

4 FEBRUARY 2020

KEY DECISION? NO

**SELF-BUILD AND CUSTOM HOUSEBUILDING REGISTER - INTRODUCTION
OF ADDITIONAL LOCAL ELIGIBILITY CRITERIA AND A FEE CHARGING
SCHEDULE**

SUMMARY AND RECOMMENDATIONS:

This report seeks Cabinet's approval to introduce additional local eligibility criteria in the form of a local connection test to determine entry to the Council's self-build and custom housebuilding register. It also seeks approval for the introduction of a fee charging schedule for entry to the register and for applicants to remain on the register on an annual basis.

The Council has a duty to maintain a self-build and custom housebuilding register and a duty to grant a sufficient number of planning permissions to meet the demand for self-build and custom housebuilding as evidenced by the register. The introduction of a local connection test and fees to enter and to remain on the register will ensure that the Council's register is a realistic and genuine reflection of local demand and that the duty to grant permission is not inflated by demand arising from outside of Rushmoor.

It is recommended that Cabinet agrees:

1. To introduce a local connection test as set out in Section 3.6.
2. To introduce a fee for entry to the Council's register and for applicants to remain on Part 1 of the register.
3. To delegate authority to the Head of Finance to determine the fees to be charged on a cost recovery basis.

1. INTRODUCTION

- 1.1. This report seeks Cabinet's approval to introduce a local connection test to determine entry to the Council's self-build and custom housebuilding register and a charging schedule for entry and to remain on the register, as permitted by the Self-Build and Custom Housebuilding Regulations 2016. Introducing the proposed tests and fees would ensure that the Council's register is a more reliable reflection of genuine local demand for self-build and custom housebuilding and that the Council's duty to grant sufficient development permissions to meet the demand, as detailed below, is not inflated by speculative demand arising from outside the Borough.

2. BACKGROUND

- 2.1. In April 2016, the Self-Build and Custom Housebuilding (Register) Regulations 2016 came into force, implementing the Self-Build and Custom Housebuilding Act 2015. The Act requires local authorities to 'keep a register of individuals and associations of individuals who wish to acquire serviced plots of land to bring forward self-build and custom housebuilding projects' and to have regard to their registers when carrying out functions related to planning, housing, land disposal and regeneration.¹ The Act also imposes a duty on local authorities to grant 'suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area', as evidenced by an authority's self-build and custom housebuilding register.² In October 2016, the Self-Build and Custom Housebuilding Regulations 2016 updated the (Register) Regulations, and the Self-Build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016 came into effect. The former allow local authorities to set local eligibility criteria to determine entry to registers and to set fees for applicants to enter and to remain on registers, whilst the latter define the time in which local authorities must meet the duty to grant permission.
- 2.2. The government argues that self-build and custom housebuilding can play a key role in increasing housing supply and enabling more people to meet their aspirations of home ownership. Whilst the Self-Build and Custom Housebuilding Act and the associated regulations aim to make it 'easier for ordinary people to build their own homes', the government claims that further benefits of self-build and custom housebuilding include contributing to economic growth, increased provision of affordable market housing, increased design quality, environmental sustainability, more-innovative building techniques and entrepreneurialism.³

Defining Self-Build and Custom Housebuilding

- 2.3. The National Custom and Self-Build Association (NaCSBA) defines self-build as projects where an individual or a group of individuals directly organises the design and construction of a new home. This definition encompasses the 'traditional' self-build home where a self-builder manages the design and build process and completes much of the building work themselves. It also includes projects where a self-builder arranges for an architect, contractor or other professional to construct a home, as well as community projects where members organise and undertake much of the construction work themselves.
- 2.4. Custom build refers to projects where an individual or group of individuals commissions a specialist developer to deliver a home. Custom build is more of a 'hands-off approach', and developers take on 'most of the gritty issues',

¹ Self-Build and Custom Housebuilding Act 2015, s. 1(1).

² Housing and Planning Act 2016, s. 10(1)(2).

³ HM Government (2011) Laying the Foundations: A Housing Strategy for England, p. 14; also see Department for Communities and Local Government (2017) Fixing Our Broken Housing Market.

including providing sites, managing construction and arranging finance. However, individuals and groups can arrange to finish a project themselves to reduce costs.

- 2.5. The government does not distinguish between self-build and custom build. For example, the Housing and Planning Act 2016 states that self-build and custom housebuilding ‘means the building or completion by (a) individuals, (b) associations of individuals, or (c) persons working with or for individuals or associations of individuals, of houses to be occupied as homes by those individuals’. The Act also clarifies that self-build and custom housebuilding ‘does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person’.⁴

Self-Build and Custom Housebuilding Register

- 2.6. As required by the Self-Build and Custom Housebuilding Act, the Council maintains a self-build and custom housebuilding register. As of 1st January 2020, the Council has received 176 eligible applications for entry to its register.
- 2.7. As noted above, the Self-Build and Custom Housebuilding Act places a duty upon the Council to give suitable development permission to meet the demand for self-build and custom housebuilding arising within each ‘base period’, as evidenced by the number of register entries. A base period is a period of twelve months, and local authorities must grant the required number of development permissions relating to a base period within the subsequent three-year period.⁵ However, it should be noted that there is no requirement for local authorities to provide land or plots to applicants and that entry on a register is not a guarantee of planning permission. The table below summarises the number of eligible applications that the Council has received since the first base period in April 2016 and the equivalent number of self-build and/or custom-build plots/dwellings which must be granted permission in the subsequent three-year period.

Base Period	Applications Received / Dwellings to Be Permitted	Development Permissions Required
01/04/2016 – 30/10/2016	49	31/10/2016 – 30/10/2019
31/10/2016 – 30/10/2017	47	31/10/2017 – 30/10/2020
31/10/2017 – 30/10/2018	41	31/10/2018 – 30/10/2021
31/10/2018 – 30/10/2019	32	31/10/2019 – 30/10/2022
31/10/2019 – 30/10/2020	7 (as of 1st January 2020)	31/10/2020 – 30/10/2023

⁴ Housing and Planning Act 2016, s. 9(1).

⁵ Note that the first base period was a seven-month period.

- 2.8. The Council received 49 eligible applications for entry to the self-build and custom housebuilding register within the first base period and was required to grant an equivalent number of permissions for self-build and/or custom-build plots/dwellings between 31st October 2016 and 30th October 2019.⁶ Officers have undertaken an analysis of the Council's planning records to determine the number of self-build and custom-build plots/dwellings which were permitted within this period, and this indicates that seven eligible dwellings received permission. It is unclear what, if any, repercussions there might be for the failure to meet the duty, although it is likely that many local authorities have also failed to meet the duty initially.

3. PROPOSAL

To Introduce Local Eligibility Criteria to Determine Entry to the Register

- 3.1. The government sets the basic eligibility criteria for entry to self-build and custom housebuilding registers. The Self-Build and Custom Housebuilding Regulations 2016 state that an individual is eligible for entry to a register if they are:

- Aged 18 or over;
- A British citizen, a national of a European Economic Area (EEA) state other than the United Kingdom, or a national of Switzerland; and
- Seeking (either alone or with others) to acquire a serviced plot of land in the relevant authority's area for their own self-build and custom housebuilding.

The Regulations make provision for individuals who wish to come together to build homes for themselves as part of a group (for example, community groups) and refer to such groups as 'associations'. An association is only eligible to be entered on to a register if all members of the association meet the above eligibility requirements. When applying to be entered on to a register, groups of individuals who wish to register as an association must appoint a lead contact.

- 3.2. The Self-Build and Custom Housebuilding Regulations 2016 allow local authorities to set additional eligibility criteria to determine entry to self-build and custom housebuilding registers. Local authorities can apply two optional local tests, which are limited to a 'local connection test' and/or a 'financial solvency test'. However, the Council does not currently apply these optional tests.

⁶ Rushmoor's self-build and custom housebuilding register was established in August 2015 before the commencing of the Self-Build and Custom Housebuilding Act in April 2016. Whilst 34 eligible applications for entry were received within the first base period, a number of applications were received before April 2016. Because the Self-Build and Custom Housebuilding (Register) Regulations 2016 required local authorities to obtain certain information from applicants which had previously not been required to determine eligibility, the Council contacted all applicants who had made an application before the regulations came into effect to obtain this information. Because fifteen applicants provided the information and confirmed their eligibility for entry to the register within the first base period, these applications are considered to have been received within this base period.

- 3.3. It is proposed that the Council introduces additional local eligibility criteria in the form of a 'local connection test' to determine entry to the self-build and custom housebuilding register. The register would be divided into two parts in line with the Regulations; Part 1 would comprise applicants that meet the 'local connection test', whilst Part 2 would include applicants that meet all the entry criteria apart from the 'local connection test'. The significance of dividing the register on this basis is that only Part 1 entries (applicants with a local connection) would be covered by the duty to grant planning permission. However, it should be noted that local authorities are required to have regard to all entries on their registers (including Part 1 and Part 2 entries) when carrying out their planning, housing, land disposal and regeneration functions.
- 3.4. Because of the complexity of collecting and analysing relevant information, it is not proposed to introduce a financial solvency test, which is limited to an assessment of whether an applicant can afford to purchase land for their own self-build and custom housebuilding. However, this position will be kept under review.
- 3.5. The government's National Planning Practice Guidance (NPPG) states that local authorities should 'determine the rationale for introducing a local eligibility test and hence the specific conditions set'. It notes that local authorities 'may wish to consider criteria based upon residency, having a family member residing in the local area and/or having an employment connection to the local area'.⁷
- 3.6. The proposed criteria for determining a local connection are set out below. To demonstrate a sufficient local connection, all applicants (individuals and all members of an association of individuals) would be expected to meet at least one of the following criteria to be eligible for entry to Part 1 of the register:
- Currently resident in Rushmoor and has lived in the Borough continuously for at least one year from the date of the application;
 - Has lived in Rushmoor for three out of the last five years from the date of the application;
 - Currently employed in Rushmoor and has been employed in the Borough continuously for at least one year from the date of the application;
 - Currently self-employed primarily in Rushmoor with an ongoing viable venture, with a registered business address in Rushmoor, and has been continuously for at least one year from the date of the application;
 - A close family relative currently lives in Rushmoor and has done so for at least five years from the date of the application. A close family

⁷ National Planning Practice Guidance, para. 20, ref. ID: 57-020-20170728.

relative is proposed to be defined as parents, grandparents, children, grandchildren and siblings;

- Currently serving in the regular armed forces or has served in the regular armed forces within five years of the date of the application;⁸
 - The applicant has demonstrated to the Council's satisfaction that a local connection applies through special/exceptional circumstances.
- 3.7. The requirements are based upon the adopted local connection conditions outlined within the Council's Housing Allocation Scheme, which is used to assess and prioritise applicants for social housing owned by Registered Social Landlords. However, where appropriate, the conditions have been adapted for the purposes of assessing local demand for self-build and custom housebuilding as opposed to social housing need. For example, it should be noted that the Housing Allocation Scheme has additional criteria in respect of injured serving or former members of the reserve forces and family and bereaved family of service personnel and does not specify a minimum period of time for applicants to have been employed.
- 3.8. The significance of a local connection test is that only register entries that meet the additional local criteria would be covered by the duty to grant planning permission. Of the 176 applicants currently on Rushmoor's register, 48 have indicated that they have no local connection to Rushmoor. However, because the Council does not currently apply additional local eligibility criteria, these 48 applications must be included within the duty to grant permission.
- 3.9. The proposed local connection test will ensure that the Council's self-build and custom housebuilding register is a realistic reflection of local demand and that the duty to grant permission is not inflated by demand arising from outside of Rushmoor. This is particularly relevant given the Borough's proximity to the Thames Basin Heaths Special Protection Area (SPA) and the need for all net new dwellings in the Borough to provide adequate mitigation in the form of suitable alternative natural greenspace (SANG) and contributions towards strategic access management and monitoring (SAMM) measures to mitigate and avoid the potential adverse impact of development upon the SPA. Because SANG capacity is finite and given that the Council must grant a sufficient number of planning permissions to meet demand, the proposed test is not considered to be unreasonable.
- 3.10. If the proposed test is introduced, the Council will contact all applicants currently on Rushmoor's register to determine their continued eligibility.

To Introduce Fees for Entry and to Remain on the Register

⁸ Regulation 5(3) of the Self-Build and Custom Housebuilding Regulations 2016 states that a local connection test 'must include provision that any person in the service of the regular armed forces of the Crown is deemed to satisfy the test whilst in service and for a period after leaving service equal to the length of the longest of any periods required by the test for a condition to be satisfied'.

- 3.11. The Self-Build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016 allow local authorities to charge a fee to individuals and associations of individuals to be entered on to a register for a base period or for part of a base period and on an annual basis to remain on a register. The NPPG states that fees can only be set ‘on a cost recovery basis’ and that they ‘must be proportionate, reflect genuine costs incurred and should not act as a deterrent for people to be entered on or remain on the register’.⁹
- 3.12. Given the increased administration of determining eligibility for entry to the Council’s register, it is proposed that the Council charges a fee for entry. It is also proposed to charge an annual fee to those who wish to remain on Part 1 of the register (applications that satisfy the local connection test and which are covered by the duty to grant planning permission) in order to recover the costs associated with ensuring that the register remains up to date and checking that applicants remain eligible. It should be noted that the Self-Build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016 do not permit an annual fee to be charged to those who wish to remain on Part 2 of a register.
- 3.13. The introduction of fee charging will help to ensure that applicants on the Council’s register are genuinely interested in obtaining a plot in Rushmoor for their own self-build or custom housebuilding and further ensure that the register is a realistic reflection of local demand.
- 3.14. It is proposed that the Head of Finance will determine the level of fees to be charged for entry to the register and to remain on Part 1 of the register. Fees will be set on a cost recovery basis and reflect the costs incurred in administering the register. The table below includes details of local authorities in Hampshire and Surrey authorities close to Rushmoor that have introduced additional eligibility criteria for entry to their registers and fees on a cost recovery basis. For information, it also includes authorities that do not charge fees despite the introduction of additional eligibility tests.

Local Authority	Local Connection Test	Financial Solvency Test	Entry Fee	Part 1 Annual Fee
Basingstoke and Deane	x	x	£15	£0
Fareham ¹⁰	✓	x	£0	£0
Guildford	✓	✓	£26 (Part 1 entry) £10.50 (Part 2 entry)	£10.50

⁹ National Planning Practice Guidance, para. 034, ref. ID: 57-034-20170728.

¹⁰ Note that Fareham Borough Council previously charged an entry fee of £20 and an annual fee of £10 to remain on Part 1 of its register but removed the charges in November 2018.

Local Authority	Local Connection Test	Financial Solvency Test	Entry Fee	Part 1 Annual Fee
Hart	✓	✓	£75 (individual application) £125 (association application)	£30
New Forest	✓	✗	£0	£0
Portsmouth	✓	✗	£0	£0
Runnymede	✓	✓	£65	£60
Surrey Heath	✓	✗	£0	£0
Waverley	✓	✗	£30	£15
Winchester	✓	✗	£0	£0

3.15. As noted, it is proposed that the Council will contact applicants currently on the register to determine continued eligibility. As part of this process, it is anticipated that applicants who remain eligible for entry will be asked if they wish to remain on the register for the next base period (31st October 2020-30th October 2021). Current applicants would not be required to pay an entry fee or a fee to remain on Part 1 of the register for the next base period but would be required to pay a fee if they wish to remain on the register for subsequent base periods (31st October 2021 onwards).

3.16. The fees charged for entry and to remain on the register will be reviewed regularly.

Alternative Options

3.17. There are several alternative options which could be taken, including:

- Do not introduce a local connection test or fee for entry and to remain on the register (i.e. maintain the current situation);
- Introduce a financial solvency test;
- Introduce a local connection test but no fees;
- Introduce fees but not a local connection test.

3.18. Officers believe that it would be prudent to introduce the proposed local connection test and fees to ensure that the Council's register is a realistic reflection of local demand for self-build and custom housebuilding. Failure to introduce the tests and fees would mean that the Council's register would remain unregulated and that the duty placed upon the Council to grant sufficient permission to meet demand would continue to be inflated by applicants who may not have a local connection or a genuine demand for a plot in Rushmoor. Although a financial solvency test would enable for an assessment of whether an applicant can afford to purchase land and would therefore provide a further indication of how realistic the demand is, it is not recommended at this stage to introduce such a test owing to the complexity of obtaining and analysing relevant information. However, this position will be kept under review.

Consultation

- 3.19. There is no statutory requirement to consult on the proposals, although the NPPG states that local authorities 'should consider consulting' before they introduce a local connection test or financial solvency test.¹¹ However, given that the proposed local connection test is based upon the adopted local connection criteria set out within the Council's Housing Allocation Scheme, it is not considered necessary to consult on the matter. The proposed fees will also be set on a cost recovery basis, as permitted by the Self-Build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016.
- 3.20. Officers consulted members of the Council's Strategic Housing and Local Plan Group at an early stage and received unanimous support to progress work on these proposals.

4. IMPLICATIONS

Legal Implications

- 4.1. The legal requirements of the Self-Build and Custom Housebuilding Act and the associated regulations are summarised throughout this report.

Financial and Resource Implications

- 4.2. The costs of implementing the proposals can be absorbed by existing budgets, and there are considered to be no adverse resource implications arising from the proposals. The proposed fees will set on a cost recovery basis and will reflect the costs associated with administering the register.

Equalities Impact Implications

- 4.3. No equalities impact implications arising from the proposals have been identified.

5. CONCLUSIONS

- 5.1. The Self-Build and Custom Housebuilding Act 2015 places a duty upon the Council to maintain a register of individuals and associations of individuals who are seeking to acquire land in Rushmoor to build a home, and to grant a sufficient number of planning permissions to meet the demand for self-build and custom housebuilding, as evidenced by the register.
- 5.2. The introduction of a local connection test to determine eligibility for entry to the register and the charging of fees to be entered on to and to remain on the register will ensure that the register is a more reliable reflection of genuine local demand for self-build and custom housebuilding and that the Council's duty to grant sufficient permissions is not inflated by speculative demand arising from outside the Borough.

¹¹ National Planning Practice Guidance, para. 019, ref. ID: 57-019-20170728.

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