

19th August 2011

Ms Jessica Smith
HM Treasury

By Email

Dear Ms Smith,

Response to Consultation on Proposed Abolition of Land Remediation Relief

Please find enclosed our response to the above current consultation.

HM Treasury, and previously The Office for Tax Simplification (OTS), contend that Land Remediation Relief (LRR) is not a driver of behaviour. However, this view fails to appreciate the myriad factors that lead to the decision to develop property and the stage in the property cycle at which development is contemplated. LRR was introduced amidst a rising property market when speculative development was more likely to occur regardless of site conditions.

Over the past two or three years, property development generally and speculative property development in particular has been severely curtailed. This has primarily been due to the recession and the complete lack of finance for development. Davis Langdon – as a market leading provider of specialist LRR consultancy services - argue that if the Government have a continuing commitment to sustainable development, then this is exactly the wrong time to remove LRR. It is currently challenging enough for developers to raise finance for greenfield site development, but if there are additional and significant costs attached to the development of “brownfield” or long-term derelict sites, it is highly unlikely that these would be developed at all in the current climate. In addition, the final withdrawal of all landfill tax exemption certificates remaining in affect is only 7 months away and to remove LRR on the same date would be double shock to the industry during a time of fragile recovery.

We have numerous clients who had held brownfield development sites, but who believed them uneconomic to develop due to the cost of remediation. A lack of awareness of the relief was found to be a common theme. Similarly, cases whereby a new owner is considering voluntary remediation of legacy pollution compared against defending an action brought under Part 2A of the environmental Protection Act, LRR can tip the balance in favour of the former, at lower cost to the public purse. The key point is that when aware of LRR, clients will factor it into their decisions; the relief can and does influence behavior as intended.

We conclude that LRR must be retained and given a chance to work in the circumstances for which it was originally intended i.e. the redevelopment of brownfield and contaminated land in a “normalised” property cycle. In the event that the Government disagrees and proceeds with its abolition, we strongly recommend that withdrawal be delayed until at least 1st April 2013 in order to minimise the negative impact on the industry.

Yours sincerely



Ben de Waal
Director

Response to HM Treasury Consultation on abolition of Land Remediation Relief

Introduction

Davis Langdon, An AECOM Company is a market-leading specialist in the preparation of claims for Land Remediation Relief. Since its inception in 2001, we have prepared thousands of claims, acting for a large proportion of the volume housebuilders, who are by far the dominant sector in terms of claimants. These clients include:

- Taylor Wimpey PLC
- Barratt PLC
- Bellway PLC
- Crest Nicholson
- Redrow Homes

Is the rationale for abolishing the relief sound?

Davis Langdon fundamentally disagrees with the assertion made in the consultation document, that “...when land is acquired for development, there is usually an element of decontamination as part of the site preparation. As this would have taken place in any event, it is clear that the relief does not always influence behaviour...”. It is simply not the case that there is nearly always an element of decontamination on all development sites as part of the preparation. We would like to understand the source of evidence underpinning such a seemingly misguided statement from HM Treasury. Contamination resulting from legacy use on a site remains a barrier to development and our clients continue to reinforce this message.

It is our opinion that the policy objectives are as true and relevant today as they were when originally introduced. In summary, rationale was based on the promotion of brownfield development over greenfield, with particular reference to meeting 60% of the housing demand target through the reuse of previously developed land. Contamination was seen as a significant cost barrier to bringing land back in to use and hence the relief was established to both reduce this barrier and incentivise developers to consider more difficult sites.

In addition, a common observation was the persistence of a number of ‘hardcore’ derelict sites that remain unattractive for development. The then Government recognised a need for additional incentives/ funds to be available in order for these sites to be brought back into productive use.

We note that the change in Government since, has resulted in a relaxation of planning policy to allow more Greenfield development, thus reducing the planning driver towards brownfield land. Consequently, incentives to encourage the re-development of brownfield sites is even more important.

The case for the development of previously developed land remains as strong as ever. It provides a sustainable supply of development sites for new housing and commercial space, safeguards the environment and enhances communities through the removal of urban blight. Furthermore, the reuse of Brownfield land lies at the heart of HCA’s work, and the Agency is responsible for developing and delivering the Government’s National Brownfield Strategy.

How many claimants to the relief are there?

Davis Langdon has circa 250 clients who appoint us specifically for land remediation relief consultancy services.

What sector/ demographic benefits?

Predominantly residential developers/ housebuilder sector is the main beneficiary, with companies of all sizes making claims. After this, commercial developers and the retail sector are also more active, although the number of claims per year is less. This is reflective of the comparative number of schemes live at any one time for these companies compared to the residential sector.

With the final withdrawal of Industrial Building Allowances, Davis Langdon anticipated new sectors starting to make claims this year.

For contaminated land, the relief is valued, particularly by volume housebuilders. Claimants do recognise which sites have qualifying expenditure that generates the benefit and do give greater consideration to increasingly contaminated sites as a direct result. In this regard, the relief is influencing behaviour positively.

The same cannot be said for long-term derelict land relief. There is no evidence as yet that the additional relief is changing behaviour though it is recognised that it is still in its relative infancy.

What is the value of the relief to claimants?

Davis Langdon has helped the 5 named top 10 housebuilders above to claim over £400million in tax relief. This alone represents a significant investment into brownfield land and urban regeneration that should be supported.

Assuming a Corporation Tax Rate of approx 29.5% over the life of LRR, this equates to a cash equivalent cost to HM Treasury of circa £60m alone. Clearly the estimate in the consultation document is inaccurate because this rough estimate is known to be very conservative. For a start, this is the amount of qualifying expenditure that Davis Langdon has certified as claims due in financial years 2005-2010. We have

not acted for all clients in all of those years. Similarly, we have acted for some of these clients since 2001. There is also a balancing figure yet to be claimed for qualifying expenditure incurred, but not yet deductible for tax purposes. Finally, these few clients are a selection of our client list; it is not possible to easily estimate the value from the other approx 245 clients claimed over the past 10 years.

If the relief was retained, will the value of the relief change over time?

The value of the relief in cash terms is decreasing in line with the upper rate of Corporation tax. In terms of brownfield development, it is generally felt in the industry that the 'easier' sites are gone. This can be interpreted to mean that more costly remediation is required. However, it is also embedded within perception of risk, such as the types of contaminants on site, the proximity and sensitivity of receptors for example. Within this context, the relief for contaminated land is increasingly important because it is a way of making the risk more affordable.

Are the proposed transitional arrangements fair and proportionate?

Davis Langdon feels that the timing of the withdrawal will create an undesirable shock in the industry because it coincides with the cessation of landfill tax exemption for contaminated land. We think that the industry should be given time to manage the effects more gradually.

In addition, for clients with large developments, these projects have a very long lead-in. Sites will have been purchased already, which relied on the availability of LRR as part of the financial appraisal. Work may not yet have started and as such their viability will be directly affected.

If abolition of LRR is to proceed, we feel that a minimum 12 months notice is fair and proportionate, recommending that the withdrawal should be from the following financial year – 1st April 2013 - at the earliest.