

DMQTWB 18 - Evidence from: The Chartered Institute of Building (CIOB)

Senedd Cymru | Welsh Parliament

Pwyllgor Newid Hinsawdd, yr Amgylchedd a Seilwaith | Climate Change, Environment, and Infrastructure Committee

Bil Tomenni Mwyngloddiau a Chwareli Nas Defnyddir (Cymru) | Disused Mine and Quarry Tips (Wales) Bill

1. What are your views on the general principles of the Bill, and is there a need for legislation to deliver the stated policy intention?

CIOB welcomes the proposals put forward in the Bill and agrees that there is a need for legislation. In addition to the recent fallout of Storm Bert in coal tip areas, disused mine and quarry tips adversely affect adversely affect construction companies, particularly in rural areas due to their prevalence of these tips. It also adversely affects small and medium enterprises (SMEs), which make up the majority of the Welsh construction industry.

Recent CIOB research into risks faced by SME construction organisations in Wales uncovered how risky these disused mine tips and quarries can be for the construction industry, particularly for smaller organisations.

CIOB's research heard from one CIOB member, whose organisation is the principal contractor on several social housing projects across Wales. He noted that this was not an uncommon issue in his experience, and that developing brownfield sites carried an inherent risk of additional remediation costs because of the discovery of a disused tip or mine shaft at the site. Often, these do not appear in any survey undertaken or on historical local authority documents. Coupled with additional financial pressures on the industry as a result of a high-inflation economy, this means brownfield sites are becoming increasingly less attractive for developers, as they have become more of a risk.

This organisation has a brownfield site in Aberdare, with plans for around two hundred homes, many of which are affordable social homes. The project is

currently facing viability barriers due to remediation costs and a lack of accountability from its historic usage.

On a different site, another CIOB member – who was working as a contractor for a client (the contracting authority that owned the site) – noted that landowners were generally unwilling to share risk on this, leaving the contractors (many of whom are SMEs) to foot the bill for remediation. As above, this often throws the project into disarray with significant delays and financial barriers, which places additional pressures and retention costs on the contractor when they are unable to deliver a project on time, if at all.

The construction sector is vital to achieving Welsh Government housing targets, and if these brownfield sites continue being seen as unviable risks, large tracts of land in Wales will remain undeveloped. This is also true of non-housing projects.

2. What are your views on the Bill's provisions (set out according to Parts below), in particular are they workable and will they deliver the stated policy intention?

▪ Part 1 - The Disused Tips Authority for Wales (sections 1 to 5 and Schedule 1)

CIOB welcomes the creation of this authority, but questions whether it can come into effect sooner than 1 April 2027. This would be a further two-and-a-half years of risk and insecurity for construction projects affected by these disused sites across Wales.

▪ Part 2 - Assessment, registration and monitoring of disused tips (sections 6 to 32 and Schedule 2)

Making these sites available on a public register for contractors, clients, and developers, would ensure transparency and ensure that remediation costs to make the land viable for projects are built into tender processes. This would also make clients more accountable for their sites, and ensure that risk can be negotiated and shared between all parties instead of being the sole responsibility of contractors as is often the case.

Compensation offered in Section 31 is welcome, particularly in the case of brownfield development sites that need to be investigated. These inspections may be risky and contractors, as such, may be reluctant to cooperate and instead look to sell off the land or leave it undeveloped.

▪ **Part 3 - Dealing with tip instability and threats to tip stability (sections 33 to 54 and Schedule 3)**

Provisions in this section are necessary but may put pressure on the landowner or the contractor responsible for development, and make brownfield sites a more risky and reluctant development opportunity. Again, this may adversely affect Welsh Government development targets, particularly around housebuilding.

In cases where the landowner is not the principal contractor and responsible for the development of the site, additional protections should be implemented or clarified in the Bill.

Section 34 goes some of the way to providing this protection, but CIOB would welcome further clarification or protection on this front.

This section outlines the case for financial compensation resulting from the sale or removal of a property for the purpose of inspection. This may be particularly problematic in the case of a client/contractor relationship, whereby the client is the contracting authority and owner of the land. If the property or other development is removed to investigate or remediate dangers from disused tips, it is unclear what right the contractor – who may already have spent money on subcontractors, resources, materials, and more – has to financial compensation.

Recent CIOB research found an imbalance of power and risk between the client (or contracting authority) and the contractor, with the majority of project risk placed onto the contractor. And, due to the complex nature of supply chains in construction projects, further clarification should be made in the legislation or subsequent guidance. The research found that contractors, particularly SMEs

which make up the majority of the Welsh construction industry, feel obliged to take undue risk on developments. This is often due to financial reasons, such as to ensure a pipeline of work for their staff and the longevity of the company, or a multitude of others.

There may also be scope for this to fall under new procurement legislation, though this may be too niche a problem to properly legislate in what is likely to be broader regulation. As such, Welsh Government policy procurement notes (PPNs) may provide further guidance and best practice. Failure to do so may make brownfield sites a perceived risky development, and contractors may become increasingly unwilling to take on these projects, leaving swathes of Welsh land undeveloped.

Where the owner of the land is a principal contractor, as in examples outlined at the beginning of this response, additional protection should be in place. These contractors may also have spent money on subcontractors, materials, and other resources, and as such may find it difficult to commit to further remediation works. Provisions outlined later in the Bill to hold liability on previous owners or interested parties of these packages of land for twelve years is welcome in this regard. In this instance, however, questions remain as to what will happen if those parties are no longer in business.

Regarding Section 35, additional clarifications need to be made in the case of developers who are not landowners. These contractors should not be held solely liable for these development costs, and Welsh Government or local authority funding would go a long way to providing security and confidence in the industry.

Measures outlined in Section 37 are welcome, and will go some of the way to reducing the risk faced by contractors when it comes to bearing the entire cost of remediation. Subsection (4) also outlines the process by which applications can be made to in the case the owner is unable to meet the costs of the operations required by the notice, which is welcome. However, questions remain as to what will happen in this case: there may be there be funding available – either as grants or low-interest loans – to undertake the remediation work, which would ensure the site does not remain vacant and undeveloped for long periods of time,

especially when contractors may have entered into subcontracting agreements and bought materials.

▪ **Part 4 - Supplementary (sections 55 to 70)**

▪ **Part 5 - General (sections 71 to 88)**

3. What are the potential barriers to the implementation of the Bill's provisions and how does the Bill take account of them?

4. How appropriate are the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum)

5. Are any unintended consequences likely to arise from the Bill?

6. What are your views on the Welsh Government's assessment of the financial implications of the Bill as set out in Part 2 of the Explanatory Memorandum?

7. Are there any other issues that you would like to raise about the Bill and the accompanying Explanatory Memorandum or any related matters?

