

# CHANGES TO HILLINGDON'S SELF BUILD AND CUSTOM-BUILD REGISTER - UPDATE AND APPROVAL

<b>Cabinet Member(s)</b>	Councillor Keith Burrows Councillor Philip Corthorne
<b>Cabinet Portfolio(s)</b>	Planning and Transportation Housing and The Environment
<b>Officer Contact(s)</b>	Prag Shah, Residents Services Julia Johnson, Residents Services
<b>Papers with report</b>	A copy of The EqIA is attached as Appendix 1 A summary of the consultation responses is in Appendix 2.

## HEADLINES

<b>Summary</b>	To receive feedback following consultation and further assessment of the proposed changes to the registration process for Hillingdon's Self Build and Custom Build Housing Register.
<b>Putting our Residents First</b>	This report supports the following Council objectives of: <i>Our People; Our Natural Environment; Our Built Environment.</i>
<b>Financial Cost</b>	Cost Neutral - Indicative income of £17k in Year 1, £4.6k in Year 2 recovering the cost of eligibility criteria checking.
<b>Relevant Policy Overview Committee</b>	Residents', Education and Environmental Services
<b>Relevant Ward(s)</b>	All

## RECOMMENDATIONS

That the Cabinet:

1. Approve the introduction of local eligibility criteria so that Hillingdon's self-build and custom housebuilding register can be split into two parts.
2. Approve the following local eligibility criteria for joining Part 1 of the Register:
  - a. Residency in the Borough for at least five years prior to the date of application with flexibility for non-continuous residency for study or temporary work; or
  - b. Currently in the service of the regular armed forces or have served in the armed forces in the past five years.

and

- c. **Able to provide evidence of “sufficient resources” to purchase land of £225,000.**
  - d. **For associations of individuals wishing to be added to Part 1 of Hillingdon’s Self-build and Custom Build Register, at least three-quarters of the members of the association must meet the local connection criteria above and be able to demonstrate that the association collectively has sufficient financial resources to purchase a plot large enough to accommodate its members.**
3. **Approve the introduction of the following fees:**
    - i. **Fee for Part 1 of the register: £90 for entry and an annual retention fee of £30.**
    - ii. **Fee for Part 2 of the register: £45 (no annual retention fee).**
  4. **Approve the national eligibility criteria for Part 2 of the register, which requires the applicant to be:**
    - a. **Over 18 years old; and**
    - b. **A British Citizen or national of an EEA State\*;** and
    - c. **Seeking to acquire a serviced plot of land to build a house to occupy as a sole or main residence.**
  5. **Approve the maintenance of existing entries on the register until 1<sup>st</sup> December 2020 after which date they will be re-assessed against the new eligibility requirements and subject to payment of the appropriate fee.**

*\*This would only continue to apply in accordance with future legislative provisions implemented at the end of the Brexit transition period.*

### **Reasons for recommendation**

The purpose of introducing local eligibility criteria is to ensure that the self-build and custom housebuilding register better reflects local demand for land for custom and self-build housing and to assist the Council in better and more accurately meeting its obligations under the Self-build and Custom Housebuilding Act 2015.

The reasons for alterations to the local eligibility criteria proposed in the May 2020 Cabinet report takes into account the outcome of the Equalities Impact Assessment (EqIA) undertaken and responses received as part of the Council’s consultation on the introduction of changes to the register. The revised approach seeks to balance the objective of ensuring that entrants on to the Council’s register have a strong local connection as allowed by legislation but also seeks to mitigate the potential discriminatory effects on protected groups in the EqIA by halving the qualifying period initially proposed. It remains important to the Council that the Register reflects the needs of those with a strong connection to the borough given the overall high level need for housing the low density nature of self-build development which reduces overall housing capacity.

A copy of The EqIA is attached as Appendix 1 of this report and a summary of the consultation responses received is set out in Appendix 2.

### **Alternative options considered / risk management**

The option exists to continue with the eligibility criteria initially proposed in the May 2020 Cabinet Report whilst introducing exemptions for specific groups in response to the EqIA findings and consultation responses. However, this would create an additional level of complexity to the administration of the register and create a need to produce additional guidance which may require further consultation. It is, therefore, proposed to retain one simple criteria for the local connection test.

Further options do exist in terms of the length of the local connection test, with the minimum residency period set by the surrounding boroughs/districts surveyed ranging from two to five years. The newly proposed five years is still at the higher end when compared to surrounding local authorities. However, with the application of flexibility to the residency requirements proposed, a period of five years is considered to be a reasonable way of determining a local connection.

Another alternative option is not to progress with the introduction of eligibility criteria. However, the level of demand for self-build and custom housebuilding in the Borough is determined by the number of entries on the register, and the current register overestimates demand because there are not any criteria to demonstrate a local connection for inclusion onto the register. At present, individuals and organisations without a local connection can sign up to be included in multiple registers across England where a two-part register does not exist. Given the high demand for self-build plots and limited availability of land, the Council does need to prioritise individuals with the strongest connections to the area, as allowed under the Act. An overestimation of demand could result in the Council having to grant planning permission for self-build and custom build housing on more sites than actual demand requires. This would have subsequent implications for the Council's ability to meet its London Plan housing targets, which are due to increase significantly once the new London Plan has been finalised.

In terms of local connection tests, the minimum residency period set by the surrounding boroughs/districts surveyed is two years with the highest level at five years. The newly proposed five years is still at the higher end when compared to surrounding local authorities, however, with the application of flexibility to the residency requirements alongside this it is considered to be a reasonable way of determining a local connection.

### **Democratic compliance / previous authority**

A report to Cabinet in May 2020 proposed a series of changes to the registration process that would be published for consultation and subject to an Equalities Impact Assessment. It was agreed that a further report should be presented to Cabinet setting out the feedback from the consultation and assessments.

### **Policy Overview Committee comments**

None at this stage.

## SUPPORTING INFORMATION

### Introduction

1. The Council proposed the introduction of specific local eligibility criteria for the Self-Build and Custom Housebuilding Register in a May 2020 Cabinet Report. Following this, the Council underwent a 6-week public consultation from 29 June to 8 August 2020.
2. The local eligibility criteria included requirements for evidence of a minimum residency of 10 years in the Borough prior to the date of application and evidence of sufficient resources to purchase a self-build plot of land in the Borough. Applicants would be required to satisfy these new criteria in order to be eligible for entry on to Part 1 of the register. The fee proposed was £90 for new entries on to Hillingdon's Self-build and Custom Housebuilding Register and an annual fee of £90 to remain on Part 1 of the Register thereafter. The Council is required to grant planning permission to enough self-build plots to meet demand as evidenced by Part 1 of the Register.
3. The Council consulted all existing individuals and associations on the Register as well as relevant organisations and individuals across the Borough who were a part of the Council's frequently updated planning policy consultation database. The Council received consultation responses from six different organisations/individuals, only four of which had specific comments to make. These responses are summarised in Appendix 1 to this report.
4. The Council also undertook an Equalities Impact Assessment of the proposed eligibility criteria to determine the impact on any protected characteristics and this has identified that there would be a specific impact on Romany Gypsies and Irish Travellers as they would be less able to meet the 10 year criteria because of their travelling lifestyle.
5. Taking into account the findings of the EqIA and the consultation, this report proposes one significant change to the local eligibility criteria proposed to Cabinet in May 2020 as well as some minor points of clarification.

### Background

6. The Self-Build and Custom Housebuilding Act 2015 imposed a duty upon relevant authorities including London boroughs to maintain a register of individuals and associations of individuals who are seeking to acquire serviced plots of land in their area in order to build homes for their occupation.
7. The Act places a 'duty to grant planning permission' on relevant authorities, whereby entries on Part 1 of the Register are counted towards the number of suitable serviced plots that must be granted permission for. Accordingly, it is a requirement that following each annual base period of 12 months, relevant authorities have 3 years in which to permission an equivalent number of plots of land for self-build as there are entries to Part 1 of the Register for that base period.

8. New Regulations introduced in October 2016 gave greater discretion to local authorities to set eligibility requirements for those wanting to be entered onto the register. This enables local authorities to:
  - Charge a fee for entries on to the self-build and custom housebuilding register (and charge an annual fee to remain on the register) to cover the cost of the administration involved in compiling and maintaining the register;
  - Set a local connection test (any local eligibility test will be deemed to be satisfied if the individual is in the service of the regular armed forces of the Crown and for a period after leaving service); and
  - Set a requirement to provide evidence of sufficient resources to purchase land for self-build and custom housebuilding.
9. Analysis of Hillingdon's register in May 2020 identified that a third of applicants did not currently live in the Borough, creating an additional requirement on the Council to meet the needs of those living in other local authority areas.
10. It was, therefore, recommended to Cabinet that the Council to utilise the revised legislation to ensure that the self-build and custom housebuilding register better reflects local demand and to assist the Council in better meeting its obligations under the Self-build and Custom Housebuilding Act 2015. These changes would be subject to public consultation and further assessment.

## **Consultation Feedback**

11. The Council consulted all existing individuals and associations on the Register as well as relevant organisations and individuals across the Borough who were a part of the Council's frequently updated planning policy consultation database. The Council received consultation responses from six different organisations/individuals, only four of which had specific comments to make. These were Northwood and Gateshill Residents Associations and two individual respondents.
12. The two residents associations were supportive of the introduction of local eligibility criteria and have clarification on whether some further measures can be introduced or thresholds increased (such as increasing the amount of financial resources required). They have also commented that they consider the administrative fees proposed to be relatively low.
13. Of the individuals that responded, the first makes only one comment regarding further information on the process whilst the second individual makes extensive comments querying the justification for the proposed criteria. In particular, concerns are raised with the 10 year criteria and how this could introduce an age related bias or exclude those who have a history of living in the Borough but have moved away for study or work. They also seek clarification on the evidence that will be accepted to demonstrate sufficient resources and for further justification on the Council's proposed fees.

## **Equalities Impact Assessment Findings**

14. The EqIA of the proposed criteria has identified that the 10 year residency requirement may have an impact on some Romany Gypsies and Irish Travellers more than any other

ethnic groups as they would be less likely to be able to meet this criteria based on their travelling lifestyle.

15. Mitigation measures have been proposed as described in section B.1 of the EqlA noting that other London boroughs have shorter residency requirements. It is noted that the 10-year requirement has been proposed to conform with the Council's Housing Allocations Policy. However, this allocations policy now includes exceptions for certain Irish Traveller, Romany Gypsy or non-UK national households compliant with the judgement of the *Court of Appeal in R(Ward & Ors) v LB Hillingdon, Equality and Human Rights Commission intervening (2019) EWCA Civ 692*. The exceptions are that the 10-year requirement be reduced from 10 years to 5 years provided the applicant can demonstrate that they are a household which is either Irish Traveller/ Romany Gypsy or non-UK national with refugee status in the UK.

## **Proposed Revisions to the Registration Process**

### **Local Connection Test**

16. In the light of the EqlA findings and the consultation response received it is proposed to change the proposed residency requirement from 10 years to 5 years. This is recommended to take account of the findings of the EqlA. A single reduced threshold rather than the introduction of exceptions is recommended to simplify the administration although an allowance for non-continuous residency for study or temporary work (up to three months) will be made. It is considered that a period of 5 years will still ensure that a strong local connection can be demonstrated and reduce those eligible for inclusion on the Register, given both this and the financial resources criteria must be met with no alternative qualifications.

### **Evidence of Sufficient Resources**

17. It is not proposed to make any further changes to this criteria. The Council believes that the proposed threshold of £225,000 is justified on the basis of evidence presented to Cabinet in May 2020. The Council accepts that there may be a variety of ways that applicants to the Register may be able to demonstrate sufficient resources, such as savings, private finance, mortgage agreement in principle or the ownership of other properties. Applications will be evaluated individually to ensure fair assessment at the point of application.

### **Registration Fee**

18. As set out in the previous Cabinet report the registration fees are based on an estimate of officer time required to assess applications charged at an average hourly rate. They are considered proportionate and justified in accordance with government guidance and will allow for cost recovery. It is, therefore, proposed to keep the fees at the levels initially proposed.

## Next Steps

19. Subject to the approval of the proposed changes to Hillingdon's Self Build and Custom Build Register by the Cabinet, officers in the Council's Planning Policy will then contact all entrants of the existing register to inform them of the changes and the re-registration process. The relevant web pages will also be updated to advise potential new applicants of the eligibility criteria.

## Financial Implications

20. The recommended introduction of a two-tiered charging structure for acceptance onto the Council's Self Build and Custom Build Register is in line with the Self-build and Custom Housebuilding (Time for Compliance and Fees) Regulations 2016. The Council is able to set a fee to recover the reasonable costs incurred with entering a person onto the register, or permitting a person to remain on the register. Any fees for unsuccessful applications will be refunded to the applicant. Activities relating to the review of eligibility criteria will be undertaken through existing staff resources.
21. There are currently 233 individuals on the Council's Self Build and Custom Build Register, 153 of which are Hillingdon residents. Assuming that 100% of the existing registration mix meets the eligibility criteria for Parts 1 and 2, and there is no movement in overall applicant numbers, indicative fee income will be £17.4k in Year 1 associated with adding applicants to the list, reducing to £4.6k in Year 2 related to the annual retention fee.
22. Following the introduction of a fee to recover the Council's process costs, and annual variations in register volumes, however, it is expected that fee recovery levels will fluctuate. Due to the expected significant reduction in the volume of entrants, it would be counterintuitive to assign an income target to this new income stream until such a time when the volume of entrants becomes consistent. The likely amount of income generated will not be material enough to include in MTFF proposals, it is therefore suggested that this income is used to manage existing service pressures.

Charge	Fee	Year 1		Year 2	
		Volume	Income	Volume	Income
Part 1 register	£90	153	£13,770		
Part 2 register	£45	80	£3,600		
Part 1 annual retention	£30			153	£4,590
Part 2 annual retention	£0			80	£0
<b>Total Indicative Income</b>		<b>233</b>	<b>£17,370</b>	<b>233</b>	<b>£4,590</b>

## RESIDENT BENEFIT & CONSULTATION

### **The benefit or impact upon Hillingdon residents, service users and communities?**

The proposals put forward in this report are intended to ensure that Hillingdon's residents are prioritised for the Self-build and Custom Build Register. Ensuring that all entries meet the required eligibility criteria (and in respect of Part 1 the local connection criteria) together with applying entry and yearly maintenance fees will help the Council to better identify what is the true requirement for self-build and custom build plots in Hillingdon and guide new relevant policies as appropriate.

These new proposals are in response to specific issues raised during the consultation as well as in response to the Council's own internal review and consideration of equality issues. A full Equality Impact Assessment (see Appendix 1) was carried out in association with the proposals explored in the May 2020 Cabinet Report which identified issues with the residency requirement that may disproportionately affect certain groups of people. It is considered that these issues have been resolved the new local eligibility criteria proposed in this report and no further equality impact issues have been identified.

### **Consultation carried out or required**

The Council proposed the introduction of specific local eligibility criteria for the Self-Build and Custom Housebuilding Register in a May 2020 Cabinet Report. Following this, the Council underwent a 6-week public consultation from 29 June to 8 August 2020.

The Council consulted all existing individuals and associations on the Register as well as relevant organisations and individuals across the Borough who were a part of the Council's frequently updated consultation database. The Council received consultation responses from six different organisations/individuals, only four of which had specific comments to make. These responses are summarised in Appendix 2 to this report.

Following the consultation and after review of the responses received, the Council explored potential solutions to issues raised during the consultation and it is now seeking to introduce revised local eligibility criteria for the Self-Build and Custom Housebuilding Register.

## CORPORATE CONSIDERATIONS

### **Corporate Finance**

Corporate Finance has reviewed the report and concur with the Financial Implications set out above, noting that there are no financial implications arising from the report recommendations.

### **Legal**

As explained in the report, it is proposed that the Council's local eligibility criteria be set at 5 years with flexibility for non-continuous residence for study or temporary work. This proposal is made

following consideration of the consultation responses and to mitigate the potential discriminatory effect of setting a 10 year qualification.

The Borough Solicitor confirms that the Council has fully complied with The Self Build & Custom Housebuilding Regulations 2016 and that there are no legal impediments to Cabinet agreeing the recommendations set out in the report.

## BACKGROUND PAPERS

[Report to the Virtual Cabinet 12 May 2020](#)