

## Society for the Environment response to the DLHUC consultation on: Strengthening planning policy for brownfield development (Spring 2024)

### Responses to consultation questions

#### **Q4. In addition to the challenges outlined in paragraph 13, are there any other planning barriers in relation to developing on brownfield land?**

##### **a) Permitting**

Double regulation by permitting regimes for materials use, contamination and processing activities creates barriers to development. Paragraph 194 of the National Planning Policy Framework (NPPF) could be further explained, with more clarity as to when different regimes apply and what is covered under planning and permitting. Permitting by default does not enable sustainable development of brownfield sites when all environmental risk can be covered by planning conditions for the construction process.

Permit timeframes rarely run in parallel and application processes can delay project delivery significantly, affect investor confidence, create contractor issues, and prevent delivery of sustainable developments. This prevents legacy contamination clean up, delivery of Biodiversity Net Gain (BNG) and Sustainable drainage systems (SuDs) on existing brownfield sites and prevents new housing/employment delivery. Delays can also prevent the societal gains often delivered by these types of development in key urban or semi-urban locations.

Requiring permits as well as planning requirements on historic landfills or sites like gas works can also significantly affect infrastructure delivery. Professional bodies have undertaken surveys of developers that have found permitting to be a frequent barrier to development projects, especially on brownfield sites. There are sites identified and allocated for development within local plans, that have been repeatedly passed over and are now effectively blighted because of the permitting interference with planning.

##### **b) BNG**

As noted by the House of Lords Built Environment Select Committee inquiry into the impact of environmental regulation on development, BNG is currently a deterrent to delivering remediation on some brownfield sites with high predevelopment biodiversity. Managing pollution and improving biodiversity need to be considered together to deliver real and tangible improvements for the environment and planning system. Environmental initiatives such as BNG, nutrient neutrality and SuDS are all essential, but need to be applied in a more coherent manner at a site-specific level, considering all the complexities at each site, including location, affordable housing, and the need for remediation.

### c) The role of experts

Site environmental assessments must always be undertaken by competent professionals and ideally professionals should hold an environmental professional registration. Some assessments may need input by multiple discipline teams, to ensure the assessment is delivered with an understanding of the impact on other areas (for example, ecology and archaeological assessments should be undertaken alongside development of remediation strategies).

## **Q5. How else could national planning policy better support development on brownfield land, and ensure that it is well served by public transport, is resilient to climate impacts, and creates healthy, liveable and sustainable communities?**

### a) A joined-up approach

There needs to be coherent, joined-up policy at the national and local level. National frameworks are key as they demonstrate a holistic approach to environmental improvement and the interactions between social and environmental outcomes. These National frameworks (including the NPPF and Fourth National Planning Framework) should link national objectives to local delivery and sync with other policies such as the forthcoming Land Use Framework. This joined-up approach can be achieved through measures such as improved engagement and consultation with stakeholders, especially local authorities.

There should be a national policy on construction soil management, which would make excavated materials a resource in the first instance, only becoming a waste if it is clearly discarded or abandoned. Clear policy on this, alongside possible bans on materials like topsoil going to landfill, could better enable brownfield developments and create a circular economy platform for the construction industry. Soil is a vital resource and an overarching soil strategy and national planning policy is needed to drive its proper use and protection in the development sector, alongside the provisions in the Defra Environmental Improvement Plan (EIP).

### b) Earthworks management

With regards to key infrastructure development, ensuring that earthworks management can all come under planning control and not be disaffected by double regulation due to waste permitting issues would provide smarter, quicker, and more effective delivery. At present planning can deliver the necessary consents and conditions, but the Environment Agency (EA) can choose not to agree that as an option for materials management and earthworks. For major infrastructure and even flood defence projects this can put schemes in jeopardy and cost the public purse significantly greater sums in delivery costs. Potential examples would be the 3<sup>rd</sup> Thames crossing and the River Thames flood relief scheme.

### c) Legislation

Delivering the Defra EIP objective of dealing with soils as a resource and not as a waste may require amendments to some elements of legislation. The EA did a research project last year on soil management systems and their report on this and interaction with the proposed Defra soil depots identifies that this may be required (also noted in the EIP, pg. 181). The report is expected to be published shortly but headlines were given at the Institution of Environmental Sciences (IES) Land Condition Symposium in Autumn 2023 by Graham Winter. Rather than amending

existing waste legislation, an approach could be taken to alter the application of waste regime to soils, via an exclusion introduced in the circular economy regulations for the construction industry.

**Q6. How could national planning policy better support brownfield development on small sites?**

Bring forward planning policy to support soil depots/earth banks and soil treatment centres (a target in the EIP), alongside further development of soil and stone management systems like the Definition of Waste: Code of Practice (DoWCoP). This will ensure that small brownfield sites have easy access to regional hubs and a soil transfer/ passport scheme, delivering effective and efficient materials exchange options to meet geotechnical requirements, while managing contamination in a risk-based framework.