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Foreword

The re-use of previously developed or “brownfield” sites has been at the forefront of campaigning by the Environmental Industries Commission (EIC) since its inception; the Contaminated Land Working Group being one of the EIC’s largest and most active groups. Over the years it has supported and participated in successive government’s initiatives, helping to shape policy and drive innovation in the sector.

This latest position paper is the EIC’s most recent piece of work on the subject and I should like to thank those members who have input into its content. Drawn from a vast array of specialists in the subject, EIC members have spent considerable time putting together their combined experiences to produce this position paper which comprehensively details the challenges and opportunities provided by the current debate on brownfield re-development. EIC members believe strongly that brownfield re-development can help enormously in providing appropriate safe and usable land where development is most needed in and around existing areas of service provision, it’s members represent the most experienced and innovative remediators and consultants in the sector and look forward to assisting regulators in the safe and secure redevelopment of such sites.

Peter Atchison
Chair of EIC Contaminated Land Working Group



Image provided by ESG



Images provided by VHE

Executive summary

The UK's rich industrial heritage, rising population and constrained space make the re-use of previously developed (brownfield) land an essential part of the delivery of new sites.

EIC Members are looking to the Government to partner the brownfield sector with the aim of increasing the proportion of brownfield development within the UK by providing;

- i. Clarity** – of roles and responsibilities in the redevelopment of brownfield sites;
- ii. Consistency** – in the quality of planning applications and in their assessment by regulators;
- iii. Certainty** – to encourage investment and the promotion of proposals for sustainable development;
- iv. Contribution** – towards the cost associated with the assessment and development of more challenging brownfield sites.

Improving the economics and attractiveness of brownfield development

We need to improve the economics of brownfield development for developers, otherwise they will usually favour greenfield sites. EIC has already sent proposals to HM Treasury setting out how modifications can be made to Land Remediation Tax Relief to improve the effectiveness of the tax relief for Brownfield sites.

Likewise we support the £1bn fund for local authorities to help bring suitable brownfield land into readiness for development. We believe that some of this fund should be used for improved resourcing of local authority contaminated land/planning functions and to administer the brownfield registers. Greater transparency of the availability of those funds is needed to give confidence to Local Authorities to invest.

Stimulating more brownfield development

Whilst crude, the pre-NPPF 60% targets did drive brownfield development.

If the Government is not willing to reinstate these, we would support the proposed target of 90% of suitable brownfield sites having planning permission by 2020. However, care must be taken to avoid local authorities meeting such a target simply by only designating small numbers of sites as 'suitable for housing'. We believe all brownfield sites need to be reviewed and evaluated.

Planning for brownfield development

EIC is supportive of a system that promotes brownfield development through the planning system. The key aim is to speed up brownfield development through the planning process and for it to take precedence over greenfield sites.

The extent to which local authority plans have appropriate detailed designations of brownfield sites is patchy and needs to be improved - we support the proposed national brownfield register as a way to address this.

We recommend the use of a proper sequential test in the planning system in order to direct development towards brownfield sites, along with set timescales for determination and the Land Forum's National Quality Mark scheme for applications.

The importance of the technical expertise contained within professional Contaminated Land Officers should be acknowledged and we see them as pivotal in providing clear concise and correct regulation as well as enabling safe and efficient progress.

1. Prioritising brownfield development will bring social and economic benefits

The UK's rich industrial heritage, rising population and constrained space make the reuse of previously developed (brownfield) land an essential part of the delivery of new sites for development. While it is acknowledged that not all brownfield land is suitable for development, latest statistics from the Homes and Communities Agency indicate an estimated 61,920ha of brownfield land in England. Of this, 54% is derelict or vacant, while the remainder is in use but with potential for redevelopment. DCLG figures (2010) suggest that approximately 35,000ha is considered suitable for housing.

The Campaign for Rural England Housing Foresight Report (2014) suggested that brownfield land has the capacity to support over 1.8 million new homes. However, despite the identified high housing capacity, the most recent government figures have shown a decline in the proportion of dwellings delivered on brownfield land.

Whilst it is right to pursue greater housing on brownfield land, this should not be the only sector that is promoted. Sustainable communities require the right combination of housing, retail, and commercial/ industrial development. Consequently a wider push on redevelopment of all brownfield land is proposed.

The remediation sector is already an important part of the economy (see box) but increasing the amount of brownfield development could boost jobs and growth further while protecting the environment and delivering sustainable communities. The EIC strongly supports the government's emphasis on promoting brownfield development.

The UK's brownfield land sector is **worth £1 billion a year** and employs almost 10,000 people. The sector is expected to grow by almost 4.5 per cent per annum between now and 2020, with the number of jobs expected to increase significantly over the same period.



Images provided by CampbellReith

2. Brownfield policy is well-established

The industrial legacy of the UK has left ample brownfield sites that currently lie undeveloped. The government has long recognised this, with a core principle of the National Planning Policy Framework (NPPF) being to “encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value”.

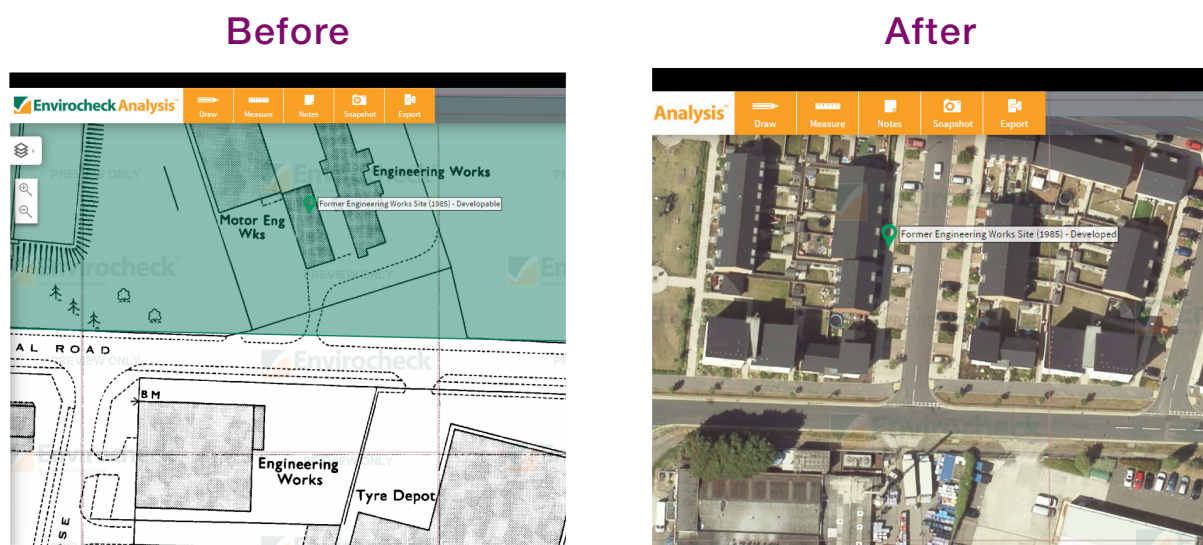
The NPPF goes on to define brownfield land as “land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.”

Brownfield sites are varied, from the relatively benign, with negligible environmental constraints, to sites that are highly contaminated and unsuitable for a residential end use without significant remediation. Such contaminated sites may be more suited to commercial or industrial use.

The regulation of historic land contamination is carried out in Great Britain through the application of Part 2A of the Environmental Protection Act 1990, introduced by Section 57 of the Environment Act 1995, and its associated Statutory Guidance. Responsibility for regulation lies with the Environmental Health function of the local authorities.

The impact of land contamination on Controlled Waters is dealt with by the Environment Agency utilising powers under the Water Act 2003 (Commencement No. 11) and Order 2012, and the European Community 2000 Water Framework Directive (2000/60/EC). The Environment Agency is a statutory consultee under planning and the Contaminated Land Officers refer to the Environment Agency for guidance on the response to planning applications.

Previous governments required local authorities to target 60% of all redevelopment on brownfield land. The NPPF removed this target, but does state that “local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land” [NPPF para 111].



Images provided by the Landmark Information Group, Get Mapping and Ordnance Survey.

3. The government's new proposals to boost brownfield development are a good start but will not overcome the challenging economics of brownfield sites

Brownfield register

The Housing and Planning Bill partially re-introduces a target, placing a responsibility on local authorities to identify brownfield sites. Once identified, the LA will be responsible for securing local development orders on more than 90% of suitable brownfield land by 2020.

Potential sites would need to be assessed against the following criteria:

- Deliverable (i.e. available to develop).
- Capable of development (i.e. viable to develop)
- Be capable of accommodating 5 or more dwellings per 0.25 Ha site
- Free of Constraints

Those sites that meet the criteria will then be entered on to the Brownfield Register as 'suitable for housing'. It is understood that the legislation will provide permission in principle for housing development for these sites.

The EIC strongly feels that a brownfield land database and its development should be underpinned with reliable data and that its application should be consistent across all local authorities.

Landmark Information Group is a member of the EIC and the major UK supplier of land and property data for decision making processes within the planning lifecycle. DCLG should seek advice from Landmark over how to approach the sequential testing of robust data to ascertain the availability, suitability, achievability and viability of brownfield land. This process could then be used to create a reliable and consistent UK brownfield land database that all local authorities could use to record, utilise and disseminate information from.

While the objectives of the register are commendable in attempting to provide certainty, clarity and consistency, there are still a number of concerns which are as follows:

- The 90% target has the potential to limit sites placed on the brownfield register to those that are easily deliverable. More challenging sites are unlikely to be included, for fear of missing the target.
- Whilst some additional funding has been promised to assist local authorities in developing and unlocking brownfield sites, it is unlikely to be significant in the context of the current age of austerity. In addition it is unlikely to cover the continued upkeep of the register, which is essential for it to remain useful.
- It is currently unclear whether the register will consist solely of land under local authority control or whether privately owned land brought forward by independent site promoters will be included. Clarity is required over this matter.
- It is unclear the extent to which Local Authorities will be expected and funded to use their CPO and other powers to pursue orphaned sites. Clarity and consistency is key.
- Sustainable communities require the right combination of housing, retail, and commercial/industrial development and social infrastructure. It is therefore essential that the Brownfield Register does not prohibit other end uses.

Economic barriers to brownfield development

If the proposed Register and Permission in Principle can be got to work effectively they will help to improve the visibility and quality of data on brownfield sites and help remove some of the risk and cost of abortive applications. This will encourage a development and house building sector to engage in the development of these sites with all their associated risks and costs.

A key policy outcome for the current set of proposals in the Housing & Planning Bill is to give house builders and decision makers “the tools and confidence to deliver more homes in appropriate places” with a priority for brownfield development. Such confidence will only be achieved if all potential development barriers are considered, not just those associated with planning and identification of sites. Some of the key barriers are summarised below:

- 1. Unknown ground conditions:** expensive site investigations required and risk of further unidentified issues being uncovered once below ground works commence.
- 2. Expensive abnormal costs:** demolition, remediation, removing or working around underground structures; extra foundation and drainage costs due to presence of made ground;
- 3. Extra cart away costs:** many brownfield sites don't have the space to use excavated material on site. This increases cost of taking material to landfill or alternative development sites.
- 4. Site constraints:** site access and working hour constraints and space for on-site accommodation. Both carry logistics risk and often have cost and programme implications.
- 5. Proximity to other buildings:** complex rights of light and daylight issues as well as party wall concerns introduce further risk, costs and programme implications
- 6. Service diversions:** many brownfield sites have to contend with expensive service diversion works and for some of the utilities this can result in extensive delay.
- 7. Flood risk concerns:** whilst not an exclusive brownfield issue, many settlements and sites suitable for development are blighted by the increasing threat of flood risk.
- 8. Ecology issues:** sites containing existing buildings and overgrown areas carry an increased risk from the presence of wildlife, typically bats and reptiles. Capture and translocation is seasonal so can present significant delay to a programme if such species are present.
- 9. Small sites:** small brownfield sites carry a disproportionate amount of risk due to the inability to easily absorb any unforeseen costs. Also, the preliminaries costs (site overheads etc) tend to be a much higher proportion of total costs than larger sites.

The reality is that housebuilders and developers will default to the least risky option so the easy to develop sites will almost always be prioritised ahead of the more complex sites. The exception is where there is funding or other incentives available to compensate for the additional risk and costs involved.

Existing financial incentives/support for brownfield sites are no longer effective

There are currently two mechanisms available to developers and landowners to get a contribution towards the cost of developing brownfield sites. The first is grant aid and the second is tax relief. Most grant aid is now administered through the Local Enterprise Partnerships (LEPs) who have the discretion to fund projects from their Local Growth Fund subject to State Aid issues being satisfied. Significantly, the State Aid Block Exemption for subsidising the cost of remediation over and above any subsequent increase in land value was renewed in July 2014 meaning LEPs retain the ability to fund remediation projects. However, this is discretionary and the application process itself can be costly and takes time. Not many projects are thought to have benefitted from this mechanism due mainly to the lack of certainty.

The tax relief on the other hand is certain subject to entitlement and eligibility conditions being met. Based on an extrapolation of data from 8 of the top 15 housebuilders in the UK the forecast is that the current annual cost to the Treasury, or benefit to the sector, is less than half of what is was at the peak in 2007 (see table below).

Year	Estimated Qualifying Expenditure	50% Relief	CT Rate	Cost to Treasury
2006	£197,000,000	£98,500,000	30%	£29,550,000
2007	£215,000,000	£107,500,000	28%	£30,100,000
2008	£224,000,000	£112,000,000	28%	£31,360,000
2009	£101,000,000	£50,500,000	28%	£14,140,000
2010	£73,000,000	£36,500,000	28%	£10,220,000
2011	£80,000,000	£40,000,000	26%	£10,400,000
2012	£82,000,000	£41,000,000	24%	£9,840,000
2013	£100,000,000	£50,000,000	23%	£11,500,000
2014	£124,000,000	£62,000,000	21%	£13,020,000
2015	Data not available	Data not available	20%	Data not available

This reduction is down to a number of factors including:

1. A reduction in the corporation tax rate from 30% to 20% since the inception of the relief in 2001. This has reduced the cash benefit of the relief for housebuilders from 15% of the qualifying cost to 10% of the qualifying cost.
2. A general reduction in the scope of eligible works in 2009 including removal of water and air as causes of contamination meaning flood prevention measures and mineshaft grouting costs are no longer eligible for the relief.
3. The fact that the date used to determine entitlement to Derelict Land Relief has not changed since the relief was introduced in 2009. The requirement for a site to have been derelict since 1998 means only a handful of sites now qualify for this relief.
4. The condition requiring the acquisition of a minimum 7 year interest in land prior to remediation which has inadvertently prevented some developers benefitting from the relief where there are deferred land transfers.
5. A relaxation in the rules allowing development of greenfield sites through the introduction of the NPPF.

The result is a tax relief regime that is not as responsive or as beneficial as when first introduced in 2001 and is inadequate to support the current policy objectives to build more homes on brownfield sites.



Images provided by GO Contaminated Land Solutions

4. An agenda for action

Effective implementation of a Brownfield Register and targets and Brownfield Fund

Whilst crude, the pre-NPPF 60% targets did drive brownfield development. If the Government is not willing to reinstitute these, we would support the proposed target of 90% of suitable sites having planning permission by 2020. However, care must be taken to avoid local authorities meeting such a target simply by only designating small numbers of sites as 'suitable for housing'.

We support the proposed national brownfield register as a way to address this.

We support the £1bn fund for local authorities to help bring suitable brownfield land into readiness for development. We believe that some of this fund should be used for improved resourcing of local authority contaminated land/planning functions and to support the administration of the brownfield register.

There is currently little transparency over the current balance of the £1bn fund or its allocation to various initiatives and projects. As such potential beneficiaries have no confidence to commit to projects or resource. We therefore call for greater visibility to available funds for the period to 2020 so that local authorities and other beneficiaries can invest with confidence.

Improving the planning system

The key aim is to speed up brownfield development through the planning process to take precedence over greenfield sites. Where a suitable preliminary risk assessment and adequate site investigation (prepared by a competent person) have been provided for the residential usage, planning permission should be granted. Contaminated Land Officers are professionally qualified and experienced scientists and engineers who manage the implementation of the Part 2A regime and most importantly provide assessment and recommendations on all developers' planning applications submitted to the local authorities for approval.

We support the National Quality Mark Scheme currently being developed by the Land Forum which will provide a mechanism to demonstrate that reports submitted with a planning application have been reviewed by a Suitable Qualified Person (SQP) and satisfy regulatory requirements enabling fast track review.

We would also recommend a final condition on verification of a remediation to be provided to the planning authority.

This would then ensure the predisposition towards granting of planning permission on brownfield sites. Landowners, buyers and regulators are then assured of adequate site investigation data and potential remediation strategies that are well developed and approved through the planning process to aid the sale and transfer of brownfield sites.

Approvals of planning permissions for brownfield sites could also benefit from standard timescales for the LPA's to approve, such as 8 weeks for example.

We recommend the use of a proper sequential test in the planning system in order to direct development towards brownfield sites.

There is a need to acknowledge the importance of the technical expertise contained within professional Contaminated Land Officers and see these as pivotal in providing clear concise and correct regulation as well as enabling safe and efficient progress.

Reforming Land Remediation Relief

A pre-tax credit for qualifying remediation costs to operate in a similar way to the Research & Development Expenditure Credit (RDEC) should be introduced. The intention would be for the credit to have the same value as the Land Remediation Tax Relief (equal to 10% (net) of qualifying costs) after the deduction of corporation tax. This would allow the current tax relief benefit to be shown as income and therefore increase the likelihood of the benefit featuring in and influencing the decision to invest. RDEC currently allows large companies to claim a pre-tax credit equal to 11% (8.8% net) of the qualifying R&D spend which is then discharged against Corporation Tax liabilities.

The value of the tax relief should be increased from 150% to 175%. This would have the effect of restoring the tax relief to the same level of cash contribution when the tax relief was first introduced when Corporation Tax rates were 30%.

The date used to determine entitlement to Derelict Land Relief should be changed from 1998 to 2008. Sites currently have to be unused from 1998 (a date set in 2009) to qualify for the relief and now very few sites qualify meaning it has lost its desired effect.

Tax relief for flood prevention measures should be reinstated. This would send clear messages to the industry that proper flood prevention or mitigation measures should be incorporated into the development of new homes, also encouraging much needed R&D into mitigation technologies.

For small sites of less than 25 units the relief would be further enhanced to 200% provided the development is completed within 24 months of planning permission being granted. This would again send a clear message of intent to deliver on the 90% target and more importantly to ensure the houses get built. It will also encourage small builders back into the market which is a key government priority at the moment and will be a valuable incentive for Local Authorities to encourage the registration of more brownfield sites.



Images provided by VHE

Appendix: Technical detail on Land Remediation Relief

An example to demonstrate the potential impact of these measures is shown below by comparing the impact of the current regime and the introduction of proposed measures 1 and 5. The result is that a site that would not be viable with only a 11.67% pre-tax profit would become viable with a 20% pre-tax profit. The overall cost to Treasury is £100,000 but the result would be 15 more homes built on a site that would otherwise lie undeveloped. This represents a subsidy of less than 4% of the cost of developing the site.

Year	Estimated Qualifying Expenditure	50% Relief	CT Rate	Cost to Treasury
2006	£197,000,000	£98,500,000	30%	£29,550,000
2007	£215,000,000	£107,500,000	28%	£30,100,000
2008	£224,000,000	£112,000,000	28%	£31,360,000
2009	£101,000,000	£50,500,000	28%	£14,140,000
2010	£73,000,000	£36,500,000	28%	£10,220,000
2011	£80,000,000	£40,000,000	26%	£10,400,000
2012	£82,000,000	£41,000,000	24%	£9,840,000
2013	£100,000,000	£50,000,000	23%	£11,500,000
2014	£124,000,000	£62,000,000	21%	£13,020,000
2015	Data not available	Data not available	20%	Data not available

Land Remediation Relief - Proposed LREC & 200% LRR			
House sales revenue		£3,000,000	
Land cost	£150,000		
Remediation	£1,000,000		
Development	£1,500,000	£2,650,000	
Profit		£350,000	
add: LR expenditure Credit		£250,000	0.25
Profit before tax		£600,000	20.00%
less: LRR tax Relief		£0	
Taxable profit		£600,000	
less: Tax		£120,000	
Profit after tax		£480,000	16.00%
Cash Saving		£200,000	20.00%

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The Environmental Industries Commission (EIC), founded in 1995, represents the businesses which provide the technologies and services that delivery environmental performance across the economy. In short, we are the voice of the green economy. Our members are innovative and the leading players in their field, and include technology manufacturers, developers, consultancies, universities, and consulting engineers.