

North Hertfordshire District Council Local Plan Examination Note to Inspector

Self-build

1. The Inspector has requested that North Hertfordshire District Council (NHDC) provide further information to the Examination with regard to self-build development.
2. Following the hearing sessions for Matter 3 (the need for housing and the housing requirement) and Matter 8 (affordable housing, housing mix and supported, sheltered and older persons housing), the following actions have been specified:
 - provide clarification as to what is meant by self-build development in Policy SP8(f)(iii) either in policy text itself or supporting text
 - consider greater promotion of self-build in explanatory text (main modification)
 - consider basis for 1% figure for self-build on strategic sites (*these actions are set out in ED53, p.3*)
 - provide a note on self-build and the position taken in respect of self-build in legislation, the National Planning Policy Framework and Planning Practice Guidance
 - consider position adopted by Stevenage BC and Luton BC on this issue
 - consider amendment to explanatory text of SP2 to include reference to self-build in villages; and
 - consider clarification as to what is meant by the identification of 100 self-build plots as compared to self-build on windfall sites (*ED54, p.2*)
3. These issues are addressed in this note.

Legislative provisions for self-build

4. The legislative provisions for self build are set out in the Self Build and Custom Housebuilding Act 2015 (the Act), the Self-build and Custom Housebuilding Regulations 2016/950 (the Regulations) and the Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016/1027 (the Compliance and Fee Regulations)
5. The Act defines 'self-build and custom house building' 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 be occupied as homes by those individuals¹. This does not include the building of a house on a plot acquired

¹ S1(A1) of the Act

from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person².

6. The Act requires the Council to maintain a register of persons seeking to acquire land to build a home³. Applicants must meet basic eligibility criteria to be entered onto the register. The Regulations allow for the register to be divided into Part 1 and Part 2⁴ with individuals having to meet an additional 'local eligibility test' to be entered onto the Part 1 register, and if they meet all the criteria except the local connection test, then they will be entered onto the Part 2 register.
7. Local eligibility criteria may include:
 - a local connection test whereby only individuals who meet such conditions as the authority reasonably considers demonstrate that the individual has sufficient connection with the authority's area, are eligible⁵; and
 - a test whereby only individuals who can demonstrate that they will have sufficient resources to purchase land for their own self-build and custom housebuilding, are eligible⁶
8. Section 2 of the Act places a duty on district councils to have regard to the self-build and custom housebuilding register when carrying out planning, housing, land disposal and regeneration functions.
9. S2A(2) of the Act requires the Council to give 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 arising in each base period. This duty does not apply to any person entered in Part 2 of the register⁷.
10. 'Development permission' means planning permission or permission in principle, and a permission is "suitable" if it is in respect of development that *could* include self-build and custom housebuilding⁸ (emphasis added). A serviced plot is a plot of land which either has access to a public highway and connections for electricity, water and waste water; or where in the opinion of the Local Planning Authority highways access and utilities connections can be provided before the granted planning permission expires⁹.

² S1(A2) of the Act

³ S1(1) of the Act

⁴ Regulation 4 and Regulation 5 of the Regulations

⁵ Regulation 5(2) of the Regulations

⁶ Regulation 5(4) of the Regulations

⁷ Regulation 9 of the Regulations

⁸ Section 2A(6(c)) of the Act

⁹ Section 5 of the Act and Regulation 3 of the Regulations

11. Demand is evidenced by the number of entries added during to the register under any relevant base period¹⁰. The first base period began on the day that the register was established and ended on 30 October 2016. Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period¹¹.
12. The Compliance and Fee Regulations confirm that the time allowed to comply with the duty is 3 years beginning immediately after the end of the base period¹².
13. A grant of permission in relation to a particular plot of land may not be taken into account in relation to more than one base period in determining whether the S2A duty is discharged¹³.
14. There is no requirement that the permission be implemented. Equally there is no requirement that the permission is granted to or for the benefit of an individual on the register. The Explanatory Memorandum to the Regulations confirms the thinking behind this is 'that a general increase in available land should make it easier for self build and custom build housebuilders to find suitable land'. Consequently for the purpose of the S2A duty, the register operates simply as a mechanism of identifying demand. Therefore any 'suitable development permission' can be taken into account when considering whether an authority has complied with its duty, even if it is for the benefit of an individual who is not on the register.

National planning provisions for self build

15. The regulatory provisions above are supported by further planning guidance in both the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)
16. Paragraph 50 of the NPPF states that local planning authorities should "plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such as, but not limited to...people wishing to build their own homes)"
17. PPG was updated in July 2017 to provide further advice on self-build and custom-build housing¹⁴. Much of this advice refers back to the Act and Regulations identified above. However, the guidance does help to clarify the definition of self-build and custom build stating that:

¹⁰ Section 2A(6)(a) of the Act

¹¹ Section 2A(4) of the Act

¹² Regulation 2 of the Compliance and Fee Regulations

¹³ Section 2A(7) of the Act

¹⁴ <https://www.gov.uk/guidance/self-build-and-custom-housebuilding>, accessed 26 January 2018

In considering whether a home is a self-build or custom build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout.¹⁵

18. The guidance also states that, to facilitate an increase in the number of planning permissions suitable for self-build and custom housebuilding:

Relevant authorities should consider how they can best support self-build and custom housebuilding in their area. This could include:

- *developing policies in their Local Plan for self-build and custom housebuilding;*
- *using their own land if available and suitable for self-build and custom housebuilding and marketing it to those on the register;*
- *engaging with landowners who own sites that are suitable for housing and encouraging them to consider self-build and custom housebuilding and facilitating access to those on the register where the landowner is interested; and*
- *working with custom build developers to maximise opportunities for self-build and custom housebuilding¹⁶.*

19. With regard to plan-making functions, the NPPG states that relevant authorities with plan-making functions should use their evidence on demand for this form of housing from the register in developing their Local Plan and associated documents¹⁷.

20. The guidance is clear that there is not a duty on a relevant authority to grant permission that specifically meets the requirements expressed by those on the register. Relevant authorities should use preferences expressed by those on the register to guide its decisions when looking at how to meet its duty to grant permissions. Relevant authorities should also consider informing those on the register when that have permissioned suitable land¹⁸.

Position in submitted plan

21. The submitted plan includes, at Policy SP8(f)(iii), a target for the provision of 100 plots for self-build development over the plan period (LP1, p.48). The supporting text, at paragraph 4.109 (LP1, p.51) states that:

¹⁵ Planning Practice Guidance, What is self-build and custom housebuilding?, Paragraph: 016 Reference ID: 57-016-20170728, Revision date: 28 07 2017

¹⁶ Planning Practice Guidance, How can relevant authorities increase the number of planning permissions which are suitable for self-build and custom housebuilding?, Paragraph: 025 Reference ID: 57-025-201760728 Revision date: 28 07 2017

¹⁷ Planning Practice Guidance, What does having 'a duty as regards registers' mean?, Paragraph: 014 Reference ID: 57-014-20170728. Revision date 28 07 2017

¹⁸ Planning Practice Guidance, What can someone on a register expect for their membership?, Paragraph: 028 Reference ID: 57-028-201760728, Revision date: 28 07 2017

Self-build provides another route to home ownership. On strategic sites, 1% of plots will be reserved for people with a local connection who wish to build their own home. No specific self-build targets have been set on Local Housing Allocation sites and local demand will be considered on a site-by-site basis having regards to the Council's self-build register. Self build may additionally be an issue that local communities wish to explore through Neighbourhood Plans.

Position adopted by Stevenage and Luton councils on this issue

22. The Publication draft of Stevenage Borough Council's (SBC's) Local Plan includes, at Policy SP7(f)(iv) a requirement for at least 1% of new homes on the urban extensions [allocated in the Plan] to be self build (ORD6, p.42).

23. The supporting text of SBC's plan, at paragraph 5.88, states:

The Government recognises the aspirations of many people to build their own homes. Although we are not aware of an identified need in the Borough currently, we want to ensure that these opportunities exist if things change in the future. The larger urban extensions provide a suitable location to meet this need, as putting aside plots for self-build use can be combined with the need to provide larger, aspirational homes, if necessary.

24. The 1% requirement is then repeated in site-specific policies for Stevenage West (Policy HO2, p.107), North of Stevenage (Policy HO2, p.110) and South-East of Stevenage (Policy HO4, p.113).

25. The Inspector's Report into the Stevenage Plan concludes that these requirements are sound subject to a main modification to explain that if self-build plots are not taken up by the public after being marketed for at least 2 years, they can revert to conventional build plots (ED16, p.22, paragraph 117).

26. The Inspector's Report into the Luton Local Plan states:

The Council has advised that there have been no registrations from anyone seeking land for self-build in Luton. However, there could be opportunities within the housing supply, particularly on windfall sites. These various potential needs have been adequately assessed and appropriately provided for. In addition, Policy LP15 requires development to achieve a mix of different housing types and tenures informed by the latest housing market assessment and local circumstances. This is in line with paragraph 50 of the Framework. (ED4, p.39, paragraph 194)

27. Luton's Local Plan was adopted in November 2017. There is no specific policy on self-build. The supporting text of the adopted plan states:

Paragraph 50 of the NPPF identifies that local planning authorities should plan for people wishing to build their own homes, and PPG (Paragraph 21)

states that the Government wants to enable more people to build their own home and wants to make this form of housing a mainstream housing option and that local planning authorities should, therefore, plan to meet the strong latent demand for such housing. However, based on the Self-Build Portal run by the National Custom and Self Build Association (NCaSBA) there are currently no registrations from groups and individuals looking for land in Luton (Source: 'Need-a-Plot' Portal NCaSBA, July 2015). The Council will continue to monitor the register and keep a register of eligible prospective custom and self-build individuals, community groups and developers¹⁹.

North Hertfordshire's self-build register

28. The current demand identified in NHDC for the first two base periods is:

Base period	Demand
Inception – 31 October 2016	24 individuals
1 November 2016 – 31 October 2017	85 individuals

29. Under the provisions above, the Council must therefore grant 24 suitable development permissions by three years from the end of the first base period (i.e. 31 October 2019) and a further 85 suitable development permissions by 31 October 2020.

30. As well as collating basic registration information, the Council's self-build register allows applicants to identify locations in which they are interested in acquiring a self-build plot. Applicants can identify as many locations as they wish from a list of 38 towns and parishes in the District.

31. A review of the registers shows that, among applications from the first two base periods have, an average of 13 preferred locations are identified. The five most frequently selected locations in the period from inception to 31 October 2017 are:

- Hitchin – identified as a preference by 78 applicants
- Letchworth – 69
- St Ippolyts – 67
- Baldock – 64
- Ickleford - 54

32. A full list of recorded preferences is including in Appendix A of this note.

¹⁹ Luton Local Plan 2011-2031, November 2017 (paragraph 6.27, p.57)

Windfall development in North Hertfordshire and relationship to Self-Build and Custom Build housing

33. As set out to the Examination, small windfall sites are considered to form a small, but consistent and important, component of housing supply in the District. The Council's Matter 4 statement identifies that an average of 64 completions per year have been achieved from sites of less than five units.
34. Neither the planning application forms used by the Council, nor the validation process on receipt of planning applications, provide a standard or easy means of identifying which planning applications meet either the legal definition of self-build, or the test set in the PPG. Similarly, there is no single test to ascertain which sites *could* include self-build and custom-build housing as per the statutory requirement outlined above.
35. There is therefore presently no robust monitoring data relating to the number of suitable development permissions granted by the Council, or the number of permissions where the initial owner of the home has had a primary input into final design and layout. The Council is in the process of reviewing how best this information might be captured.
36. Evidence has been presented to the examination detailing total house completions and small site completions (defined as schemes of 4 or less homes) in the period 1 April 2016 to 31 March 2017 (ED26a & ED26b). This states that, out of a total of 539 net completions in this period, 70 net completions (13%) were on small-scale / windfall sites. It is asserted that these are custom and self-build completions.
37. A review of the Council's own monitoring data confirms that this evidence includes all completions on sites of this size for the monitoring year.
38. It is not known what additional checks, if any, were undertaken to determine whether all of these 70 net completions (or the permissions on which they are based) would satisfy the definitions of either self-build or suitable development permission outlined above. As per paragraphs 34 and 35 above, NHDC presently has no simple means of ascertaining this.
39. It is considered unlikely that all small site completions would meet the definition of self build and custom build housing (i.e. where the initial owner had a primary input into its design) as these completions might include, for example:
- The conversion of an existing building into multiple flats; or
 - The granting of permission to an existing householder to construct an additional home within the curtilage of their property for subsequent sale.

40. Notwithstanding these points, it is accepted as likely that at least some of the small windfall permissions granted in North Hertfordshire since October 2016 would, on further scrutiny, be capable of contributing towards the Council's suitable development permissions.
41. As set out in oral evidence to the Matter 4 hearing, the Council considers it likely there is some confusion / conflation between, on one hand, the definitions and requirements relating to self build and custom build housing set out in statute and national guidance and, on the other, small-scale windfall developments brought forward by individuals and small and medium sized companies.
42. Although there is overlap between the two, they do not precisely correlate with one another.
43. A proportion of small windfall schemes are likely to be on sites identified, acquired and brought forward by private individuals and small companies outside of any formal definitions of, or processes associated with, self build and custom build housing.
44. The Council has no wish to stifle the ability of any such individuals or companies to bring forward appropriate plots for small-scale windfall development within the policy framework established by the plan. The Council has no intention of imposing, through the plan, an upper limit on the number of such homes that will be permitted.

Meeting registered demand for self-build

45. As set out above, it is considered likely that some small windfall completions within North Hertfordshire would, on further scrutiny, be capable of being classified as suitable development permissions contributing towards the Council's statutory obligations against the Act and Regulations. It is possible that the number of suitable development permissions being achieved by the Council through its normal consideration and granting of planning permissions may, in numerical terms, prove to be sufficient to discharge its statutory responsibilities.
46. However, this risks becoming something of an 'accountancy exercise' where demand as registered through one route (the self build register) is simply offset against suitable development permissions that are achieved entirely independently of any measures to address the demand on the register.
47. Indeed, it is entirely plausible that this (or any other) Council could satisfy its statutory obligations without ever facilitating the acquisition of a single plot by any individual on the self build register.
48. This approach would be statutorily compliant. However, the NPPF and PPG encourage a more pro-active approach that goes beyond the statutory requirements.

The PPG, in particular, explicitly encourages relevant authorities to consider how they might support self-build and custom build housing through developing policies in Local Plans, engaging with landowners of sites suitable for housing and facilitating access to those on the register where the landowner is interested.

49. In this context, the Council considers there is a justified role for the Local Plan to play in facilitating the provision of additional self build plots.

Justification for approach to plan

50. On review, the Council considers that (subject to the proposed modifications set out below), the broad principles of the approach set out in the plan are justified.

51. As set out above, there is a **statutory duty to have regard to the self-build register when carrying out planning functions**. Although the analysis above suggests that it might be possible to fulfil the Council's statutory duties without introducing any specific measures, the **NPPF and PPG encourage proactive facilitation of self-build**. This includes suggested measures which go beyond the statutory duties such as providing opportunities to those on the self build register and developing local plan policy.

52. The Council can demonstrate **clear evidence of local demand for self-build**. Through its Self Build Register, the Council has identified 109 individuals in the first two base periods. The Council is now under a statutory obligation to evidence 109 suitable development permissions by 31 October 2020.

53. In this respect, it is noted that Stevenage had identified only a low level of demand at the time of the plan's examination. Application of their 1% requirement would allow for at least 27 plots to be provided (i.e. 50% above the registered demand for 18 plots at the point of the examination).

54. It is accepted that not all applications to be added to the register are likely to translate into expressions of interest or acquisitions of plots for self build should opportunities arise. However, the Council's register is only 18 months old and it is not unreasonable to anticipate further applications over the plan period. Should the register continue to grow at its average rate of 6 entrants per month for the remainder of the plan period, there would be over 900 additional entries on the register by 2031.

55. In addition to the overall demand, the Council can, through analysis of its register, provide **evidence of locational demand**. Although the PPG is clear that authorities are not obliged to specifically meet the requirements of those on the register, the evidence to date shows that three of the main towns within the District are amongst the most popular choices. There is evidence of at least some demand within all of the areas where strategic sites are located. North Hertfordshire is relatively compact,

particularly around the central A1(M) core, and provision on strategic sites would be within reasonable distance of many of the locations identified on the list.

56. In this context, the 1% requirement on strategic sites is considered a **proportionate response that can be made acceptable and deliverable in planning terms**. The 1% requirement for strategic sites ensures a reasonable planning balance between:

- Achieving a 'critical mass' of plots that can be located together within a development without undermining its overall coherence; and
- Not providing a scale of proportion of plots such that they might have a disproportionate influence on the overall scheme in terms of its general design and / or appearance.

57. The Council's viability evidence (TI2, p.23, paragraph 2.2.15) considers that the provision of plots for custom and self build should be at least neutral in viability terms. In this regard, the Council's approach is considered **compliant with paragraph 173 of the NPPF** in that it will not threaten viability, either individually or cumulatively with other policy obligations.

58. In the above context, the Council considers that the 1% requirement on the strategic allocations proposed in the plan is justified in relation to sites BA1, LG1, NS1, HT1 and GA2 (Policies SP14 to SP18, pp.61-70).

59. However, it is now accepted that the Council cannot justify this approach in relation to the East of Luton site (LP1, Policy SP19, p.71). The majority of this allocation (1,950 out of the proposed 2,100 homes) is to help address unmet housing needs arising from Luton. As set out above, Luton have not identified a self-build need or self-build requirement through their own plan and it would therefore be inconsistent to require the provision of self-build plots for this element of the build.

60. Seeking 1% self-build on the 150 homes that are proposed East of Luton to meet the share of needs arising from within North Hertfordshire would be to apply a lower threshold on a 'one-off' basis and result in the provision of just 1 or 2 plots, contrary to the approach in paragraph 56 above.

Practicalities

61. Some concerns have been raised through the examination relating to the practicalities of securing self-build provision and ensuring its coherence with the remainder of the development. It is considered that these concerns can be addressed through the Council's decision making functions. This might include the use of (but not necessarily be limited to):

ED83 - MATTERS 3 & 8

- The inclusion of 'reversion' clauses in any relevant s106 legal agreements identifying that self-build plots remaining unsold after a specified time period; and
- Design codes (or equivalent) setting out an agreed palette of materials, parameters etc. for self-build plots having regard to the proposals for the wider site.

62. The Council is considering the need for further guidance on Self-Build in North Hertfordshire outside of the Local Plan examination. These issues can be given further consideration through this process.

Modifications to the plan

63. Following discussion at the examination and the submission of statements and additional information by participants, it is accepted that approach to Self Build and Custom Housebuilding in the plan should be clarified for effectiveness. In particular, the distinction between:

- Windfall development schemes that will arise over the course of the plan period which might contribute to the supply of 'suitable development permissions' and the statutory requirements of the Act and Regulations, but are generally self-identified/procured (windfall) schemes that are not open to third party interest or bids; and
- Proactive measures to more specifically address the requirements identified by those on the register and widen opportunities to access self-build in line with the policy and advice set out in the NPPF and PPG respectively.

64. Additional supporting text to Policy SP2 will highlight the possibility for windfall and / or self-build development to come forward in villages.

65. It is further proposed to amend the target for 100 self-build plots in Policy SP8(f)(iii) and relate it instead to the total number of plots to be achieved through the 1% requirement on strategic sites. The supporting text will make the distinction between small windfall development and proactive measures to facilitate self-build opportunities in line with the PPG.

66. As a consequence of the analysis above, it is proposed to delete criterion (f) from Policy SP19.

67. The detailed text of the proposed modifications will be set out in the published schedule of potential changes to the plan.

Appendix A: Locational preferences identified by entrants on self-build register

(Inception to 31 October 2017, total 109 entries)

HITCHIN	78
LETCHWORTH	69
ST IPPOLYTS	67
BALDOCK	64
ICKLEFORD	54
WYMONDLEY	51
ASHWELL	48
PIRTON	47
GRAVELEY	46
KNEBWORTH	46
WESTON	45
ROYSTON	44
CODICOTE	43
OFFLEY	43
PRESTON	38
HEXTON	35
HINXWORTH	35
KIMPTON	35
LILLEY	35
BYGRAVE	34
THERFIELD	34
RADWELL	33
ST PAULS WALDEN	33
LANGLEY	32
KINGS WALDEN	31
WALLINGTON	31
CALDECOTE	30
CLOTHALL	30
GT ASHBY	29
HOLWELL	28
SANDON	28
KELSHALL	27
BARKWAY	26
BARLEY	26
NEWNHAM	26
RUSHDEN	26
REED	23
NUTHAMPSTEAD	21