

WELWYN HATFIELD BOROUGH COUNCIL
CABINET PLANNING AND PARKING PANEL – 9 AUGUST 2018
REPORT OF THE CORPORATE DIRECTOR (PUBLIC PROTECTION, PLANNING AND
GOVERNANCE)

SELF BUILD AND CUSTOM HOUSEBUILDING ELIGIBILITY CRITERIA
CONSULTATION

1. Executive Summary

- 1.1 The Council (as a relevant authority) has a duty to maintain and publicise a Self-build and Custom Housebuilding Register for (a) individuals and (b) associations of individuals, who are seeking to acquire serviced plots of land in the authority's area for their own Self-build and Custom Housebuilding. Linked to this, the Council has a duty to grant permission for sufficient land suitable for Self-build and Custom Housebuilding to meet the demand on the register.
- 1.2 Under Regulation 5 (2) of the Self-build and Custom Housebuilding Regulations 2016, the Council may introduce a local eligibility test, including local connection and financial solvency criteria; and a fee for applicants to be entered onto and remain on the register.
- 1.3 On 5 October 2017 the Council's Cabinet Planning and Parking Panel agreed to consult on the introduction of a local connection and financial resources test, with a view to this being introduced alongside the existing statutory eligibility criteria. In addition, the panel noted a draft proposal for a fee to be introduced for applicants to enter onto and remain on the register.
- 1.4 A six week public consultation on the proposed introduction of a local eligibility test took place from 17 May 2018 to 29 June 2018. This report summarises the responses received to the consultation and makes recommendations as to the adoption of local eligibility conditions.
- 1.5 In addition, following further consideration of the registration process, officers have developed a final proposal for the fee to be charged for applicants to enter onto and remain on the register. A separate recommendation is made in regard to the introduction of this fee.

2. Recommendation(s)

It is recommended that:

- 2.1 The Panel considers the results of the public consultation on the proposed introduction of a local eligibility test as set out at paragraphs 4.7 to 4.8 of this report and Appendix A..
- 2.2 The Panel agrees to recommend to Cabinet the introduction of local eligibility criteria for entry on to the Self-Build and Custom Housebuilding Register, proposed to take effect from 31 October 2018, as set out at paragraphs 4.16 to 4.17 of this report.
- 2.3 The Panel agrees to recommend to Cabinet for approval by Full Council the introduction of a fee of £25 for new applicants to enter onto the register, as set out in paragraphs 4.24 to 4.28 of this report, proposed to take effect from 31 October 2018.
- 2.4 The Panel agrees to recommend to Cabinet for approval by Full Council the introduction of a fee of £25 for a new association to enter onto the register plus £10 for each individual within the association excluding the lead individual, as set out in paragraphs 4.24 to 4.28 of this report, proposed to take effect from 31 October 2018.
- 2.5 The Panel agrees to recommend to Cabinet for approval by Full Council the introduction of an annual fee of £15 for individuals to remain on Part 1 of the register, as set out in paragraphs 4.29 to 4.31 of this report, proposed to take effect from 31 October 2018.
- 2.6 The Panel agrees to recommend to Cabinet for approval by Full Council the introduction of an annual fee of £15 for each association plus £10 for each individual within that association to remain on Part 1 of the register, as set out in paragraphs 4.29 to 4.31 of this report, proposed to take effect from 31 October 2018.

3. Background

- 3.1 The Council (as a relevant authority) has a duty¹ to maintain and publicise a Self-build and Custom Housebuilding Register for (a) individuals and (b) associations of individuals, who are seeking to acquire serviced plots of land in the authority's area for their own Self-build and Custom Housebuilding. The Council must have regard to the Register when carrying out its functions relating to:

- Planning;
- Housing;
- The disposal of any land of the authority; and
- Regeneration.

- 3.2 Self-build and Custom Housebuilding is defined in the Self-build and Custom Housebuilding Act 2015 (amended by the Housing and Planning Act 2016) as:

“... 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

¹ In accordance with the Self-build and Custom Housebuilding Act 2015 (the Act), as amended

be occupied as homes by those individuals. But it 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.”²

- 3.3 Consistent with the relevant Act and Regulations, since 1 April 2016 the Council has publicised and maintained a register of individuals and associations of individual who wish to acquire serviced plots of land to bring forward Self-build and Custom Housebuilding projects in the borough. The Register was formerly hosted externally on the *Local Self Build Register* website but in May 2017 a decision was taken to bring the hosting of the register in-house. A bespoke registration system is currently being designed to support the Council to deliver its duties. Registration is via the Council’s website: <http://www.welhat.gov.uk/selfbuild>
- 3.4 On 31 October 2016, *The Self-build and Custom Housebuilding Regulations 2016* came into force³. One effect of the legislative updates was to introduce a duty on local authorities to grant permission for sufficient land suitable for Self-build and Custom Housebuilding to meet the demand for plots as evidenced by the number of entries on their register (measured in ‘base periods’) within 3 years. Alongside this, the opportunity was introduced for relevant authorities to set a local eligibility test (including local connection and financial solvency criteria); and a fee for applicants to be entered onto and remain on the register.
- 3.5 Local eligibility tests means a set of conditions:
- The authority reasonably considers is necessary to demonstrate that an individual has sufficient connection with the authority’s area, **a local connection test** (with certain provision being made for persons in the service or previously in the service of the regular armed forces); **and**
 - A financial solvency test whereby applicants would need to demonstrate that they have ‘**sufficient resources**’ to purchase land in the borough for their own self-build and custom house building project.
- 3.6 National Planning Policy Guidance states that it is for each local authority to determine the specific conditions that they will set. In designing a local connection test, the NPPG advises that relevant authorities may wish to consider criteria based on residency, having a family member residing in the local area and / or having an employment connection to the local area. In designing a financial solvency test, relevant authorities may wish to assess whether the applicant can afford to purchase the land required for their self-build project.
- 3.7 On 5 October 2017 officers presented to the Council’s Cabinet Parking and Planning Panel setting out proposals to consult on local eligibility conditions and to introduce a fee for applicants to enter onto and remain on the Register. The Panel agreed that the proposed eligibility conditions should be made available for a six week period for consultation and that officers would report the results of the consultation back to the Panel, together with a schedule of any recommended changes as considered appropriate. The Panel noted the draft proposal for a fee to be introduced and that a final proposal would be developed by officers and brought before it alongside the results of the consultation.

² Housing and Planning Act 2016 (Chapter 2, Section 9) had the effect of amending the Self-build and Custom Housebuilding Act 2015 : <http://www.legislation.gov.uk/ukpga/2016/22/section/9/enacted>

³ <http://www.legislation.gov.uk/uksi/2016/105/contents/made>

4. Explanation

- 4.1 **Local eligibility criteria consultation:** National Planning Policy Guidance states that local authorities should consider consulting on their proposed eligibility criteria although there is no statutory requirement to do so. In accordance with this advice, Welwyn Hatfield have carried out a six week public consultation on the introduction of the proposed local eligibility criteria and a financial resources test. The purpose of this was to obtain the views of interested parties on the proposals, to consider the responses received and to decide whether to adopt local eligibility tests and, if so, what form these should take. The public consultation took place from 17 May 2018 to 29 June 2018.
- 4.2 The consultation was publicised in Issue 14 of the Council's Local Plan Newsletter, which on 16 May 2018 was sent to 4,910 residents, businesses and key stakeholders registered on the Council's Local Plan database. The consultation was also advertised in the Welwyn Hatfield Times and the Hertfordshire Mercury and a press release was prepared.
- 4.3 **The consultation:** The consultation set out the Council's proposed local connection and sufficient resources to purchase land criteria.
- 4.4 In order to be eligible to enter into the Register, the consultation form set out that applicants would be required to meet one or more of the following four criteria and to be able to demonstrate this with appropriate documentary evidence.
- i) **Residency:** To meet this criterion an applicant must have lived in Welwyn Hatfield Borough continuously for 5 years or more.
 - ii) **Family Connection:** To meet this criterion an applicant must have close family (such as parents, siblings or children) who, on the date of their application to enter the Register, reside in the borough and have done so continuously for 10 years or more
 - iii) **Employment:** To meet this criterion an applicant must have been working in Welwyn Hatfield borough continuously for 12 months or more on the date of their application to enter the Register and have a permanent employment contract for 16 hours or more per week
 - iv) **Armed Forces:** The regulations make provision for existing members of the armed forces. In order to be eligible to enter the Register, former members of the regular armed forces would need to have left no more than 5 years ago.
- 4.5 In order to be eligible to enter the Register the consultation also set out that applicants must have access to sufficient financial resources to purchase land in Welwyn Hatfield borough for their own Self-build and Custom Housebuilding project and would be required to demonstrate this with appropriate documentary evidence.
- 4.6 The consultation form asked general questions about whether respondents agreed with each criterion, more specific questions in some cases, and a free form box was provided for consultees where they did not agree so that they could propose changes and explain why these were necessary.
- 4.7 **Consultation responses:** One response was received to the consultation. This is summarised in Appendix A to this report. The respondent suggested that the introduction of local eligibility tests in Welwyn Hatfield could be contrary to

European legislation. Specifically, the response questioned the legality of introducing a local connection test requiring applicants wishing to join the Register to demonstrate that they have sufficient connection with the local area. The respondent referenced the "Flemish case" which was tested in the European Courts and referred to the experience of various Councils in Ireland with the use of local connection requirements in relation to decisions on planning applications

- 4.8 Having regard to the fact that the response raised a legal point, and in accordance with advice from the Council's Head of Law and Administration, Counsel opinion was sought. The conclusion was that the representation does not raise any issues which prevent the adoption of a local connection test. The use of a local connection test is explicitly sanctioned by both primary and secondary legislation. Further, a person's presence on the register is not a material planning consideration for the purposes of determining an individual planning application. This situation is therefore plainly distinguishable from the cases that the representation drew attention to.
- 4.9 **Justification for local eligibility criteria:** The Self-build and Custom Build Register is used by the Council to assess the demand in the borough for serviced plots of land for people to build their own home. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) places a legal duty on local authorities to keep a Register of individuals and associations of individuals who are seeking to acquire serviced plots of land in the authority's area for their own self-build or custom housebuilding. The local planning authority has a legal duty to grant sufficient development permission for enough serviced plots of land to meet the demand for Self-build and Custom Housebuilding, (based on the number of entries on Part 1 of the Register) under Section 10 of the Housing and Planning Act 2016.
- 4.10 Local Authorities who choose to set a local connection test are required to have two parts to their Register. Individuals or associations of individuals who apply for entry on the Register and meet all the eligibility criteria must be entered on Part 1. Those who meet all the eligibility criteria except for a local connection test must be entered on Part 2 of the Register.
- 4.11 The duty to grant planning permission only applies to entries on Part 1 of the Register. The Council has to have due regard to Part 2 of the Register but does not have a duty to grant planning permission.
- 4.12 There is a high probability that the current number on the Register (312 as at 24 July 2018) represents an overestimate of the true demand for self-build plots in the borough. The Council is aware of numerous individuals who have registered their interest for self-build in multiple local authority areas. On the basis that these individuals are only likely to be seeking one self-build plot this would result in a major overstatement of need at a regional/national level. Individual authorities are then impacted by having to plan for an inflated amount of self-build plots.
- 4.13 The introduction of a local connection test will support the Council to reach a more informed view of the true demand for self-build plots in the borough. Similarly the introduction of a financial resources test will help ensure that the Register reflects true demand.
- 4.14 Given the challenge of meeting the borough's Objectively Assessed Need for housing, and the scarcity of non-Green Belt land for housing in the borough, it is considered wholly reasonable that the Council's evidence relating to the demand for

provision of serviced plots should be as robust as possible. This in turn will help ensure that the scale of development permissions issued by the Council under its duties (set out in para 4.12) are broadly consistent with true demand for serviced self-build plots in the area.

- 4.15 Without the introduction of the local eligibility criteria proposed in this report, the Council may be in the position of having to ensure the provision of sufficient plots of land to meet the apparent demand from entries on the Register, which may be substantially over-inflated by applicants registering within a number of local authority areas or who may not have the financial means to purchase a plot of land should one become available.
- 4.16 **Introduction of local eligibility criteria:** Officers have reviewed the proposed local eligibility criteria following the consultation and, in light of no objections and the criteria still being considered appropriate, propose to introduce the local connection criteria, with effect from the next base period, commencing on 31 October 2018. Applicants would have to meet one or more of the following criteria:
- i) **Residency:** To meet this criterion an applicant must have lived in Welwyn Hatfield Borough continuously for 5 years or more.
 - ii) **Family Connection:** To meet this criterion an applicant must have close family (such as parents, siblings or children) who, on the date of their application to enter the Register, reside in the borough and have done so continuously for 10 years or more
 - iii) **Employment:** To meet this criterion an applicant must have been working in Welwyn Hatfield borough continuously for 12 months or more on the date of their application to enter the Register and have a permanent employment contract for 16 hours or more per week
 - iv) **Armed Forces:** The regulations make provision for existing members of the armed forces. In order to be eligible to enter the Register, former members of the regular armed forces would need to have left no more than 5 years ago.
- 4.17 **Financial Resources:** In order to be eligible to enter the Register applicants must also have access to sufficient financial resources to purchase land in Welwyn Hatfield borough for their own Self-build and Custom Housebuilding project and would be required to demonstrate this with appropriate documentary evidence.
- 4.18 **Part 1 and Part 2 of the Register:** Local Authorities who choose to set a local connection test are required to have two parts to their Register. Individuals or associations of individuals who apply for entry on the Register and meet all the eligibility criteria must be entered on Part 1. Those who meet all the eligibility criteria except for a local connection test must be entered on Part 2 of the Register. It is intended this will take effect from 31 October 2018 the Register will be divided into Part 1 and Part 2 in order to coincide with the base periods.
- 4.19 **Eligibility for Part 1 of the Register:** The introduction of local eligibility and fee conditions, means that individuals or each member of an association will now be eligible for entry into Part 1 of the Register if that individual or each member of an association:
- a) Is aged 18 or over;

- b) Is a British citizen, a national of an EEA State other than the United Kingdom, or a national of Switzerland;
- c) Is seeking (either alone or with others) to acquire a serviced plot of land in the relevant authority's area for their own Self-build or Custom Housebuilding; and must
- d) Satisfy the local eligibility conditions, including the local connection test and a financial resources test set by the council; and
- e) Has paid the fee required to be entered onto or remain on the Register (see paragraphs 4.20 to 4.32 below)

- 4.20 **Eligibility for Part 2 of the Register:** Applicants who do not meet the local connection test criteria will not be denied entry to the Register. Providing they meet the basic eligibility criteria of age, nationality and the intention to build their own home, they will be eligible for entry onto Part 2 of the Register. However, regard must still be paid to the applicants who are entered onto Part 2 of the Register.
- 4.21 Those entries already on the Register are exempt from the local connection test and will remain on Part 1 of the Register subject to them confirming their continued interest and paying the fee to remain on the Register, regardless of whether they would meet the additional criteria.
- 4.22 **Fee to enter onto and remain on the Register:** Regulations⁴ now enable local authorities to charge a fee in respect of the Register. A person may be charged:
- a) To be entered on the Register for a base period or part of a base period;
 - b) Thereafter, on an annual basis, to remain on that register irrespective of whether any fee was charged to be entered on the register.
- 4.23 Fees must be set on a cost recovery basis only. The amounts charged must be publicised and must be proportionate, reflecting genuine costs incurred and should not act as a deterrent for people to be entered on or remain on the Register. If an application is unsuccessful, any fee that has been paid must be returned.
- 4.24 **Fee to enter onto the Register:** Applications to enter the Register are made through a registration portal on the Council's website (through the use of an application form for associations). If the existing eligibility criteria is met, a notification is generated. The Council is then notified of new applicants and officers review the information provided in order to decide if applicants can be added onto the register. The Council does not (as a general rule) verify declarations, however, officers do from time to time, carry out further investigations where it is considered the need arises. However the addition of the local eligibility tests will add to the cost of administering the Register.
- 4.25 Officers have reviewed the process for administering applications to join the register in light of the proposed local eligibility tests. Having regard to the estimated time taken to register a new individual and the average cost per hour of the officers responsible for the process, the total cost of the registration process for individuals is estimated at £25. It is therefore proposed that a £25 fee should be chargeable in

⁴ The Town and Country Planning, England – The Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016

respect of new applications to enter the Register (both Part 1 and Part 2). It is proposed that the fee will come into effect from 31 October 2018.

- 4.26 Fees charged by other authorities currently range from £16 to £350 to enter the Register (Part 1 and Part 2). Some (but not all) charge a smaller fee if the applicant is eligible to enter Part 2 of the Register (given that authorities need only have *regard* to Part 2 of the Register and the duty under S2A of the Act does not apply).
- 4.27 Applications to join the self-build register may be submitted by both individuals and associations. Applications from associations could contain a considerable number of applicants to assess (e.g. a recent application was submitted seeking land for 1,000 self-build plots). To ensure that the Council covers its reasonable costs it is proposed that a £25 fee will be charged for a new association to enter onto the register plus £10 for each individual within the association excluding the lead individual.
- 4.28 The proposed introduction of fees for applicants to enter the Register was not subject to public consultation, as it is on a cost recovery basis only.
- 4.29 **Fee to remain on the Register:** It is proposed that individuals who are on Part 1 of the Register will be required to pay an annual fee of £15 to remain on the Register, payable on the anniversary of their registration. The fee of £15 will apply to associations on the Register and £10 for each individual within that association.
- 4.30 The regulations do not allow for applicants who are entered onto Part 2 of the Register to be charged an annual fee to remain on the Register.
- 4.31 The fee will be chargeable upon the first anniversary of their registration or on 31 October 2018 if they have already been on the Register for a period of a year or longer.
- 4.32 **Justification for introducing fees:** The principle benefit of introduction fees will be to enable the Council to recover its reasonable costs for administering the Register. It is considered that introducing a fee will have a number of ancillary impacts:
- It should help to ensure that only applicants who are genuinely interested in a project in Welwyn Hatfield apply in the first instance – this would help to ensure that the Register is a better reflection of true demand and of the need to grant suitable development permission to meet that demand;
 - Introducing a fee to remain on Part 1 of the Register, would allow the Council to undertake an annual re-registration process. Applicants who are no longer seeking a plot of land in the borough or have subsequently decided not to pursue a self-build project are unlikely to pay a fee to remain on the Register. The authority may remove an entry from the register if it considers that an individual (or any member of an association) is no longer eligible for entry in the register.
- 4.33 **Monitoring of fees:** The recommended fees for entering onto and remaining on the Register are best guess estimates based on the experience of administering the registration process to date. Officers will monitor the registration process once local eligibility tests are implemented. If an increase in fees is required to ensure reasonable cost recovery a report will be brought back to Members seeking authorisation to increase the fees.

5. Next Steps

5.1 The local eligibility criteria for new applicants joining the Register will apply from 31 October 2018, subject to approval by Cabinet.

5.2 The fees set out in Section 4 above will apply from 31 October 2018 subject to agreement by Full Council.

6. Link to Corporate Priorities

6.1 The subject of this report is linked to the Council's Business Plan 2018-2021, particularly:

- Priority 3 – Meet the borough's housing needs;
- Priority 4 - to help to build a strong local economy;
- Priority 5 - engaging with our communities and provide value for money.

7. Legal Implication(s)

7.1 Self-build and Custom Housebuilding is governed by primary legislation, the Self-build and Custom Housebuilding Act 2015 (the Act), as amended by the Housing and Planning Act 2016, and secondary legislation set out in Regulations.

7.2 Subsequent to the introduction of the Act, Regulations came into force on 1 April 2016. The Housing and Planning Act (May) 2016 then made a set of changes to the Act. Subsequently, on 31 October 2016, two new sets of Regulations came into force. One set of Regulations had the effect of revoking the earlier April 2016 Regulations. National Planning Practice Guidance (PPG) was issued in April 2016 and was updated on 28 July 2017.

7.3 The Council must have regard to the Register when carrying out its functions relating to:

- Planning;
- Housing;
- The disposal of any land of the authority; and
- Regeneration.

7.4. In light of the representation received to the consultation of local eligibility conditions Counsel Opinion was sought. This representation and the Counsel response is summarised in paragraphs 4.7 and 4.8. The conclusion of Counsel was that the representation does not raise any issues which prevent the adoption of a local connection test. The use of a local connection test is explicitly sanctioned by both primary and secondary legislation.

8. Financial Implication(s)

8.1 **Adoption of fee and future implications:** The Council may now set a fee on a cost recovery basis. Officers have assessed the estimated costs likely to be associated with maintaining and managing the Register. It is recommended that the set of local eligibility conditions set out in section 4 of this report be applied as part of the application process, together with the introduction of the following scale of fees:

- For individuals to be entered on the Register: £25;
- For associations to be entered on the Register: £25 plus £10 for each individual within the association excluding the lead individual;
- For individuals to remain on Part 1 of the Register: £15 per annum (to be charged on the anniversary of the first registration date or 31 October 2018 if the individual has been on the register a year or longer).
- For associations to remain on the Register: £15 per annum plus £10 for each individual within the association excluding the lead individual.

8.2 The proposed fees will allow for the estimated recovery of the costs to the council of administering the Register and will also help to ensure that only people with a genuine commitment to building their own home in the borough join the Register.

8.3 The proposal is that on-line payments can be made as part of the registration process (initially for individuals only as the applications for Associations are more complex and applications are made using a downloadable application form). For fees to be charged as part of the renewal process, all those already registered will need to be contacted by email on an annual basis.

8.4 The fees charged will however be reviewed periodically in light of experience of operating the registration system. If monitoring indicates that the fees proposed no longer covers the Council's reasonable costs, then Members will be advised accordingly with a view to seeking authorisation to increase the fee.

9. Risk Management Implications

9.1 If the Council does not grant sufficient suitable development permissions to meet the demand in any one base period, then the Council will fail to meet its Duty. However, if action is not taken to introduce local eligibility conditions together with a fee to join the Register, then there is a strong possibility that demand may be overstated and in discharging its duty, the Council may deliver more planning permission than the true level of local demand.

9.2 The introduction of the local eligibility criteria together with the payment of a fee is a new process which has not been tested in conjunction with the registration process. A revised on-line registration process will need to be designed and implemented (in partnership with Steria), which may pose a risk to the proposed timetable for introducing the new criteria and fee.

10. Security and Terrorism Implication(s)

10.1 There are no security and terrorism implications arising directly as a result of this report.

11. Procurement Implication(s)

11.1 There are no procurement implications arising directly as a result of this report.

12. Climate Change Implication(s)

12.1 There are no climate change implications arising directly as a result of this report.

13. Policy Implications

13.1 **Policy SP 7** of the submitted Local Plan states that:

Self-build and Custom Housebuilding: Strategic Development Sites SDS1 (WGC4), SDS2 (WGC5), SDS5 (Hat1) and SDS6 (Hat15) should make provision for a proportion of serviced plots of land to contribute towards meeting the evidenced demand for Self-build and Custom Housebuilding in the borough. Serviced plots of land for Self-build and Custom Housebuilding will also be supported on other allocated sites or permitted windfall sites where overall, this would not result in an over-provision of this type of Housebuilding when compared to the Council's supply/demand evidence.

13.2 Self-build is currently exempt from planning obligations or CIL payments to cover infrastructure costs or the provision of affordable housing.

14. Equality and Diversity

14.1 The proposal to introduce local eligibility conditions was subject to an initial Equalities Impact Assessments (EIAs) at screening stage. No unjustified negative impacts were identified at that time and no issues have been identified through public consultation. A full assessment is not considered to be necessary.

Julie Spicer/Bryce Tudball
Planning Policy and Implementation
24 July 2018

Appendices

Appendix A: Table of responses to public consultation on Welwyn Hatfield proposed local eligibility criteria.

Background Papers

- [Self-build and Custom Housebuilding Act 2015](#)
- [Housing and Planning Act 2016](#)
- [Self-build and Custom Housebuilding Regulations \(Register\) 2016](#)
- [The Self-build and Custom Housebuilding \(Time for Compliance and Fees\) Regulations 2016](#)