

‘Right to Build: supporting custom and self build’ consultation: LGA Response

December 2014



The Local Government Association (LGA) welcomes the opportunity to respond to the ‘Right to Build: supporting custom and self build’ consultation.

The LGA is here to support, promote and improve local government. We will fight local government's corner and support councils through challenging times by making the case for greater devolution, helping councils tackle their challenges and assisting them to deliver better value for money services. www.local.gov.uk

This response has been agreed by the LGA’s Environment, Economy, Housing and Transport Programme Board. The Environment, Economy, Housing and Transport Board has responsibility for LGA activity in relation to the economy and environment, including: transport, employment and skills, economic development and business support, housing, planning, waste and climate change.

Summary

Councils up and down the country are already supporting custom build housing as an additional means of bringing forward supply, as the case studies in the consultation document clearly illustrate.

There are however a number of issues arising from the Right to Build proposals which we feel could be resolved by:

- Introducing a fee structure based on a cost-recovery basis for the custom build register
- Allowing local planning authorities to carry out any required needs assessment or site identification to promote custom build at the next scheduled review of their strategic housing land assessment and five-year housing supply
- Introducing a duty on government departments to co-operate with local authorities in discharging the Right to Build and consider the Right in the disposal of their own land
- Ensuring adequate flexibility in the system to enable local authorities to balance their acquisition of land with demand, or to deal with constrained supply
- There should be full local authority discretion to determine what preference information, eligibility criteria and principles for offering

Submission

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plots would be most helpful in delivering custom and self-build housing in their local area.

Comments on proposals included in the consultation

Councils strongly support self-build and are already helping custom builders to get plots and build their own homes. This includes the provision of public sector land where it is locally appropriate and planned for development.

We also consider that there is already a sufficiently robust planning policy and supporting guidance framework in place to promote custom build and that additional legislation is unnecessary.

The aim should be for the need for custom build to be assessed alongside other local housing needs and how that need is met should be left for local determination alongside other elements of housing need and relevant considerations – this approach would be more in keeping with the localism agenda.

The proposals as they stand are over-prescriptive and over-engineered in terms of how delivery against demand should take place. There is a risk that the mechanisms suggested will create a 'bureaucracy-heavy' solution that are difficult to deliver practically on the ground.

However, notwithstanding our view above, if government are minded to take forward the 'Right to Build' proposals outlined in the consultation there are number of issues that must be addressed before these are taken forward.

In particular, councils have concerns about transitional arrangements and impact on local plans, as well as cost implications for councils of maintaining a register and acquisition/provision of land and serviced plots.

Government should also make a clear statement in bringing forward any of the proposals that there is no guarantee that a plot of land will be made available that meet the preferences of prospective custom or self-builders.

Finally, with the learning and experience from the vanguard authorities not yet available to draw on we consider that it is premature to plan the detail of a new regime. We would therefore request that the government provides further opportunity to comment on the Right to Build proposals after completion of the 'vanguard' projects. This would like to see the learning from the Vanguards evaluated

Establishing demand for custom build – the register

The Self-Build and Custom Housebuilding Bill working its way through parliament will put in place a requirement for local authorities to maintain a register of people who wish to acquire a service plot to build a home and to have regard to the demand evidenced by the register.

This statutory requirement is unnecessary given the clear advice already laid out in national planning guidance on how local planning authorities should identify and plan for the needs of custom builders.

However, if the requirement for a register is brought forward in legislation,

the regulations should avoid being over-prescriptive in relation to custom builder preferences or eligibility criteria. There should be local authority discretion to determine what preference information and eligibility criteria would be most helpful in delivering more custom and self-build housing in their local area. Best-practice advice from the vanguards and other local authorities who are proactively taking custom build forward could stand in place of regulations and statutory guidance.

The costs of setting-up, maintaining, reporting on and publicising the register should be met under the new burdens doctrine. It is proposed that in the first years of the register it will be free for applicants to join and then consideration may be given to introduce fees. We are concerned that the consultation suggests this could be on a 'cost-contribution' basis. Any fee structure put in place should be based on full cost recovery.

Consideration should also be given to introducing a fee structure straightaway. Not only would this cover the costs of operating the register, but would also help to ensure that only those with a genuine commitment to building their own home would apply to join the register.

Meeting demand on the register

The consultation proposes that land allocated for custom build (reflecting the demand demonstrated by the Right to Build register) should be reflected in a local planning authority's five year housing land supply.

Given that 77% of local planning authorities now have published local plans, which will pre-date any implementation of the Right to Build, it is important that there are appropriate transitional arrangements in place.

Where councils with emerging or adopted local plans have not already carried out the required needs assessment or site identification to promote custom build, they should not be required to do this ahead of a scheduled review of their strategic housing land assessment and five-year housing supply.

This will ensure that the momentum to get local plans in place can be maintained and also avoid unnecessary additional time and resource burden on both councils and the Planning Inspectorate.

It is important that local planning authorities have discretion in the approach they take to bring forward custom-build plots. This is best decided at the local level and government should avoid prescription on this in regulation.

On provision of land for custom build, the consultation is not clear on whether there is to be a duty on councils to provide serviced plots or whether enabling people to access serviced plots will be acceptable. We would strongly oppose any obligation on a local authority to commit capital resources to buying and servicing plots of land, irrespective of financial resources and corporate priorities. This would put local authorities at significant financial risk.

Approaches to securing land

Maximum flexibility must be provided on the route by which land may be secured for custom build, to take into account local circumstances,

including land availability and the nature of local demand. This will also encourage and support innovation of new approaches in addition to those outlined in the consultation document. It is important to note that no single approach (and possibly no combination) can guarantee sufficient plots to meet potential demand.

Buying land is an option for local authorities but such significant capital expenditure should be undertaken only after prioritisation against other uses for the funding, and careful analysis of benefits, costs and risks. We are concerned that if local authorities have to acquire land to fulfil a duty, but cannot sell at a price that covers their costs, it will be to the detriment of tax payers when the land is sold on. This will be a particular risk at times when markets go into decline, and where plots cannot be sold at market rate.

There are also cash flow implications for councils as well as resource implications (for example, staffing). As presently set out the proposals would introduce significant additional burdens on local authorities which should be funded as such.

We also have concerns that the new duties on local authorities could interfere with existing plans for land and could result in land being stockpiled for custom build use when demand and actual take-up of plots is uncertain, particularly in the first few years. This could lead to unnecessary capital expenditure, delays in getting land with planning permission built out and disruption with local plans.

In addition, there is no acknowledgement of the role that central government land could play in discharging the Right to Build. To that extent, government should introduce a duty on government departments to co-operate with local authorities in discharging the Right to Build and consider the Right in the disposal of their own land.

Meeting the requirement to offer a plot

There will be valid circumstances such as land constraint where it will not be possible for custom builders to have the plot they desire in the place that they would like it to be. The duty placed on local planning authorities should therefore not have to go beyond doing what is 'reasonably practicable.'

The following points must be considered:

- Sites are possible only in locations that comply with Local Plan policy.
- Where demand exceeds supply it will not be possible to satisfy the preferences of everyone.
- There will be instances where financial factors make the provision of plots unviable, e.g. valuable scarce sites in protected areas, or a location remote from mains services.

The consultation proposes a national framework that gives custom builders the right to be offered 3 plots; those plots to be offered within 2.5 years and plots to reflect preference.

Whilst all the above may be possible in some areas, in other areas particularly where there is constrained land supply, this may be impractical

and unachievable. Rather than a prescriptive national framework, the detail of these principles should be decided at a local level. Overarching 'best-practice' advice could support this endeavour.

Councils should also be able to apply local discretion to the length of time which custom build plots can be 'held' for that purpose before they can be reallocated to fulfil other housing supply requirements.