



Local Heritage Engagement Network

BRIEFING

Housing and Planning Bill

&

Brownfield pilot areas

The Housing and Planning Bill is one of the main elements of the Government's planning reform agenda in this Parliament. Essentially these reforms all aim to;

- **Streamline the planning system**
- **Increase housebuilding rates**
- **Stimulate economic growth**

These aims all fall under the Government's 'productivity' agenda, which identifies the planning system as one of the most significant constraints on the economy, bringing delay and inflexibility.

The Housing and Planning Bill contains a large range of provisions, however, the archaeology sector is particularly concerned with issues surrounding the proposal to substantially expand 'permitted development' rights by instituting a 'planning permission in principle' (PiP) for particular identified sites. The PiP would apply to:

- Any sites included by a local authority on a Register of brownfield land
- Sites included in Strategic housing land availability assessments (SHLAAs) – i.e. which are identified in the local plan.
- Sites included allocated in Neighbourhood Plans.

Sites which are already included on SHLAAs will not automatically be subject to PiP, but will require authorities to assess them prior to PiP being activated.

The Government are launching a **pilot study of 73 local areas** to bring forward plans for Brownfield Registers and PiP. The list of pilot areas can be found [here](#).

The following table outlines how the proposals will alter the process of development of such sites:

Stage	Current practice (planning permission)	Proposed system (permission in principle)	Concern
Identification	LA codifies SHLAA and (optional) brownfield policies and SHLAA within local plan.	LA identifies brownfield sites	
Assessment of suitability	Developer's responsibility. Prior to application must pay for viability assessment, including archaeological report, usually submitted to LA with planning applications.	Local Authority's responsibility to ensure suitability, required prior to inclusion on Brownfield Register. No requirement for developer.	At present pre-determination assessment of suitability and evaluation is usually <u>only</u> carried out where there is an application for permission.
Pre-application advice	(Optional) Developer can consult with LA to discuss likely historic environment mitigation required.	N/A – no opportunity for the LA to pre-condition work to identify or assess archaeological significance.	Pre-application discussion allows local authorities to guide development towards environmentally suitable levels, and advice on likely levels of mitigation.
Pre-determination conditions	If required, LA can request further archaeological work to assess suitability.	N/A – no opportunity for the LA to request work.	It will not be possible to impose conditions at the in-principle stage and it is not clear that the technical details stage will encompass archaeological and other considerations relating to the historic environment.
Decision-making	LA balances evidence and makes decision based on proposals.	Site included on Brownfield Register or SHLAA and receives PiP. Developers indicate intention to develop.	Once the PiP is granted there will be limited opportunity for LAs to alter it based upon evidence which arise subsequently.
Permission & conditions	Permission is granted, subject to post-determination conditions, which must be discharged in order for permission to remain valid.	'Technical Details' consent is negotiated. This is likely to include archaeological mitigation.	There may be circumstances where archaeology comes to light at a late stage which creates unsustainability issues or which LAs are legally incapable of mitigating.

Questions and concerns

Who pays?

In the proposed model, the responsibility to ensure that the land is suitable for permission to be granted has shifted from the developers to the local authority. Our evidence suggests that it is unreasonable to assume that local authorities will have the resources available to adequately assess sites for archaeology and other environmental issues, such as flooding, and ecology. This is a necessary step in order to ensure that tests for sustainability are met under the NPPF.

What will happen: Local authorities will either be forced to include sites on the Register and SHLAA without proper assessment, or not include the large proportion of sites which have not been assessed to a level commensurate with requirements of the NPPF to ensure sustainable development.

How will site suitability be assessed?

Whilst the authority has the power to not include sites on the register, rhetoric from Government is suggesting that the vast majority of brownfield sites will be expected to be included.

In the proposed model there is also no opportunity for local authorities to pre-condition sites which are included on the register, as this would effectively undermine the permission in principle. This means that all viability assessments will need to be conducted by the local authority, prior to inclusion on the register. Given the financial constraints currently placed on authorities, this would be an extremely bitter pill to swallow, and could lead to many authorities failing to adequately assess sites for archaeological, and also ecological, suitability.

What will happen: The only viable way to prevent harm to sites is to not include them on the register. However, it is often difficult to assess whether there is an in-principle objection to development on archaeological grounds without detailed consideration in the form of desk-based assessment and sometimes field evaluation. In addition, in a small number of cases, even if there is no in-principle objection, the extent of archaeological mitigation required can in some cases make development unviable or require that original plans be altered in respect of archaeological discoveries. This would not be possible under PiP, as the volume of housing will already be granted, meaning that mitigation would be necessarily more limited.

This will likely mean that many sites will be granted PiP without confidence that the extent of archaeological remains on the site are satisfactorily known and mitigation agreed between the authority and the developer. This will mean greater financial risk to developers, but also greater liability for the authority if a PiP is subsequently proved to be

unviable due to high demands for mitigation (agreed at the technical details stage – see below), which may make development unviable.

Technical Details stage

It is unclear to what extent the ‘technical details’ stage will include the potential to agree steps to mitigate harm to archaeology – e.g. to preserve remains in situ, allow for excavation and recording. However, the tests of the NPPF will apply in theory.

Although the Government have not expressly stated what will be included in the Technical Details stage, it is assumed that archaeology and wider historic environment issues will be one of the elements.

What will happen: Sites will be assessed by developers on a range of factors in order to get Technical Details consent. This is to be a light-touch process and be about finalising proposals, not issuing long lists of requirements. The Government have stated that it is expected that it will a very rare occurrence that technical details consent will not to be granted.

Most sites which exhibit archaeology will be made subject to modest mitigation as part of technical consent. However, if large amounts of significant archaeology is discovered, such that archaeological mitigation would either decrease the volume of housing provided for by the PiP, or make the development of the site financially unviable, there may be legal grounds for the developer to challenge the local authority for undermining the PiP, and be awarded compensation. Similarly, if remains of national importance are discovered which are worthy of scheduling, the authority would likely be liable to huge compensation payouts if permission was revoked. More likely is the archaeology would be destroyed with inadequate investigation. Planning policy for the historic environment has, since 2010, maintained that recording is not an adequate substitute for preservation, and as such this is an erosion of protections.

Summary of issues:

- Environmental protections are a core aspect of the NPPF and the Government’s erosion of planning permission is impeding the ability to fulfil satisfactorily the requirements of the NPPF paragraph 128 which states:

‘Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.’

- The proposals rely implicitly upon placing new demands on local authorities in order to maintain these protections. This is unreasonable given precarious financial position of local government.

- The planning system is not the sole, or even main, reason why housebuilding rates are lower than the Government would like: Other issues, such as developer land-banking, slow speed bringing development forward, lapsed permissions, lack of capital investment to bring projects forward, and market factors such as developers controlling supply and demand for maximum house prices are all equally responsible for slow housing growth.
- Under the proposed system, a significant archaeological discovery, made after permission in principle has been granted on a site, could lead to costly legal battles and compensation paid to developers, and shifts the onus from the developer (the 'polluter') onto the local authority to ensure that no significant archaeology is present.

Ongoing debate:

The Bill is currently at the Committee Stage in the Lords. It will be discussed one or two more times. Various bodies in the archaeological sector, including the Council for British Archaeology, are involved in lobbying for changes to the current provisions, which will give greater freedoms to local authorities. However, it is clear that the government are intent on pushing the Bill through and that archaeology is a small concern. However, without appropriate safeguards being put in place at this stage, the Bill could create a new class of development where the protections of the past 25 years will no longer be possible to enforce.

What can you do?

If you live in a pilot area:

- Examine your local plan and see what brownfield policies are currently included
- Examine your authority's Strategic Housing Land and identify any sensitive sites currently included.
- If you are aware of any sensitive brownfield sites in your area, let us know and we will discuss specific concerns and help you to monitor them.
- Write to your councillor to express your concerns for archaeology within the pilot and ask them what the Council's proposed procedures are for assessing archaeological suitability for PiP in accordance with the NPPF.

Regardless of where you live:

- Write to your MP to express your concern for the effects of these proposals on archaeology.