Land Remediation Relief Consultation Response
September 2025

About The Fiscal Incentives Group Limited

The Fiscal Incentives Group Limited (TFI Group) was formed in 2015 as a consultancy offering capital allowances (CAs), land remediation relief (LRR) and Research & Development (R&D) valuation services. TFI Group currently prepare the LRR claims for 8 of the current top 10 national housebuilders by volume, many of whom have been clients since 2015 with some extending back to 2004 in legacy consultancies.

In the 2004-2008 period, the same team had prepared claims for 4-5 of the national housebuilders who were generally unfamiliar with the relief and requested a review of all sites going back 6 years which were the time limits allowed by FA98 Sch 18 at the time. This led to an HMRC enquiry for all those companies and an extensive review of the eligibility criteria ensued which provided all parties with greater clarity of eligible costs going forward. HMRC concluded that there was an unintended consequence resulting from the 2001 definition of "land in a contaminated state" that allowed flood mitigation and mineshaft grouting and capping costs as eligible expenditure. To correct this, the definition was changed in the 2009 version of the legislation. This was achieved by stating that land was not in a contaminated state if it was in that state due to the presence of air or water. This had the desired effect of preventing claims for mineshaft grouting and flood mitigation. Whilst the exclusion of flood mitigation costs is consistent with the broader objectives of this regime, the reason for excluding mineshaft grouting costs is less clear and is assumed to be for cost reasons.

TFI Group also advise property investment companies and businesses with property interests including retailers, banks and REITS. They are members of the Environmental Industries Commission, the Home Builders Federation and the British Property Federation.

In 2020, in a joint project with CIOT, TFI Group undertook a review of the CIRD manuals covering LRR with a view to making improvements to help taxpayers understand the entitlement conditions and scope more clearly. The outcome was a document with proposed edits to the CIRD manuals being issued to HMRC officials. No amendments were forthcoming. Some of the issues relating to better guidance are again raised in this consultation and so, for ease, we have appended the previously proposed revisions with any changes between 2020 and now being noted.

TFI Group claims data

The consultation document refers to the submission of 1,750 claims in the previous accounting period (assumed to be 5th April 24) with a total value of circa £50 million. The document also suggests that the median claim is just £1,700 and that 90% of claims are below £35,000. Also, that the value of the claims has increased in the last five years without a discernible increase in the number of claimants.

A subsequent clarification from HMT confirmed that the figures referred to in the consultation are the cash values, not the amount of qualifying expenditure. The data provided does not however distinguish between the value of claims for investors (a term generically used throughout this document to represent companies incurring capital expenditure) and housebuilders (a term used to represent all companies developing sites for sale).

This distinction is very important because not only is the relief worth up to 3 times more for investors than housebuilders, but without a distinction being made between investor and housebuilder claims it is very difficult to draw any conclusion on the effectiveness of this relief at supporting the target of

building 1.5 million with a priority for brownfield sites (or Previously Developed Land (PDL), the analogous term used in planning).

The data and the way it is presented is also potentially misleading as the amount claimed in a period is very unlikely to be the full value of the claim on a site. The consultation document reference to 90% of claims being less than £35,000 is a reference to the amount claimed in that period, not the total claim on that site. This is because qualifying expenditure is generally claimed pro-rata to legal completions over many years.

To demonstrate this point and provide what we hope is some helpful insight into housebuilder claims, we have analysed the data from all claims submitted by 11 national housebuilders during accounting periods in the 2023 calendar period and the summary is in the table below which should be read with the footnotes.

FY23 claim values	Footnote	QLRE	Cash value
Expenditure expensed to P&L in period	1	£125,554,216	£14,438,735
Number of sites	2	1290	
Median expenditure expensed	3	£25,164	£2,894
Average expenditure expensed	4	£91,422	£10,514
Number of sites with less than £35k cash value in period	5		1179
Percentage of sites with than £35k cash value in period	6		91%
Proportion of total cost claimed in 2023	7	21%	

Total claim values (all years 2014-2023)	Footnote	QLRE	Cash value
Total expenditure on sites with amounts expensed in FY23	8	£604,216,830	£69,484,935
Number of sites		1,290	
Median total expenditure per site	9	£163,494	£18,802
Average total expenditure per site	10	£468,385	£53,864
Number of sites with less than £35k cash value			826
Percentage of sites with less than £35k cash value in period	11		64%
Total average cost per plot per plot	12	£2,391	£275

Footnotes:

1. This is the total amount of qualifying land remediation expenditure (QLRE) expensed to the P&L as a cost of sales in the FY23 period.
2. This is the total number of sites included within that claim. We are not clear whether the reference to 1,750 claims refers to the number of claimants or the number of claims. For example, the 1,290 claims included in the analysis relates to 11 clients but with probably closer to 40 legal entities with separate CT600 returns.
3. This is the median amount of QLRE expensed, and the cash value of the relief, based on a 23% Corporation Tax (CT) as most claimants were RPDT payers. So, the £2,894 would be directly comparable to the £1,700 referred to in the consultation.
4. This is the average cost rather than the median, which shows that a smaller number of sites have much higher claims.
5. This is the number of sites with a cash value of less than £35,000 in the period which is consistent with the HMT data.
6. Ditto the percentage
7. This is an important statistic because it shows the proportion of total QLRE expensed in the FY23 period. The 21% signifies that only a fifth of the cash value was received in that year and supports that view that it takes 4-5 years on average to sell all the homes on a site.

8. This is the total claim amount of QLRE incurred between 2014 and 2023 on sites that made a claim in FY23. It excludes QLRE that is yet to be incurred on some of these sites and also the expenditure incurred prior to 2014. So, this is the minimum amount the QLRE will be. This is where the 21% was derived, namely £125 million QLRE was claimed in FY23 on sites where £605 million has been incurred. The main point here being that if a housebuilder could claim the relief in the year the expenditure is incurred you will be injecting a significant amount of working capital into the sector, the benefit of which will be far greater to housebuilders than the cost to HMT due to the different cost of capital.
9. This shows that the median cash contribution to a site is nearly £19,000, not the £1,700 currently implied in the consultation.
10. Similarly, the average of £54,000 showing the influence of larger sites.
11. This is a good measure of the skew of claim value towards higher claims with 64% of claims having a cash benefit of less than £35,000 which is a more accurate representation of the size and spread of claims than the 90% implied in the consultation.
12. This is the average claim per plot (a single house or apartment) across all 1290 claims. Because this excludes pre-2014 and costs not yet incurred, the actual figure is likely to be closer to £2,500 meaning a site with 100 homes would have an average QLRE of £250,000 providing a cash benefit of £36,250 @ the current CT rate of 29%.

Executive Summary

We fundamentally believe that the case for reform is strong. Despite the pressing need for new homes the tax regime currently massively favours commercial development over residential development. Whilst capital allowances is not the subject of this consultation there is a significant disparity between the incentives available to investors through capital allowances and accelerated LRR benefits than those available to residential developers and housebuilders who are not only unable to claim the LRR until the point of sale but residential investors are also unable to benefit from Structures and Buildings Allowances (SBAs) and to a great extent P&M allowances due to the domestic dwelling exclusion. This disparity in treatment seems to be working very much against the ambition to build 1.5m homes and needs to be corrected by creating a more valuable tax incentives regime to help build working capital capacity within the housebuilders and to make the UK more attractive for inward investment. Our three main recommendations are:

Recommendation 1: Accelerated tax relief for developers and housebuilders

The unequal treatment between housebuilder and investor claims needs to be remedied by allowing housebuilders the option to treat 150% of qualifying remediation costs as a revenue deduction in the year the expenditure is incurred rather than at the point of sale. A separate paper has been presented to HMT with details as to how this would work from a tax and accounting perspective in practice.

We see this as an opportunity to trial accelerated tax relief for housebuilders ahead of potentially extending that capability to a much broader range of costs on brownfield sites as set out in the Adam Smith Institute paper which has also been discussed with HMT and HMRC officials.

Recommendation 2: Increase the scope of qualifying costs to help subsidise more of the costs that are unique to brownfield sites

The consultation response proposes some options for expanding the relief from removing the "air" exclusion test that currently denies claims for mineshaft grouting costs, a blight to many former mining areas; removing ground floor slabs (as recognised by the recently extended definition of PDL); demolition costs and the range of costs that currently apply to derelict sites only.

Recommendation 3: Increase the headline rate and with a higher rate allocated to SME builders developing brownfield sites of 25 or less dwellings.

Even though the relief provides a significant injection of working capital through tax saved, the value of the relief at a site level is more often than not too small to have the desired influence on development decisions. This is due to the scope and rate of the relief. We therefore believe that the rate should also be increased alongside the previously mentioned scope increases with a greater relief level reserved for Small and Medium Enterprises (SME) housebuilders developing sites of 25 units or less. The rate needs to be determined by the amount of financial support that the Government want to put forward to support housing and the brownfield agenda through this mechanism, but we would recommend a rate increase to 175% and 200% for SMEs as a minimum.

We also make several other recommendations in the responses given and they are highlighted in red text. The most notable ones being:

Recommendation 4: To remove the derelict land relief (DLR) provisions and make the list of qualifying costs available on all brownfield sites

There are 3 principal flaws with the DLR provisions. The first is that any definition that includes a date, either fixed or relative to time risks becoming outdated in the first case or delaying the acquisition or development of a site just to trigger entitlement to the relief in the second. The second is that the relief is restricted to a very prescriptive list of qualifying costs that are not only not capable of extension through analogy but only include a small amount of the costs responsible for the site being in a derelict state. And thirdly, the costs listed are not unique to derelict sites, affecting many brownfield sites too.

Recommendation 5: Update the CIRD manuals to provide clearer examples of HMRCs interpretation of the legislation

It is anecdotally observed that outside the larger companies who have internal tax teams, there is little awareness of the ability to claim this tax relief which would provide a vital source of working capital to SMEs and other companies. At TFI Group we also encounter regular instances where prior claims of new clients include non-qualifying costs, most notably mineshaft grouting. Error and fraud is a key aspect of this consultation and the former can be significantly reduced with better guidance. We include with our response a marked-up version of the CIRD manuals with some proposed amendments.

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Introduction

We have a pro brownfield development Government who has supported brownfield development through the planning regime and other initiatives like brownfield passports and has set an ambitious target to deliver more homes. The same planning policy has reintroduced mandatory local authority housing targets with an ability to include grey belt and green belt land in the assessment of housing land potential. Whilst a blend of development on various land types will be needed to meet ambitious house targets, the acceptance and conditional flexibility to build on greenfield sites and the new category of grey belt land does present further competition for brownfield as the preferred land to develop. Brownfield sites tend to be smaller than greenfield sites and are inherently riskier due to the largely unforeseeable and unpredictable environmental, geotechnical and special restrictions. These are particularly a risk for small sites where the abnormal costs of development (like remediation) can be a much higher proportion of overall cost.

The housing sector is also being challenged on multiple fronts including regulatory compliance costs resulting from the Building Safety Act, Biodiversity Net Gain and changes to the Building Regulations (Parts FLOS) to meet the challenging carbon reduction targets set out under the Future Homes agenda, with another updated version soon to be released. There is also the prospect of significant hikes in Landfill Tax on the disposal of inert material arising from excavations and for many of the larger housebuilders, the Residential Property Development Tax surcharge means that large companies are now paying 29% CT. Combined, these represent a significant pressure on working capital capacity and ultimately reduces the amount of capital available to buy land and invest in more homes.

For a housebuilder, working capital capacity is a key determinant of financial resilience due to the structural disconnect between sale receipts and cost outflows. Income is inherently irregular due to unpredictable sales patterns, while substantial land acquisition costs and staged construction payments create fixed and often front-loaded obligations that are not naturally aligned with receipts. This increases liquidity risk and heightens reliance on careful cash forecasting and treasury discipline. LRR provides meaningful cash benefits to offset working capital strain. Maintaining this capacity is essential not only to support day-to-day operational liquidity and covenant compliance, but also to preserve the capacity to fund longer-term development pipelines and strategic objectives.

In this context, the consultation on the effectiveness design of the LRR legislation is both timely and essential and it presents the opportunity to review its impact at a site and corporate level whilst also remedying aspects of the relief that appear contrary to the original intent. The consultation seeks input on how LRR can better support brownfield development and invites suggestions for making the relief a more effective policy tool.

LRR was designed to incentivise the clean-up and redevelopment of contaminated land. A significant update in 2009 expanded the relief to cover additional costs associated with derelict sites, creating a new relief category for derelict land with an extended list of eligible costs for qualifying sites. At the same time, the 2009 changes narrowed the definition of contaminated land, excluding claims for mine shaft grouting and flood mitigation—ostensibly for cost control, though the rationale remains unclear.

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At its core, tax relief is an additional source of working capital through the reduction in CT liabilities freeing up funds for investment in further remediation and much-needed homes. Therefore, any policy that enhances or accelerates tax relief will directly increase the capital available for development—an outcome that both industry and Government should welcome.

Based on data from the 11 national housebuilder, our estimate is that the housebuilding industry has spent in the region of £1.5 billion remediating contaminated sites since 2015 and £3 billion since the relief's enactment in 2001 representing a significant contribution to successive Government's brownfield policies and removing blight and potential environmental harm. However, generally it is more likely that the sites that have been remediated to date and the less complex ones and that the pool of undeveloped brownfield sites are becoming harder to develop making an extension to this relief even more important.

Currently, housebuilders benefit from a 50% enhancement on qualifying costs under LRR, but crucially, from a cash perspective, they cannot claim this relief until the point of sale, when costs are expensed to the income statement, rather than when the expenditure is incurred. In contrast, investors can claim the 50% enhancement, and the 100% capital cost itself, as a revenue deduction in the year of expenditure, not on ultimate sale. This timing difference is profound: it can release working capital sometimes decades earlier, effectively providing a subsidy worth up to 37.5% towards upfront remediation costs—making it the most valuable CT relief available in the UK.

The business case for using tax relief to support the Government's agenda for more homes on brownfield sites is no different now than it was in 2001 when enacted. In fact, it is arguably needed more because of the increased flexibility to build on greenfield sites introduced in various planning legislation since then.

If the intention is for LRR to predominantly support a policy for the development of homes on brownfield sites, then it would seem contrary to this intention for accelerated tax relief to only be available to investors and not housebuilders. The different treatment for capital expenditure is understandably driven by the typically longer time horizon between incurring cost and the tax point for that cost at the point of sale as part of the chargeable gain calculation. Therefore, providing the relief at the point of expenditure through the election process set out in s.1147 is entirely logical. What is overlooked for housebuilders though is that the time horizon between the point of incurring the qualifying cost (typically year 1) and selling the homes, the point the housebuilder gets the tax relief, can also be many years. For example, if the remediation was incurred in year 1, the first sale in year 3 and the last sale in year 7 (as borne out by our analysis), there would be a significant time advantage to be gained by accelerated relief. In some cases, on large multi-phase regeneration schemes, it can take as long as 20 years for all the relief to be recovered. This disconnect between cost and benefit is one of the principal reasons the relief is not taken into account when a site is acquired.

The principle of accelerated tax relief has been discussed with HMT officials and the question asked as to how timing benefits (costs to HMT) get valued. There was no response provided, but the key point is that the cost to HMT will be significantly lower than the benefit to housebuilders who will have a much higher weighted cost of capital. An accelerated relief provision would take full advantage of this difference.

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Our consultation response which follows addresses each of the questions raised but, fundamentally, if HMT wishes to support brownfield development through tax incentives as they do for commercial property investment through the CAs regime (full expensing and SBAs being two recent updates), then the three main options would be to accelerate the relief ahead of its default tax point, increase the scope of the relief, or enhance the rate relief is given above the current 150%.

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Response to consultation questions

TFI Group has offered a response to all the questions in the consultation, but TFI Group are not a claimant, so where there are requests for examples of how the relief is used or viewed, our views are based on anecdotal evidence from clients and observed industry practice only.

The stated purpose of the consultation is to better understand:

- the impact of LRR on development of brownfield sites
- how the relief is factored into businesses' decision making
- how effective the relief is; and if it is not, why not
- the extent to which it is robust against abuse

Question 1: What are the main factors that businesses consider when selecting a site for development?

- **Main factors considered:**

  Many investors, developers and housebuilders approach site election by considering all the potential costs of development and anticipated receipts from sale to determine what they would be prepared to bid for a site after making an allowance for profit and costs of funding. This is sometimes referred to as a residual land calculation. Risk will be priced into the costs via a contingency allowance which will be a sum allowed for to pay for costs that are not foreseeable at the time of acquisition. This will not infrequently include a provision for unknown qualifying remediation costs but by its nature will not be to a level of accuracy to reliably convert to a cash subsidy for LRR to consider in their appraisal and investment decision.

- **What role does tax (in particular LRR) play?**

  The cash benefits of the relief are very different for housebuilders and investors, with housebuilders typically receiving a cash equivalent subsidy of 12.5%) (or 14.5% for RPDT payers). Most site assessments are undertaken on a pre-tax basis using well-understood financial measures such as return on capital employed (ROCE) or gross margin to demonstrate the financial performance of a project and business overall. If tax relief is used in that calculation, to help move a marginal site into a viable site, then that might be the right thing from a cash perspective, but it will still show up in the accounts as a site that did not hit the target ROCE or gross margins which will ultimately impact on share price and consequently on ability to raise more working capital.

  Successive Governments have used tax incentives to encourage investment, increase economic activity and to create a favourable tax regime to attract inward investment. The role of tax incentives almost demands a separate consultation of its own but at its core, the concept of tax relief acting as a catalyst for investment is challenged because most business decisions, and most company financial performance measures, are pre-tax. For this reason, is it reasonable, in the context of deciding the effectiveness of LRR, to use impact on decision making as a key metric in drawing conclusions on its effectiveness? Especially as there are no provisions in the detail of the relief that make the LRR subsidy any more or less likely to be factored into decision making than capital allowances.

- **If LRR is factored into decision making, how is it considered in the site selection and development process?**

  For the reasons explained above, the propensity for companies to assess development on a pre-tax basis does make it more difficult to expressly factor a tax relief benefit into the appraisal. Similarly, the unpredictability of qualifying costs and the disconnect between the expenditure being incurred and the cash benefit being realised, on sale, especially if CT rates have changed in the intervening period, will further impact on confidence to factor into site appraisals.

  Nonetheless, and notwithstanding comments made in the previous question, the presence of the relief creates a positive cash benefit, which opens the opportunity to consider the relief in the decision-making process. We have heard of examples including adding the benefit to the purchase price to achieve a price a vendor is prepared to transact at or highlighting it as a developer benefit to compensate for taking on inherently more risky brownfield development. Care is needed, however, to make sure the polluter pays principle is upheld by ensuring that a vendor, who might also be the person responsible for the contamination, doesn't end up as the beneficiary of the relief by virtue of the relief being factored into the price paid for their land.

  It is also not a surprise that the much higher cash benefit of the relief on capital expenditure results in the relief playing a far more prominent role in site selection. The cost of land is predominantly made up of the acquisition cost and the remediation / enabling works to achieve a suitable development platform. The greater the remediation cost as a proportion of overall land costs, the more significant the relief becomes especially when you consider the 37.5% tax subsidy on capital expenditure. In extreme cases a piece of land may be acquired for £1 due to its contaminated state resulting in an effective subsidy of up to 37.5% on the all in cost of land due to the cash value of the relief on the remediation costs. We are currently advising a well-known retailer who has specifically selected a brownfield site over a greenfield site as the site for their new distribution centre purely because of the presence of LRR and CAs, with the former being the far more significant contributor. The LRR therefore operating as intended, namely the determining factor in choosing the brownfield over the greenfield option.

- **How do businesses establish the amount of contamination or dereliction and, with that, the costs that would be eligible for LRR compared with overall costs on site?** Companies will provide costs to support decision making at various stages in a project. At the early stages of assessment, they will be using benchmark data for building costs and will typically get an estimate of abnormal costs (such as remediation, earthworks, demolition, services diversions, abnormal foundations etc) from an internal or external quantity surveyor who will base their estimates on provisional site investigations. There will be a contingency sum added to these costs to cover the unknown costs and risks more generally. It would be possible to do an estimate of the LRR qualifying amounts at this stage too. As more information on the ground conditions comes through (from intrusive ground surveys), these estimates will become more reliable, and the risk contingency adjusted. Once planning has been achieved, the developer will tender the works to a contractor who will provide their price for the works. This will be in whatever detail is requested in the tender documents but rarely are the qualifying works listed separately. The works will then be let to the preferred contractor, and they will be paid for the works undertaken plus the cost of any agreed variations at the end of each month. It is within variations where the qualifying costs can vary significantly as it is not untypical for additional works to evolve due to the presence of unforeseen contamination or geotechnical issues associated with the ground, after the works

have commenced. Once the works are complete, a final account is agreed with the contractor, and they are paid for their works before a final payment being made. As LRR consultants we are asked to prepare claims on these costs plus any associated professional fees once the site achieves its first legal completion which may be a year or two after the expenditure is incurred. The reason for this is that they only want to pay for the valuation to be carried out in the year they are able to start claiming. For investor claims we do the valuations annually unless it is deemed to be pre-trading expenditure in which case the exercise is deferred until the commencement of the property business.

The challenge is clear. The lack of technical detail and detailed costings at the early stages of a project, when investment decisions are made, contribute to a reluctance to factor the relief into investment decisions. Also, the disconnect between costs being incurred and benefits being realised are a further reason to not consider this relief in the early stages of a project.

- **How does LRR help with any uncertainty around this?**

LRR is a derivative of the costs incurred and doesn't itself impact on the certainty of costs. The appetite for better estimating and tendering of qualifying costs would be vastly improved if the relief was claimed in the year the expenditure was incurred as there would be an increased incentive to do so. Better guidance in the CIRD manuals would also help companies understand the scope of allowable costs. The LRR legislation ultimately requires a claim to be based on actual costs which will not be known until later in the project once the final account is agreed.

Question 2: What are the main barriers to development on

- **Brownfield sites?** The main factors affecting brownfield sites from a physical works perspective can be broadly split into five sections:

I. Removal of existing <u>above ground</u> structures which will often need to be demolished, typically down to ground floor slab. The removal of asbestos within these buildings is allowable under the existing regime but general demolition is not.
II. In some cases, there may be a planning requirement or a listing that requires an above ground structure to be retained. Such an example are the steel frames around former gas holder sites. There is no fiscal support to cover these costs other than LRR which may be available on removal of asbestos fire cladding or lead contaminated paint.
III. The <u>below ground</u> environmental and geotechnical legacy of the site's former use(s). This could be contamination, removal of ground floor slabs (as noted in the consultation document the NPPF definition of PDL was recently extended to include ground floor slabs); removal of building foundations and underground obstructions. It is also worth noting that the density of buildings on brownfield sites is often much higher, sometimes the entire site, meaning that any excess soils from basement or foundation excavations have to be moved off site. If these costs also attract the higher rate of landfill tax currently proposed that would be a major cost to absorb.
IV. Services diversions or removal of redundant services. It is not uncommon for utility services routes to clash with the proposed siting of new foundations or basements meaning those services need to be diverted.
V. Proximity to sensitive assets or users. Brownfield sites are by their nature typically positioned adjacent to other sites or transport networks. For example, there can

sometimes be considerable costs associated with building over London underground tunnels due to the vibration risks to the building and the risk of building foundations being too close to tunnels. Similarly, if a site is adjacent to an above ground rail track or major utility service corridor, there will be typically significant and costly boundary treatment conditions imposed the regulators of those assets.

- **And, in particular, contaminated and long-term derelict land?**

  I. The main reason why contamination is so costly and risky is because of the unknown remediation requirements when a site is acquired. It is not until the ground has been fully investigated that any costs can be reliably predicted. Contamination can also be mobile if contained within an aquifer further increasing the risk. Also, there is a risk of dispersing contamination to more sensitive receptors when breaking ground or simply piling through ground.

  II. Long term derelict sites. Derelict sites are essentially brownfield sites that have remained unused and inviable for development for many years. Sites become long term derelict mainly because the site is not financially viable to develop either because the demand for buildings (commercial or housing) is low or because costs are too prohibitive due to complex ground conditions or planning constraints. These are the types of sites that need grant funding rather than tax relief.

- **To what extent/how does LRR help with these versus other options, such as grants?**

  LRR fundamentally helps alleviate some of the risk of developing brownfield sites. Having the upside of tax relief at the end of a project (as is the case currently for housebuilders) means that there is a corporate benefit through the tax line that generates a cash subsidy that ultimately frees up working capital for further investment. If remediation costs are greater than predicted, then there is similarly some recovery of those costs through the tax line. Theoretically, grants should only be needed where these is a negative land value resulting from low demand or prohibitive costs. There are however sites that remain undeveloped simply because the seller is unwilling to sell, preferring to maybe wait until market conditions improve to get a higher price. Tax relief can sometimes be helpful in supporting the case for an increased price in such circumstances.

  The grants referred to in the consultation relate largely to Registered Provider grants to support the acquisition and development of affordable housing. They indirectly support brownfield development but are fundamentally there to subsidise the cost of building or buying the homes rather than remediating sites. Homes England do use grants to fund the upfront enabling and remediation work or major sites that have a negative land value or are too cost prohibitive or too capital intensive to develop by the private sector. This is where grants are best used.

  LRR only covers 14.5% of the remediation costs for large housebuilders and only 12.5% for smaller housebuilders who are not subject to the RPDT. Investors receive a subsidy of up to 37.5%. These significant differences are down to just two issues. The timing of the relief for investors and CT rates. These differences must be resolved to maintain equity and fairness in the regime. The relief also needs to recognise where help is most needed, namely SME developers of small sites who currently receive the least value from this relief.

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Chapter 2: Design of the relief

Question 3: To what extent are the right projects able to access LRR, given the structure and design of the relief? This depends on what a right project is deemed to be which is not clarified so is assumed to be any site that is being remediated. There are several reasons or instances where such sites do not attract LRR:

I. Where a developer develops a site under a development agreement with a seller who retains the freehold in the land until the development is complete, or other such milestone is reached. This is a mechanism often used by Homes England and Local Authorities who want to retain some leverage over the developer by keeping hold of the principal interest in land. What typically happens in these scenarios is that the developer is granted a build licence to give them a right over the land to undertake the works. However, this build licence is not a "major interest" in land and therefore the developer is unable to claim. Interestingly, we have raised this issue with Homes England who we understand changed their policy to always grant a 125 year lease for the development phase but we still encounter agreements with licences only.

   A potential way round this would be to incorporate similar wording to that used in the SBA legislation to address a similar issue which is as follows:

   > *270DB Interest acquired on completion of construction*
   > *For the purposes of determining the relevant interest, a person who—*
   > *(a)incurs expenditure on the construction of a building or structure, and*
   > *(b)is entitled to an interest in the building or structure on or as a result of the completion of the construction,*
   > *is treated as having had that interest when the expenditure was incurred.*

II. Sometimes a developer will be granted a 999-year leasehold interest as their major interest in land prior to development where the freeholder, say a local authority or trust who wishes to retain the freehold for some other commercial purpose such as receipt of a ground rent, is the polluter. Where the owner of the freehold reversion is the polluter, the developer would be denied the relief because of their relevant connection to the polluter through the polluter's retained interest in land (Corporation Tax Act (CTA) 2009 s. 1150). The concept of a 999-year peppercorn lease as being an effective disposal of the property (notwithstanding the reversionary interest) has been accepted in other taxes. The grant of a lease can be a disposal of the relevant property for the purposes of a VAT transfer of a going concern if the reversionary interest retained is worth less than 1% of the property transferred.

   Is there an argument, therefore, to apply this principle and clearly state that a reversionary freehold interest does not amount to a retained interest in land?

III. Similarly, the relevant connection rules and the requirement for contamination to be wholly or partly caused by someone with a relevant connection for a company to be denied the relief does create some potentially unintended consequences. For example, Owner A has a large site with multiple buildings and tenants containing asbestos. One of the tenant's (Company B) activities pollutes the site. Owner A then sells to owner C who then wishes to demolish the buildings and change the use to housing. They buy the building and inherit the lease with company B which runs for another 6 months whilst C gets planning. All other buildings were

acquired vacant. Because company B polluted part of the land and had an interest in land, Company C could technically be denied the relief on all remediation costs on the site.

The legislation does not appear to cater for a disaggregation of the various types of contamination with the entitlement conditions assessed on each separately identifiable source of contamination but that is surely the logical approach. Some guidance in the CIRD manuals to clarify HMRCs position would help.

IV. Sites remediated by Registered Providers are generally unable to access the relief. The main reason being that they use gift aid provisions to move profits from entities they set up to undertake taxable trading activities, into their charitable arm. They could use the relief if they make a loss in the period in that entity or if they wish to retain cash in that entity tax free.

V. Non-taxpayers, income taxpayers and tax transparent entities with income taxpayers are also prevented from claiming the relief.

VI. REITS can claim the relief, but this only impacts the PID paid to investors. This is the same for capital allowances (CAs). Given the requirement to exclude LRR qualifying costs from the SBAs valuation of a CA claim a REIT (and other investors) will always have to determine what those costs are. REITs can benefit from the tax credit rules if making a loss, but this is very rare.

Question 4: We have heard representations that the following aspects of the design of LRR act as an impediment to incentivising development of contaminated or derelict land, which we are seeking views on in particular:

- **Activities/elements that aren't covered by LRR** – there is clearly a connection between the value of the relief (determined by its scope, the rate of relief, prevailing tax rates and the timing of the relief) and the potential impact on decision making. If HMT wish to provide more support for brownfield through the tax system, then these are the areas to focus on. If the scope was to be extended, then the most logical extension is to include costs that are unique to brownfield sites.

  Some suggestions are:

  I. Remove the air exclusion test that currently prevents mineshaft grouting costs form qualifying.
  II. Above ground demolition costs including the ground floor slab.
  III. Adding in the list of 5 items that are currently allowed on DLR sites only, to all sites.
  IV. A specific category for the remediation and treatment of gas holders where there is a regulatory need to be retained and repurposed.

- **The types of works that are included in the definition of 'derelict land'** – there are no works that are particular to derelict sites and not other brownfield sites. As previously stated, sites become derelict because of fundamental viability issues that don't support development, even at a zero land value. Qualifying derelict land sites currently benefit from the same relief as non-derelict sites plus the list of five prescriptive costs. Costs which also potentially affect many brownfield sites. The scope extension suggestions made above apply equally to DLR sites. In our opinion there is no logical reason for a DLR category in the tax relief regime, and the two schemes should be merged.

- **The impact of the date from which land must be derelict to be considered eligible –** a fixed date, as currently provided (1998) risks becoming harder to prove or harder to achieve given the increasing passage of time a site needs to have been derelict for it to qualify. If it was a date relative to time, then there is always the risk that development is delayed. What would that time be? Number of year before the expenditure is incurred? Before the date of purchase? Before a contract is let? In all scenarios the risk of deliberate delay exists. However, if HMT wish to retain the DLR relief then a relative data would seem most logical.

- **The number of additional sites that would become viable if the date were changed from 1998 to a fixed date (for instance, 10 years) prior to today, aligning with the original legislation** – for the reasons set out above it is highly unlikely that a relatively small subsidy against a relatively small amount of qualifying costs would make the difference between a site being developed or not. These sites need grants.

- **The 'continuous use' requirement, which disqualifies land from LRR that has been in productive use for more than 7 days a year** – we presume this means continuous disuse. There is no definition of this in Part 14 CTA2009. The CIRD manuals make a reference to 7 days. It makes good commercial sense for any developer, considering development of a derelict site, to try and generate some income during the planning phase which can often take many years.

  If this relief was to be retained, then the more logical condition could be for the site to be unused by any company for a period of more than 30 days in any 12 month accounting period unless that use requires no permanent structures to be built. Permanent structures would be any structure intended to survive the ultimate development of the site. So, if the site was used as a temporary car park using a hardstanding that is then excavated once the ultimate development works take place then the site could still be deemed to be derelict.

- **The exception from LRR where a company or connected party was responsible in any way for causing the contamination or dereliction or such a company holds an interest in the land (the 'polluter pays principle') – in particular where the owner retains a reversionary interest**. This has been covered in Q.3 above

Question 5: Are there other aspects of the design that act as an impediment to incentivising the development of contaminated or derelict land?

There are several impediments mentioned in responses to Q.1 and Q.3, namely:

- Disconnect between cost being incurred and benefit being received.
- Unpredictability of cost as the point a company makes the decision to buy a site.
- The fact that it is a below the line benefit.
- The restriction often encountered in development agreement scenarios.
- The polluter pays operation where polluter retains the reversionary interest.
- The inability to disaggregate different sources of contamination.

However, at a more structural rather than detail level, it is the scope of the relief and the rate at which the relief is given that are the main impediments to this being a more effective instrument. Most companies receive less than a 15% contribution towards the cost of a limited amount of qualifying costs. This is the reason why claims are low and therefore rarely considered in site appraisals. The

LRR tax relief is the only corporation tax relief available to housebuilders compared to the significant additional support given to investors through the capital allowances regime. Given the Government's priorities for housing, this unequal treatment needs to be resolved by significantly increasing the rate at which the relief is given beyond its current 150% level. The rate will clearly need to consider affordability but needs to be set at a level that materially influences the subsidy on remediation and other costs and needs to be considered alongside scope change, and we would therefore recommend an increase to 175% as a minimum.

It is also widely recognised that the number of SMEs participating in housebuilding has shrunk well below the number prior to the credit crunch in 2008. The cost of regulation as a proportion of turnover for SMEs is arguably much higher than large housebuilders and development finance is also likely to be more expensive. Furthermore, the small urban sites blighting many towns and cities are often too small to be of interest to the large housebuilders. And yet SMEs receive the same level of tax relief as large companies. Growth in the SME builder market is a key strand to the development of 1.5 million homes and the availability of a higher subsidy to year 1 remediation costs, if combined with the accelerated relief, would provide an invaluable injection of working capital to these smaller companies at a time when it is needed most.

In addition to the recommendation to provide an enhanced headline rate, we also recommend that SME developers of sites <= 25 units receive an enhanced benefit above any enhanced rate and at least at a level of 200%. An alternative to this would be to allow SMEs to claim 200% on all sites, a rate distinction that has precedence in the R&D tax relief world. This would increase the value of the relief to 25% which if combined with accelerated relief and extended scope could make a significant impact on the viability of these smaller sites.

Question 6: How complex is the relief to claim?

LRR, like many tax incentives, hinges on a series of qualifying conditions that must be satisfied for costs to be eligible. While this approach is manageable for those familiar with tax legislation and its intricacies, it can be daunting for many, often resulting in lengthy HMRC enquiries or costly tribunal proceedings. A notable example of this complexity is the 2009 amendment to the definition of "land in a contaminated state". This change moved away from a definition that was far more aligned with established contaminated land regime definitions, instead introducing wording designed specifically to block claims for mineshaft grouting and flood mitigation costs—by stating that land is not in a contaminated state if in that condition due to the presence of air or water.

The rationale for the prevention of mineshaft grouting costs remains unclear. If the intention is to control expenditure by narrowing eligible costs, that is one thing. However, without such a fiscal imperative, there is little rationale for excluding mineshaft grouting costs, which continue to impede regeneration in former mining communities.

Provided the person preparing the claim is fully aware of the scope of allowable costs and is sufficiently knowledgeable about the way construction pricing works, then the actual claim preparation is relatively straight forward in that it relies on a review of the works needed to remediate the site to remove harm which are set out in the geoenvironmental and geotechnical report for a site including bore hole reports and logs; the remediation strategy; asbestos surveys; Unexploded ordnance surveys and recommendations; validation reports (a report prepared at the end of a project which validates from an external party the remediation works undertaken) and material management plans.

These collectively define the scope of qualifying works. The costs attributable to those works are then calculated with reference to the contractor's pricing document which can vary in detail. It is not uncommon for additional calculations to be made to extract out the relevant qualifying portion of a sum that contains both qualifying and non-qualifying works. A good example of this is the landfill tax (LFT) element. It is a cost paid by the company who takes the material to landfill and not therefore a figure that housebuilders always have visibility of as it rarely shown as a separate figure in a contractor's pricing schedule, often being lumped in with the overall cost of removal of materials off site. As a result, we often correct claims to remove the non-qualifying LFT element once the cost has been determined. All qualifying costs then need to be apportioned to the correct accounting period with reference the management and statutory accounting records and any accruals policy.

In terms of any recommendations, the inability to claim LRR on LFT payments effectively creates a double jeopardy scenario. The penalty for taking materials off site to landfill is the LFT paid. That is the incentive to try and keep as much material on site as possible, not whether they get 12.5% (assuming a 25% CT rate) recovery of that cost through LRR. There are some very good and well documented reasons why material must go off site and a company is already penalised heavily when doing so through the LFT regime. To penalise that action further by denying LRR seems to be harsh.

The recommendation would therefore be to remove the provision that denies relief on landfill tax payments on the grounds that it would remove administrative burden and the double penalty.

Question 7: To what extent does administrative complexity of claiming the relief hinder the relief from achieving its objectives?

Notwithstanding isolated areas mentioned above, we don't believe that administrative complexity is a major factor in hindering the relief. However, we do feel that better guidance would help including edits to the CIRD manuals. We do feel that the requirement to place 150% of the cost in box 685 in CT600 irrespective of whether it is a claim for capital expenditure (enhanced relief of 150%) or revenue expenditure (enhanced relief of 50%) also hinders the accurate recording of the cost of this relief to HMT risking incorrect conclusions being made.

Chapter 3: Impact of the relief

Question 8: What role does the credit element of LRR play in influencing decisions in site selection/proceeding remediation works?

The credit is typically claimed where a company makes a trading loss (ignoring any carry forward losses) in a period and that loss is created or increased by the LRR claim. It then becomes a case of deciding whether to take the credit in exchange for a 16% payment or carry forward the loss created by the relief and offset against future profits at the prevailing tax rate for that company (currently 25%, or 29% for large housebuilders with > £25 million profits). This is a cashflow consideration and whether the credit is taken will depend on the company's cost and availability of working capital. Given that CT rates have ranged from 19% to 30% during the period of this relief since enactment in 2001, the credit relative to those amounts has also varied, So, companies would relatively be far more likely to take the credit when CT rates were 19% than when they were 30%.

For single property SPVs, the availability of the tax credit would help significantly in helping investors to provide cash flow in the early years of a development. If housebuilders could also claim in the year

of expenditure, it may be that the tax credit option is taken, subject to any group relief opportunities. For investment companies it is not the design of the relief that is the problem, rather the pre-trading rules that stipulate that the relief is not available until rental income is being generated. This has the effect of pushing back the timing of the benefit until the end of the development phase, thus decreasing its influence in the decision-making process. The same applies to CAs.

Allowing the relief to be claimed on capital expenditure in the year of expenditure instead of the year the trade commences would overcome this disconnect and improve the relief's impact on decision making.

It is also perhaps worth considering making the credit rate a percentage relative to the CT rate rather than a fixed percentage.

Question 9: In general, what proportion of overall costs tend to be eligible for LRR?

Our benchmark data states that the average cost of qualifying expenditure per plot (1 house) is circa £2,500. The cost of a house varies due to size and specification but as a very broad benchmark the average cost to build a house is circa £2,000 per m2 and the average size is circa 100m2. So, £200,000 average across all house types and specifications meaning the qualifying spend will be in the region of 1-2% of the overall cost of a development. This figure would of course be more as a percentage of total cost if the scope was broadened to include more costs attributable to brownfield development. And therefore more impactful in the decision making.

Question 10: How much eligible land is there?

Local authorities hold this data through their brownfield registers. However, not all local authorities have the resource to accurately identify and register brownfield sites in their area despite the regulatory requirement to do so – see the Gov.uk guidance here: https://www.gov.uk/guidance/brownfield-land-registers. A good example of a completed register is as follows can be found on the Birmingham city council website here: https://www.birmingham.gov.uk/downloads/file/9037/brownfield_register. The recent consultation on brownfield passports to support planning will, if implemented, also require local authorities to allocate a passport to a site meaning planning in principle is agreed. The passports will however only apply to a limited number of brownfield sites, typically those in urban areas and earmarked for development of a particular type (e.g. 4-storey minimum) which would exclude any two storey house developments.

How does this compare to when the relief was first introduced?

We don't have data on this, but we review every site for our clients and the percentage of sites with qualifying expenditure has been dropping gradually over the 24 years of this relief. When we first started preparing claims in 2003/2004 around 70% of sites contained qualifying expenditure whereas more recently that has been less than 50%. That is partly because there are fewer sites because of the sites being remediated in that period but it is also because, in that same period, and particularly around 2016, greenfield development was made a lot easier through relaxed planning.

Question 11: Are there examples of contaminated and derelict land that has been developed as a result of LRR? Do you have a sense of how much contaminated or derelict land has been developed overall as a result of LRR?

For many of the reasons already set out in this response, LRR is more often a consideration rather than an explicit part of a financial business case for the development of new homes. Despite this, the corporate-level impact of LRR should not be underestimated. The tax relief generates working capital that funds future development works, including remediation. For example, the 11 companies have spent £1.25 billion on remediation in the last 10 years generating additional working capital of circa £150 million resulting in more investment in new homes including remediation. As an example, assuming all that working capital was used to fund remediation works then our data shows that over 55,000 homes have been delivered on land remediated entirely from funds generated from LRR. Expenditure which itself generates further LRR creating a highly attractive virtuous circle of investment. This is a powerful motivator for ongoing brownfield development, and one that would be significantly enhanced if the relief could be accelerated to the point of expenditure, a central message in this consultation response.

Question 12: Are there examples of where LRR has contributed to projects that would not have proceeded absent the relief? Similarly, are there examples of where LRR has contributed to projects that would have proceeded absent the relief?

Despite all the reasons given as to why the LRR is difficult to consider in development decisions, the overriding fact is that the cash value of tax relief and the impact on investment decisions and heavily linked. For example, housebuilders can only recover a maximum of 14.5% of the qualifying costs (£1,000 x 50% x 29% = £145) or 12.5% for 25% CT payers. This is very different to the 37.5% recovered by investors (£1,000 x 150% x 25% = £375). It is not therefore surprising that investors are far more interested in factoring this this relief into the investment decisions. A good example is the national retailer referred to earlier who is currently reviewing two potential sites for the development of a new regional distribution centre. One site is on agricultural land and one on a highly contaminated and geotechnically complex brownfield site. Both sites have been assessed based on the overall cost of development less the net present value (NPV) of the CAs and LRR. The LRR element contributes a NPV cash value in excess of £10m which is roughly equal to the NPV of the CAs benefit. As a result, the preferred choice is the contaminated site.

Question 13: How does LRR compare with other forms of support for the development of Brownfield land, such as the Brownfield Infrastructure and Land Fund, and local government support? What benefits or drawbacks would, for example, a grant have compared with a tax relief to the same value?

Grants are always preferable because they subside a higher if not all of the cost of remediation but in our opinion should be reserved for sites with negative land values or where development is not viable without grant assistance or for publicly owned land. Grants are typically less certain due to the often lengthy application process with unpredictable outcomes. LRR is more certain and ultimately manifests itself in an improved working capital position and improved post tax returns for companies engaged in brownfield development. The reward of tax relief being the incentive to positively engage in the pro-brownfield agenda.

If the cash value was the same, then the primary difference is that the grant will appear as an above the line reduction in cost whereas the tax relief will be a below cash benefit. Tax will not impact gross margin, an often used measure of development viability, whereas grants do. The cash position is however neutral, and it would be up to each individual company to decide how they take that into account in making investment decisions.

This does beg the question as to whether the LRR benefit should be provided as an above the line taxable expenditure credit like the R&D expenditure credit. The way it works is to give a credit (expressed as a percentage of qualifying costs) which can be treated as taxable income. The cash benefit is then received through the tax line. The real benefit of the above the line credit is that it is effectively treated as additional income and would mean that companies could more easily factor the credit into their pre-tax development appraisal. The downside is that it potentially increases land values which would benefit the seller rather than the housebuilder or investor. Particularly so if the vendor was the polluter. Whether the upside benefit is greater than the downside risk is a moot point.

If the intent was for the LRR benefit to be more visible and influential in the decision making, then this would certainly help achieve this alongside an acceleration of the relief and scope change.

Question 14: What impacts do interactions between LRR and other forms of support, such as government grants, have?

The general rule is that LRR is denied where expenditure has been grant-funded. With careful planning, it may be possible to allocate grant funding to non-qualifying costs, but this is complex and only worthwhile for significant sums, where all parties are prepared and able to structure a grant award accordingly.

There is also a slightly confusing interaction with CAs in that LRR is denied if the expenditure also qualifies for plant and machinery allowances, but SBAs are denied where the expenditure qualifies for LRR. Given the very rare instances where the first applies, typically mechanically operated radon or methane protection systems in buildings build by investors, the proposal would be that LRR always has precedence over any form of CA on the grounds that it is the most valuable. This means that LRR would be claimed on qualifying Plant and Machinery costs rather than the other way round.

Chapter 4: Robustness against abuse and error

Question 15: What is your understanding of why customers and/or their agents may make errors when submitting claims for LRR or the LRR tax credit?

Main reason will be that the scope or entitlement conditions are not always properly understood, as best, or not sufficient attention paid to them. As previously stated, when we take on new clients, we often undertake a review of prior claims under the 4 year time limit (2 years for capital expenditure). We always, without exception, encounter claims for costs that do not qualify ranging from mineshaft grouting costs, landfill tax, Japanese knotweed removal costs (only on-site treatment is allowable); whole “remediation contract” costs being claimed without any apportionment between qualifying and non-qualifying aspects of those works. These errors often occur because a company uses its own staff, who often do not have the in-depth knowledge of the LRR regime, to prepare claims using proformas that are often incorrect. There is often little consideration given to payment timings and splits between accounting periods or accruals policy. As regards the CIRD manuals, we believe that there is scope for better explanations of what qualifies and what doesn’t. Given many non-specialists

are even aware of the existence of the manuals it would perhaps help if HMRC issued some general advice on the existence of the manuals to help improve the accuracy of claims.

We have submitted with this document a copy of the CIRD manuals in CIRD60000 with edits for suggested amendments. These have been updated from the version issued to HMRC via the CIOT in 2020 but with many of the edits left unchanged.

Question 16: Are there any changes that could be made to the LRR guidance or rules to help prevent errors when making LRR claims, and/or make the process more straightforward?

Please see proposed edits attached to this submission.

Question 17: Are there fraud risks associated with LRR, particularly with the payable tax credit part of the relief?

The payment of a credit will always be enticing for those wishing to manipulate loopholes in the system or by submitting knowingly fraudulent claims based on spurious and unsubstantiated costs in the hope that the credit gets paid and HMRC don't raise an enquiry.

Question 18: What additional processes could help to reduce error or fraud without introducing disproportionate administrative burdens?

Greater rigour around Anti Money Laundering checks will certainly help in identifying the persons with significant control to follow up any instances of potential fraud and we understand that HMRC will be using more AI enabled capability to spot abnormalities in claim behaviours which will be good.

Whilst we don't intuitively feel that the fraud risk is as great for LRR as it was for R&D mainly because LRR claims are mainly limited to developers or property investment companies and therefore fewer in number, it could be that a similar AIF procedure is adopted if HMRC start to experience elevated levels of fraud.

However, careful thought would be needed to determine what information is requested in the AIF form which we are happy to assist with if that is something that HMRC wishes to consider.

The only other suggestion would be to maybe request that a claim document showing the basis of the claim and the costs claimed be submitted with the CT600 for any claims above a certain claim value threshold or in instances where a credit claim is made.

TFI Group
9th September 2025