STATUTORY INSTRUMENTS

2017 No. 403

TOWN AND COUNTRY PLANNING, ENGLAND

The Town and Country Planning (Brownfield Land Register) Regulations 2017

Made - - - -	*20th March 2017*
Laid before Parliament	*23rd March 2017*
Coming into force - -	*16th April 2017*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 14A and 122(1)(a) and (3) of the Planning and Compulsory Purchase Act 2004(**1**).

Citation and commencement

1. These Regulations may be cited as the Town and Country Planning (Brownfield Land Register) Regulations 2017 and come into force on 16th April 2017.

Interpretation

2. In these Regulations—

"the TCPA 1990" means the Town and Country Planning Act 1990(**2**);

"development" has the meaning given by section 55 of the TCPA 1990;

"dwelling" includes a flat contained within a building of one or more flats;

"entry date" in relation to any land, means the date on which land is entered in Part 1 of the register;

"flat" means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally;

"hazardous substances" has the meaning given by regulation 3 of the Planning (Hazardous Substances) Regulations 2015(**3**);

"housing development" means development for the provision of dwellings;

(**1**) 2004 c.5; for the definition of "prescribed" see section 122(1). Section 14A was inserted by section 151 of the Housing and Planning Act 2016 (c.22).
(**2**) 1990 c.8.
(**3**) S.I. 2015/627 to which there are amendments not relevant to these Regulations.

"infrastructure manager" in relation to relevant railway land means any person who—

(a) is responsible for developing or maintaining the land; or

(b) manages or uses the land, or permits the land to be used for the operation of a railway;

"maximum net number of dwellings" means the maximum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the entry of the land on Part 1 or Part 2 of the register, as the case may be;

"minimum net number of dwellings" means the minimum number of dwellings on the land after the proposed development less the number of dwellings on the land immediately prior to the entry of the land on Part 1 or Part 2 of the register, as the case may be;

"neighbourhood forum" means an organisation or body designated by a local planning authority under section 61F of the 1990 Act(**4**);

"non-housing development" means development other than housing development;

"operational railway" means a railway which is in use;

"permission in principle" has the same meaning as in section 58A of the TCPA 1990(**5**);

"planning permission" means permission under Part 3 of the TCPA 1990 but does not include permission in principle;

"previously developed land" has the same meaning as land of that description in the National Planning Policy Framework issued by the Department for Communities and Local Government, as it has effect from time to time(**6**);

"register" means a brownfield land register kept under regulation 3;

"relevant railway land" means land—

(a) forming part of any operational railway; or

(b) which is authorised to be used for the purposes of an operational railway under—

(i) a planning permission granted or deemed to be granted,

(ii) a development consent granted by an order made under the Planning Act 2008(**7**), or

(iii) an Act of Parliament,

including viaducts, tunnels, retaining walls, sidings, shafts, bridges, or other structures used in connection with an operational railway and excluding car parks, offices, shops, hotels or any other land which, by its nature or situation, is comparable with land in general rather than land which is used for the purpose of an operational railway;

"requisite notice" means notice in the form set out in Schedule 1 to these Regulations or in a form substantially to the same effect; and

"residential development" means development the main purpose of which is housing development.

Requirement to keep a register

3.—(1) Each local planning authority(**8**) must prepare and maintain a register of previously developed land which —

(**4**) Section 61F of the Town and Country Planning Act 1990 was inserted by section 116(1) of, and paragraphs 1 and 2 of Part 1 of Schedule 9 to, the Localism Act 2011 (c.20).
(**5**) Section 58A of the 1990 Act was inserted by section 150 of the Housing and Planning Act 2016 (c.22).
(**6**) *See* Annex 2 of the National Planning Policy Framework http://planningguidance.communities.gov.uk/wp-content/themes/planning-guidance/assets/NPPF.pdf.
(**7**) 2008 c.29.
(**8**) *See* section 37 of the Planning and Compulsory Purchase Act 2004 (c.5) for the definition of "local planning authority".

(a) is within their area, and

(b) meets the criteria in paragraph (1) of regulation 4.

(2) Each local planning authority must publish their register by 31st December 2017.

(3) The register to be prepared, maintained and published by each local planning authority in accordance with this regulation is to be known as that local planning authority's "Brownfield Land Register".

(4) The register must be kept in 2 parts.

(5) In these Regulations, a reference to "Part 1" or "Part 2" is a reference to Part 1 or Part 2 of the register.

Criteria

4.—(1) The criteria referred to in paragraph (1)(b) of regulation 3 are, in relation to each parcel of land—

(a) the land has an area of at least 0.25 hectares or is capable of supporting at least 5 dwellings;

(b) the land is suitable for residential development;

(c) the land is available for residential development; and

(d) residential development of the land is achievable.

(2) In this regulation—

"achievable" in relation to residential development of any land means that, in the opinion of the local planning authority, the development is likely to take place within 15 years of the entry date, having regard to—

(a) any information publicly available; and

(b) any relevant representations received;

"available for residential development" in relation to any land means—

(a) the relevant owner (or, where there is more than one, all the relevant owners), has expressed an intention to sell or develop the land and at a date not more than 21 days before the entry date there is no evidence indicating a change to that intention, having regard to—

(i) any information publicly available on that date; and

(ii) any relevant representations received;

(b) the developer has expressed an intention to develop the land and at a date not more than 21 days before the entry date there is no evidence indicating a change to that intention, having regard to—

(i) any information publicly available on that date; and

(ii) any relevant representations received; or

(c) in the opinion of the local authority there are no issues relating to the ownership of the land or other legal impediments which might prevent residential development of the land taking place, having regard to—

(i) any information publicly available on that date; and

(ii) any relevant representations received;

"the developer" means the developer in control of the land on the prescribed date;

"heritage asset" means a building, monument, site, place, area or landscape which has been identified by the local planning authority as having heritage interest or is—

(a) a property appearing on the World Heritage List kept under article 11(2) of the UNESCO Convention for the Protection of the World Cultural and National Heritage adopted at Paris on 16th November 1972(**9**);

(b) included in the schedule of monuments compiled by the Secretary of State under section 1 of the Ancient Monuments and Archaeological Areas Act 1979 (schedule of monuments)(**10**);

(c) a listed building within the meaning of section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990(**11**) (listing of buildings of special architectural or historic interest);

(d) a garden or other land included in a register compiled by the Historic Buildings and Monuments Commission for England under section 8C of the Historic Buildings and Ancient Monuments Act 1953(**12**); or

(e) an area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (designation of conservation areas);

"owner" in relation to any land means any person who—

(a) is the estate owner in fee simple; or

(b) is entitled to a tenancy granted or extended for a term of years certain of which not less than 15 years remain unexpired;

"the prescribed date" is the day 42 days before the entry date for the land;

"the relevant owner" means in relation to any land, the owner of the land on the prescribed date;

"relevant representations" in relation to the definition of "achievable", paragraphs (a), (b) and (c) of the definition of "available for residential development", and paragraph (d) of the definition of "suitable for residential development", means—

(a) as regards land to be entered in Part 1, any representations which are—

(i) relevant to the definition or paragraph of the definition in question; and

(ii) received by the local planning authority—

(aa) as a result of any procedures carried out in accordance with paragraph (6)(a) of regulation 5,

(bb) before the end of the relevant period specified in accordance with paragraph (6)(b) of regulation 5;

(b) as regards land to be entered in Part 2, any representations which are—

(i) relevant to the definition or paragraph of the definition in question; and

(ii) received by the local planning authority—

(aa) as a result of any of the procedures carried out in accordance with paragraph (7) of regulation 5,

(bb) by the date, or before the end of the relevant period, specified in accordance with regulation 9 or 13, as the case may be; and

"suitable for residential development" in relation to any land means that the land at the entry date—

(**9**) *See*http:/whc.unesco.org/en/list
(**10**) 1979 c.46.
(**11**) 1990 c.9.
(**12**) 1953 c.49. Section 8C was inserted by section 33 of, and paragraph 10 of Schedule 4 to, the National Heritage Act 1983 (c. 47). The Historic Buildings and Monuments Commission of England is also known as "Historic England".

(a) has been allocated in a local development plan document(**13**) for residential development;

(b) has planning permission for residential development;

(c) has a grant of permission in principle for residential development; or

(d) is, in the opinion of the local planning authority, appropriate for residential development, having regard to—

(i) any adverse impact on—

(aa) the natural environment;

(bb) the local built environment, including in particular on heritage assets;

(ii) any adverse impact on the local amenity which such development might cause for intended occupiers of the development or for occupiers of neighbouring properties; and

(iii) any relevant representations received.

Entry of land in the register

5.—(1) The local planning authority must enter land in Part 1 where the land falls within the description in paragraph (1)(a) of regulation 3 and meets the criteria in paragraph (1) of regulation 4.

(2) The local planning authority must also enter land in Part 2 where—

(a) the land falls within the description in paragraph (1)(a) of regulation 3,

(b) the land meets the criteria in paragraph (1) of regulation 4, and

(c) the authority have decided to allocate the land for residential development, having followed the procedures mentioned in paragraph (7).

(3) The local planning authority may enter land in Part 1 where the land falls within the description in paragraph (1)(a) of regulation 3 and meets the criteria in paragraphs (1)(b) to (d) of regulation 4, but does not meet the criterion in paragraph (1)(a) of regulation 4 (area of site or quantity of development).

(4) The local planning authority must also enter land in Part 2 where—

(a) they have exercised their discretion to enter land in Part 1 in accordance with paragraph (3), and

(b) they have decided to allocate the land for residential development, having followed the procedures mentioned in paragraph (7).

(5) Paragraphs (2) and (4) are subject to regulation 14 (exemptions).

(6) Before the local planning authority enter land in Part 1 they—

(a) may carry out procedures (including consultation) as they see fit; and

(b) must take into account any representations received, within such period as the local authority may specify, when carrying out such procedures.

(7) Before the local planning authority enter land in Part 2, they must follow the applicable procedures in regulations 6 to 9 (publicity and notification) and 10 to 13 (consultation).

Publicity of proposal to enter land in Part 2

6.—(1) A local planning authority must publicise their proposal to enter land in Part 2 by giving requisite notice in at least one place on or near the land for not less than 21 days.

(**13**) *See* section 37 of the Planning and Compulsory Purchase Act 2004 (c.5).