

**Report for:** Regulatory Committee, 1<sup>st</sup> July 2019

**Title:** Haringey Self-Build and Custom-Build Register – Eligibility Criteria and Charging Fees

**Report**

**authorised by :** Dan Hawthorn, Director of Housing, Regeneration and Planning

**Lead Officer:** Rob Krzyszowski, Head of Planning Policy, Transport and Infrastructure. Ext 3213

**Ward(s) affected:** All

**Report for Key/**

**Non Key Decision:** Key Decision

**1. Describe the issue under consideration**

1.1 The Self-build and Custom Housebuilding Act 2015 imposes a duty upon the Council to maintain a register (the “self-build register”) of individuals and associations of individuals who are seeking to acquire serviced plots of land in the borough to build a house for their own occupation. Initially, the regulations simply required the Council to have regard to the self-build register in carrying out existing functions (including planning, housing, regeneration and land acquisitions and disposal), but the legislation was amended to impose a duty on authorities to grant sufficient suitable 'development permissions' (planning permissions or permissions in principle) for self-build homes to meet the demand indicated by the register. Haringey’s existing self-build register currently contains 344 entries.

1.2 The regulations on Self-build and Custom Housebuilding published in October 2016<sup>1</sup> enabled local authorities to set local eligibility requirements (in addition to the general national requirements) and to charge a fee for entries on to the self-build register (and an annual fee to remain on the register) to cover the cost of the administration involved in checking evidence submitted by potential entrants and maintaining the register.

1.3 This report seeks Regulatory Committee endorsement to introduce two local eligibility criteria - a location connection test and a financial resources test - to qualify for inclusion on Haringey’s self-build register, as well as the introduction of a registration and renewal fee.

**2. Cabinet Member Introduction**

N/A

**3. Recommendations**

3.1 That the Regulatory Committee recommends:

A. Cabinet agrees the introduction of the local connection test (see section 6) to qualify for inclusion on Part 1 of the Haringey Self-build Register;

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<sup>1</sup> The Self-build and Custom Housebuilding Regulations 2016 and Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016

- B. Cabinet agrees the introduction of the financial resources test (see section 6) to qualify for inclusion on Part 1 and Part 2 of the Haringey Self-build Register;
- C. Cabinet agrees to charging a £144 (inclusive of VAT) fee for registration of valid applications to the Haringey Self-build Register; and an annual re-registration fee of £144 (inclusive of VAT) to remain on Part 1 of the register thereafter.
- D. Cabinet agrees to maintain the existing entries on the register until 30 October 2019 after which date they will be re-assessed against the new eligibility criteria and subject to payment of the £144 annual fee for Part 1 registrations.

#### 4. Reasons for decision

4.1 This report proposes the introduction of two local eligibility criteria that will apply to applications for registration on Haringey's self-build register as follows:

- a **Financial Resources Test**: to be entered onto the register applicants would have to demonstrate that they have access to the finance needed to acquire land valued at £330,000 (land valuation evidence commissioned by officers indicates that this is the minimum likely cost of a 0.01ha serviced plot in Haringey suitable for development of a single home - see Appendix A for more information about the land valuation evidence); and
- a **Local Connection Test**: to be entered onto Part 1 of the register (which triggers the duty to grant planning permission), applicants would also have to demonstrate that they have been living in the borough continuously for at least 3 years or are a serving member of the regular forces or have been such a member within the 5 years preceding their application to be placed on the register, or have been working in the borough for at least 3 years (this is consistent with the connection test incorporated in the Council's adopted Housing Allocations Policy 2015, as amended in March 2018). The criteria regarding serving members of the regular forces is also specified in the Self-build and Custom Housebuilding Regulations.

4.2 If the above two local eligibility conditions are approved, Part 1 of the self-build register will comprise applicants who pass both the local connection test and the financial resources test. Applicants placed on Part 2 of the register will be those who satisfy the financial resources test but do not satisfy the local connection test.

4.3 At present, Haringey's single-part self-build register contains 344 entries in total comprising 339 individuals and 5 associations. In line with the regulations, where there is a single-part register the Council must grant sufficient planning permissions to meet the demand indicated by the number of entries on the register within 3 years of their year of registration.

4.4 The self-build register is one form of evidence of the housing need in Haringey for a very specific type of housing, which the Council has a duty to take into account. In considering how to respond to the level of demand indicated by the existing self-build register, the Council will need to consider the likely impact of self-build and custom-build housing on the overall land supply for housing in the borough and our ability to meet other housing needs. Particular concerns about

the self-build register and its relationship with other housing needs are as follows:

- the vast majority of those on the self-build register are individuals and would be expected to seek a single-home plot, so self-build homes are likely to be built at very low density (and require more land) than the apartments more commonly developed in the borough;
- Haringey's adopted Local Plan (2017) sets a challenging target for the Council to deliver a minimum of 19,802 additional homes over the period 2011 – 2026 (1,320 homes per year);
- the Local Plan has identified sufficient housing sites to meet this target but not to exceed it significantly, so the provision of self-build homes at lower densities could harm our ability to meet the overall targets;
- Haringey's housing target is proposed to increase further through the new London Plan (currently subject to examination in public), requiring the provision of 1,958 homes per annum;
- Haringey has significant competing demand for different land uses of a limited supply of land, including for new housing;
- an overestimation of the local demand for self-build homes could result in the Council having to grant permission for self-build on sites more suited to higher density housing or other forms of housing;
- provision for self-build and custom-build homes could also harm our ability to meet other specific needs identified by the Local Plan, such as affordable housing and specialist housing for older people;
- there is no realistic prospect of the Council being able to identify sufficient land to meet the level of demand indicated by the existing self-build register, which represents over 25% of our annual housing target;
- 288 (circa 83%) of those on the existing self-build register do not currently live in the borough. Whether the people who make up this number are working in Haringey (and would therefore meet the local connection test) is unknown. However, as currently stands, the register could be considered to give a distorted understanding of the local demand for this type of housing;
- the majority of those on Haringey's self-build register are also seeking plots from other authorities, including the majority of those who live or work in the borough.

4.5 The introduction of the two proposed local eligibility criteria is considered to be necessary so that the Council can:

- ensure Haringey's self-build register accurately reflects genuine local demand for this type of housing, and thus improve the ability of the Council to satisfy its duty to grant suitable planning permissions without prejudicing its ability to meet other local housing needs;
- ensure that those on the register have a reasonable prospect of acquiring land in the borough; and
- limit the duty to grant planning permission to those that the Council wishes to prioritise as existing borough residents.

4.6 Introducing a fee for entry onto the register will deter speculative / non-genuine entries from people who have no genuine intention of self-building or custom housebuilding in Haringey. The introduction of additional local eligibility criteria

for entry onto Haringey's self-build register will filter out applicants who do not have a connection to the Borough and/or do not have the means to self-build here. These changes will help ensure the evidence base for the Local Plan housing policies are not distorted and that we continue to make the most efficient use of land.

## **5. Alternative options considered**

- 5.1 The Council could choose to maintain its existing self-build register unaltered. However, the implications would be that the Council would have a duty to grant planning permission in the borough in relation to 344 serviced plots suitable for self-build and custom housebuilding. For the reasons outlined in paragraph 4.4 and 4.5 this option is not considered an appropriate response.
- 5.2 The Council could also choose to introduce just one of the local eligibility criteria – either the local connections test or the financial resources test. However, officers are of the opinion that both tests are relevant, in that it is both appropriate that the Council should seek only to provide self-build opportunities within the Borough to residents or those working in Haringey but that the individuals must also have the resources to realistically acquire the land to be able to realise this opportunity.
- 5.3 As land values vary significantly across Haringey, as demonstrated in the supporting evidence base report at Appendix A (LB Haringey Self Build Report – BNP Paribas Real Estate, May 2019), a higher land value benchmark could be applied. However, officers consider that using a higher figure could potentially exclude some people from being on the register who have a reasonable prospect of acquiring land and a significant local connection, which may cause public complaints and reputational damage to the Council.
- 5.4 The Regulations provide for authorities to seek a Government exemption from the duty to grant sufficient planning permissions to meet self-build demand in certain circumstances, but Haringey does not qualify for exemption under the relevant regulatory provisions<sup>2</sup>, so this is not an option available to the Council.
- 5.5 The Council could also choose not to charge a fee for registrations and renewal on the register. However, officers are of the view that the time and resource spent maintaining the register should not fall to existing budgets, and that those that meet the financial resources test will be able to afford a relatively small administrative fee to apply.
- 5.6 The Government guidance on self-build recommends that the introduction of local eligibility criteria should be subject to public consultation. Officers consider the proposed Local Connection Test is based on Haringey's connection test in the Council's Housing Allocation Policy 2015 (as amended in March 2018) and has already been subject to public consultation. The proposed financial resources test is based on evidence from an independent valuation report of the minimum likely cost of a self-build plot in Haringey. On this basis, officers

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<sup>2</sup> The only circumstance for exemption is where the demand for self-build housing (in the current base year) is greater than 20% of the land identified by the relevant authority as available for future housing ("land availability").

consider that public consultation on the proposed changes would be unlikely to provide more accurate evidence or raise matters not previously considered.

- 5.7 Officers will address issues with the implementation of the changes to the register through monitoring and can recommend amendments where necessary to maintain an appropriate balance between providing opportunities for self-build and reducing the scale of the register to a sustainable level.

## **6. Background information**

- 6.1 The [Self-build and Custom Housebuilding Act 2015](#) (as amended by the Housing and Planning Act 2016) (the Act) requires the council to keep a register (self-build registers) of individuals and associations of individuals who are seeking to acquire serviced plots of land to undertake their own self-build or custom-build home. The Act provides a legal definition of self-build and custom housebuilding. The Act does not distinguish between self-build and custom housebuilding and provides that both are where “*an individual, an association of individuals, or persons working with or for individuals or associations of individuals, build or complete houses to be occupied as homes by those individuals*”.
- 6.2 In considering whether a home is a self-build or custom build home, the Council must be satisfied that the initial owner of the home will have primary input into its final design and layout.

### **Who is eligible to be entered on the register?**

- 6.3 Legislation sets out the information that must be sought from those wishing to be on the register. Applicants must meet all the eligibility criteria for entry on the register. Each individual applicant and every member of an association of individuals that applies for entry on the register must:
- be aged 18 or older;
  - be a British citizen, a national of an EEA State other than the United Kingdom, or a national of Switzerland;
  - satisfy any local eligibility conditions set by the relevant authority;
  - have paid any fee required by the relevant authority to enter or remain on the register; and
  - be 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 project.
- 6.4 When applying to be entered on a register, individuals who wish to register as an association must appoint a member or officer to act as the lead contact.

### **Haringey’s Self-Build Register**

- 6.5 The Haringey self-build register has been in place since the commencement of the Act in 2015. It has been administered on behalf of the council by Ecomotive, a social enterprise, who were operating the self-build registers of the majority of London boroughs.
- 6.6 The Haringey register currently has 344 entries. Appendix B sets out a summary of the current entries. It should be noted that in the current register

questions relating to whether an applicant lives or works in Haringey, or has a family connection to Haringey, are simple yes/no questions with no evidence required. The current register was designed this way as it was intended only to be used only the purposes of understanding demand for self and custom build.

### **Changes since the Register was introduced**

- 6.7 Since the requirement to introduce a self-build register there have been changes to the legislation including a duty to grant sufficient development permissions<sup>3</sup> in respect of serviced plots of land to meet demand evidenced by the register, the ability to charge a fee, and further clarity on the use of local eligibility criteria.
- 6.8 To reflect these changes, and properly implement a robust self-build register, the Council needs to decide if it wishes to refine its register by introducing local eligibility criteria and/or a fee to be charged for administering the register. The Act enables the Council to include up to two optional local eligibility tests provided that these are proportionate and justified. These tests are limited to:
- a local connection test; and
  - a financial resources test.

### **Local Connection Test**

- 6.9 If the Council chooses to set a local connection test, the register is then split into two parts (Part 1 and Part 2). 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.
- 6.10 Without a local connection test, it will continue to be the case that anyone can apply to be placed on the Haringey self-build register and the Council will have a duty to secure plots of land for them. Entries in Part 1 of the register count towards the number of suitable serviced plots that the Council must make provision for. Entries on Part 2 do not count towards demand for the purpose of the Act but the Council must have regard to the entries on Part 2 when carrying out their planning, housing, land disposal and regeneration functions.
- 6.11 It is therefore proposed that the Council should seek only to meet demand for self/custom build from individuals and associations that can demonstrate a local connection to Haringey. It is suggested that the following criteria, which is consistent with the connection test incorporated in the Council's adopted Housing Allocations Policy 2015 (as amended in March 2018), should be used:

*Applicants must demonstrate through the submission of appropriate documentation that:*

- *Their principal home is situated in Haringey and they have been living in the borough continuously for at least 3 years; or*
- *They are (whether or not they currently live in the borough):*
  - *a serving member of the regular forces or have been such a member within the 5 years preceding their application to be placed on the register*

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<sup>3</sup> 'Development permissions' are either conventional planning permissions, or 'permissions in principle' (the new category of permission introduced by the Housing and Planning Act 2016).

- *the spouse or civil partner of a deceased member of the regular forces (whose death is attributable wholly or partly to that service) and have recently ceased or will cease to be entitled to reside in Ministry of Defence accommodation*
- *serving or have served in the reserve forces and are suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service have lived within the London Borough of Haringey for a period of three out of the past five years; or*
- *Their principal place of work is situated in Haringey and they have been working in the borough continuously for at least 3 years.*

### **Financial Resources Test**

- 6.12 In addition to a local connection test, it is important to determine if the person(s) applying to be on the register have the financial ability to realistically purchase land and to fund the construction of their project. Such an approach is not unreasonable given the duty placed on the Council to provide a suitable number of self/custom build plots. The provision of plots which are ultimately not realised for self-build would be an inefficient use of land, time and resources on the part of the Council.
- 6.13 A financial resources test is appropriate and it is therefore proposed that individuals (and associations of individuals) must satisfy the following in order to be eligible for entry on the Register:

*Applicants must demonstrate through the submission of appropriate documentation that they have access to sufficient financial resources to acquire land valued at £330,000 (the minimum likely cost of a self-build plot in Haringey).*

- 6.14 With respect to the request for financial information, the Council must bear in mind its data protection requirements under the General Data Protection Regulation (2018). For this reason, a Privacy Impact Assessment (or Data Protection Impact Assessment) will be carried out before the financial resources test is brought into use.

### **Cost Recovery**

- 6.15 The Council can set fees to be included on the register but only on a cost recovery basis. Any fees charged must therefore be proportionate, reflect genuine costs incurred and should not act as a deterrent for people to be entered on or remain on the register.
- 6.16 To recover the costs of registering an individual or association of individuals, the Act allows the Council to charge an entry fee to anyone who applies to be entered on the register. The Council can also charge a different fee to associations than to individuals where it incurs a different cost for processing an application from an association of individuals compared with an application from an individual.
- 6.17 Thereafter, the Council can charge an additional annual fee to those who are entered on Part 1 of the register and wish to remain on it.

- 6.18 The recommendation is that a fee of £144 should be levied for registering and £20 for annual renewal. The fee reflects the reasonable costs likely to be incurred by officers in assessing of documents submitted, requesting additional information if necessary, updating the register itself and correspondence with applicants, potential specialist advice in assessing information against regulatory requirements, including financial information, and the implementation of payments.
- 6.19 The Council is entitled to refuse entry onto the register until payment has been received. The Council is also entitled to remove an individual or association of individuals from the register if they fail to pay the annual fee.

### **Bringing the proposed changes into effect**

- 6.20 It is recommended that, if approved, the proposed changes to the register and the introduction of the fee should be brought into effect before 30 October. This is because the base period runs from 1 November to 30 October.
- 6.21 Prior to the 30 October, officers will contact all individuals and association contacts on the existing register and advise them of the changes and the requirement to submit information to demonstrate they meet the new eligibility criteria. They will also be prompted to pay the annual renewal fee.
- 6.22 Those who do not pay the renewal fee or fail to meet the financial resources test will be removed from the register. Those who do not meet the local connection criteria they will be removed from Part 1 of the Register but they can be entered onto Part 2 of the register if they meet all other criteria.

## **7. Contribution to strategic outcomes**

- 7.1 The introduction of the changes to Haringey's self-build register will help us to achieve the *Housing* objectives of the Borough Plan, and in particular to strike an appropriate balance between providing opportunities for self-build and reducing the scale of the register to a sustainable level, so that it does not compromise the Council's ability to make the most efficient use of land and to deliver other forms of housing. It will also support the objectives around Equalities and People, ensuring the opportunity for self-build prioritises local residents, enabling them to maintain their connections to the borough.

## **8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)**

### **Finance**

The report recommends for That the Regulatory Committee recommends:

- Cabinet agrees the introduction of the local connection test (see section 6) to qualify for inclusion on Part 1 of the Haringey Self-build Register;
- Cabinet agrees the introduction of the financial resources test (see section 6) to qualify for inclusion on Part 1 and Part 2 of the Haringey Self-build Register;



- Cabinet agrees to charging a £144 (inclusive of VAT) fee for registration of valid applications to the Haringey Self-build Register; and an annual re-registration fee of £144 (inclusive of VAT) to remain on Part 1 of the register thereafter.
- Cabinet agrees to maintain the existing entries on the register until 30 October 2019 after which date they will be re-assessed against the new eligibility criteria and subject to payment of the £144 annual fee for Part 1 registrations.

The fee reflects the reasonable costs likely to be incurred by officers in assessing of documents submitted, requesting additional information if necessary, updating the register itself and correspondence with applicants, potential specialist advice in assessing information against regulatory requirements, including financial information, and the implementation of payments. The number of applications are expected to be small and therefore of minimum financial impact.

### **Legal [Robert Walker - Senior Lawyer]**

A decision on whether to introduce fees or adopt a local connection test and financial resources test in relation to Haringey's Self-Build Register is an executive function by virtue of the Local Authorities (Functions and Responsibilities)(England) Regulations 2000 and can therefore be exercised by Cabinet. In accordance with paragraph 2(d) of the Regulatory Committee's terms of reference in Part 3, Section B of the Constitution, this report is being presented to the Committee to make recommendations to Cabinet.

Cabinet has discretion under Regulation 5 of the Self Build and Custom Housebuilding Regulations 2016 to introduce eligibility criteria for entry in the Self-Build Register. Government guidance specifically advises that when designing a local connection test, Cabinet 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. Further, when designing a financial solvency test, relevant authorities may wish to assess whether the applicant can afford to purchase the land. The proposed eligibility tests set out in paragraph 6 of this report meet the statutory requirements of the Act and relevant Regulations.

Regulation 3 of the Self Build and Custom Housebuilding Time for Compliance and Fees Regulations 2016 grants Cabinet the discretion to charge fees to persons to be entered onto the Self-Build Register and, thereafter, charge fees on an annual basis to remain on the register (irrespective of whether any fee was charged to be entered onto the register). As stated a paragraphs 6.15, the Council must set the fees on a cost recovery basis.

### **Equality**

The Council has a Public Sector Equality Duty under the Equality Act (2010) to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act
- Advance equality of opportunity between people who share those protected characteristics and people who do not
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

The implementation of a Financial Resource Test and Local Connection Test have been screened for impact on individuals and groups who share the protected characteristics. The screening has not identified any likely inequalities arising from the decision to implement the two tests. The Local Connection Test proposed is that which is already approved by the Council for the Housing Allocation Policy (2015), and has been subject to a full EQIA. There are no negative implications beyond those identified and mitigated for within that EQIA. The setting of Fees to cover costs is allowed for by Primary Legislation and there is no evidence to suggest that such fees would unduly impact on any particular group. Moreover, the implementation of the tests will better enable the Council to meet its house building targets, and in so doing directly benefit individuals and groups with protected characteristics who are most likely to benefit from additional affordable and social housing

## 9. Use of Appendices

Appendix A: LB Haringey Self Build Report – BNP Paribas Real Estate, May 2019

Appendix B: Summary of Haringey’s Self-build Register (as at Base Period 3)

## 10. Local Government (Access to Information) Act 1985

10.1 The following background papers are of relevance to the matters being dealt with in this report:

- [Self-build and Custom Housebuilding Act 2015](#) (as amended by the Housing and Planning Act 2016);
- [The Self-build and Custom Housebuilding Regulations 2016 and Self-build and Custom Housebuilding \(Time for Compliance and Fees\) Regulations 2016](#);
- National Planning Practice Guidance – [Self-build and Custom Housebuilding](#); and
- Haringey Council’s [Housing Allocations Policy 2015](#).

10.2 External links – Haringey Council is not responsible for the contents or reliability of linked web sites and does not necessarily endorse any views expressed within them. Listing should not be taken as endorsement of any kind. It is your responsibility to check the terms and conditions of any other web sites you may visit. We cannot guarantee that these links will work all of the time and we have no control over the availability of the linked pages.