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Right to Build Task Force Custom and Self-Build Planning Guidance

PG3: Provision of Affordable Housing, including Exception Sites

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1. INTRODUCTION

1. This document forms part of the Right to Build Task Force Custom and Self-Build Planning Guidance. The guidance consists of an overview, together with separate planning guidance documents and appendices.
2. This guidance has been designed to complement existing legislation and regulations, together with the National Planning Policy Framework (NPPF) and in particular National Planning Policy Guidance (NPPG) in relation to custom and self-build.
3. Together the guidance sets out good practice guidance to support the delivery of custom and self-build homes in England. By “good practice” we mean information at a level of detail that is otherwise not available to support an approach that best aligns with the aims, the letter, and the spirit of the legislation.
4. It is intended for use by:
 - a. Those responsible for planning policies and decisions within local authorities and National Parks in England.
 - b. Those seeking to bring forward or support custom and self-build developments.
 - c. Planning Inspectors and those engaged in review of planning decisions and planning policies.
 - d. Landowners and land promoters.
 - e. All those interested in better and more beautiful homes.
5. The guidance is published by the Right to Build Task Force and it is regularly updated to reflect emerging good practice and in response to any relevant changes in legislation, regulation or policy. The latest version of the guidance can be found at www.righttobuild.org.uk. A full list of all guidance documents and appendices is included at the end of this document.
6. All references are correct at the time of publication.
7. Feedback on this document and the associated good practice guidance notes is welcome and any comments should be sent to vanessa@righttobuild.org.uk.

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2. THE RIGHT TO BUILD TASK FORCE

8. The Right to Build is the generally used term for a collection of primary and secondary legislation introduced to support the growth in the number of custom and self-build homes within England.
9. The Right to Build Task Force (Task Force) was established by the National Custom and Self-Build Association (NaCSBA) in 2017. NaCSBA is the voice of the custom and self-build housing sector.
10. The aim of the Task Force is to support the delivery of the Right to Build through the provision of technical expertise and advice based on a model that has been used successfully in the Netherlands.
11. The Task Force provides help to local authorities, community groups and other organisations across the UK to deliver large, affordable, custom, and self-build projects.
12. An ethical wall separates the activities of NaCSBA and the Task Force. A Task Force Advisory Board, made up of experts and advisors from national and local government, industry and community housing, provides strategic oversight of our work.
13. The Task Force is currently funded by the Ministry of Housing Communities and Local Government.

3. SUMMARY

14. The Right to Build legislation is specific in its reference to the “occupant” rather than “owner” and therefore the legislation is relevant to all housing tenures.
15. The National Planning Policy Framework (NPPF) specifically links custom and self-build (CSB), the Right to Build legislation and affordable housing.
16. National Planning Policy guidance (NPPG) however could be seen as narrowing the tenure range by making specific reference to the “owner” and by specifically considering the need to accommodate those seeking “affordable home ownership schemes”, but not “affordable rent”. It remains possible to deliver homes for “affordable rent” that meets the statutory definition of CSB.
17. The use of CSB as a route to affordable home ownership is specifically referenced in the NPPG in relation to the need to take this into consideration when implementing a financial solvency test, so ensuring those on lower incomes are not excluded by such a test.
18. Under the NPPF, provision of affordable housing should not be sought on residential developments that are not major developments, other than in designated rural areas. There is ongoing consultation on a higher site limit for major developments.
19. On major developments there is an expectation in the NPPF that at least 10% of homes be available for affordable home ownership. There is a possible exception for CSB homes, but this does not imply that there should be no affordable housing provision.
20. The NPPF provides for affordable homes on rural exception sites which may be facilitated by some market housing. CSB may be a route to delivery of all, or part, of rural exception sites, and which can support the meeting of legislative duties under the Right to Build.
21. Whilst affordable housing has a specific definition within the NPPF, there are many ways through which market CSB homes may be more affordable than other alternatives.
22. Whilst it is neither explicitly stated nor tested, it appears reasonable to apply a lower hurdle in determining if an affordable property is CSB, including where there is “sweat equity” involved.
23. It is recommended that this planning guidance note is read in conjunction with [Right to Build Task Force Custom and Self-Build Advice Note EN04: Affordable Housing - The Essentials](#).

4. CUSTOM AND SELF BUILD HOUSING AS AFFORDABLE HOUSING

Right to Build Legislation

24. The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) provides a legal definition of CSB housebuilding.

‘(A1) In this Act “self-build and custom housebuilding” means 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 individuals.’¹*

25. The Act does not refer to ownership but to occupation.

26. Also, whilst referring to the acquisition of plots, the Act makes no requirement for the plot to be owned by the occupant.

‘1(1) Each relevant authority must keep a register of—

- (a) individuals, and*
 - (b) associations of individuals,*
- who are seeking to acquire serviced plots of land in the authority's area for their own self-build and custom housebuilding.’²*

27. Following on from the definition in 1(A1) above the Act goes on to state:

‘1(A2) But it does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person.’³

28. From this it may be concluded that it is the involvement in determining the plans and specifications that is the key and not the tenure.

National Planning Policy Framework

29. The National Planning Policy Framework (NPPF) uses the term:

‘...people wishing to build and commission their own home.’⁴

¹ Housing and Planning Act 2016 Chapter 2, 9 Definitions (1)

² Housing and Planning Act 2016 Chapter 2, 9 Definitions (2)

³ Housing and Planning Act 2016 Chapter 2, 9 Definitions (1)

⁴ National Planning Policy Framework February 2019 Paragraph 61

30. This has the same meaning as CSB house building, and it is directly cross referenced to the primary legislation.

31. The NPPF also makes it clear that:

*'Self and custom-build properties could provide market or affordable housing.'*⁵

32. From this it clear that the NPPF references affordable housing in general and does not differentiate between affordable home ownership and affordable rent.

National Planning Practice Guidance

33. The NPPG Self Build and Custom Housebuilding Guidance makes general reference to the link between CSB and affordable in two areas:

'More widely, relevant authorities can play a key role in brokering and facilitating relationships to help bring suitable land forward. This can include:

- *working with local partners, such as Housing Associations and third sector groups, to custom build affordable housing for veterans and other groups in acute housing need.'*⁶

and

'(ii) Housing

*Local housing authorities will need to consider the evidence of demand for self-build and custom housebuilding from the registers when carrying out their housing functions. This includes preparing their local housing strategies, delivery of affordable housing, supporting community-led housing and in developing plans for new housing on land owned by the local housing authority. Authorities are encouraged to work closely with local delivery partners to ensure that self-build and custom housebuilding is an integral part of their housing delivery strategy.'*⁷

34. This guidance again establishes the overlap between CSB and affordable housing.

⁵ National Planning Policy Framework February 2019 Note 26

⁶ Self-build and Custom Housebuilding Guidance Paragraph: 025 Reference ID: 57-025-20210508

⁷ Self-build and Custom Housebuilding Guidance Paragraph: 014 Reference ID: 57-014-20210508

5. AFFORDABLE HOME OWNERSHIP AND AFFORDABLE RENT

35. From the legislation and the NPPF there is no differentiation between affordable home ownership and affordable rent.

36. However, the use of “owner” rather than “occupant” in the NPPG, as set out below, raises the issue of a more restrictive approach than set out on the face of the legislation. Whilst there is no direct association with affordable housing, this paragraph could suggest the potential exclusion of homes for affordable rent, even if the original tenant has primary input into its final design and layout.

‘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.’⁸

37. The guidance contains a further paragraph that could also suggest a difference of approach between affordable home ownership and affordable rent.

‘In designing a financial solvency test, relevant authorities may wish to assess whether the applicant can afford to purchase the land. Authorities should be aware that self-build and custom build can provide a route to affordable home ownership for those on low incomes and so will need to take this into consideration if introducing a financial solvency test.’⁹

38. This guidance seeks to ensure that a financial solvency test does not exclude those on lower incomes. As such it makes it easier for those on lower incomes to join registers and this should in turn help deliver more affordable CSB homes. However, the reference is explicit to affordable home ownership (and hence not affordable rent).

39. Overall, the NPPG is supportive for those considering CSB as an approach to affordable home ownership. For those whose tenure is likely to be affordable rent the guidance provides less certainty. Councils should ensure that policies and decisions do not unfairly discriminate or disadvantage specific households. However, it remains possible to deliver homes for “affordable rent” that meet the statutory definition of CSB. Further clarification may be provided in the upcoming planned review of the legislation.

⁸ Self-build and Custom Housebuilding Guidance Paragraph: 016 Reference ID: 57-016-20210208

⁹ Self-build and Custom Housebuilding Guidance Paragraph: 020 Reference ID: 57-020-20210508

6. NEED FOR AFFORDABLE HOUSING PROVISION

40. Most CSB homes are not part of major developments and, where not in designated rural areas, provision for affordable housing should not be sought. Major developments are defined in the NPPF Glossary at ten homes or more, or 0.5 hectares or more.
41. In designated rural areas, a policy may set a lower threshold of five units or fewer (potentially single homes). Where this is the case all sites larger than this threshold are considered major developments.

*'Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of five units or fewer)'.*¹⁰

42. Designated rural areas are defined in the NPPF Glossary:

*'National Parks, Areas of Outstanding Natural Beauty and areas designated as 'rural' under Section 157 of the Housing Act 1985'.*¹¹

43. The NPPF provides some exemption for CSB developments and exception sites with regard to the provision of affordable home ownership products.

'Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the homes to be available for affordable home ownership (Note 29 As part of the overall affordable housing contribution from the site), unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups. Exemptions to this 10% requirement should also be made where the site or proposed development:

c) is proposed to be developed by people who wish to build or commission their own homes; or

*d) is exclusively for affordable housing, an entry-level exception site or a rural exception site.'*¹²

44. This wording has been used in some cases to make the case for an absence of all affordable housing provision. However, the wording is specific to affordable home ownership only and therefore does not result in any exception with regards affordable rent.

¹⁰ National Planning Policy Framework February 2019 Paragraph 63 (part)

¹¹ National Planning Policy Framework February 2019 Annex 2 Glossary

¹² National Planning Policy Framework February 2019 Paragraph 64

45. In August 2020, the government published a consultation on Changes to the Current Planning System. The consultation includes a proposed raising of the small sites threshold to 40 or 50 new homes for an initial period of 18 months. No decision has yet been taken.¹³

¹³ MHCLG Changes to the Current Planning system. Consultation on changes to planning policy and regulations August 2020.

7. EXCEPTION SITES

46. The NPPF sets out definitions for both rural and entry-level exceptions sites:

***Rural exception sites:** Small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. A proportion of market homes may be allowed on the site at the local planning authority's discretion, for example where essential to enable the delivery of affordable units without grant funding.*

***Entry-level exception site:** A site that provides entry-level homes suitable for first time buyers (or equivalent, for those looking to rent), in line with paragraph 71 of this Framework.¹⁴*

47. CSB can form part of exception site delivery. In the case of rural exception sites, then prioritising CSB for the market housing element as well as the affordable is a good fit with the duties under the Right to Build legislation. A number of Planning Authorities have made specific provision for single plot affordable CSB developments. Other councils have introduced planning policies relating to affordable or local needs pathways to delivery of exception site housing.

¹⁴ National Planning Policy Framework February 2019 Annex 2 Glossary

8. AFFORDABLE AND “AFFORDABLE” HOUSING

48. Affordable housing has a specific definition within the NPPF. It is also important to note that whilst CSB homes do not have, for example, the same benefits of scale as the large housebuilders there are many ways in which CSB can be a route to a more “affordable” home than the speculative new build market can supply. For example:
- Self-builders may be able to put an element of “sweat equity” into their home in particular with internal finish.
 - Custom and self-builders can ensure that their home is built with their specific cultural or physical needs considered from the outset saving time and resource in retrofitting.
 - Custom and self-builders typically build homes that are more sustainable and have lower ongoing costs.
 - Custom and self-builders will benefit from an exemption from the Community Infrastructure Levy, where it is applied, and lower stamp duty.
 - Custom and self-builders can delay some elements of the build until additional resources become available.
49. Industry data from the Home Building & Renovation Self and Custom Build Market Report (2017) indicates that self-builders can benefit from an approximate average of 30% uplift in the value of their completed property.

9. INPUT INTO DESIGN AND CONSTRUCTION

50. Despite the term “self-build” the key to the definition within the legislation (see Section 4) is about input into design and specification rather than physical construction.
51. It is recognised that the ability to influence design and specification will vary with the type of build, for example with a high-rise development input may be limited to external elements of the build. Similarly, a terrace may be built to a shell to be completed to the specifications of the occupant. It seems unlikely that legislation will ever definitively establish where CSB starts and stops for all possible scenarios, and therefore this is ultimately a matter of risk and judgement.
52. In the case of affordable housing then the nature of the build means that some restriction is more likely than for market housing. There are also many good reasons for “sweat equity” being a route through which value is created by the occupier even though it is not part of the legislative definition. However, ability to influence design and contribute to build can be transformational to the occupant and to their relationship with the property and the community.
53. It appears reasonable (in the specific case of affordable housing) to adopt a more relative definition of CSB. In other words, to establish whether the approach to build has been designed to maximise the input of the occupier into the design and specification whilst recognising the limits that apply by nature of the build.
54. This process may involve a group coming together to agree between them common aspects of the design. The design may be informed by the involvement of members, or a steering group, but this does not necessarily guarantee that the final occupants will have informed the process. Due to the long timescales involved in the development process, members may drop out and be replaced by others not involved in the initial design process. Alternatively, the final occupants of a project may not be selected until later in the process, after the design has been finalised.
55. That group may evolve over the life of the build. One of the challenges with CSB housing as affordable, whether rented or part purchased (shared ownership or discount market sale) is that the initial occupant may well look to move on should their circumstances change. The level of customisation may need to be limited to ensure that resale is not impacted, whether this resale is undertaken by a landlord or the owner themselves.
56. To summarise, it appears reasonable (in some cases) for the affordable occupant to have more limited input into design and specification than in the case of market housing. However, it also appears reasonable to apply a lower hurdle in determining if a property is CSB where this is the case. Homes where the aim is to deliver more input from the occupant should be encouraged.

10. LIST OF ALL RIGHT TO BUILD TASK FORCE PLANNING GUIDANCE DOCUMENTS

57. The Guidance is made up of individual planning guidance documents. These are listed below. Not all documents are currently published. These notes will be introduced over time, with an indicative phase shown.

Reference	Title	First Issued
PG0	Planning guidance good practice overview	October 2020
Definitions		
PG1	Defining custom and self-build	October 2020
Plan Making and Policies		
PG2	Delivering a sufficient supply of homes	October 2020
PG3	<i>Provision of affordable housing, including exception sites</i>	March 2021
PG4	Designs of exceptional quality	Phase 4
PG5	Sustainability	Phase 3
PG6	Supplementary Planning Documents (template)	Phase 4
PG7	Neighbourhood plans and the process	Phase 4
PG8	Maintaining open and inclusive Registers and engaging with those on the Register	Phase 2
Decision Taking		
PG9	Using Register numbers to identify plots to be permissioned	October 2020
PG10	Counting relevant permissioned plots	October 2020
PG11	NPPF and Right to Build Legislation – delivering appropriate permissions	April 2021
PG12	Working with multi-plot sites and phased delivery	Phase 3
PG13	Annual Monitoring Reporting	April 2021
PG14	Securing delivery of self and custom-build homes	Phase 3
Engaging		
PG15	Working with groups of self-builders	Phase 4
PG16	How to address undersupply (strategic and short-term)	Phase 3
Appendices		
Appendix A	Legislation and regulation	October 2020
Appendix B	National Planning Policy Framework and National Planning Policy Guidance	October 2020
Appendix C	Other key policy documents	October 2020
Appendix D	Planning appeals	Phase 2