017\(^8\), which came into force on 16 April 2017, have made brownfield registers a requirement. Local planning authorities must enter land in Part 1 of the register where it meets the following criteria:

1. The land is at least 0.25 hectares or can support at least 5 dwellings;
2. The land is suitable for residential development;
   a. Is allocated in the local plan
   b. Has planning permission
   c. Has permission in principle, or
   d. Is appropriate for residential development
3. The land is available for residential development; and
   - Owner has expressed an intention to sell or develop the land
   - No ownership issues or other legal impediments
4. Residential development of the land is achievable.
   - Development likely within 15 years of the entry date.

Planning practice guidance (Ministry of Housing, Communities & Local Government, 2017b) on permission in principle (PIP) sets out how PIP can be granted through registers of brownfield land and how PIP relates to local and neighbourhood plans. The guidance advises that ‘Local planning authorities should regularly review the suitability of all relevant sites on their brownfield land registers for a grant of permission in principle, taking into account relevant policies in the development plan and other material considerations... The scope of permission in principle is limited to location, land use and amount of development.’ However, technical details consent must be granted by the local planning authority before development can proceed.

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\(^6\) Housing and Planning Act 2016 (Permission in Principle etc) (Miscellaneous Amendments) (England) Regulations 2017, SI2017/276  
\(^7\) Neighbourhood Planning Act 2017, c.20  
\(^8\) Town and Country Planning (Brownfield Land Register) Regulations 2017, SI2017/403  
\(^9\) Regulation 4, Town and Country Planning (Brownfield Land Register) Regulations 2017, SI2017/403
Generally, the Secretary of State has the power to call in planning applications, from the local planning authority, for his own determination. There will then be a public inquiry chaired by a planning inspector or lawyer who will make a recommendation to the Secretary of State. The Secretary of State may reject the recommendation and genuinely take the final decision (Garton Grimwood and Barton, 2019). However, the guidance continues stating that 'There is no power for the Secretary of State to call-in a decision on whether to enter a site in Part 2 of a brownfield land register and trigger the grant of permission in principle.' Consultation must be undertaken before sites can be granted permission in principle. Furthermore, local planning authorities must publicise their intention to grant sites permission in principle with site and online notices.

**Implementation of Brownfield Land Registers**

The CPRE claim that their research (CPRE, 2018a) of published Brownfield Land Registers confirms that there is enough space on brownfield land to build at least one million new homes. They contend (CPRE, 2018b) that ‘This means that three of the next five years’ worth of housing targets could be met through building homes on brownfield land that has already been identified, easing pressure on councils to continue releasing greenfield land unnecessarily and preventing then unnecessary loss of countryside.’ CPRE argues that ‘The Government needs to get on with amending its guidance to make sure that councils identified all the available brownfield sites in their areas. They then need to improve incentives to build on these sites and ensure that they follow through on their commitment that all new-builds should be on brownfield first.’

The CPRE report notes that despite the requirement for all local planning authorities to publish Brownfield Land Registers by 31 December 2017, more than one in five failed to meet the deadline for submission. However, 95% of Brownfield Land Registers had been successfully published by 31 January 2018. The CPRE’s recommendations to Government include ‘Make brownfield sites the priority for any policy decisions and allocate public funding to bring forward new housing.’

According to the CPRE’s *State of Brownfield 2019* report (CPRE, 2019), 338 published brownfield registers from local authorities identify more than 18,200 brownfield sites covering more than 26,000 hectares. The CPRE argue that the majority of brownfield sites are available to build on now as 59% of the total identified housing is labelled as deliverable within the next five years. While planning is in place for some sites, there remains capacity for more than half a million homes where planning has not been approved.

The National Housing Federation (NHF) (2019) has collated and mapped individual English local authorities brownfield registers. The NHF were able to map 98% of sites published in all available brownfield registers in England: almost 18,000 brownfield sites. The map summarises key information such as the number of sites and the number of potential homes that could be built on these sites. The CPRE in their *Recycling our land: the state of brownfield 2020 - An updated analysis of the potential of brownfield land for new homes* report (CPRE, 2020b) explains that the government has identified capacity for 1.3 million homes on local authority brownfield registers (which is an increase of 19% over the figure reported by the CPRE in 2019). The CPRE’s detailed analysis of brownfield registers has uncovered nearly
21,000 sites covering almost 25,000 hectares and identified planning permission for 53% of the total brownfield housing capacity.

Discussion
Neighbourhood planning under the Localism Act 2011 has been extensively researched. However, there has been limited scrutiny of the Housing and Planning Act 2016 requirement for local authorities to create brownfield registers to accelerate housebuilding.

The CPRE advocates for a ‘brownfield first’ stance for housing development. An example of brownfield regeneration is London’s 2012 Olympic Games legacy provision of housing. However, the CPRE recognises the cost of brownfield site remediation and lack of data on brownfield land as barriers but the most significant concern is the availability of greenfield sites which are cheaper to develop. It is recognised that brownfield development is only viable if it is profitable. Incentives for private investors to engage in sustainable brownfield development are advocated. Under resourced local planning authorities are recognised.

The CPRE analysis of the Government’s brownfield registers pilot scheme found that brownfield sites could meet five-year housing supply targets. Redeveloping brownfield, including housebuilding, has been important for planning and regeneration policy in England for decades. Engagement of local planning authorities with private organisations is recommended to implement urban regeneration projects.

In the West Midlands, £250 million from the Housing Infrastructure Fund will be used to buy and remediate sites to deliver 8,000 homes. In addition, the WMCA has committed £200 million to prepare former industrial sites for development.

The government’s ambition is to increase the rate of housebuilding to 300,000 homes a year. There are 26,000 hectares of brownfield land available with the capacity for one million homes. The current NPPF mandates strategic planning to ensure housing and related infrastructure can be delivered. The policies include requirements to deliver a sufficient supply of homes and make effective use of land by promoting brownfield development. However, brownfield re-use is not prioritised over greenfield development. Furthermore, brownfield sites are similarly burdened as greenfield locations with section 106 (Town and Country Planning Act 1990) obligations and the Community Infrastructure Levy.


The Town and Country Planning (Brownfield Land Registers) Regulations 2017 mandated local planning authorities to compile brownfield registers. Planning practice guidance sets out how PIP can be granted through registers of brownfield land and how PIP relates to local and
neighbourhood plans. However, before development can proceed, technical details consent must be granted by the local planning authority. Furthermore, local planning authorities must consult and publicise, with site and online notices, their intention to grant sites PIP.

The majority of brownfield land registers have been successfully published. The 338 published local authority brownfield registers identify more than 18,200 brownfield sites covering more than 26,000 hectares. The National Housing Federation have mapped 98% of sites published in all available brownfield registers in England: almost 18,000 brownfield sites. The CPRE explains that government has identified capacity for 1.3 million homes on local authority brownfield registers and their detailed analysis of brownfield registers has uncovered 21,000 sites covering 25,000 hectares.

**The Black Country**

The Black Country is an old industrial sub-region, within the West Midlands, which emerged as an urban industrial landscape promoted by the surface availability of coal and production of iron (Henderson, 2015). The Black Country name originated in the 19th century due to the smoke from thousands of ironworking foundries and coal mining (BBC, 2014). The Black Country comprises the four local authority areas of Dudley, Sandwell, Walsall and Wolverhampton and sits in the heart of the West Midlands (Walsall Council, 2017). The Black Country’s planning and regeneration plan, previously its Core Strategy which was adopted in 2011, is now under review (City of Wolverhampton Council, 2018). In addition, the Black Country LEP together with four Black Country local authorities and the Homes and Communities Agency are working to create a Black Country Garden City (Black Country LEP, 2018).

The Black Country Local Authorities’ (2016) response to the West Midlands Land Commission’s call for evidence identified the key issues. The result of the findings indicated that development viability is either negative or marginal due to adverse ground conditions. Site assembly and weak commercial/residential property markets are predominating issues for redevelopment of brownfield. The Black Country authorities recognise the importance of brownfield redevelopment planning for housing growth. However, the public sector needed to play a key role in helping the private sector to bridge this funding viability gap. Nevertheless, the authorities must also address other important aspects of brownfield redevelopment such as land assembly including compulsory purchase powers and restrictions to land banking, site clearance and remediation. Moreover, the capacity of local authorities is also a concern (Parker and Slater, 2016).

The CPRE (2020b) report identified that the West Midlands region has the largest number of sites on brownfield registers: 3,266 sites out of a total of 20,750 sites in England. In the Black Country, the public sector is needed to bridge the brownfield funding viability gap and undertake land assembly including using compulsory purchase powers. The significance of brownfield redevelopment planning for housing growth is recognised. Two landmark Wolverhampton brownfield sites are described and illustrated by photographs. The dilapidated
former Eye Infirmary, Chapel Ash, Wolverhampton (photograph 2), a 0.6 hectare site, has been identified for conversion to apartments (Wolverhampton City Council, 2019). The Grade II listed former Springfield brewery 12 acre site (photograph 3) has been converted into the University of Wolverhampton’s architecture and built environment campus. In October 2020, a planning application was submitted for a new £17.5 million National Brownfield Institute on the University of Wolverhampton’s Springfield Campus (West Midlands Combined Authority, 2020).

Conclusions

There has been advocacy for a ‘brownfield first’ approach to housing development but the cost of brownfield site remediation and lack of data on brownfield land are barriers. To address the financial viability challenge, incentives for private investors to redevelop brownfield sites are advocated. However, an important concern is the availability of greenfield locations which are cheaper to develop. Moreover, the capacity of local planning authorities is also a concern.

Public sector funding has been made available, in the West Midlands, to purchase and remediate land to deliver housing. The government aspires to improve the rate of home delivery to 300,000 per year. There is capacity for one million homes on 26,000 hectares of brownfield land. Planning policies mandate strategic planning to deliver housing and related infrastructure to ensure adequate housing supply. Although brownfield re-use is promoted, it is not prioritised over greenfield development and subject to section 106 (Town and Country Planning Act 1990) obligations and the Community Infrastructure Levy.

The Housing and Planning Act 2016 includes provisions to grant permission in principle for housing-led development in England. The Town and Country Planning (Brownfield Land Registers) Regulations required local planning authorities to organize brownfield registers which can be used to grant planning in principle. Most brownfield land registers have been published leading to the mapping of almost 18,000 brownfield sites. Government has identified capacity for 1.3 million homes on local authority brownfield registers. Detailed analysis of brownfield registers has uncovered 21,000 sites covering 25,000 hectares and identified planning permission for 53% of the total brownfield housing capacity.

The concepts detailed in this review could be used to develop brownfield planning strategy in other countries. However, future research is required to examine whether brownfield land registers and planning permission in principle have resulted in increased development of brownfield sites in preference to greenfield locations.
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