

	<b>REPORT TO PLANNING &amp; DEVELOPMENT COMMITTEE TO BE HELD ON 5 OCTOBER 2017 AND CABINET ON 17 OCTOBER 2017 AND FULL COUNCIL ON 6 NOVEMBER 2017</b>
	<b>Key Decision</b> <b>NO</b>  <b>Forward Plan Ref No</b> <b>SP&amp;T1</b>
<b>Corporate Priority:</b>	<b>Cabinet Portfolio</b> <b>Cllr J Plant</b> <b>Holder</b>

**REPORT OF CHIEF EXECUTIVE – 17/206**

**WARDS AFFECTED: “All”**

**SUBJECT: SELF-BUILD HOUSING AND THE SELF-BUILD REGISTER (CHARGING AND ELIGIBILITY CRITERIA).**

**RECOMMENDATION (S):**

1. That Members note the requirements of the Self-build and Custom Housebuilding Act 2015 (as Amended) and the need for the Borough Council to publish a self-build register and meet its duty to grant planning permission for sufficient serviced plots within the Borough (excluding the North York Moors National Park Area); and
2. That Members recommend that Council agree to the introduction of the charging schedule as set out in this report (the proposed fees to be reviewed on a regular basis) for inclusion on Part 1 of the Self-build register;
3. That Members recommend that Council agree to the introduction of eligibility criteria for inclusion on Part 1 of the Self-build register as set out in this report.

**REASON FOR RECOMMENDATION (S):** The provision of self-build plots is a requirement as set out in the Self-build and Custom Housebuilding Act 2015 (as Amended). In terms of the provision of such plots these should be directed towards genuine need within the Borough. Housing land is a finite resource and it is considered that without restrictions on who can apply to be on the register, persons could have their name on more than one register in North Yorkshire or wider. This would result in an over-estimation of need in the wider area and put pressure on 'more popular' areas to provide self-build plots. Scarborough, Whitby and Filey are very popular areas for second homes and retirement and, if left uncontrolled, could see wide interest in building self-build housing from persons with no local connection or without appropriate funds to realise a self-build project. The introduction of a charge, albeit modest, also allows the authority to recover a small part of the cost of managing the register and associated work involved.

## **HIGHLIGHTED RISKS:**

The risks involved with self-build are set out below.

- i) Failure to provide the requisite amount of self-build plots as required by the Self-build and Custom Housebuilding Act 2015 (as Amended) and as identified in the Self-build Register. It is unclear what any repercussions of this would be as this has not been set out by Government as yet, however, these could be financial or give rise to outside involvement in the process. As the Council receive(d) a contribution from Government for publishing a self-build register it is likely that any further payments could be withheld;
- ii) The risk of not adopting a local eligibility criteria is that persons interested in building a home will be more likely to have their details entered on multiple registers across North Yorkshire and potentially wider. This would skew demand and potentially result in an over-provision of self-build plots. Furthermore not having some form of eligibility criteria in an area that is renowned for being popular for persons outside of the Borough to retire to could put added pressure on finding plots. There already exists a need/requirement to find housing sites for persons with a local connection.

## **1. INTRODUCTION**

- 1.1 The Self-build and Custom Housebuilding Act 2015 (as Amended) (hereafter referred to as 'the Act') placed a duty on public authorities to keep a register of individuals and associations who wish to acquire serviced plots to bring forward self-build housing. This act placed a duty on public authorities to have regard to those registers in carrying out their planning and other functions. This was enacted on 26 March 2015.
- 1.2 Since that date the Planning section has produced a register for self-builders and kept it up to date. This is covered later in the report.

- 1.3 This report seeks to update Members on the mechanisms for providing serviced plots in addition to seeking approval for the introduction of both eligibility criteria and a charge to be included on the self-build register. The criteria and the proposed charges are covered in the report.

## **2. CORPORATE PLAN**

- 2.1 The issue of self-build housing links directly to the aim of ensuring there is a choice of high quality, suitable and affordable homes for all.

## **3. BACKGROUND AND ISSUES**

- 3.1 The issue for Members consideration is to note the duty that has been placed on the Local Authority and to determine whether to adopt both a local eligibility criteria and charge for being placed upon the self-build register.

## **4. CONSULTATION**

- 4.1 There is no requirement for consultation upon this matter and is a decision for Members.

## **5. ASSESSMENT**

- 5.1 The assessment will set out what self-build housing is, the duties placed upon local authorities, whether the self-build register should attract a financial charge and local eligibility criteria and how the local authority will attempt to meet the duties placed upon them.

### **What is Self-build housing?**

- 5.2 There is a definition included within the Act as amended by the Housing and Planning Act 2016. This states that 'self-build and custom housebuilding' means the building or completion by individuals, associations of individuals or persons working with or for individuals or associations of houses to be occupied as homes by these individuals.
- 5.3 This does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly plans or specifications decided or offered by that person.

### **The Duties of Local Authorities (Self-build Registers and Serviced Plots)**

- 5.4 Through the Act and subsequent amendments and Regulations several burdens and duties were placed on public authorities including the Borough Council.
- 5.5 The initial duty enacted by the Act required the keeping and publicising of a register by the Borough Council that allows persons to register their interest in acquiring a plot for a self-build house.

- 5.6 The second duty confirms that the authority must bear this register in mind when carrying out its functions. These functions are listed as planning, housing, regeneration and the disposal of any land of the authority.
- 5.7 The final duty set out in the Act as amended is the 'duty to grant planning permission'. This requirement under Para 2A is to grant permission on sufficient plots to meet the identified need on the self-build register for each base year. The base year starts from the first establishment of the register. In respect of Scarborough this date was 21 February 2016 with that base year ending on 30 October 2016. Para 2 of the Self-build and Custom Housebuilding (Time for Compliance for Fees) Regulations 2016 confirms that the authority has three years from the end of the base period to comply with the duty. Therefore it can be assumed that the Borough Council has until the 30 October 2019 to meet the needs of those persons who were entered on the register in the first year and three years from each subsequent year to meet any new arising demand for self-build plots. In the first base year 8 people were entered onto the register, however, this demand may be reduced depending on the outcome of this report. A further 18 persons have been entered onto the register since 31 October 2016.
- 5.8 It should be noted, however, that the duty is to provide sufficient permissions for plot demand not to actually ensure all persons on the register actually deliver a self-build home. So long as sufficient plots are approved and/or are made available that is considered to be sufficient.

### **The Self-build Register (Charging and Eligibility)**

- 5.9 The duty to publish a self-build register was set out in the Act. The Borough Council prepared a suitable register using its consultation software 'Objective'. This can be accessed through the Council's website at:

<https://www.scarborough.gov.uk/home/planning/self-build-and-custom-housebuilding>

- 5.10 The interested party must fill in the relevant details including:
- Name and address;
  - Their interest level in self-build;
  - The type of project (eg individual self-build);
  - The location for self-build project;
  - Size of plot;
  - Size of house;
  - When they would like to commence;
  - Funding arrangements;
- 5.11 From inspecting the information submitted to date the following is a list of notable points:

- Of all the registered persons to date all are interested only in individual plots and not in any group builds on larger sites;
- Interest across the Borough including Scarborough, Whitby, Filey and the outlying rural areas;
- Varying plot sizes requested and requirement for 2 to 5+ bedroomed houses and bungalows;
- Five persons are from outside of the Borough;
- Six of the registered persons suggest that funding is required (hence not in place), the majority state it will be self-funded with only one stating funding is in place;
- In terms of timescales 10 state they are 'ready to go', 10 'within the next 12 months' and the remaining 6 state they are 'just exploring'.

5.12 Officers have been working on addressing the self-build issue but prior to moving further forward the issue of charging to be on the self-build register and eligibility criteria need to be fully explored and considered by Members.

5.13 The Act under Schedule 1 sets out that the Regulations may make provision about a person's eligibility to be entered on to the register. The subsequent Self-build and Custom Housebuilding Regulations 2016 set out further details on the eligibility criteria that can be used to determine who can be entered onto the register. The criteria can include:

- A local connection test whereby a person can be requested to demonstrate a sufficient connection with the authority's area<sup>1</sup>; and/or
- Whether a person who wishes to be entered onto the register has sufficient resources to purchase land for their own self-build.

5.14 The recently adopted Local Plan was based on substantial evidence that identified housing need in the area. This is a challenge for the Borough Council and resulted in the identification of sites to achieve circa 450 dwellings per year up to 2032. For this reason it is considered entirely reasonable that the Borough Council should only seek to meet demand for self-build or custom build housing from individuals and associations who can demonstrate a connection to the Borough.

5.15 Officers consider that the following criteria are sufficient to demonstrate a connection to the area. Applicants must demonstrate through the submission of appropriate documentation that;

- They have been living in Scarborough Borough for three consecutive years; or
- They have previously lived in Scarborough Borough for a period of three consecutive years within the past 10 years; or
- They are currently employed in Scarborough Borough and have been for the past 12 consecutive months<sup>2</sup>; or

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<sup>1</sup>Regular armed forces are exempt from this stipulation including once they have left the armed forces for a period of years (see Regs 5(3)).

<sup>2</sup> Employment must be more than 16 hours per week and where working hours fluctuate, an average will be

- They are currently self-employed, with an ongoing viable venture where work is within the Borough, and has been for the past 12 consecutive months.<sup>3</sup>.
- 5.16 In addition to a local eligibility test, officers consider it important to determine if the person applying to be on the register does have the financial ability to purchase land and to fund the construction of their project. This is not considered unreasonable on the basis that the duty placed on the Council to provide a suitable number of self-build plots. The provision of plots which are ultimately not realised for self-build would be an inefficient use of time and resources on the part of the Council.
- 5.17 As such a solvency test that requires the applicant to demonstrate that they have the financial ability to both purchase and construct a property is considered necessary and would be determined by the submission of either:
- Details of savings equivalent or greater to the average price per plot (to be defined) that could definitely be used for purchase of land and to fund construction of a self-build project; or
  - In principle loan agreement for the purchasing of the land and funding of any resources that will be used to construct the build.
- 5.18 All data and works by the Council need to bear in mind Data Protection and the upcoming General Data Protection Regulation (comes into force in mid-2018). Clearly the submission of personal information in relation to finances is a significant consideration and one that needs careful deliberation. For this reason it has been decided to carry out a Privacy Impact Assessment (or Data Protection Impact Assessment). This will be completed prior to the criteria being implemented and will be approved by the Council's Senior Information Risk Officer (SIRO).
- 5.19 The Regulations allow Authorities to charge a fee for entry onto the register and a separate annual fee for remaining on the register. It is considered that Scarborough Borough Council should adopt a modest charge to recover reasonable costs incurred. These costs to the Council will include determining applications, maintaining the register and corresponding with entrants on the register.
- 5.20 Officers consider that it would be appropriate to charge £50 for entry onto the register and an annual fee of £25 for remaining on it.
- 5.21 Should Members agree with the above the fee should be applied to all persons either on or applying to be on the register if they meet the local eligibility and financial solvency tests. This includes those persons currently entered onto the register who will be contacted to determine if they meet the criteria and if so, requested to pay the £50 entry fee. Members of Planning

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taken over 12 months.

<sup>3</sup> Self-employment must be more than 16 hours per week and where working hours fluctuate, an average will be taken over 12 months.

and Development Committee discussed the fees proposed with some suggesting a higher levy due to the potential workloads that could be involved. It was resolved to accept the fees proposed but that officers should monitor the level of work involved with the process and, if necessary, seek to amend the fees at a future date and keep them under review. Should the introduction of a fee be agreed all persons entered onto the register will be notified that the fees chargeable will be subject to review and could go up.

- 5.22 Where a person either does not meet the criteria or is not willing to pay to be included on the register they will be removed from Part 1 of the Register. In these instances where a person does not meet the criteria or will not pay a fee the Authority must write to them to notify them that they are not eligible for inclusion in Part 1 but that they can be entered onto Part 2 to the register.
- 5.23 The difference between Parts 1 and 2 is that the Council has no duty to provide or ensure enough plots are made available for those on Part 2.

### **Meeting the Duty**

- 5.24 The keeping of the register with whoever meets the agreed criteria is only half of the requirement. The second and possibly most demanding aspect of the new requirements is the duty placed upon the Authority to grant sufficient permissions to meet the identified need on Part 1 of the Register. This was explained in Para 5.7
- 5.25 How this duty will be met is a difficult question. There are a number of ways in which the Authority could aim to address this need and these can include:
- A policy in the Local Plan that requires a percentage of plots on new sites (over a certain scale) to be made available for self-build;
  - A policy in the Local Plan that allows self-build development on the edge of settlements in a similar manner to that permitted under the current rural exception policy (HC 4);
  - The publicising of undeveloped plots for one or a small number of dwellings and providing connections between landowners and potential self-builders. A register of available sites could be placed on the Council's website and the persons on the self-build register notified of this;
  - The release of Council owned land for self-build plots or at a minimum the notification of the release of land for housing to those on the self-build register;
  - Bespoke requests for self-build on larger sites at pre-application and application stage.

### Policies in the Local Plan

- 5.26 As members will be aware the Local Plan was recently adopted in July 2017. The introduction of the Self-build Act and the accompanying Regulations came too late for full consideration and potential inclusion in some form in the Local Plan. Other Local Authorities are considering the inclusion of policies

that require the provision of a set proportion of self-build plots on larger housing sites. As an example a district could seek to secure 5% of plots as self-build on schemes of over 100 units.

- 5.27 The other option is to consider a policy that would allow the release of small sites/plots on the edge of settlements for self-build housing. This would be in a similar manner to the release of sites for local occupancy housing (rural exceptions housing).
- 5.28 Neither of these options is considered to represent a suitable way forward at the current time. The recent adoption of the Local Plan would mean it would have to be reviewed to include such policies and the Council has no intention of reviewing the Plan so soon after adoption, even in part. Notwithstanding the above it is not considered that the securing of a percentage of plots on a larger housing site is the panacea that other authorities believe it may be. There is little evidence to suggest that the demand for self-build plots would be satisfied within more modern housing developments; perhaps numerically but it is unlikely to be of a form and location that is of interest to those on the self-build register. There is also some trepidation from the larger housebuilders as there is less control over the design of the property that will sit within the wider development and no control over when the site will be developed. Such plots could remain vacant for many years until an appropriate buyer / self-builder is found. Which raises the question of how long would a housebuilder be expected to make the plot available for self-build before it could potentially revert back within their own portfolio. The longer the period the greater the risk to the housebuilder; a risk that would have to be incorporated into any viability assessments used to determine the delivery of affordable housing.
- 5.29 As such it is not proposed to look to review the Plan in the short term to introduce either of these types of policy although officers will keep track of other Local Plans coming forward, if such policies are included and how successful they are. Notwithstanding this, options to provide self-build on large housing sites can still be explored and this is covered later in this report.

#### Undeveloped Plots

- 5.30 The Planning Section approves a significant number of planning applications each year for housing development. Many of these are for one or a small number of dwellings and a proportion of those never come to fruition. The reason for this is not known but could be a combination of finance, changing priorities for the applicant or a lack of expertise in house building.
- 5.31 Many of these applications remain undeveloped and often permission will expire. There would therefore appear to be untapped opportunities to bring forward housing including those of a self-build nature.
- 5.32 It is therefore proposed to further investigate the publicising of these sites. At the very least it is proposed to compile a list of these sites, updated bi—annually, and uploaded to a convenient location for those on the self-build

register to investigate potential opportunities. Whether actual details can be provided to the landowners of potential builders is unknown at present due to data protection issues. Such issues will have to be fully investigated before this is taken forward and will determine how it is taken forward.

- 5.33 It should also be noted that sites permitted prior to the base date (referred to earlier in the report) cannot be used to meet the Council's duty. The sites can still be publicised but the Regulations specifically state that the Council can only count sites permitted after the commencement of the self-build register to meet identified demand. Notwithstanding this, if a person on the self-build register does decide to take forward an older site the overall demand for plots will still reduce.

#### Council Owned Sites

- 5.34 A further option to be explored is whether Council owned sites can be promoted for self-build housing. The Act suggests this should happen as it specifically states that the Council should have due regard to self-build in their duties including the release of Council land.
- 5.35 The Council is, however, also duty bound to achieve best value for its assets for the benefit of the wider population of the Borough. Therefore whilst persons on the self-build register can bid for land released by the Council they cannot be afforded special privileges in any competitive bidding process.
- 5.36 The availability of Council owned land will be investigated further with the Estates Department.

#### Self-Build on Proposed Sites

- 5.37 Whilst it is not proposed to revisit Local Plan policy (see paras 5.26 to 5.29) it is still feasible to deliver some self-build homes on large housing sites where it is considered appropriate. This can be done through negotiation at pre-application and formal application stage with the site promoter.
- 5.38 A recent example of where this has been achieved is at the Middle Deepdale site. The legal agreement attached to the development requires that no less than 0.6 ha of land be allocated to small builder and self-build. This could accommodate up to 20 dwellings and would make a substantial contribution to meeting the identified self-build need identified on the register. Officers are currently investigating this further with the site promoters and hope to bring forward this part of the development over the coming year.
- 5.39 This is an option that officers can explore as the larger sites are submitted for consideration on an individual basis as opposed to seeking a blanket policy covering all sites that would require the Council to go through the Local Plan Examination in Public process again.

## **6. CONCLUSIONS**

- 6.1 Self-build housing is one means of delivering much needed homes. Whilst it is not going to make a major contribution towards the overall housing number it is a statutory requirement or duty placed on Local Authorities to firstly keep a register of interested parties and secondly to provide the requisite number of serviced plots.
- 6.2 Taking this into account it is considered wholly reasonable that the Council should ensure their efforts to provide serviced plots is both aimed towards genuine local need and, if it is, be financially viable for the interested parties to bring forward such sites. Without the criteria proposed in this report the Borough Council could put in significant effort to provide plots that won't actually be delivered as the applicant could be 'hedging their bets' within a number of local authority areas or not actually have the financial means to deliver.
- 6.3 The imposition of a fee to be entered onto and stay on the register is also considered reasonable for the work that will have to be put in by the various Council sections, most notably the Planning Section. The fees proposed are modest and will be unlikely to cover the full costs but will allow at least some recovery of expenses and also ensure that self-builders are fully committed to building their own home.
- 6.4 It is therefore proposed that, subject to the completion of a privacy impact assessment (to be agreed with the SIRO), that the local and financial eligibility criteria be adopted along with the imposition of a registration fee.

## **6. IMPLICATIONS**

### **(a) Policy**

- 6.1 There are no direct policy implications of this.

### **(b) Financial**

- 6.2 The Forward Planning budget will take into account the administration of the self-build register supplemented by the fee as proposed in this report.

### **(c) Legal**

- 6.3 The Self-build and Custom Housebuilding Act 2015 (as Amended) places a duty on Councils to prepare self-build registers and also to provide sufficient plots to meet any identified demand.

### **(d) Planning Implications**

- 6.4 There are no planning policy implications, however, there may be the submission of self-build housing applications that will be considered by the development management section.

### **(e) Staffing Implications**

- 6.5 The work carried out to date and that planned for is to be carried out within existing staffing budgets with receipts from self-builders being entered onto/retained on the register being put towards this work.
- 6.6 I have considered whether the following implications arise from this report and am satisfied that no identified implications will arise from this decision in relation to Environmental Implications, Crime and Disorder, Co-operation with Health Authorities, Health and Safety implications, Equality implications or the Human Rights Act.

## 7. ACTION PLAN

- 7.1 Arising for the consideration of the issues, the following action plan is proposed:

Objective	Target
Preparation of Privacy Impact Assessment	Nov / Dec 17
Implementation of Eligibility Criteria and Fee	Jan 18



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**Background Papers:**

Please give details of all publicly accessible (non private) background papers applicable to the report:

## RISK MATRIX

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/Responsible Officer	Action Plan
1	June 2017	Council does not implement eligibility criteria and fee	<p>The register could over estimate demand for plots with people being entered onto multiple registers along with persons who cannot actual deliver a project due to cost.</p> <p>Council has abortive work providing plots or negotiating plots on larger sites.</p>	Adopt the proposed criteria and modest fee.	D2	B2	Mr D Walker / Mr S Wilson	None

