



Tax Incentives for Development of Brownfield Land: A Consultation

Regeneration Incentives Group

Report - June 2007

This report has been prepared by Davis Langdon Crosher & James in order to provide a coordinated industry response to Tax Incentives for Development of Brownfield Land: A Consultation (March 2007). It has been submitted on behalf of the Environmental Industries Commission to the Treasury and therefore represents the interests of key industry stakeholders and interested parties from the brownfield sector. The contents have also been endorsed by the British Property Federation.

1.0 INTRODUCTION

1.1 Executive Summary of Recommendations

For each chapter, the following summary of recommendations is provided.

Section 1 - The Challenge of Long-term Derelict Land

- Implement a tiered structure for an extended relief, allowing retention of the existing Land Remediation Relief (LRR) for all sites, providing additional help for long-term derelict sites at an enhanced rate, with the potential for increased help on a geographical basis.
- Qualifying costs should not be too prescriptive, but structured in a similar manner to that of the current LRR legislation. Recommended types of expenditure to be targeted by an extended relief should include:
 - works necessary to remove the legacy of previous use
 - extra over geotechnical substructure solutions (arising from natural site characteristics)
 - costs of providing services and infrastructure
 - flood mitigation costs
 - planning permission associated costs.
- Registration on the National Land Use Database (NLUD) should not be a condition for the enhanced relief, although sites registered prior to enactment of the extended relief should automatically qualify.
- Irrespective of the above, from the date of enactment, qualifying sites should be determined through clearly defined entitlement conditions.
- For any changes in the LRR scheme, a focused effort on increasing awareness is imperative, particularly in relation to the NLUD and its role (if any) in the application process.
- A fixed date of the 31st March 1998 is generally acceptable as a starting point for non-use, providing that it is regularly reviewed to ensure that more 'new' target sites are included.

Section 2 - Focusing on Development

- Any modifications that remove the entitlement for LRR from specialist remediation organisations would - as a consequence of their willingness to undertake complex remediation contracts - be regressive and contrary to the intentions of the tax relief as a form of incentive.
- Care should be taken when considering any changes to LRR to ensure that the remediation of land for use as public space, or consciously retained without buildings in the interests of regeneration, remains to be incentivised.
- Refurbishment is an intrinsic part of development because it contributes to improving the quality of the built environment, extending economic life and sustainability. The treatment and/or removal of recognised contaminants, such as asbestos containing materials, in the course of refurbishment activity should remain as LRR qualifying expenditure. Any changes to this position are strongly resisted.
- Aligning LRR with Planning Gains Supplement (PGS) would be to the detriment of remediation specialists and hence is strongly resisted.

Section 3 - Land Remediation Relief and the Timing of the Relief

- Receipt of the LRR benefit should be accelerated so that it is more closely aligned to project cash-flow and the point at which expenditure is actually incurred.
- A tax-credit or revenue deduction for work-in-progress method is preferred.
- Market perception is that this method should be no more open to abuse than other corporation tax measures.
- Increase confidence in the market place by providing a guarantee that the legislation in place at the point of purchase would form the basis of entitlement for the tax relief, not the legislation in place at the time expenditure is incurred or claimed.
- Exercise caution with respect to insisting on LRR being explicitly factored into investment purchase decisions, particularly those based on residual valuation methodology. It is more important to ensure that funds remain available for brownfield development rather than potentially falling out of the system through the payment of higher land prices to landowners.

- Factoring in the tax benefit into the purchase price should not be a barometer of success of the legislation. Increased activity and increased post-tax profits/earnings per share of those organisations engaging in these fundamentally risky investments is more meaningful in real terms for delivering the brownfield agenda.

Section 4 - Japanese Knotweed

- Japanese Knotweed (JKW) is clearly a contaminant and meets the LRR legislative eligibility criteria. Clear statement and inclusion of this position would be welcomed.
- Other pernicious weeds should not be excluded explicitly from LRR eligibility, as there are other contaminating plants with the potential to cause harm that can be a barrier to development.

Section 5 - Landfill Tax and the Contaminated Land Exemption

- Landfill Tax Exemption (LFTE) should be retained for contaminated sites that necessarily require off-site disposal within the remediation strategy for development to take place. Without this provision, there is a genuine risk of these sites falling derelict.
- Transitional arrangements should allow for sites currently underway with an exemption, and those purchased prior to the date of effective withdrawal, to be unaffected by any change in policy. A time limit of five years after the point of purchase for an LFTE application should be applied.
- Additional funding should be directed at:
 - Research and Development (R&D) of more alternatives to off-site disposal
 - funding demonstrations and awareness to build industry confidence and increase uptake of new technologies
 - establishment of more soil hospitals and associated fiscal incentives such as enhanced capital allowances for plant/machinery and Stamp Duty Land Tax (SDLT) reductions for soil hospital land
 - implementing the cluster-zone approach for smaller sites.
- Clear criteria need to be set for judging the environmental impact of techniques, with the potential for offering additional incentives for use of the low scoring options.
- Carbon footprint of remediation methods is increasingly a concern in light of the current climate change agenda, and therefore should be investigated further, particularly with a view to forming future financial incentives on this basis.

Section 6 - Land Remediation Relief Generally

- All types of parties involved in remediation activities should be able to benefit from LRR, not just incorporated businesses as at present.
- Overhead costs for in-house remediation works should be qualifying expenditure as is the case currently for the overhead costs of an external contracted party.
- "Innocent" polluters should be entitled to claim LRR.
- Awareness of LRR in the market place is still a problem, hindering its uptake and effectiveness. The need to address this reality persists.

1.2 Methodology

Data collection and evidence for this response has been fielded from four primary sources:

- Interviews with leading national housebuilders and private developers.
- Questionnaire responses from environmental consultants and remediation contractors.
- Consultation specific discussion groups with key industry representatives and stakeholders.
- LRR claim experience and data from Davis Langdon Crosher & James clients.

Response Structure

The response basically follows the sections as laid out in *The Consultation* document, addressing the five specific issues:

- The Challenge of Long-Term Derelict Land
- Focusing on Development
- Land Remediation Relief - Timing of the Relief
- Japanese Knotweed
- Landfill Tax and the Contaminated Waste Exemption.

Each chapter contains the following sub-sections:

1. Introduction - a summation of the Government's presentation of the key issues.
2. Understanding the Issues - an analytical examination of the issues presented, clarifying understanding of the fundamental elements to the discussion and raising additional points to assist answering the questions.
3. Questions, Comments and Observations - Every section will address *The Consultation* questions, and record general comments and observations gathered from customers and claim data. However, the order of these within the sub-section is variable between sections necessarily because of the natural path the discussion took. Hence in some instances, the Treasury's specific consultation questions are best answered following consideration of initial market place observations and feedback. Similarly, some responses raised important observations in answering the questions first. Consequently, the presentation is flexible within this sub-section, in order to suit the logic and nature of the particular discussion.

Where available and appropriate, quantitative evidence gathered from the feedback is provided to support the observations and comments. In addition, consideration has been made where possible, of how suggestions might work from a legislative perspective.

4. Summary – Each Section ends with a summary of the key points made.
5. Recommendations – Recommended actions are provided for future legislative modifications to brownfield tax incentives.

Finally, the response closes with some general observations about the current LRR scheme and concluding comments looking forward.

2.0 ISSUE 1: THE CHALLENGE OF LONG-TERM DERELICT LAND

2.1 Introduction

The Government is considering extending the current existing LRR scheme to provide additional help for long-term derelict land. Targeting such sites has been identified within the 2004 Barker Review of Housing Supply as a measure to improve the potential supply of land for meeting the housing stock demand. In addition, there is recognition of the positive effects on urban regeneration when land is brought back into use.

Given this context, the Treasury is focused on the primary problem of defining and identifying the specific sites to benefit from an extended LRR scheme. The second challenge is to understand what costs are a barrier to development on these sites and should therefore be qualifying under any new legislation.

2.2 Understanding the Issues

Without doubt, it is extremely difficult to be generic about a multitude of unique sites and bespoke, complex situations that typify long-term derelict sites. In order to attain meaningful responses to the challenges posed, it is necessary to understand and reframe the problem for customer feedback.

To restate the problem presented in *The Consultation*, the aim is to “deal with issues associated with or arising from long-term dereliction” and “ensure that relief is accurately targeted...removing barriers to development caused by dereliction”. In speaking to customers about dereliction, the fact that a site is not in use, and may not have been for an extended period of time, does not in itself present a barrier to development. There are no actual costs directly and necessarily linked with the reality of dereliction that can be listed. Dereliction therefore presents a very different challenge as compared to that of contamination.

Contamination is clearly a barrier to development in that it can be said that ‘a site is not in use because it is contaminated’. It is nonsensical to similarly state that ‘a site is not in use because it is not in-use’. This is not simply a case of semantics, but a fundamental difference between the two issues. Dereliction is a symptom of non-development evidenced by disuse, whereas contamination is a cause of non-development. Thus to understand the development barriers associated with dereliction, the causes first need to be recognised. From this base, the generality required for structuring an extended tax relief scheme arises.

2.3 Questions, Comments and Observations

2.3.1 Causes of Dereliction

With the above understanding of dereliction as a symptom, not a cause of non-development, respondents were first asked to consider the primary reasons underlying long-term derelict sites, ranking them in order of importance (using scores of 1-10). The results are shown in the chart here:



Figure 1: Primary Reasons for the Long-Term Dereliction of Sites

Respondents were also given the opportunity to offer other reasons for dereliction. The following additional reasons and/or explanations were provided:

- low economic activity in the area (as a factor of location)
- size of the site
- planning policy at a local and national level
- wildlife considerations and species/habitat protection
- geotechnical reasons (naturally occurring as opposed to legacy of previous use).

2.3.2 Analysis of Results

The data provided in Figure 1, as a total score, provides a simplistic understanding of the perceived importance of some factors. Further analysis of the top five, combined with explanatory comments gathered from the interviews provides important further insight.

Location

The most common influencing elements to location that would encourage or discourage development were: a) the level of economic activity: b) surrounding uses: c) accessibility. Fundamentally, a site needs:

- a demand to exist for a sustainable use in the locale
- to be complimentary to existing/future uses in the locale
- to be accessible (transport and services).

...in order for it to be - and remain to be - occupied post-development.

Legacy of Previous Use

Whilst this can and does include contamination, there are numerous other barriers to future development, which can arise from previous uses. In particular, the largest costs of this type tend to be geotechnical in origin. For example:

- underground obstructions are frequently costly and time consuming
- made ground/low quality and uncontrolled imported inert fill on site necessitating more complicated and therefore expensive foundation and substructure solutions
- stabilisation of ground, mine shafts and industrial excavation activities
- presence of existing structures that are to be retained in the future development limiting design solutions and increasing costs.

Other (non-geotechnical) costs typically arising from previous use include:

- demolition and removal of existing buildings, structures and the like to eliminate legacy of previous use
- contamination remediation
- diversion, removal and/or upgrade of services.

Planning Permission Constraints

Difficulties in achieving planning consent were frequently cited as an obstacle to development. Respondents regularly complained about an overburdened, cumbersome planning system, which is not news, but does need to be explicable linked as a contributory factor to long-term dereliction. Prioritisation of long-term derelict land within planning departments, alongside financial incentives is key to bringing these sites back in to supply.

A good example of the types of planning barriers being faced was given by a leading housebuilder who continues to pursue planning consent for a large derelict former military site with complex contamination issues. Over the past ten years, planning permission has been refused for what can only be generally understood as a case of NIMBY-ism! Whilst financial assistance will help to bring more sites forward, planning departments could prevent any real progress being made.

Ownership/Stakeholder interests & Conflicts

Interview responses revealed close links between these two factors. Most highly ranked responses tended to come from respondents who were involved in large-scale development schemes, with further reaching impacts on the community and environment. Acquiring crucial plots and piecing together individually owned land, to create the total site for a project could leave some sites dormant and seemingly inactive for prolonged periods of time. In addition, they have more stakeholders and interested parties to satisfy, which complicates and hinders planning applications, bringing delay in to the development process.

Flood Risk

Of the top five, flood risk had the widest spread of results, with ranking ranging from 1-9. Insight from respondents indicates that this distribution possibly stems from the geographical area of work of the respondent. Some locations and regions naturally carry a greater flood risk than others, and hence the results are not necessarily a straightforward reflection of the potential for flooding to be a barrier to development.

Interviewed persons agreed that when a site is in a high flood risk zone, the costs can and do regularly threaten the viability of a site, because flood prevention measures are expensive additions to normal build costs. Thus it is important to recognise that where flooding is an issue, there will be significant additional costs incurred by a developer, and these can be, and frequently are, on a scale capable of making a site undesirable for development. One national housebuilder stated that they actively avoid purchasing sites in flood plains because of the inevitable additional expense involved.



Interviewees further commented that this position has worsened since the introduction of PPS 25 with its more stringent planning requirements for flood plain development.

2.3.3 Application of Understanding

The greater understanding of the causes of dereliction enables a picture of how an extended relief system could be targeted. The nature of some of the causes cited relate to physical characteristics/manifestations on the site as opposed to being of a socio-economic variety. For example, flood prevention costs and geotechnical solutions are necessary factors because of the physical characteristics in a way that location and planning factors are not. The ‘physical’ causes are more naturally suited to providing qualifying costs, whereas the others could be construed as entitlement criteria.

A proposal of how this might work is provided below.

2.3.4 Possible Structure of Extended Relief – A Tiered Approach

The implied structure of an extended LRR scheme within *The Consultation* document is an addition of categories of qualifying expenditure for eligible long-term derelict sites at the same rate of 150% for these categories. Whilst this has a theoretical simplicity that is appealing, there are two important points to note:

- If a site is long-term derelict with contamination issues resulting from a previous use, under the proposed extension mechanism, there will actually be no incentive for that site which is not already available.
- Under the current LRR legislation, would the landowner allowing persistent dis-use have a liability as the “polluter”, engendering difficulties and confusion around entitlement?

A tiered, rather than a broadening approach to modifying the current LRR has the potential to add enhanced relief for long-term derelict sites, including those with contamination issues, whilst retaining the current scheme, without significant alteration. This could be structured as follows:

- For all contaminated sites, the existing 150% incentive remains.
- For long-term derelict sites, an enhanced rate of relief (e.g. 200%*) for a wider list of qualifying expenditure, including costs arising from contamination could be offered. Entitlement to this enhanced relief would be as per the agreed definition of a long-term derelict site (see below).
- Either as an additional entitlement condition or as a third tier of additional relief (e.g. 250%*) to be applied if the site is within defined target geographical areas (e.g. Midlands and North of England with the most long-term derelict land). Consistency with Business Premises Renovations Allowance (BPPRA) is strongly encouraged to aid implementation of this suggestion.

(* NB: the percentages used are for illustrative purposes of the structure only.)

Whilst it is recognised that this structure may cause difficulties in terms of European State aid rules, the correlation between geography and dereliction should not be ignored. The importance given to location as a cause of dereliction highlights the fact that it is at the very heart of regeneration issues. Again, consistency with the precedent on these lines set by BPPRA could make this a workable option.

However an extended LRR scheme might look, it is imperative that consistency with the existing contamination scheme be retained. Publicity and awareness of LRR is still a serious issue currently and to completely change the mechanism could be more harmful than productive.

2.3.5 The Consultation Questions

Q: Are there any other qualifying criteria for long-term derelict sites that should be explored?

A: In terms of defining a site as long-term derelict, the following comments were made:

- “Long-term” as a name for the target sites necessitates a time element to eligibility for extended relief. Proof of disuse from a fixed point in time could work on a self-assessment basis.
- This qualification criterion alone would limit the number of eligible sites, and any more recently derelict, key sites would be excluded.
- A regular review of the fixed date every two years could address this problem.
- No specific problems have been raised regarding the choice of 31st March 1998 as the fixed point in time. However, it has been commented that this requires approximately twenty years of abandonment to be classified as long-term derelict, when ten or even five years is considered to be an unacceptable period of disuse of a scarce resource. Furthermore, the longer the period of disuse, the greater the impact on the surrounding area.
- The alternative eligibility criteria for long-term derelict suggested is the presence of land in a vacant state on the NLUD. The idea of having a defined list of eligible sites is appealing to most.
- However, there is confusion about how a site gets registered and the criteria that it has to meet in order to be registered as derelict. Potential concerns that arise about NLUD, as a result of inadequate information on registration are:
 - should the same information be required to evidence disuse, as for a self-assessment approach, there is no incentive to register
 - if landowners only register sites, some developers will not be entitled to claim because they do not have the requisite legal interest in the land. A self-assessment route must therefore be available to non-landowning developers
 - NLUD does not cover the whole of the UK
 - registration on NLUD must be achievable in a short period of time that does not hinder the development process and should be capable of negotiation retrospectively.

Q: What costs represent a barrier to the development of long-term derelict land and would be suitable for inclusion in any extension of land relief to long-term derelict land?

A: This question has largely been answered above, in relation to the more ‘physical’ causes of dereliction. The table below examines the costs that would be most suitable for inclusion as qualifying expenditure. However, as with any legislation, well defined terms will be necessary to ensure that only targeted expenditure is eligible for relief.

Cause	Examples*
Legacy of previous use	Contamination treatment; demolition of buildings; removal of obstructions; stabilisation of made ground, mine shafts etc.
Naturally occurring geotechnical characteristics	Extra-over costs for sub-structure solutions arising directly from the geotechnical properties of the site e.g. stabilisation costs; additional pile lengths to reach capable load bearing ground etc.
Service and infrastructure provision	Utility upgrades; service diversions; road constructions etc.
Flood Mitigation Costs	Raising site levels; flood barriers; sustainable drainage systems, PPS2S compliance costs, etc.
Planning costs associated with bringing a site into a developable state	Planning application costs; feasibility reports; site investigations and surveys (including aborted measures); environmental impact assessments; legal searches

* Associated supervision, preliminaries, OHP and fees to be included in all cases above.

Whilst seemingly common sense, it is important to explicate the fact that the wider the net is cast in terms of offering financial assistance, the greater the number of sites that would be targeted and brought back into use. Inevitably, any restriction on types of qualifying expenditure will mean that some sites will benefit whilst others will not. Equally, the Treasury should recognise that there may be marginal sites benefiting that might have been developed anyway. The danger is that by concentrating too much on preventing the marginal sites from benefiting, ‘genuine’ cases could also be excluded.

Q: Are there categories of expenditure that should be excluded?

A: There were no suggestions made to answer this question.

A leading private developer commented that the type of expenditure was an irrelevance if the aim is to develop long-term derelict land; why wouldn’t all expenditure on that site qualify? They felt that if a site was easily recognisable as having an entitlement for tax relief, and they knew that all the build expenditure qualified, they would be far more incentivised to target these sites and have the confidence to factor in the benefit at development appraisal stage. Whilst this company recognised that it would probably be at a lower rate of relief, they believed that the simplicity of such a system would be the most effective incentive for targeting long-term derelict sites.

2.3.6 Feedback on NLUD

As the NLUD potentially has a large part to play in an extended relief scheme, gaining an understanding of the current level of awareness was considered to be important. This follows on from the work of the University of Ulster (“*Evaluation of the Urban White Paper Fiscal Measures*”, May 2006), which identified a lack of awareness as a major barrier to the uptake of LRR.

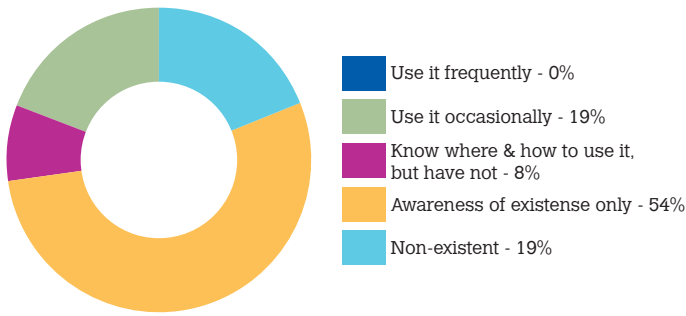


Figure 2: Illustrates the current awareness levels of respondents as representatives of the target audience for LRR.

Clearly there is an awareness issue in the market place that would need to be addressed in order for any extended relief based on the NLUD to be effective.

Furthermore, consultation feedback revealed a problem of negative perception for sites registered on the NLUD, as being particularly bad or difficult. This reaction must be addressed if it is not to be counter-productive to the uptake and consideration of target sites.

2.4 Summary

- It is extremely difficult to be generic about long-term derelict sites.
- Dereliction is a symptom, not a cause of non-development.
- Leading causes of dereliction are: location, legacy of previous use, planning constraints, ownership issues and flood risk.
- These causes should provide the foundation of an extended relief. The ‘physical’ types of causes lend themselves to being qualifying costs; the more ‘socio-economic’ factors as entitlement criteria.
- In implementing a targeted legislation, not all long-term derelict sites will benefit. Equally, some sites (of the more marginal variety) may benefit that would otherwise have been developed in the foreseeable future anyway. There is no solution to this quandary, but it needs to be stated and appreciated now because future consultations on the effectiveness of the extended relief are likely to return evidence of this reality. It is an unavoidable situation with any tax relief scheme, but does not necessarily in itself render the incentive ineffective.
- A fixed date in time, (or equivalent) could work as a qualifying criterion for long-term derelict sites, although the date would need reviewing regularly (e.g. every two years).
- The criteria by which a site has historically been selected for inclusion on the NLUD appears to be inconsistent. Therefore, there would need to be a cleaner definition of the criteria necessary for registration, which would be the same as the entitlement criteria for the enhanced relief. NLUD would therefore seem to be superfluous, adding an unnecessary compliance burden. The NLUD could, however, be used as a mechanism to help promote sites that would be eligible for the extended relief.
- Self-assessment of long-term derelict sites must be possible to allow for sites that are not being developed by the land owner or are in Wales or Northern Ireland where there is no NLUD or equivalent.

- Geographical location should also be considered as a potential entitlement condition for additional relief, because long-term dereliction has a significant geographical element.
- Awareness of the NLUD is minimal at best.

2.5 Recommendations

- Implement a tiered structure for an extended relief, allowing retention of the existing LRR for all sites, providing additional help for long-term derelict sites at an enhanced rate, with the potential for increased help on a geographical basis.
- Qualifying costs should not be too prescriptive, but structured in a similar manner to that of the current LRR legislation. Recommended types of expenditure to be targeted by an extended relief should include:
 - works necessary to remove the legacy of previous use
 - extra over geotechnical substructure solutions (arising from natural site characteristics)
 - costs of providing services and infrastructure
 - flood mitigation costs
 - planning permission associated costs.
- Registration on the NLUD should not be a condition for the enhanced relief, although sites registered prior to enactment of the extended relief should automatically qualify.
- Irrespective of the above, from the date of enactment, qualifying sites should be determined through clearly defined entitlement conditions.
- For any changes in the LRR scheme, a focused effort on increasing awareness is imperative, particularly in relation to the NLUD and its role (if any) in the application process.
- A fixed date of the 31st March 1998 is generally acceptable as a starting point for non-use, providing that it is regularly reviewed to ensure that more ‘new’ target sites are included.

3.0 ISSUE 2: FOCUSING ON DEVELOPMENT

3.1 Introduction

The Government is concerned that there is tax relief being claimed on remediation expenditure, without ensuing development. As LRR is intended to improve the development viability of sites and incentivise bringing difficult sites back into supply, there arises a question of effectiveness, if such activity is taking place.

The Consultation document therefore speculates as to whether introducing a link between the award of full planning consent and the entitlement conditions for LRR would ensure that qualifying remediation costs are synonymous with development activity.

3.2 Understanding the Issues

- From the interviews, questionnaire responses and analysis of claims processed by Davis Langdon Crosher & James, there is virtually no knowledge of sites being cleaned up, benefiting from LRR and not subsequently being developed (if not immediately then within a reasonable period of time by the remediating party or by a subsequent owner). Customers were aware of some sites being cleaned up without development, but these tended to be a statutory clean up by the polluter, in which case there is no entitlement for LRR.
- In the absence of substantial evidence to the contrary, respondents were unconvinced that there is in fact a significant problem to be addressed. Some canny respondents asked for referrals to the location of clean land awaiting development!
- Clearly, the Treasury believes it has evidence in order to include the matter for consultation. Nonetheless, respondent opinion overwhelmingly believed that the amount of alleged 'abuse' is likely to be minimal in the context of all claims. Furthermore, it was felt that more harm than good could result by focusing on a minority problem: the necessary effort would likely be disproportionate to any increased perceived efficiency.

3.2.4 Finally, many respondents didn't understand the strength of the Government's concern, even if evidence of a significant problem does exist. The counter argument presented is that all clean up is in the public interest, and if the existence of LRR is assisting in that process, it remains to be money well spent. This view is consistent with the National Brownfield Strategy.

3.3 Questions, Responses and Observations

3.3.1 The Consultation Questions

The Consultation questions are answered in the context of the above understanding of the problem.

Q: Would the introduction of a planning permission condition be the most effective way to target relief more closely on development?

A: This is a very specific theoretical question. Given that, the theoretical answer has to be yes. If the relief were to be dependent upon a planning permission condition, it would inevitably be the best way to target it more closely on development. The caveat is that in practice, it is not clear that anything would be gained, and at worst, could be counter-productive. There are genuine concerns about the detrimental effect that could result from a planning and LRR entitlement linkage, most notably for situations where remediation and development responsibilities are fulfilled by different parties in the development process.

Specialisation of works in brownfield development is increasingly common with more remediation contractors now purchasing contaminated land, completing the remediation works and selling on the clean land to a developer/housebuilder. Should a planning linkage be introduced, both parties would lose an ability to claim LRR. The remediation specialists typically do not secure full planning consent and thus would be exempt. Equally, the subsequent developer with planning approvals could not claim because they had not incurred the qualifying expenditure.

Davis Langdon Crosher & James believe that this rise in specialists seeking to be involved in complex remediation works is partly due to the introduction of the LRR legislation, both in terms of raising the profile of remediation as a specialist activity as well as the financial contribution made. By removing the financial incentive, you also remove the driver for a specialist developer to take on that additional risk. The appetite for remediating brownfield land, particularly the more technically challenging sites that are most at risk of dereliction, could be severely hindered resulting in a negative impact on the supply of land. Clearly this runs contrary to the Government's intentions.

A natural response to this argument is that the market would adjust and structure development agreements in such a way that the benefit would be claimable by a party in the process. However, whilst this would be true in some circumstances, it will not be without cost, not least in terms of additional legal fees. If complex development arrangements are required, the cost of setting up the necessary framework could negate the benefit of setting up the structure in the first place. Smaller sites could particularly suffer from an 'economy of scale' related effect, adding to the barrier that this factor can cause for remediation strategies generally.



Ultimately, the predominant sentiment recorded is that to create a link between planning and LRR would be to introduce potential barriers and difficulties into a process without significant just motivation or reward to be gained. It certainly would not in

itself achieve the Government's aim of increasing annual housing production. At worst, it is a regressive approach that will impact upon speculative market participants, for whom the planning risk is a step too far, thus reducing the supply of developable sites.

Q: Would there be benefit from applying any additional conditions?

A: Notwithstanding the above comments, there is clear appeal from the Government's perspective to structuring LRR in a way that is aligned with any future implementation of PGS (i.e. that the tax point for PGS and the trigger of any entitlement to relief under LRR are at the same point in time).

The driver for alignment of the PGS and LRR to the same tax point would seem to be one of simplification. However, the benefits of this would be insignificant compared to the potential downside of the loss of relief otherwise available to developers who remediate sites but sell without the benefit of full planning.

Whilst there would be an ability to factor the PGS liability into the purchase price paid to the vendor, there would be no ability for the vendor to recover lost LRR. In such situations the tax incentive would simply become obsolete.

Q: What are the practical difficulties associated with this approach?

A: Making LRR dependent upon the expenditure being incurred pursuant to a specific planning condition or obligation would undoubtedly increase uncertainty pertaining to LRR entitlement.

Most respondents expressed a fear of additional administration and bureaucracy, with ensuing delays. There is clearly anxiety within the industry about laying another level of responsibility on an already overburdened planning system. Furthermore, any changes to the entitlement conditions will cause some confusion, and require yet more publicity about the tax relief. This could potentially delay delivery of the brownfield agenda, whilst new legislative requirements are understood and familiarised. Finally, customers were unclear as to how this is currently being policed and how it might be going forward. The anxiety again relates to additional bureaucracy without significant improvements in efficiency and effectiveness of LRR.

3.3.2 Further observations

It has also been suggested by the Treasury that asbestos removal, as part of a repair or refurbishment contract, does not amount to development and should therefore not qualify for the relief.

In interviews conducted with respondents, this assertion was overwhelmingly refuted. It was argued, vehemently that refurbishment is categorically a form of development because it improves the quality of the built environment, such as by removing visual blights and increasing the health and safety of occupants, and thus increases economic life and sustainability. Secondly, it was pointed out that there is no mandatory, statutory requirement currently to remove all asbestos from buildings providing it exists in a safe, contained form, properly labelled and managed. However, it is in the greater public interest to remove it, which is a costly process and therefore should equally be incentivised.

Similarly, another industry representative argued that development does not necessarily have to include buildings. For example, remediating land to be used as public space is a form of development because it too improves the quality of the built environment. By insisting on connecting LRR to planning permission, the incentives for these desirable activities would be lost, to the detriment of regeneration plans.

3.4 Summary

- There is little evidence to support the problem of remediation without development that the Government reports, and hence respondents are unconvinced that there is a problem to be addressed.
- If there is such evidence, respondents felt that that this was still in the public interest and worthy of being incentivised.
- Most did not generally foresee any practical benefits to be achieved by aligning LRR to planning consent.
- Practical difficulties will arise for situations where the remediation and the main development responsibilities are carried out by separate parties. Remediation specialists who are increasingly taking additional risks in purchasing contaminated land and selling on to a developer, will likely be disincentivised as they typically do not take the planning risk. This important source of developable land, particularly for smaller, more technically challenging sites, will largely be lost. Complicated development agreements may be able to overcome this difficulty, but the expense of establishing these could negate any tax benefit to be had.

- There is anxiety about additional administration related delays resulting from an already overburdened planning system if the proposal was introduced.
- Refurbishment is categorically a valuable form of development that brings existing stock back into use, extending the economic life and sustainability of the built environment.
- Development is also not just about buildings. Remediating land for it to be retained as public space is also a form of development and in the public interest, through improving the quality of the built environment (as recognised within English Partnership's National Brownfield Strategy).

3.5 Recommendations

- Any modifications that remove the entitlement for LRR from specialist remediation organisations would - as a consequence of their willingness to undertake complex remediation contracts - be regressive and contrary to the intentions of the tax relief as a form of incentive.
- Care should be taken when considering any changes to LRR to ensure that the remediation of land for use as public space, or consciously retained without buildings in the interests of regeneration, remains to be incentivised.
- Refurbishment is an intrinsic part of development because it contributes to improving the quality of the built environment, extending economic life and sustainability. The treatment and/or removal of recognised contaminants, such as asbestos containing materials, in the course of refurbishment activity should remain as LRR qualifying expenditure. Any changes to this position are strongly resisted.
- Aligning LRR with Planning Gains Supplement (PGS) would be to the detriment of remediation specialists and hence is strongly resisted.

4.0 ISSUE 3: LAND REMEDIATION RELIEF - TIMING OF THE RELIEF

4.1 Introduction

Operating as a corporation tax relief, the need for compliance with GAP has meant that there is currently an inevitable delay between the point at which expenditure is incurred and the point at which the LRR benefit can be claimed. The Government is unhappy with this situation, preferring that the relief be available as quickly as possible. Thus it is looking at ways to accelerate the relief, but without compromising compliance issues.

Furthermore, there is an understanding from the Government that this delay is largely responsible for the benefit being typically taken at a group corporate level rather than on a project specific basis. As the relief is intended to act as an incentive for individual sites, the Government wants to see the benefit being factored in from the start. Hence accelerating the relief is seen as vital to changing market behaviour and getting LRR inclusive upfront financial planning that takes availability into account from the outset.

4.2 Understanding the Issues

The feedback gathered in this consultation exercise, combined with the findings of the University of Ulster (May 2006), supports the Government’s assessment that the delay in the receipt of any benefit and the lack of certainty surrounding that receipt are key factors in preventing LRR being factored in from the start of a project. This conclusion is supported by the evidence in the figures below:

- To what extent is tax relief considered when buying a site?

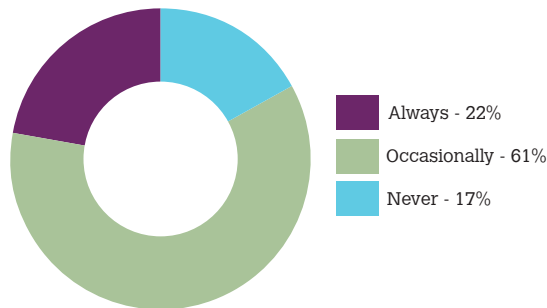


Figure 3: Extent to which Tax Relief is Considered when Buying a Site

NB: The respondents contained some contractors whom would typically not be eligible for claiming LRR, 29% of which answered ‘always’. Thus an element of caution must be used when relying on these results as they are likely to be positively skewed because of a potential confusion on behalf of the respondents between LRR and LFTE, which contractors are most likely to always be factoring in.

- How would increased certainty of the value of LRR affect this decision?

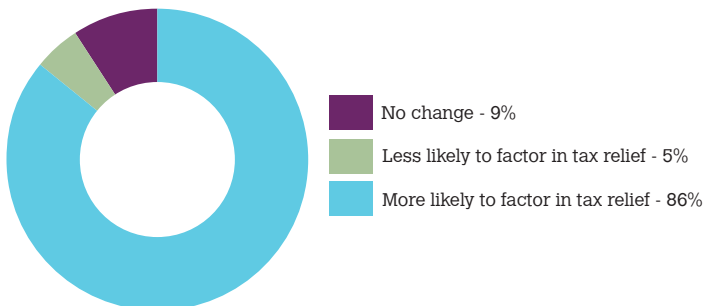


Figure 4: The Effect of Increased Certainty of the Relief on Development Decisions

- If the receipt of the benefit was accelerated such that it was more closely aligned to project cash-flow, how would this affect your decision?

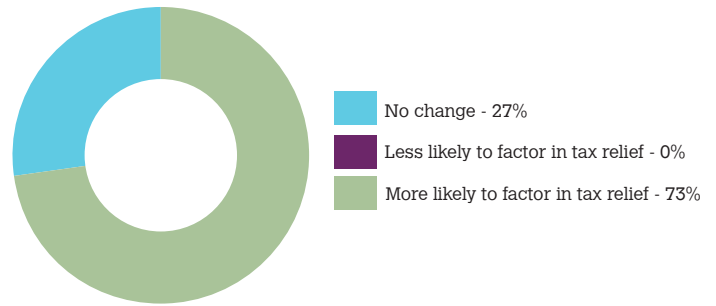


Figure 5: The Effect of Acceleration of the Relief on Development Decisions

Evidently, there are deterrents intrinsic to the relief influencing claimant behaviour and the decision to claim at all in the case of some. The Government is therefore right to be concerned about this issue.

4.3 Questions, Responses and Observations

4.3.1 The Consultation Questions

Q: Is it possible to accelerate relief whilst ensuring that the tax system is not open to abuse?

A: In the context of a developer-trader it would effectively have to be a tax credit on-account that would subsequently be adjusted at the point of sale to ensure that the relief is not taken twice. Indeed, this is exactly the method adopted to allow the tax relief to be claimed on capital expenditure. It should be possible to, therefore, give relief as a normal revenue deduction in computing the general profits of the company in the year that the expenditure is incurred, using the current Schedule 22 Election provisions.

It was frequently commented that there will always be those seeking to take advantage of any tax scheme. Notwithstanding this point, it was genuinely not perceived that a modified LRR would be more open to abuse than at present, and that self-assessment works well.

One major housebuilder commented that the type of abuse they felt to be the cause of Government concern was inevitable to some degree until such time that corporation tax operates on a registration basis analogous to the rigour of the VAT system. However, they argued that those deficiencies were not reason enough for the timings of LRR to remain unmodified.

Q: If the availability of land remediation relief is not factored into financial planning, what additional certainty could be given to ensure that it is?

A: Having established above that LRR is not generally factored into financial planning, the additional certainty that respondents sought was surprisingly not particularly quantum focused. Most customers accept that there is certainty in the rate of relief i.e. 150% of qualifying expenditure, and further accept that the cost of remediation is not an exact science at development appraisal stage, as is the case for any build cost estimate.

Rather, the primary source of uncertainty cited by respondents resides in a fear that the relief will not exist at the time expenditure is incurred. Particularly on large regeneration schemes, the delay between site appraisal, incurring the expenditure and subsequent disposal can be many years. Thus it is perhaps unrealistic and too ambitious to expect developers to factor in and rely on a delayed cash benefit in a site purchase decision, without offering guarantees on the future ability to claim.

Underlying the whole problem are issues of confidence and trust in relation to tax relief schemes. Historically, this has been undermined within the industry by previous experiences such as the sudden overnight withdrawal of Deprived Area Relief (DAR) in 2005, and more recently Industrial Buildings Allowance. These are instances where the existence of tax benefits have been relied on within financial planning, but have been subsequently withdrawn without notice. Hence there is an understandable reticence to heed calls for LRR to be part of the decision making process. Improving confidence is vital if LRR is to be brought forward and factored in at the beginning of a development.

4.3.2 Further Observations

The discussions with respondents began to question the Government's necessity to see LRR within site development appraisals. Whilst there is a clear understanding of the intention to incentivise sites that would not otherwise be developed, respondents did not understand the pure need for this to be explicitly visible. There is definitive evidence that LRR is considered, (such as internal systems being modified in national housebuilders to facilitate claiming), but the desire to see LRR in the purchase decision could be counter-productive.

At the heart of this argument is the process of residual valuation, whereby the price paid for the land results, with the required development margin built in. If LRR was included in this process, a higher price would be payable for the land. The benefit would pass to the landowner and not stay with the risk taker as the true intended recipient of the cash 'reward'. In some instances, the land owner may be the original polluter, leading to a situation where the polluter is the beneficiary of the tax relief, which is contrary to the "polluter pays" principle of contaminated land.

One housebuilder was content with the idea of being able to pay more for land, seeing that LRR could enable them to bid more competitively for a site. However, this is a short term, unsustainable position because the perceived competitive advantage arises from imperfect knowledge of LRR in the market currently. In reality, LRR is available to all purchasers, and as awareness grows, the position of current market leaders will be eroded. In fact, consideration of the extreme long term view suggests that explicit inclusion of LRR could force up the cost of all brownfield sites generally, and ultimately restrict supply.

The best situation for the brownfield agenda is for LRR to be an upfront consideration for a site, but without actually featuring in the valuation, ensuring that the benefit remains with the risk taker. There are critics of this behaviour who argue that LRR operating in this way only serves to line the pockets of companies who would have carried out the development anyway. But this grossly underestimates the tacit value of LRR. Facilitating the profitability of brownfield development stimulates the appetite to do more of it. The critics need to become more comfortable with the concept of profits increasing for developers because it is a vital part of the recycling process. If developers are more profitable, there are greater funds available to buy and clean up more brownfield sites. On the other hand, if the benefit passes to the landowner, it falls out of the system and will stagnate, rather than stimulate delivery of the brownfield agenda.

4.4 Summary

- Increased certainty and acceleration of the relief is desired in the market, preferably through a normal revenue deduction process.
- Reluctance to factor in LRR into the investment decision (at purchase) is rooted in an uncertainty about the availability of the tax relief at the point of incurring expenditure. Previous sudden withdrawals of fiscal incentives have engendered nervousness to the industry and hence an ability to trust in future claims is fundamental to market behaviour.
- There is a risk, due to the process of residual valuations that Government insistence on factoring in LRR to development appraisals will only serve to push up prices paid to landowners and not actually incentivise brownfield development.

4.5 Recommendations

- Receipt of the LRR benefit should be accelerated so that it is more closely aligned to project cash-flow and the point at which expenditure is actually incurred.
- A tax-credit or revenue deduction for work-in-progress method is preferred.
- Market perception is that this method should be no more open to abuse than other corporation tax measures.
- Increase confidence in the market place by providing a guarantee that the legislation in place at the point of purchase would form the basis of entitlement for the tax relief, not the legislation in place at the time expenditure is incurred or claimed.
- Exercise caution with respect to insisting on LRR being explicitly factored into investment purchase decisions. It is more important to ensure that funds remain available for brownfield development rather than potentially falling out of the system through the payment of higher land prices to landowners.
- Factoring in the tax benefit into the purchase price should not be a barometer of success of this legislation. Increased activity and increased post-tax profits/earnings per share of those organisations engaging in these fundamentally risky investments is more meaningful in real terms for delivering the brownfield agenda.

5.0 ISSUE 4: JAPANESE KNOTWEED

5.1 Introduction



JKW is recognised as a danger to the built environment and is consequently subject to statutory controls. If JKW is present on a site, there is no choice but to treat it as an Environmental Agency requirement, and sometimes a planning condition. This can result in significant additional cost for many developers.

The question is whether it is appropriate to extend the scope of LRR to cover JKW related expenditure because of its particular potential to damage property and undermine development projects.

5.2 Understanding the Issues

It is argued that JKW clearly meets the legislative requirements as they currently stand, in that it is a recognised contaminant, present at the point of site purchase with the potential to cause harm to property and buildings. Treatment is not optional and hence expenditure is necessarily incurred on removing the contaminant, thus fulfilling the eligibility criteria for remediation qualifying expenditure.

The source of controversy about the eligibility of JKW rests on a technical argument that as a plant, and therefore a living organism, it does not constitute a 'substance' and as such is excluded. In the absence of clear guidance on this matter, legal counsel has been consulted. The opinion returned was in favour of JKW as an eligible substance, emphasising that its inclusion fits with the overarching intention of the legislation and is in the public interest. This position is supported further by the fact JKW is recognised as a contaminant for which Landfill Tax Exemption can be sought; to then argue that it is not a contaminant for LRR is demonstrably inconsistent.

Nonetheless, given the controversy surrounding the eligibility of JKW, clarity on the matter is welcomed.

5.3 Questions, Responses and Observations

5.3.1 The Consultation Questions

Q: What is the incidence of Japanese Knotweed on development sites at present?

A: Over 90% of respondents have had to treat JKW on a development. These respondents were subsequently asked to estimate the proportion of sites affected by JKW. The answers provided were extremely variable, indicating that the size of the problem is generally not very well understood, but instances are far from being uncommon. To illustrate the point, the mean average proportion was approximately 35%, but the modal average was tied between 2%, 50% and 70%. The range of results was 2% - 75%.

A market specialist in the treatment of JKW has managed circa 2000 sites (approx 150,000m²) in the past seven years. This specialist is not aware of any comprehensive quantitative or qualitative research to show the size of the UK problem.

Q: To what extent is JKW a barrier to development?

A: Respondents were asked directly whether the presence of JKW had ever threatened the viability of a site. A third knew of instances where this had been the case, but in interviews, this tended to be in extreme cases, where other factors were present that complicated treatment. Generally, the feedback indicated that JKW is a significant extra cost and hassle for a development, but was not usually a deal breaker in itself.

However, in speaking to a specialist treatment contractor with a greater knowledge of JKW's impact, they stated knowledge of sites that remain undeveloped due to its presence making them commercially unviable.

Q: What in practice are the costs associated with its removal?

A: It is extremely difficult to quantify the costs of treating JKW. A specialist home estimates the size of the eradication market to be in the region of £10,000,000 per annum, excluding related professional and consultancy fees. To include these, would probably be in the region of 100% again.

Herbicidal based treatments are significantly more affordable than off-site disposal solutions.

Q: What types of treatment have in practice been most cost effective?

A: The most common methods employed by the customers interviewed included:

- incineration
- burial (sometimes in conjunction with above)
- herbicidal on-site treatment (possibly repeated applications annually)
- off-site disposal when repeat treatments are not possible or safe burial location is not possible on-site.

Herbicidal tends to be the cheapest, although repeated applications can limit its appropriateness.

5.4 Summary

- The size of the JKW problem is not completely understood, but its instances are extremely common.
- JKW has the potential to be a barrier to development, but is usually manageable, although not without significant additional cost and time requirements.
- Herbicidal treatments tend to be the most cost effective; dig and dump is comparatively very expensive although sometimes used where time considerations are a higher priority.

5.5 Recommendations

- JKW is clearly a contaminant and meets the LRR legislative eligibility criteria. Clear statement and inclusion of this position would be welcomed.
- Other pernicious weeds should not be excluded explicitly from LRR eligibility, as there are other contaminating plants with the potential to cause harm that can be a barrier to development.

6.0 ISSUE 5: LANDFILL TAX AND THE CONTAMINATED WASTE EXEMPTION

6.1 Introduction

LFTE is currently available for waste arising from the clearing of contaminated land and hence is most relevant to the development of brownfield sites. The exemption was introduced so as to ensure that landfill tax is not a barrier to developing contaminated sites, which is in the greater public interest. Whilst this motivation remains, there is concern that the LFTE does not present the best value for money in terms of using funds to incentivise contamination treatment. At worst, LFTE presents a barrier to the uptake of alternative remediation methods and further pressurises landfill sites. Since its introduction in 1996, there are more genuine remediation alternatives to landfill through the development of new technologies.

The Government is keen to promote on-site remediation techniques because it reduces the demand for landfill, reduces the environmental impact of landfill related transportation and encourages the recycling of materials. Whilst there is recognition that landfill will continue to have a role, the Government would prefer this to be a bare minimum, reserved for extreme sites only.

6.2 Understanding the Issues

This is by far the most emotive of the five consultation topics because it presents a potentially immediate direct cost to development. Unlike LRR, many more customers do factor in and subsequently rely on the LFTE at the development stage because it can be applied for upfront, pre-agreement achieved and the value known.

However, clearly there is a presentational difficulty for the Government. The wider public agenda is heavily emphasising the importance of recycling and re-use, yet there is a credit available for industry to deposit contaminated waste in landfill sites. Whilst there is not necessarily a conflict between these two positions in reality, there is a public relations problem to be addressed.

6.3 Questions, Responses & Observations

6.3.1 Preliminary Observations

The questions asked in *The Consultation* document commence with a presumption that LFTE is being withdrawn. This was felt to be a premature assumption, and hence some preliminary exploration of the issues surrounding LFTE was conducted first.

When asked directly whether LFTE should remain or be removed, approximately three-quarters voted in favour of retention. However, this statistic alone does not adequately represent the views and opinions of the customer base.

A large proportion of the votes for retaining LFTE were influenced by a fear of the transition period. As stated above, customers have relied on the existence of LFTE for certain projects, and that perceived financial viability could be in jeopardy with a poorly-timed and ill-conceived withdrawal.

Three pertinent points were repeatedly raised in the discussions:

1. Dig and dump is increasingly a last resort for customers. Two thirds of respondents were in accord with this statement. For some, this is an explicit environmental policy statement (including a leading national housebuilder) whilst for others it is simply the result of basic economic drivers. The fact is that the processes of excavating, moving and disposing off-site any material, be it contaminated or inert, is expensive and to be

avoided whenever possible. Thus, even with LFTE, dig and dump is already unattractive.

2. Alternative technologies and remediation solutions are increasingly being embraced, as the chart below evidences.

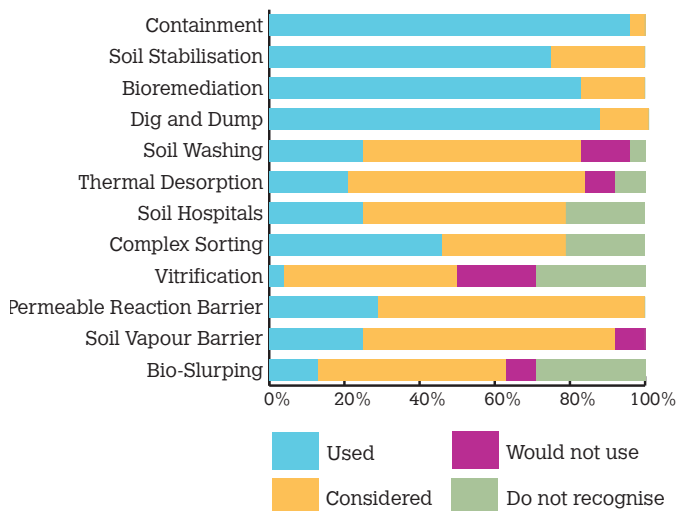


Figure 6: Consideration and Use of Alternative Remediation Methods

This is largely attributable to the economic drivers above and companies naturally seeking to gain economic and competitive advantage through innovation.

3. Dig and dump is still the only viable option for a number of sites and hence will still have a role to play, certainly in the foreseeable future.

Given these facts and assuming a well managed transition period, for sites commencing post a LFTE withdrawal the existence or non-existence of LFTE is arguably an irrelevance. This point is best understood in the context of residual valuation which presides in the development process. If a contaminated site can only be remediated using dig and dump methodology, the cost will be factored in within the appraisal process and a lower market value will result for the land. In the long run, the market should adjust to accommodate an increased cost of landfill.

However, this bold conclusion comes with a large caveat in that it assumes perfect market conditions, where the market value of all sites is capable of being adjusted. Unfortunately, this is not the reality for contaminated sites and the market is far from perfect. The supply of land is restricted, and unevenly spread geographically. Certain sites, particularly former utilities land, do not have an adjustable open market value. Also, the requisite knowledge levels and perceptions of working with brownfield land are typically inadequate to the extent that some players can seek advantage through expertise, and some sites struggle to be attractive at all.

As a result of market imperfections, there are genuine risks and potential detrimental effects that must be considered before any withdrawal of LFTE takes place. These include:

- Whilst there have been great improvements in remediation strategy, nothing is yet as readily available and universally applicable as dig and dump. Thus there will remain to be sites which will require dig and dump as the only viable option. If the costs are prohibitive, these will be more at risk of dereliction.
- Imperfect knowledge in the market place could have a negative effect on the more conservative brownfield developer who may be deterred from continuing to work in the sector.

These points are emphasised by the fact that a leading national housebuilder with an active in-house emphasis on alternative remediation technologies and some of the most advanced procedures for considering all options before dig and dump, still strongly object to the withdrawal of LFTE. They argue that despite an implicit acceptance in *The Consultation* document that dig and dump can be the only way forward for some sites, the real issue of how to resolve these sites without using dig and dump has not been addressed.

6.3.2 The Consultation Questions

Q: *Would Government support for the clean up of contaminated land be more effectively delivered through enhancements to land remediation relief rather than the existing exemption from Landfill tax for waste from contaminated land. If not, why not?*

A: If there are genuine alternative remediation solutions available, then the answer is yes, to further incentivise the uptake of these technologies. As stated above, the economic driver already exists because dig and dump is expensive even with LFTE, but additional financial assistance may tip the psychological and confidence barriers to try other options. It has not been proven though that the time is now and that sufficient alternative methods exist for the removal of LFTE to have the desired effect.

It is indisputable though, that in the absence of a viable on-site alternative, LFTE is absolutely vital to preventing such sites becoming derelict. The available funds would not be benefiting the most difficult sites if totally diverted elsewhere, which is clearly unacceptable.

Q: *What measures would minimise the regulatory impact of ending the landfill tax exemption?*

A: If complete withdrawal of the LFTE is to take place, it is imperative that sites purchased prior to the date of withdrawal remain able to attain LFTE. Similarly, those with LFTE at the date of withdrawal retain the benefit and all other rules in operation continue to apply (e.g. extensions etc.).

Q: *How long should the landfill tax exemption continue for existing development?*

A: As required (see above). Timing considerations will be a judgment on the adjustability of the market value. If a site has been purchased, with consideration given to LFTE, then it must continue to be available for the duration of the works.

Q: *What factors would determine activities which required a longer time to adapt to the removal of the exemption?*

The sites most affected by the removal of the exemption will be those where dig and dump is the only viable option due to site constraints.

6.3.3 Comments

Retention is Key to Development

In summary, there is strong resistance to the withdrawal of LFTE because it is inconceivable of a future where 0% of waste will have to go off site. Within acceptable levels of time, cost and remediation quality for the delivery of urban development required, there is currently not the belief that technology will advance to totally eliminate off-site disposal. One respondent compared the situation to the pursuit of a paperless business with IT advancements. Hence, for that minimum number of sites for which there is no viable alternative, LFTE is invaluable to ensure

that landfill tax does not become an insurmountable barrier to development.

The strength of feeling from respondents must not be disregarded as simply a classical 'knee-jerk' reaction from a sector that is unhappy to be losing an established benefit; rather, there is genuine concern for the effects of withdrawal. Most accept that there needs to be some form of test in place to evidence that all other options have been considered; it is not a call for out-right retention for the current system. But there is real cause for concern that a blanket withdrawal will increase the stock of derelict land, which will eventually require enhanced LRR anyway to bring them back into supply. The objectors are promoting a 'prevention rather than cure' position by pointing out the dangers of an absolute removal of LFTE.

The development of soil hospitals and other off site treatment centres are a good potential alternative to dig and dump. However, planning consultants, public perceptions and concerns over the ability to subserviently recycle the treated soils on other development sites means that there is still some work to be done to create a viable alternative to dig and dump. More R&D funding in these areas would definitely help.

A representative from a national environmental consultancy pointed out that the level playing field for remediation methods that the Government is searching for, is closer with the current system. Dig and dump is not actually incentivised now, because LFTE does not represent a carrot, but the removal of a stick. Of all the remediation methods available, dig and dump is the only one to be taxed. If the Government is actually motivated by having a level playing field for remediation methods, then the current position is it. Removal of LFTE would actually distort the situation and demonstrate an agenda from the Government in terms of remediation methods, which has been previously denied.

Alternatives

Notwithstanding the technological barriers to providing alternatives to off-site disposal, there are behavioural barriers to address. Even when there is substantial evidence that minimal residual on-site risk will result from an alternative method, the fact is that there is a psychological appeal to dig and dump because it takes the problem off-site and away from the landowner/developer/contractor. Not only does this give confidence to the developer, but also to the end user/end client (if separate), reducing the need for warranties, indemnities and insurances. The importance of this point comes back to the need for a viable last resort option that totally removes the need for dig and dump. However, achieving this goal is not simply in the technological domain, but also rooted in market perception.

One potential solution which would perform strongly on this point is soil hospitals, which are a more acceptable form of off-site disposal. They give the same feeling of removing a problem away from site, but without sending the same volume to landfill. Currently though soil hospitals are few and far between. Attempts to increase this number have typically been complicated by planning restraints and general 'NIMBY-ism' related difficulties for local authorities.

Finally, technological options and behavioural preferences are only two of the numerous factors that formulate a remediation strategy decision. The choice of remediation method for a site is typically made up of numerous interplaying considerations such as cost, timescale, size of site, extent and scope of the contamination, availability, experience, residual risk, performance and end land quality, amongst others. This wider picture must be appreciated in order to direct funding most appropriately in future.

Confidence and Insurances

The effect of insurance considerations on the choice of remediation strategies also cannot be ignored, and is worth a separate mention. This factor typically comes in two guises:

1. Professional Indemnity Insurance - A number of customers reported that whilst they would like to be more proactive on alternative remediation strategies, the PII cover of their environmental consultants had an influence on the options available and final recommendation. Where clients have insisted on broadening the options or suggested alternative methods, they have been faced with additional costs relating to the consultancy appointment.

If more money is to be targeted at new technologies, gaining the confidence of the consulting advisors and their insurers in new methods is as important as, if not more so than, the implementers and clients, particularly for the non-expert clients.

2. Environmental Liability Insurance (and related products) - increasingly end user clients are requesting warranties, indemnities or guarantees with financial backing in place to address the increased residual risk from on-site remediation technologies leave, as compared with dig and dump. Hence in the long run, it is unlikely to not only be the additional landfill tax costs that the market will have to accommodate if LFTE is to be removed, but also the additional fees - most notably legal - and insurance costs associated with providing future users' security.

Remediation Method Judgement



The Consultation document states that it "is generally accepted that on site clean up can give good environmental results and is in many cases a preferable environmental solution to landfill."
It is not clear what

evidence this statement is based on and has been challenged in the feedback. In particular, the concern surrounds the criteria for judging whether a method is good and preferable on environmental terms. For example, if it is to be judged on carbon footprint, it could be argued that dig and dump is a more desirable environmentally friendly option as compared with the impact of on-site thermal desorption. Before passing judgement on the environmental merits, or not, of some methods, greater understanding of the performance objectives is sought from the market.

6.4 Summary

- Offsite disposal is a necessary element of construction, although minimisation should be an industry objective.
- Offsite disposal is expensive, even with LFTE and existing economic drivers increasing the uptake of alternative remediation techniques.
- LFTE should be available for sites where there is no viable alternative to offsite disposal.
- The financial level playing field for choosing a remediation method is the current system because off-site disposal is the only option to be subject to tax, if the LFTE did not exist. Total withdrawal cannot therefore be anything other than a barrier to development in some cases.

- Total withdrawal of LFTE for contaminated land could result in an increased stock of long-term derelict land.
- Where the open market value of a site is adjustable, and a number of remediation strategies available, the removal of LFTE should be manageable, through market adjustments in the long-run.
- Transitional arrangements for any withdrawal of LFTE are of paramount concern to customers. Projects underway, or sites purchased relying on LFTE are most at risk.
- Genuine alternatives to dig and dump should be the focus of R&D, whilst it is still being used as a last resort.
- Greater recognition of the factors that comprise a remediation strategy decision, particularly when implying sufficient alternatives exist to remove the need for dig and dump.
- Residual risk is one such influencing factor, and the confidence of insurers and consultants, as well as contractors/developers and end users, is vital to increasing the uptake of new methods.
- Greater clarity is sought as to how the environmental merits of remediation options are being judged.

6.5 Recommendations

- LFTE should be retained for contaminated sites that necessarily require off-site disposal within the remediation strategy for development to take place. Without this provision, there is a genuine risk of these sites falling derelict.
- Transitional arrangements should allow for sites currently underway with an exemption, and those purchased prior to the date of effective withdrawal, to be unaffected by any change in policy. A time limit of five years after the point of purchase for an LFTE application should be applied.
- Additional funding should be directed at:
 - R&D of more alternatives to off-site disposal
 - funding demonstrations and awareness to build industry confidence and increase uptake of new technologies
 - establishment of more soil hospitals and associated fiscal incentives such as enhanced capital allowances for plant/ machinery and SDLT reductions for soil hospital land
 - implementing the cluster-zone approach for smaller sites.
- Clear criteria need to be set for judging the environmental impact of techniques, with the potential for offering additional incentives for use of the low scoring options.
- Carbon footprint of remediation methods is increasingly a concern in light of the current climate change agenda, and therefore should be investigated further, particularly with a view to forming future financial incentives on this basis.

7.0 GENERAL OBSERVATIONS AND COMMENTS

As a final section, there are a number of important points about the current LRR scheme that have been fed back through *The Consultation* process, although not consulted on specifically.

- Unincorporated businesses carrying out remediation activities are excluded from current financial incentives. It is inconsistent for the same works to be non-qualifying because of the attributes of the active party incurring the expenditure. At worst, it is discriminatory to prevent individuals and partnerships from claiming, and completely contrary to the aims of the brownfield agenda. All parties should be equally entitled.
- Overhead costs for in-house remediation works are non-qualifying expenditure currently, whereas the overhead costs of an external contracted party are (correctly) eligible. This is inconsistent and needs to be corrected as the current system penalises in-house operations without good reason.
- All polluters have no entitlement to LRR for their decontamination works. However, it does not appear just for a party to be penalised, or discriminated against, for carrying out what may have been universally accepted safe practice at the time. This is not the same as expense incurred in the course of fulfilling statutory clean up requirements, as a result of irresponsible polluting activities. Asbestos installations are the primary example of this injustice.
- There is increasing evidence of companies changing internal systems to consistently consider LRR and facilitate information collection for the claim process. This is positive testament as to the increasing awareness and recognised value of LRR in the industry. However, awareness of LRR in the market place is still a problem, hindering its uptake and effectiveness. The need to address this reality persists.

8.0 CONCLUDING COMMENTS

Directing tax incentives for the development of brownfield land is clearly an extremely complicated task. Considerably more work is required going forward, particularly in relation to definitional needs for an extended LRR incorporating long-term derelict sites. However, the enthusiasm and readiness demonstrated by the industry to engage in this Consultation is testament to the importance of financial measures for delivery of the brownfield agenda. The Treasury is therefore urged to give full consideration to the answers, comments and observations made by the stakeholders and interested parties represented in this response. In any event, all endeavours must be taken to ensure that the results of *The Consultation* and subsequent changes to LRR, are clearly communicated in order to give the best chance of effecting the improvements sought.

Davis Langdon Crosher & James is the property, tax and finance arm of Davis Langdon LLP and has been providing tax advice on property for over 30 years.

The firm's Regeneration Incentives Group (RIG) advises solely on grants and incentives aimed at urban regeneration and brownfield development.

The RIG Group has three key objectives:-

-To provide innovative and expert advice to clients on the availability of fiscal incentives for regeneration projects and brownfield development.

-To ensure those incentives are delivered without compromise to the client's overall commercial objectives.

-To promote regeneration and brownfield development through collaboration with industry representatives and public agencies.

Contact:
Mr Ben de Waal
0121 632 3600
ben.dewaal@crosherjames.com