Campaign to Protect Rural England
Standing up for your countryside

HOUSING FORESIGHT

REMOVING OBSTACLES TO BROWNFIELD DEVELOPMENT

How Government can work with communities to facilitate the re-use of previously developed land

Foresight Paper No.2

Campaign to Protect Rural England: Housing Foresight Series

The objective of the Campaign to Protect Rural England's Housing Foresight Series is to provide evidence-based research papers that support innovative policy solutions to critical housing issues.

The purpose of the series is not to set out the Campaign to Protect Rural England's official policy position on the future delivery of housing. Rather, it will explore a number of 'blue-sky' policy solutions with the aim of inciting and provoking wide ranging discussion over the future shape of housing policy.

With this in mind, we welcome comment on the policy solutions identified within the Housing Foresight Series.

Over the next two years, eight research papers will be released that examine different areas that are impacting upon the delivery of housing in England. We welcome any recommendations on subject matters for these papers. Please email lukeb@cpre.org.uk

Housing Foresight Series Papers So Far

1. **Increasing Diversity in the House Building Sector (Published: July 2014)**

2. **Removing Obstacles to Brownfield Development (Published: September 2014)**

3. **Brownfield Development: Best Practice (Working Title, Proposed Publication Date: December 2014)**

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HOUSING FORESIGHT

Executive Summary

- The aim of this research paper is to examine the obstacles that are preventing residential development from taking place on brownfield land and suggest policy mechanisms that can overcome these obstacles to increase housing supply.

- In 2010, the Government identified that there are approximately 70,000 hectares of brownfield land that is unused or may be available for redevelopment. Much of this land is located in existing urban areas and approximately 35,000 hectares of this land is considered suitable for housing.

- This 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 that the proportion of dwellings delivered on brownfield land has fallen significantly from 81% in 2008 to just 68% in 2011. It is likely that this has decreased further to 2014.

- The paper finds that a range of obstacles are preventing brownfield from being considered as a viable option for residential development. These include land ownership obstacles and physical obstacles such as site preparation costs and the reliance on developers to pay the high cost of remediating contaminated land. National and local planning policy is also currently acting as a barrier to development as it does not contain a sequential approach to land allocation which prioritises brownfield development and does not do enough to allocate small scale brownfield sites which have the capacity to deliver a significant amount of housing.

- The paper concludes by suggesting four policy mechanisms can alleviate these obstacles increase the number of homes built on brownfield land (overleaf)

Summary of Policy Options for Discussion

1. **The taxation of uncompleted housing for which planning permission has been granted:**
   Charging council tax on the completed value of housing for which planning permission has been granted after two years on brownfield sites

2. **Improved funding and assistance for brownfield remediation:**
   Improved structures for taxation relief and liability

3. **Special planning measures and state intervention to aid in delivering brownfield sites:**
   Better clarity and improved use of local development orders and compulsory purchase orders to facilitate brownfield development

4. **The introduction and use of tax increment financing:**
   The use of tax increment financing to fund development on brownfield land

Introduction and Background

'If we want to limit development on important green spaces, we have to remove all the obstacles that remain to development on brownfield sites'. (George Osborne, Mansion House, 2014)

Since the United Nations Summit of 1992 English planning has been framed around ensuring that development is sustainable, and the National Planning Policy Framework (NPPF) contains a powerful 'presumption in favour of sustainable development', with this presumption running as a 'golden thread' through all plan making and decisions.[1] The prominence of sustainable development as a UK policy priority is strongly linked to the emphasis on brownfield regeneration and particularly the ambition of increasing residential development on such sites.

[1] Department of Communities and Local Government, 2012, National Planning Policy Framework. London: HMSO

'Previously Developed Land' and 'Brownfield Land' - Definitions

The terms 'previously developed land' and 'brownfield land' are often used inter-changeably, even by people who should know better, including the Government (and hence anyone referring to Government statistics, including this paper), but they have subtly different meanings; the former having a particular technical definition in English planning and the latter being more colloquial. The outcome of this is that not all land that is defined as 'previously developed' is necessarily seen as 'brownfield' and *vice versa*.

The National Planning Policy Framework defines previously developed 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.

This excludes:

- Land that is or has been occupied by agricultural or forestry buildings;
- Land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures
- Land in built up areas such as private residential gardens, parks, recreation grounds and allotments
- Land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time"[2]

This definition does not exclude land or buildings that are in an existing productive use.

The colloquial understanding of 'brownfield' land, however, tends to assume that land or buildings are unused (and most likely derelict or contaminated in some way) and would not necessarily make a distinction between former agricultural/forestry buildings and buildings in any other use.

The NPPF definition of previously developed land benefits from some flexibility, but the potential exists for some overlap at the margin with land that has never been previously developed (for example, a redundant airfield in a rural area, 90% of which is grassed) such brownfield sites may not be seen as appropriate for development.[3]

While the two terms have become almost interchangeable, policy should focus on the importance of bringing redundant urban land back into productive use, irrespective of its condition.[4] It is important that brownfield land that has a value in not being redeveloped is safeguarded, and that brownfield land which is suitable for development, particularly land that is contaminated and located in urban areas, is focused on for remediation and redevelopment.

2 Ibid

3 Adams, D. and De Sousa, C. 2007, Brownfield Development: A Comparison of North American and British Approaches, Paper presented at the European Urban Research Association Conference 'The Vital City' 2007, University of Glasgow

4 Ibid

Housing Density Definition:

Housing Density is generally measured in dwellings per hectare (dph). "Net residential densities refer only to the land covered by the residential development, with any gardens and other spaces that are physically included in it."[5]

Gross residential densities "also include certain nearby non-residential development, in order to reflect the amount of services and amenities such as schools and parks that are needed to support the housing element. Although the distinction between net and gross appears straightforward, in practice different inclusions in each category can complicate otherwise simple comparisons."[6]
In this paper, the densities referred to are net residential densities.

By way of illustration, 30 dph (the minimum density previously sought in national planning policy) is typified by inter-war suburban housing estates. 53 dph (the average density of recent previously development land development in England) is less than the density of desirable Victorian/Edwardian terraced housing in Hertfordshire.

It makes social, environmental and economic sense for most new development to occur in built-up areas,[7] where infrastructure and services are already in place, or can easily be provided, rather than in the countryside. Brownfield development is essential for urban regeneration. Done well, it brings homes, jobs and services closer together, reduces car dependence and enhances communities. However, not all previously developed sites should be considered suitable for development. Land important for wildlife, historically significant or that provides valuable open space should be safeguarded from inappropriate development.[8]

There is ample brownfield land available for residential development in England. Government land use statistics collected from each local authority in 2010 identified that there were approximately 68,910 hectares (ha) of 'brownfield land that is unused or may be available for redevelopment'. Of these, 34,980ha are considered by local authorities to be suitable for housing and these sites have the capacity to deliver 1,504,140 [9] dwellings. This is assumed at a density of 43 dwellings per hectare, the average density that housing was delivered on both Brownfield and Greenfield land in 2010. However, this may be an underestimate of capacity for these sites. In 2011, the average density of housing delivered on brownfield land was 53 dwellings per hectare,[10] if this figure is multiplied by the 34,980ha of brownfield land that are considered suitable for housing, the capacity of these sites increases to over 1.8 million.

5 Town and Country Planning Association, 2003, Residential Densities, Town and Country Planning Association.

6 ibid

7 National Round Table on Environment and the Economy, 2003, Cleaning Up the Past, Building the Future, A National Brownfield Redevelopment Strategy for Canada, National Round Table on Environment and the Economy, Ontario, Canada.

8 CPRE, 2008, The Campaign to Protect Rural England's Policy on Brownfield Land, CPRE

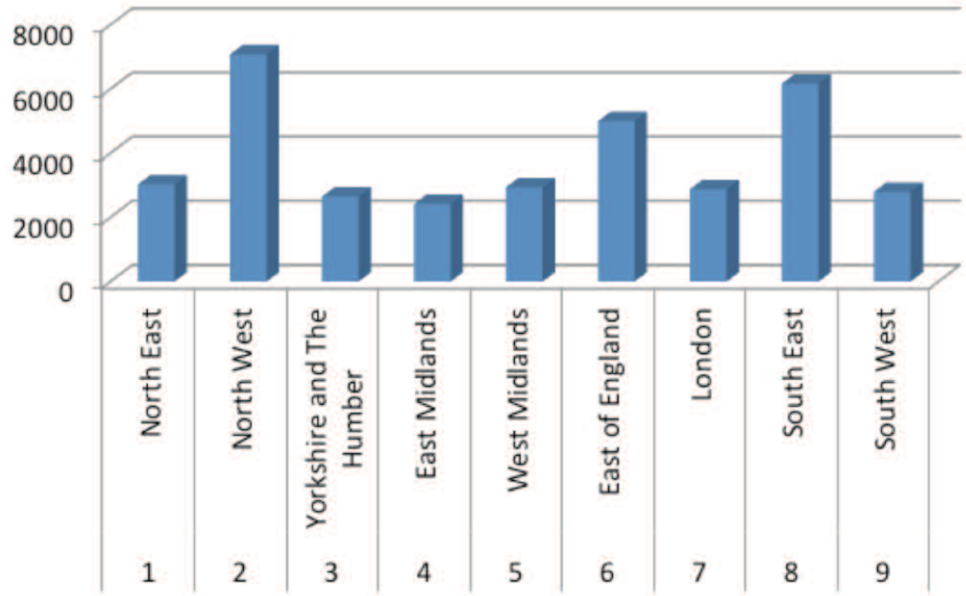
9 Government Statistics, 2010, Land Use Statistics (Previously Developed Land), UK Government

10 Government Statistics, 2011, Table 211 Land use Change, Proportion of New Dwellings on Previously Developed Land, England, 1989 – 2011, UK Government

Brownfield land which is considered suitable for housing is not distributed evenly all over the country. For instance, according to Government figures, the North West contains 7080ha or 20% of England's brownfield land and the South East contains 6170ha or 18% of England's brownfield land. In comparison, the East and West Midlands together contain just 5360ha or 15% of England's brownfield land.

Figure One: Hectares of Brownfield Land Considered Suitable For Housing by Region

(Government Land Use Statistics, Previously Developed Land, 2010.)

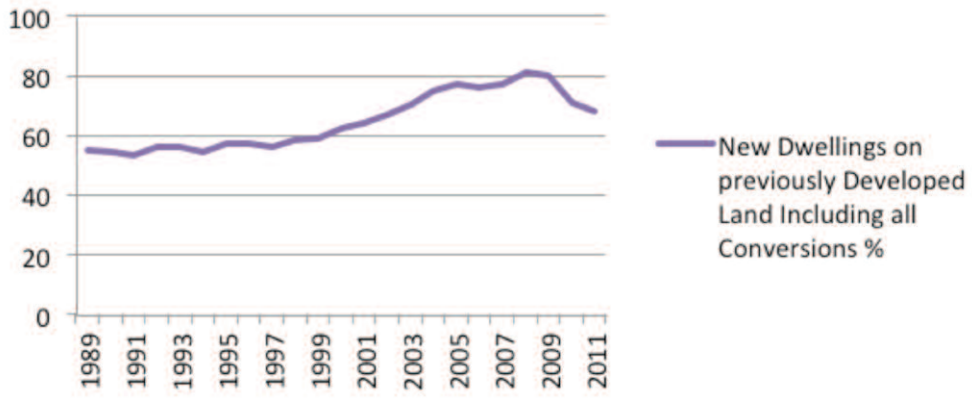


Regardless of this large amount of brownfield land being available, the latest Government statistics show that in 2011 only 68% of dwellings (approximately 79,968 units) including all conversions were built on brownfield land. In 2008, residential development on brownfield land peaked with 81% of dwellings (approximately 114,202 units) delivered on brownfield land.[11] There has been steady decline in the proportion of new housing delivered on brownfield land since this peak.

[11] Government Statistics, 2010, Land Use Statistics (Previously Developed Land), UK Government

Figure Two: Proportion of New Residential Development on Previously Developed Land Including All Conversions

(Land Use Change Government Statistics, 2011.)



Despite the benefits of developing on brownfield land and its widespread availability, evidence suggests that there has been a significant increase in the proportion of housing permitted and delivered on greenfield and Green Belt land since the adoption of the National Planning Policy Framework[12] . Local experience highlights that brownfield sites are not being redeveloped because even where developers have planning permission, they are now arguing these sites are no longer viable. This anecdotal evidence is supported by a CPRE research paper[13] which identifies that developers are targeting development on greenfield sites as the development process typically carries less cost and therefore less risk.

In his recent Mansion House speech, George Osborne identified that 'we have to remove all the obstacles that remain to development on brownfield sites.'[14] Measures have recently been put in place to increase development on brownfield land, including a £200 million fund to aid in the delivery of 200,000 new homes in 30 new housing zones on brownfield land throughout the country (with the exception of London, which has set own £400 million fund with the aim of delivering 50,000 new homes across 20 housing zones). While the measures put in place by the Government to encourage residential development on brownfield land are a welcome change of policy, the above statistics identify that brownfield land has the capacity to deliver many more homes than the 200,000 target and policy mechanisms need to reflect this.

This paper aims to identify and examine the key obstacles that are preventing housing delivery on brownfield land. It concludes by offering four policy mechanisms that can be adopted by Government, with the help of local communities, to overcome barriers and encourage and facilitate increased residential development on brownfield land.

12 The Campaign to Protect Rural England, 2014, Community Control Or Countryside Chaos, CPRE

13 Copley, J. 2014, Report on the Impact of the 5 Year Housing Land Supply Rule of the National Planning Policy Framework in allowing countryside loss in Lancashire, Greater Manchester & Merseyside'

14 Osborne, G. 2014, Mansion House Speech, Available from: https://www.gov.uk/Government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer

2.0 The obstacles that limit residential development on brownfield sites

Previous academic, professional and Government literature has identified that there is a range of obstacles that need to be overcome to increase residential development on brownfield sites. Developers prefer to build housing on large scale greenfield sites as these sites carry substantially less risk. Housing supply in England is dominated by private sector volume house builders, and the financial viability of individual development schemes underpins their business strategies.[15] If a site is not considered financially viable by a developer, it will not be built out and there are multiple obstacles on brownfield land that can impact upon the viability of a proposed development scheme. For the purposes of this paper these obstacles have been categorised as relating to viability, land ownership, physical obstacles and planning issues relating to the development of brownfield land.[16]

[15] Burroughs, L. 2014, Increasing Diversity in the House Building Sector: The Need to Re-Establish Small and Medium Sized Enterprises in Housing Construction, Housing Foresight Series Paper 1, The Campaign to Protect Rural England

[16] Adams, D. & Watkins, C. 2002, Greenfields, Brownfields and Housing Development, Oxford: Blackwell Science

2.1 Viability obstacles

The concept of viability in property development is multidimensional, and has been defined by a number of different commentators (for example the Harman Report, 2012, The National Planning Policy Framework, 2012, and the Planning Inspectorate, 2013). The Royal Institute of Chartered Surveyors defines viability for planning purposes as:

"An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, whilst ensuring an appropriate site value for the landowner and a market risk adjusted return to the developer in delivering that project."[17]

[17] RICS, 2012, Financial Viability In Planning Definition

This short definition shows that viability can be seen from two perspectives, that of the developer and of the landowner:

i. For the developer, we can measure the value of profit as a capital sum [i.e. as an absolute sum], or as the relative margin of profit as a percentage of costs or of gross development value. The relative rate of profit is more relevant since it allows the developer to compare on an equivalent basis the relative returns of other possible investment projects, some of which may not be in property development.

ii. For the landowner, the comparison [and therefore their viability test] is focused on whether the land bid price in some future use [e.g. perhaps a known use which is permitted by planning] is higher than the land's current value use or other uses [for which planning is also required].[18]

[18] Walker, S. Galloway, J. and Myers, D. 2008, A Strategic Housing Viability Assessment Study Part 1: Report, Northern Peninsula Housing Market Area Partnership

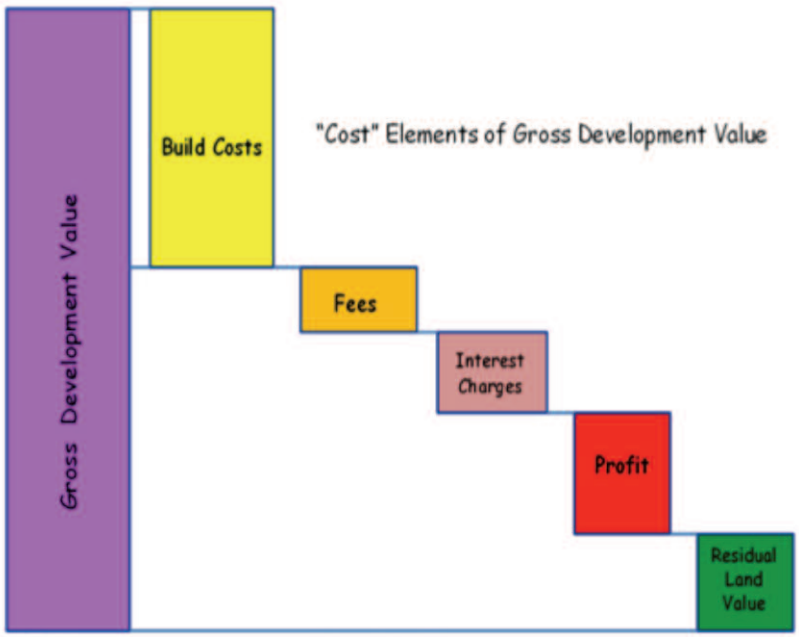
The method used by developers to calculate whether a scheme is viable is called the 'residual land valuation' and is explained below.

To assess viability, the future use land value of a site must be compared with the existing or current use value. The valuation starts with identifying the different uses that land can be used for (i.e. market housing or industrial use) and then assessing whether changing the use will leave a valuation for the land that would be acceptable to the land owner when build costs are subtracted from the gross development value (including a reasonable profit margin). The remainder is the residual land value that can be offered to the landowner. Build costs (usually gathered from sources such as the BCIS database) and profit margins (usually around 15 – 20% depending on the site) are well established so both land owner and developer can have a reasonable estimate of this final price.[19]

The residual land value, the amount the developer pays the land owner to secure the land to build on, is the last step in the calculation. However, as developers are less likely to enter into options agreements on brownfield sites, the land cost is often paid entirely at the start of the development process.[20] This causes the developer to carry significant risk throughout the development process as the land as the other costs (building material costs, fees, planning costs, interest charges, and estimates of future house prices etc.) are only educated estimates and can fluctuate.[21]

Figure Three: The Cost Elements of The Gross Development Value

(Source: Professor Stephen Walker) [22]



19 Booth, T. 2014, Understanding and adapting the land market is key to solving our housing crisis, LSE Blog available from http://blogs.lse.ac.uk/politicsandpolicy/why-arent-we-building-enough-homes/

20 Jones, C, Leishman, C & Mac Donald, C 2009, 'Sustainable urban form and residential development viability' Environment and Planning A, vol 41, no. 7,

21 Booth, T. 2014, Understanding and adapting the land market is key to solving our housing crisis, LSE Blog available from http://blogs.lse.ac.uk/politicsandpolicy/why-arent-we-building-enough-homes/

22 Walker, S. 2013, Development Economics & Viability, The Royal Town Planning Institute, Conference, Exeter Friday 11th July 2013

The viability of a development scheme is very sensitive to differential changes in gross development value. Even relatively small changes to cost estimates can result in magnified shifts in the gross development value and impact the level of developer's profit and land bid which in turn can impact upon the viability of a development proposal. If the level of profit or the land bid available to give to a land owner falls below a certain threshold the development is considered unviable.

A key obstacle that can prevent the development of brownfield land is the expense of the land itself. Developers favour greenfield land as it is most often agricultural land which carries a relatively low use value. Brownfield land can be in a range of uses that command different levels of value but it can be assumed that much brownfield land that is considered suitable for housing is of a higher use value than agricultural greenfield land. Even open hard standing, when there is some demand for it, can command a much higher price than agricultural land.[23]

It is common that land owners have unrealistic aspirations as to the value of their land and expectations as to the price developers will be willing to pay.[24] Brownfield site owners are hesitant to sell their land because they speculate that the value may increase in future and as a result brownfield sites within urban areas may remain vacant for a significant amount of time. Previous research has identified that this barrier impacts strongly upon the viability of development proposals and can prevents brownfield development from taking place.[25]

Further to this, a sensible land bid from a developer, based on likely future property values is likely to be outbid by another developer that wants to minimise competition, has a more optimistic view of future property values or the level of contribution to infrastructure will be required to secure planning permission. A recent LSE blog by the head of policy at Shelter, Toby Lloyd identified that the result of this land auction process may be that the development proposal that offers the least contribution to the community or the poorest quality homes can be the one that is developed as it is the one that offers the most cash up front to the landowner. As a result, the development proposals may always be at the margins of viability.[26]

[23] Beaman, M. How much does it take to get a Landowner to Release Land, Available from: www.regenerate.co.uk

[24] Syms, P. 2010 Land, Development and Design 2nd ed. Oxford: Wiley-Blackwell

[25] Syms, P. 2001, Obstacles to the Release of Brownfield Sites for Redevelopment, The Joseph Rowntree Foundation

[26] Lloyd, T. 2014, Understanding and adapting the land market is key to solving our housing crisis, LSE Blog Available from http://blogs.lse.ac.uk/politicsandpolicy/why-arent-we-building-enough-homes/

Fluctuations in the wider housing market can also impact upon the viability of development schemes. Falling residential property values can cause sites that were considered economically viable at the outset of the development process to become unviable part way through. This leads to developers stalling development schemes and leaving planning permissions incomplete. Research by the University of Reading and Glenigan has suggested that the economic downturn of 2008 which caused residential property prices to fall significantly impacted upon the viability of individual development schemes and has been a key reason in the stalling of sites. The research identified that 72% of stalled development sites are located within urban settlements with a population of 10,000. These sites are most likely to be brownfield sites because of their nature and location in urban areas.[27]

The level of developer contribution towards infrastructure demanded by local authorities can also affect viability. Previous research from the University of Reading has recognised that 'the inherent volatility of the expected costs and revenues creates changes over time in the level of financial surpluses generated by development sites. As planning obligations are funded from these financial surpluses, the ability to deliver planning obligations is affected by this volatility.'[28] As agreements over the level of contribution are often signed and paid for at the start of the development process,[29] fluctuating costs can cause the agreed level of contribution to potentially impact upon the viability of development schemes. To overcome this obstacle, the Government has allowed the renegotiation of Section 106 affordable housing agreements on development schemes that have become unviable[30]. Yet the relative inflexibility of the community infrastructure levy has the potential to impact upon the viability of brownfield sites as it cannot take into account abnormal costs.[31] Whilst it is essential that planning obligations are able to mitigate the impacts of developments, Government guidance identifies that the level of contribution should promote the viability of brownfield sites across the local area.[32]

27 McAllister, P., Street, E. and Wyatt, P. (2013) Shovel ready? An empirical investigation of stalled residential sites. Working Papers in Real Estate & Planning. 11/13. Working Paper. University of Reading, Reading. pp27.

28 Crosby, N. McAllister, P. Wyatt P, 2010. "Fit for planning? An evaluation of the application of development viability appraisal models in the UK planning system" Environment and Planning B: Planning and Design 40(1) 3 – 22

29 London School of Economics, 2014, LSE London response to consultation on Mayor's Draft Housing Strategy, London School of Economics

30 Department for Communities and Local Government, 2013, Section 106 Affordable Housing Requirements: Review and Appeal, DCLG

31 Kerrison, A. 2012 A Guide To CIL: Practice and Procedures, RTPI Delivering Infrastructure Through Planning Conference

32 Department for Communities and Local Government, 2014, National Planning Policy Guidance, DCLG

2.2 Land ownership obstacles

The difficulty of site assembly acts as an obstacle to development on brownfield sites. This issue stems from the complex ownership structures of much brownfield land. There has been little recent nationwide work to examine the extent of this issue; however, in 2001 a study carried out on 80 major redevelopment sites in four major British cities identified that ownership constraints disrupted the development process on 64 of these sites.[33] A key barrier to development is the unknown ownership of brownfield land. In 2009, it was estimated by the Homes and Communities Agency that 20% of brownfield land was in unknown ownership (although it was conceded that much of this was likely to be owned by private individuals).[34] This unknown ownership is a significant obstacle to the delivery of new housing as it is difficult to purchase development sites.

The complex and fragmented ownership of much brownfield land is a complex obstacle that prevents the delivery of housing on brownfield sites. Unlike greenfield land, many brownfield sites suitable for housing development may be broken up in a range of parcels of land owned by a variety of different individuals or organisations.[35] This makes the procurement process of land very complex, with landowners having objectives for the use of the land and differing perceptions about its value. For example, it has recently been identified that in London alone 45% of the permitted homes are in the control of firms that are not builders: firms such as owner-occupiers, investment funds, historic land owners, Government and 'developers' who do not build.[36] These non-builders provide an obstacle to both major and minor brownfield redevelopment schemes as often they do not intend to build out planning permissions or they do not have the expertise or to do so.

2.3 Physical obstacles

Developers are deterred from developing brownfield sites 'when the degree uncertainty exceeds the risks they are willing to take on board.'[37] Brownfield sites, due to previous uses, often have significant abnormal costs that need to be factored into the valuation of proposed development schemes.[38] The most commonly discussed abnormal cost on brownfield land when compared with greenfield land is site contamination. However, it needs to be identified whilst that not all brownfield sites are contaminated they can still carry abnormal costs such as the costs of removing underground obstructions, the demolition of existing buildings and poor quality nature of used top soil[39]. These costs increase the need for expensive site assessments[40] and create additional large costs for developers which can impact upon the viability of a development scheme.

33 Adams, D., Disberry, A., Hutchison, N. and Munjoma, T. (2001) Ownership constraints to brownfield redevelopment, Environment and Planning

34 Homes and Communities Agency, 2009, Previously Developed Land That may be Available for Development, HCA

35 Adams, D. & Hutchison, N. 2000, The urban task force report: Reviewing land ownership constraints to brownfield redevelopment, Regional Studies

36 Molior, 2012, What are the Market- Perceived Barriers to Residential Development in London, Molior London Limited

37 Shepard, J. and Dixon, T. 2004, The Role of the UK Development Industry in Brownfield Regeneration, College of Estate Management, Reading UK

38 Payne, S. 2009, The institutional capacity of the UK speculative housebuilding industry - responding to the brownfield development policy agenda, University of Glasgow

39 Adams,D. and Watkins, C., 2002, Greenfield, Brownfields and Housing Development, Blackwell Publishing Limited, Oxford

40 De Sousa, C., 2000. Brownfield redevelopment versus greenfield development:a private sector perspective on the costs and risks associated with brownfield redevelopment in the Greater Toronto Area. Journal of Environmental Planning and Management 43 (6), 831–853

Land contamination can be caused by many different elements and is often linked to the historical industrial use of land. It is difficult to determine how much contaminated brownfield land there is in urban areas within England, but it has been estimated that there may be around 100,000 sites (both brownfield and greenfield) affected by contamination in England and Wales. It is advised that between 5% and 20% of these may require action to ensure that dangerous risks are decreased. This shows that whilst contamination and brownfield are often coupled in academic analysis of development, it may be that the risk of contamination on brownfield sites within urban areas is less than is often claimed.[41]

The Environmental Protection Act 1990 states that a landowner is responsible for the costs associated with a contaminated site if they have caused or knowingly permitted the contamination of land. However, if these original polluters cannot be found, the responsibility can pass to the current landowner.[42] This approach can be good from an economic perspective as the site remediation could be immediately funded. However, it can act as an obstacle to brownfield development as it can discourage new buyers from buying the land with contamination as this could be linked with the additional cost for land remediation.[43]

In many cases, the existence of contamination can be consistent with the current use of the land.[44] Despite a 'polluter pays' principle, the most common method of remediation is through the town and country planning regime as part of a development project.[45] This method relies on a developer purchasing contaminated land and paying for the remediation of this land as part of a development project. The large cost of remediation is a burden to the developer and can impact upon the viability of a development scheme. The Government has the opportunity to put in place stronger measures that ensure land owners who are known polluters clear up brownfield land instead of relying on developers to do so as part as a development project.

41 Environment Agency, 2002, The State of Contaminated Land

42 Luo, Q., Catney,P.,Lerner, D. 2009, 'Risk-based management of contaminated land in the UK: Lessons for China?' Journal of Environmental Management

43 Wegiel, E. 2010, A Comparative Analysis of the UK and EU Regulatory on Soil Protection, Executive Summary of Ewa Wegiel's MSC Thesis, Imperial College London

44 UKELA, 2014, Contaminated Land, UK Environmental Law Association, Website Available from: http://www.ukela.org/rte.asp?id=35

45 Ibid

The structures of tax relief that aim to aid developers in site remediation are also acting as a barrier to development. The Government offers tax '150% corporation tax relief for certain costs involved in cleaning up contaminated land or if the developer has developed a site that has been derelict since 1998.'[46] However, it has been identified by Civitas that the system of claiming for this relief is complex and it is 'virtually impossible to obtain and the burden of pursuing it virtually insurmountable' meaning that developers often have to pay a high cost to remediate land. The reliance on developers and not polluters to remediate brownfield land, and the complex structure of the tax relief system that aims to facilitate the remediation of these sites is creating a significant obstacle to increased residential development on brownfield land. To facilitate and encourage increased residential development on brownfield land, the Government has an opportunity introduce stronger measures that ensure that the 'polluter pays' for the remediation of brownfield land to make it suitable for developers, and where a developer has agreed to remediate sites a better structure of financial incentive for remediation is essential to facilitate brownfield residential development.

46 Pinsent Masions, 2012, Brownfield Tax Reliefs, Available from: http://www.out-law.com/topics/tax/property-tax-/brownfield-tax-reliefs/

2.4 Planning obstacles

National planning policy is currently inhibiting the amount of development that is taking place on brownfield sites. Previous national planning policy documents have had a strong presumption in favour of residential development on brownfield land, with the use of sequential tests and brownfield targets to encourage the majority of development to be located on brownfield sites. Despite wording that encourages the development of brownfield land; the National Planning Policy Framework does not require local authorities to adopt a sequential approach when allocating land for residential development. This loosening of policy has allowed scope for large amounts of house building on greenfield sites, which are preferred by developers.

Previous research has identified that unusual planning application procedures apply to development on brownfield land. These relate to the documents that need to be submitted to address the areas such as site conditions, contrasting local policy aims and third party interest. Gathering and submitting this information currently mainly falls to the developer, is very expensive, complex and time consuming and is an obstacle to the delivery of brownfield sites.[47]

47 Ganser, R., Williams, K., 2007. Brownfield Development: are we using the right targets? Evidence from England and Germany. European Planning Studies

A second issue that prevents residential development on brownfield land is that local authority planning documents can reserve brownfield land that is potentially suitable for housing for other uses.[48] Although it is essential to ensure that local areas consist of a mix of uses and have a sustainable economy, a significantly high demand for housing exists in many cities where brownfield sites are located. To meet this high demand, local authorities have the opportunity to allocate more brownfield land for housing, particularly in areas that are well connected to existing infrastructure.

Further to this, approximately 45% of local authorities in England have out of date local planning documents that impact upon development control decision making[49]. As brownfield land is a renewable and constantly changing resource, up-to-date planning documents are essential in maximising the amount of housing delivered on brownfield land. CPRE research has revealed that the NPPF's requirement for local authorities to have a statement of five year housing land supply is increasing the amount of residential development taking place on greenfield land. Without this statement, existing housing policies are considered out of date and NPPF states that permission should be granted for development unless adverse impacts outweigh the benefits. This policy has enabled developers to move away from brownfield development and gain planning permission by appeal on greenfield sites that may have been considered unsuitable by local authorities.[50]

In addition, planning consents obtained by non-specialist house builders on brownfield land, which improve land values, often have serious flaws in terms of design which any developer would be forced to amend by renegotiating or submitting a new planning application. The expense of reapplying for a planning permission may create further issues with viability as added expense in both the planning process and will create a higher level of risk to the developer. This has led to 'reluctance on the part of builders to buy development sites where the planning permission was achieved by a non-builder.'[51]

Previous research has also revealed that brownfield sites of under 2ha are often excluded from local authorities planning site allocation documents.[52] However, these sites are often suitable for residential development and have the capacity to supply much needed housing in urban areas. This lack of allocation is acting as a deterrent to brownfield housing delivery as often as volume developers will not develop these sites as they are not profitable enough; the risk and expense of developing an unallocated site is too great for many small and medium sized builders.

48 Ibid

49 Planning Inspectorate, 2014, Preparation and Monitoring of Local Plans, available from: http://www.planningportal.gov.uk/planning/planningsystem/localplans#intro

50 Parsons Brinkerhoff, 2014 (forthcoming), The impact of the NPPF's housing land supply requirements on housing supply and the countryside, The Campaign to Protect Rural England

51 Molior, 2012, What are the Market- Perceived Barriers to Residential Development in London, Molior London Limited

52 Power, A. 2013, Green Social Democracy: Better Homes in Better Places, The Green Alliance

3.0 Future policy options and other mechanisms that can incentivise increased residential development on brownfield land

The barriers identified above are preventing residential development from taking place on brownfield land. The Government has the opportunity to implement policy mechanisms that can encourage and facilitate increased development on these suitable brownfield sites. Four potential mechanisms are identified in this section.

3.1 The taxation of uncompleted housing for which planning permission has been granted on brownfield land

In March 2013, it was estimated by the Local Government Association that there were approximately 6,500 unimplemented planning permissions in England with a capacity for approximately 381,390 residential units.[53] There is an incentive for some landowners/developers (particularly those landowners who do not have the ability or experience to carry out development) to gain planning permission and sit on land to benefit from movements in land value. Such a tactic can be profitable and trading land carries less risk and expense than development. Previous research has shown that due to a variety of factors, possibly including speculation, the average time for individual development schemes to be completed from the granting of planning permission has increased to over two years.[54]

It is accepted that developers need to retain a land banks as part of business strategy. However, to discourage the type of speculation identified above, there is the opportunity for Government to 'permit the levying of local charges'[55] on unimplemented planning permissions where it is clear that a developer is holding the land to increase value. This mechanism has been previously championed by London Councils who identified that in July 2013 there were 124,247 homes that had planning permission in London but which had not been built. In 2010, London had land with planning permission valued at approximately £12 billion. If an undeveloped land tax was levied on land where planning permission had been agreed for housing and just 5 per cent of these homes were started each year, this could lead to an additional 26,825 homes being built over a five year period.[56]

[53] Spratt, L. 2013, An analysis of unimplemented planning permissions for residential dwellings 2013, Local Government Assocation.

[54] Ibid

[55] Crowe, D. and Howell, S. 2013, Clearing the Hurdles Freeing localities to boost national growth, Localis

[56] London Councils, 2013, The London Housing Challenge: A London Councils Discussion Paper, London Councils

The Planning Officers Society identify that a simple way of encouraging developers to speed up the delivery housing is to 'charge council tax on permitted dwellings (say) 24 months after planning permission is granted if the development has not commenced.'[57] Charging council tax on the completed property values of sites with planning permission will encourage developers to speed up development completions, reducing speculation, and will ensure that developers are keen to finish and market development quickly which can increase the level of housing supply.

[57] Linihan,N. 2014, The Lyons Housing Review: Call for Evidence, Planning Officers Society

However, as identified above, developer/landowner speculation on rising land prices is not the only reason that planning permissions remain uncompleted. If a developer considers a scheme to be unviable, they will not complete a development to operate at a loss, and will instead wait until more favourable market conditions raise house prices to make the scheme viable or seek to renegotiate the terms of the planning permission. If applied, the taxation of undeveloped brownfield housing for which planning permission has been granted should be discretionary and take into account the viability of individual development schemes.

3.2 Improved funding and assistance for brownfield remediation

To alleviate the barrier of contamination on brownfield land, the Government has the opportunity to clarify measures that attempt to ensure that the polluter of site pays for the cost of remediation. The Environmental Protection Act requires local authorities to produce a written strategy for inspecting contaminated sites within their area. If heavy contamination is found they have a duty to remediate the sites, and to ensure this happens, the local authority can serve a remediation notice to the responsible landowner. However, despite the responsibility that a polluter or site owner has for the contamination of their land, these orders are often not served because 'they are viewed as very prescriptive and difficult to write correctly (in accordance with legal standards), and are generally seen as a weapon of last resort when negotiations between regulators and 'appropriate persons' have failed.'[58]

[58] Luo, Q., Catney,P. , Lerner, D. 2009, 'Risk-based management of contaminated land in the UK: Lessons for China?' Journal of Environmental Management

Whilst it may be difficult to trace the original polluter of a site if contamination is historic, the Government has the opportunity to clarify how remediation notices can be served by local authorities by the use of templates and case studies. This has the potential to stop the over reliance on developers to pay expensive remediation costs and can make contaminated brownfield sites more viable for increased housing delivery.

Currently, the only Government funding and assistance for brownfield remediation that English landowners and developers receive is tax relief on profit. This takes the form of an 150% corporation tax relief for certain costs involved in cleaning up contaminated land or if the developer has developed a site that has been derelict since 1998. However, the way the tax is calculated leaves the landowner or developer carrying out remediation with large costs. It has been identified by Civitas that 'with corporation tax at 20 per cent, the 150 per cent claim for qualifying expenditure of Y would generate a tax saving of 1.5 × Y × 0.2, which equals 0.3 times Y, or 30 per cent of the qualifying expenditure, ten per cent additional tax relief, leaving the developer still to absorb the crippling remaining 70 per cent of the cost'[59] . This burden falling to a landowner or a developer is often enough to make a site unviable for development, and therefore the site remains vacant and contaminated.

American states offer strong taxation relief that facilitates the remediation of brownfield sites. For example, if a development meets certain criteria in terms of housing and employment delivery, certain state Governments such as Missouri will offer 100% taxation relief via credits on the expense of remediation for contaminated sites and the demolition of existing buildings on those sites. This is generous compared with the English structure of taxation of brownfield remediation outlined above, and to facilitate and encourage brownfield development, the Government has the opportunity to adopt similar taxation structures.[60]

The Government also has the opportunity to improve liability relief to developers who have carried out remediation on brownfield land. In England, it is notoriously difficult to obtain a definitive sign-off from the Environment Agency that will give complete certainty that no more remediation work will be required later.[61] American states have a strong history of successfully offering developers incentives for redevelopment and remediation of brownfield land. These can take the form of liability relief where often a state will take responsibility for remediation after it is carried out by developers by offering letters of no further action, certificates of clean up completion or covenants not to sue.[62] The Government can put in place similar policies regarding liability to lower the risk for organisations carrying out remediation and facilitate the development of brownfield housing.

59 Haslehurst, P. 2014, Restoring Brownfield Sites in Our Inner Towns and Cities, Civitas: Issue 10 May 2014

60 Missouri Department of Economic Development, 2014, Brownfield Redevelopment Program, Missouri State, Available from http://www.ded.mo.gov/BCS%20Programs/BCSProgramDetails.aspx?BCSProgramID=3

61 Haslehurst, P. 2014, Restoring Brownfield Sites in Our Inner Towns and Cities, Civitas: Issue 10 May 2014

62 Alberini, A., A. Longo, S. Tonin, F. Trombetta, M. Turvani (2005) "The Role of Liability, Regulation and Economic Incentives in Brownfield Remediation and Redevelopment: Evidence from Surveys of Developers," Regional Science and Urban Economics

It is essential that the Government also needs to offer better direct financial incentives to improve the remediation of brownfield land. Government funding which aims to increase housing supply, such as the 2001 'Get Britain Building' fund, has not differentiated between increasing the supply of housing on greenfield or brownfield land. Whilst it is recognised that the Government has released details of a brownfield development fund worth £200 million, the target of providing 200,000 homes is woefully short of reaching the full capacity of brownfield sites. The Government has the potential to set up a better structure of direct grants that can help deal with issue of physical obstacles that are preventing brownfield development.

However, asking the community to pay for remediation, whether through tax relief or direct funding, should be a last resort to facilitate brownfield regeneration in the public interest where development would otherwise be unviable; the default position should be that remediation is in the first instance the responsibility of the polluter, and after that the responsibility of those that will profit from the development.

3.3 Special planning measures and state intervention to aid in delivering brownfield sites

While national planning policy encourages development on brownfield sites, there is no longer a sequential approach in the way that land is allocated for housing. To discourage developers from building residential development on unsustainable greenfield sites, it is essential that national planning policy sets out a sequential approach to land allocation which prioritises brownfield land.[63] Whilst this would be the most effective way of encouraging residential development on brownfield land, two special planning measures can help overcome planning and land ownership barriers that can act as obstacles to development.

[63] The Campaign to Protect Rural England, 2014, Community Control or Countryside Chaos? The effect of the National Planning Policy Framework Two Years On. CPRE

Local development orders

A policy option that has the potential to encourage brownfield development is the provision of Local Development Orders (LDOs) on such sites. This has been championed by the current Government and on 11 June 2014, it was announced the Government would focus on using LDOs on brownfield land that is suitable for housing with the aim of facilitating development on more than 90% of this land by 2020, providing up to 200,000 new homes.[64]

[64] Osborne, G. 2014, Mansion House Speech, Available from: https://www.gov.uk/Government/speeches/mansion-house-2014-speech-by-the-chancellor-of-the-exchequer

The 2008 Planning Act encouraged the use of LDOs by removing the requirement for orders to achieve policies set out in adopted local planning documents. LDOs work by local Government granting planning permission for the type of development specified in the Order, and by doing so, removes the need for a planning application to be made. It is assumed that these local development orders for residential development on brownfield land will apply only to specific brownfield sites and grant planning permission only for residential development of a certain type and mix subject to conditions.[65]

The planning process, especially on brownfield sites, can be complex, expensive and time consuming with the risks borne entirely by the developer. LDOs can effectively remove the planning risk from the development process as the premise of development has been accepted by the local planning authority and no documents need to be submitted by developers. While it does not mean that brownfield development will be viable or overcome land ownership issues, this removes nearly all planning uncertainties in the development stage and can speed up the development process.[66]

However, previously LDOs have focused mainly on commercial use in areas that have been zoned for enterprise. The delivery of new housing can be a controversial subject and there is a need for consultation with a range of parties (including communities living adjacent to the proposed development site, ecology experts, etc.) that needs to be carried out to ensure that development that would be permitted by the order does not cause harm that would have been picked up and mitigated through the normal planning process.

The lack of assessment of applications and submission of documents means that a design code which embraces the local character of areas will need to be implemented to guide developers to deliver housing which is acceptable. This design code will also need to set out information regarding the optimal mix of housing to meet demand in local areas.

For most effective use of LDOs it is essential that the Government release good practice guidance on consultation and the creation of design guides that can underpin specific development proposals and ensure that the homes delivered are appropriately located, well designed to high environmental standards, and meet local needs.

It should be noted that the existence of an LDO does not prevent the submission of planning applications for development departing from the specifics of the Order: they are a permissive and facilitative tool.

65 Planning Advisory Service, 2014, Local Development Orders, Available from http://www.pas.gov.uk/45-local-development-orders

66 Ibid

Compulsory purchase orders

The ownership barriers such as multiple and unknown ownership discussed above drive the case for Government intervention which can ensure that housing is delivered on these complex brownfield sites.

Central and local Government can already use Compulsory Purchase Orders (CPOs) to 'improve the supply and quality of housing in England'.[67] CPOs are non-negotiable legal orders to sell land at a set level of compensation.[68] Local authorities have the opportunity to make a CPO where they can make a compelling case that development of a parcel of land is in the public interest (for instance the regeneration of degenerated areas of cities). Often the threat of compulsory purchase can make existing landowners on complex sites more willing to sell land as the levels of compensation given may be lower than the land bid from an existing developer. However, if landowners are not willing to sell, this mechanism can be an effective way of de-risking the land purchase stage of brownfield development land.[69]

There are some significant issues that impact upon the efficiency of CPOs. A key problem with urban CPOs is that there are generally widespread objections from property owners. These objections result in the significant postponement of the process while a CPO inquiry that assesses evidence from both the local authority and objectors is held, and at the end of the inquiry a decision is made on whether to confirm, modify or reject the order. It is a complex legal process that remains 'lengthy and expensive' and as a result is only utilised as a 'last resort'.[70] Often a local authority does not have the resources to carry out the CPO process on their own so they rely on funding from developers to deliver projects, this can lead to confusion over the reasoning for compulsory purchase which should be used to regenerate and develop areas inclusively rather than set up as a profit-oriented development scheme.[71] CPOs are also open to challenge by existing landowners and this further delays the process of development.

There is no doubt that CPOs have the potential to overcome land ownership, physical and planning barriers to encourage residential development on brownfield land. However, due to the high level of resources needed and the legal background of CPOs, they are typically a long drawn out measure that can take years to develop housing. Government has the potential to use CPOs more frequently, but better guidance and templates need to be given to local authorities so that the process of issuing a CPO is facilitated. Government may potentially also need to give more funding to the CPO process due to the high legal expenses that are associated with this method.[72]

67 Department for Communities and Local Government, 2010, Compulsory Purchase and the Crichel Down Rules, Circular 04/2010

68 Griffiths, M. and Jefferys, P. 2013, Solutions for the housing shortage: How to build the 250,000 homes we need each year, Shelter

69 Crowe, D. and Howell, S. 2013, Clearing the Hurdles Freeing localities to boost national growth, Localis

70 Adams,D. and Watkins, C., 2002, Greenfield, Brownfields and Housing Development, Blackwell Publishing Limited, Oxford

71 Ibid

72 Town and Country Planning Association, 2007, Unlocking Public Land for Housing Supply, TCPA

3.3 The introduction and use of tax increment financing

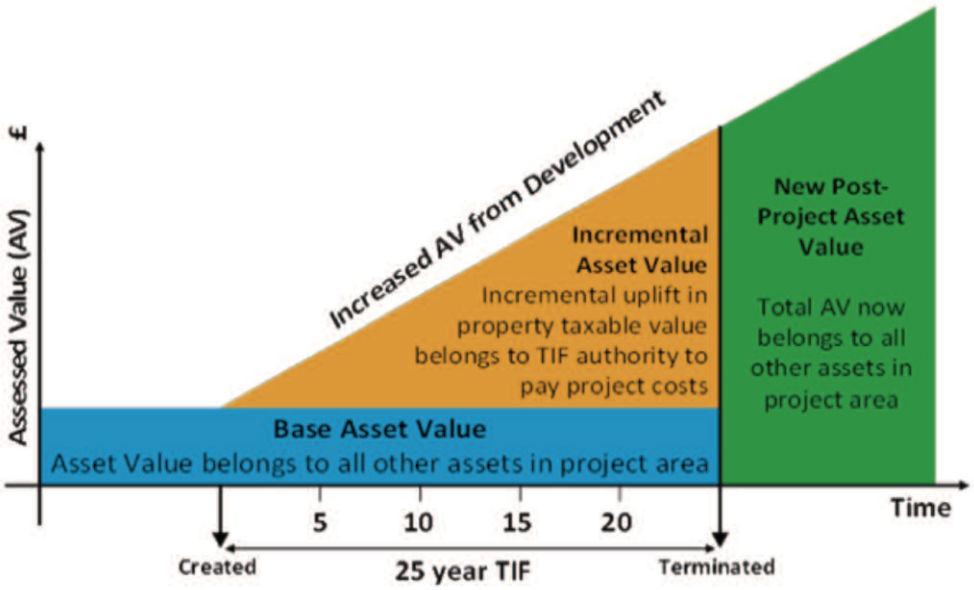
A longer term instrument that can increase the number of houses delivered on complex brownfield land is 'tax increment financing' (TIF). TIF is a mechanism that recognises that the supply of new or improved infrastructure or housing usually leads, directly and indirectly, to an increase in property values, and hence the potential level of taxation generated in the surrounding area. TIF can allow local Government to fund new housing and infrastructure by allowing the trading of future anticipated tax income for a present benefit. This future anticipated tax income is used to fund the infrastructure that is being provided and financing debt issued to pay for the project is returned over a set timescale.[73] Figure four below identifies how TIF works.

[73] British Property Federation, 2013, Tax Increment Financing, BPF Available from http://www.bpf.org.uk/en/files/bpf_documents/finance/BPF_TIFS_Paper_Final_A4

Figure Four : A Diagram to Show the Workings of Tax Increment Financing)

(Source: Professor Kevin Ward, University of Manchester)[74]

[74] Ward, K. 2012, Tax Increment Financing – a model in motion, The University of Manchester: Cities in Motion Available online at http://citiesmcr.wordpress.com/2012/04/30/tax-increment-financing-a-model-in-motion/



This mechanism has the ability to unlock complex brownfield sites where developers have previously considered the delivery of new infrastructure and particularly housing has not been possible. Borrowing against the future asset value can ensure that there is funding to pay for both the remediation of land and the delivery of new housing which can incentivise developers. Typically, in countries where TIF is commonly used, such as the United States, it has been most successfully used to finance development on contaminated land or land in need of significant regeneration with large abnormal costs. While tax increment financing has been successful in America, there has been little precedent for using it in England (indeed the extension to the Northern Line in Battersea has been the first scheme to use TIF). This means that the legal framework for TIF is relatively immature and there are key barriers that may prevent the successful implementation of such a scheme. For instance, the British Property Federation has identified that the system of paying business rates back to central Government before they are redistributed means that the proceeds of business growth are not retained at a local level. These business rates cannot be used to repay any borrowing used to promote economic development because they are paid directly to central Government. This denies any long term certainty over the revenue stream required to fund tax increment financing.[75]

[75] British Property Federation and Local Government Association, 2012, Unlocking Growth through Partnership, BPF and LGA

However, if measures were put in place to secure the revenue stream for at least 25 years, councils would be more likely to be able to pursue TIF. The British Property Federation suggest that there would be significant economic benefits for Government if they were to permit ring-fencing of business rates growth by local authorities if there was evidence that investment would produce growth that is genuinely additional due to the implementation of a TIF scheme. For TIF to be implemented and used to generate housing on complex brownfield sites it is essential that there is a legal framework that facilitates its use in providing the funding, and that clear national guidelines and frameworks are put in place for local authorities to be able to assess whether a development scheme can successfully use TIF. Please see the case study at the end of this document for an example of TIF working effectively to deliver both market and affordable housing on brownfield sites in Chicago, Illinois.

Conclusion

This paper has been produced to contribute to the debate as to how it is possible to overcome the obstacles and increase the amount of housing delivered on brownfield land in England. These sites have the capacity for over 1.8 million new homes if used effectively, and development on these sies has the ability to be vital in solving the housing crisis. However, it is clear that in recent years the proportion of housing delivered on brownfield land has been falling and high levels of development are taking place on less sustainable greenfield sites. This is at least partially the result of significant obstacles that prevent the development of brownfield sites. Much brownfield land is considered unviable by developers because of the high risks, costs and complexity associated with its development. The complex ownership structures of much brownfield land make the purchase of land difficult and prevent the delivery of a significant amount of housing. Physical obstacles relating to the previous use of brownfield land, and the reliance on developers to remediate land can block development from taking place. Current national planning policy is also acting as an obstacle to development due to the lack of a sequential approach that prioritises brownfield land and out of date local planning documents are failing to realise the potential of brownfield sites.

While the focus on brownfield development in George Osborne's Mansion House speech and the recently announced £200 million fund to aid in the delivery of 200,000 new homes in 30 new housing zones on brownfield land throughout the country (with the exception of London) is welcome, this mechanism will not ensure that the 1.8 million homes that can be delivered on brownfield land that is considered suitable for housing will be delivered. To overcome the key obstacles that are preventing residential development on brownfield land and ensure that this land is used to its full capacity, the Government has the opportunity to implement the identified policy mechanisms.

Summary of Policy Options for Discussion

1. **The taxation of uncompleted housing for which planning permission has been granted:**
   Charging council tax on the completed value of housing for which planning permission has been granted after two years on brownfield sites

2. **Improved funding and assistance for brownfield remediation:**
   Improved structures for taxation relief and liability

3. **Special planning measures and state intervention to aid in delivering brownfield sites:**
   Better clarity and improved use of local development orders and compulsory purchase orders to facilitate brownfield development

4. **The introduction and use of tax increment financing:**
   The use of tax increment financing to fund development on brownfield land

Good Practice Case Study 1.

Tax Increment Financing to deliver Housing In Chicago, Illinois

- Tax increment financing has been a successful source of funding the development of market and affordable housing in Chicago, Illinois. The mechanism has gained approximately $278 million worth of funding to support nearly 11,000 affordable housing units.

- The state of Illinois facilitates the development of housing by allowing allocating districts of land that Tax Increment Financing can be utilised on. These areas of land are often identified to be suffering from 'blight' which created a need for regeneration.

- In terms of funding housing delivery on Brownfield land, funding from tax increment financing to cover up to half of construction costs of an affordable housing development. It also allows developers to use TIF funding money to write off 75% of interest costs associated with the assembly of a project. This can include "acquisition of land and other property, real or personal, or rights or interest therein, demolition of buildings, clearing and grading of land, and other site preparation costs."

- TIF revenue can be combined with other sources of finance by developers in Chicago to create diverse developments which include a mix of types of housing. For example, TIF revenue can be used to develop 'new rental housing, condominiums, and single-family housing. This housing can be both affordable and market housing.

- Importantly, a main objective of the use of TIF in Chicago is to support the use of infill development and the rehabilitation existing buildings in the allocated district. Chicago is a strong example of how TIF can unlock funding for the provision of both market and affordable housing on brownfield land that otherwise may not have been developed due to the complexities requiring large scale upfront funding.

(Case Study Information Taken From: www.CityofChicago.org

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The former Deacon Trading Estate at Earlestown, an 11.3 hectare site, was granted outline planning permission in 2010 for 440 residential units in a variety of house types plus 3,000 square metres of commercial floor space for small industrial and/or office units. The development never started, perhaps due to the recession, however an extension to the planning permission, valid for 3 years, was granted in March 2014. As we went to print, an application had been made to develop houses on the land.

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We aim to defend the countryside from damaging development by:

- influencing national and local planning policy relating to housing
- promoting appropriate brownfield development
- promoting examples of sustainable urban and rural development and good practice
- influencing the approach of the Government towards the countryside and planning

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Campaign to Protect Rural England
Standing up for your countryside

HOUSING FORESIGHT

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