

Agenda Item No: 10
Report To: Cabinet
Date of Meeting: 12th October 2017
Report Title: Self and Custom Build Register – charging of fees
Report Author & Job Title: Matthew Nouch, Policy Planner
Portfolio Holder Cllr. Paul Clokie
Portfolio Holder for: Planning



Summary:

Beginning on 1st April 2016, the Self-Build and Custom Housebuilding Act 2015 has placed a duty on local councils in England to keep and have regard to a register of people who are interested in self-build or custom-build projects in their area. Local planning authorities must give planning permission to enough suitable serviced plots of land to meet the demand on this Self and Custom Build Register (SCBR). Applicants to the SCBR must meet a series of eligibility criteria. Furthermore, local authorities are able to set further optional criteria, including the payment of a fee to cover officer time and administrative burden.
Purpose of the report

The report explains the Council's responsibilities with regard to the SCBR. It outlines the way in which the overall 'demand' for serviced plots for self and custom build is calculated, clarifies the current level of demand and what this means for the Council. It will outline the measures currently being undertaken internally to be able to plan for and meet the demand for self and custom build within the borough. This will provide the context and rationale for requesting that Cabinet agrees a fee should be required from applicants to enter onto the SCBR, and a renewal fee charged annually on 31st October to remain on the register.

Key Decision: YES

Significantly Affected Wards: All

Recommendations: The Cabinet is recommended to:-

- I. Agree that a fee may be charged for entry onto the Self and Custom Build Register (SCBR), and for renewal on an annual basis, to fully cover the Council's reasonable costs.
- II. Agree the fee amounts for the 'base period' 2017-

18 are set at £30 for initial entry onto the register, and £15 annual renewal fee.

Policy Overview:	Ashford's Corporate Plan seeks to ensure that the Council "is effective, efficient and sustainable in terms of finance, resources, service delivery and enforcement". This is further detailed in Ashford's underpinning principles for our four priorities, ensuring we remain a well-resourced Council to be able to deliver the high standards of service expected of us. This is intended to underpin Priority 2 of the plan, resourcing the delivery of Self and Custom Build homes in the borough.
Financial Implications:	The introduction of the requirement to keep a SCBR has introduced an ongoing administrative burden on local authorities which, as guidance allows, may be covered by charging applicants this discretionary fee for entry to and remaining on the register.
Legal Implications	See Appendix 1
Equalities Impact Assessment	See Attached
Other Material Implications:	None
Exempt from Publication:	NO
Background Papers:	None
Contact:	matthew.nouch@ashford.gov.uk – Tel: (01233) 330254

Self and Custom Build Register – charging of fees

Introduction and Background

1. The Self-Build and Custom Housebuilding Act 2015 places a duty on local councils in England to keep and have regard to a register of people who are interested in self-build or custom-build projects in their area. This register is intended to help inform the Council of the level of demand for self-build and custom-build plots in borough and enable it to develop a strategy for delivering serviced plots.
2. Applicants to the register must meet all of the eligibility criteria for entry on the register. Each individual applicant and every member of an association of individuals that applies for entry on the register must:
 - a) be aged 18 or older;
 - b) be a British citizen, a national of a EEA State other than the United Kingdom, or a national of Switzerland;
 - c) satisfy any local eligibility conditions set by the relevant authority;
 - d) have paid any fee required by the relevant authority to enter or remain on the register; and
 - e) be seeking (either alone or with others) to acquire a serviced plot of land in the relevant authority's area for their own self-build and custom housebuilding project.

Points c) and d) are not currently required by Ashford Borough Council.

3. Local planning authorities have a duty to give planning permission to enough suitable serviced plots of land to meet the demand for self-build and custom housebuilding in their area. The level of demand is established by reference to the number of entries added to an authority's register during a 'base period'.
4. The first 'base period' began on 1st April 2016 (when the requirement to keep a register came into force) 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 period'. Subsequent 'base periods' will therefore run from 31 October to 30 October each year.
5. At the end of each 'base period', relevant authorities have 3 years in which to permission an equivalent number of plots of land, which are suitable for self-build and custom housebuilding, as there are entries for that 'base period'. If insufficient permissions have been granted within that time period, there is recourse for permissions to be granted for self or custom build on publicly-owned land.

Proposal/Current Position

What is Ashford's current demand?

6. Applicants can currently register to enter onto the Ashford SCBR by completing the online form at www.ashford.gov.uk/self-build-register, which can also be accessed via the national portal at <http://localselfbuildregister.co.uk/>.
7. The contents of the register are not public, given the sensitive personal data collected, processed and stored according to the Data Protection Act 1998. However, the Council is obliged to publish headline data on the demand for self and custom housebuilding revealed by the register in its Annual Monitoring Report. There is opportunity for further publicity via the Council's website.
8. During the first 'base period', Ashford received 16 applications for entry onto the register. This means that by October 2019 the authority will need to issue permissions for 16 serviced plots of land to satisfy this demand. We are now in the second 'base period', but during the first eight months we have received 67 applications for entry on the register. The current requirement, therefore, would be to issue permissions for 83 serviced plots of land by October 2020 to satisfy this demand.
9. The demand in the second 'base period' is significantly increased. To provide for the anticipated need, Policy HOU6 of the draft Local Plan to 2030 will require that 5 percent of dwelling plots for development of 40 dwellings or more in the urban area or 20 dwellings or more in the rural area will support self and custom build development.
10. Demand for self and custom housebuilding will continue to be monitored. A number of additional questions are asked of applicants upon registration, including preferences for a particular location within the borough, type of housing required, and envisaged timescale for delivery. This information assists in better being able to match applicants with available plots, and to ascertain likelihood of delivery. Meanwhile, a schedule of available serviced and permitted plots for self and custom build will also be assembled, although there is no such formal requirement for this.

Proposed Fee

11. The aim of the SCBR is ostensibly for the Local Planning Authority to ascertain the level of latent demand in its area for this type of housing. The mechanisms built in to the system compel the local authority to ensure that those admitted to the register are catered for in terms of permissions granted. This has resulted in an additional burden on officers and the establishment of a procedure and system for administration of the SCBR.
12. The regulations allow for the local authority to set fees for admission to the register on a cost recovery basis. A fee can also be charged annually for those wishing to remain on the register. **It is proposed that a fee of £30 should be charged for initial entry onto the register, and that an annual renewal fee of £15 should be charged on 31st October for the 'base**

period' 2017-18. This fee will be reviewed on an annual basis, and the Council would reserve the right to alter the fee to take account of variations in administrative burden.

13. It is intended that the fee will serve to cover officer administrative time, and additionally to ensure that those entered onto the register will have a real drive to build once an appropriate planning permission is issued.
14. The level of the fee charged is comparable to that charged by those other local authorities that have introduced the fee – including Guildford, Basingstoke, Mole Valley and Daventry – and accord with the current regulations regarding the charging of fees in relation to the SCBR.

Implications and Risk Assessment

15. The introduction of the requirement to keep a SCBR has introduced an ongoing administrative burden on local authorities which, as guidance allows, may be covered by charging applicants this discretionary fee for entry to and remaining on the register.
16. Following the end of each 'base period', the local planning authority has a period of three years to provide sufficient serviced plots with planning permission to meet the number of entries onto the SCBR during that period.
17. One of the biggest risks at the moment is that delivery of any serviced plots could be highly reliant on public land.

Equalities Impact Assessment

18. Members are referred to the attached Assessment. The recommendations emerging from this report have no differential impact on those with protected characteristics beyond the statutory requirements that any applicant to the SCBR must be aged 18 or over and be a national of the UK, EEA or Switzerland.

Other Options Considered

Local connections test and a financial resources test

19. The Self and Custom Housebuilding legislation enables relevant authorities to include up to two optional local eligibility tests. These are limited to a local connection test and a financial solvency test. However, guidance states that use of one or both of these tests should only occur when there is a strong justification for doing so. Use should be proportionate and, in the case of the former, should be introduced in response to "a recognised local issue", howsoever defined.
20. A local authority may also set a criterion whereby only individuals who can demonstrate that they will have sufficient resources to purchase land for their own self-build and custom housebuilding will be eligible. This criterion is applied by Islington, which requires as evidence, the following:

- a) An offer for a self-build mortgage from a verifiable lender (for example, a Member of the Council of Mortgage Lenders);
- b) Written confirmation and evidence from a qualified financial advisor, of sufficient available funds;
- c) Any other information which demonstrates that the applicant has sufficient funds to purchase land.

Reasons for Supporting Option Recommended

21. At present, the majority of those entered onto the SCBR are currently resident within the borough. Only a minority currently reside in other parts of Kent and further afield. Therefore at this time it is not proposed that a local connections test is appropriate, but this does not preclude its introduction in the future if required.
22. Likewise, given the potential difficulties of obtaining a mortgage at the early stages of the self-build process, before a plot of land has been identified, it is considered that a mortgage offer should not be a consideration for entry onto the SCBR. In the future, however, a method of processing criteria b) and c) detailed in paragraph 20 (above) may be considered appropriate.
23. At this time, it is considered necessary only that the administrative burden of the SCBR should be covered by those wishing to seek entry.

Next Steps in Process

24. If Members give approval for the collection of fees – a key decision - charging would begin from the commencement of the next 'base period' on 31st October 2017.
25. On this date, all new entrants to the SCBR would be required to pay £30 as a condition of their entry. Also on this date, contact would be made with all those already on the SCBR advising them of the need for a payment of £15 to remain on the register until October 2018. Contact would need to be made in any case since the LPA must periodically reconfirm the wish of an entrant to remain on the register.

Conclusion

26. The introduction of the requirement to keep a SCBR has introduced an ongoing administrative burden on local authorities which, as guidance allows, may be covered by charging applicants this discretionary fee for entry to and remaining on the register.
27. This is a key decision. It is important that this decision is made prior to 31st October 2017 since this marks the beginning of a new 'base period' for calculating need for plots.

Portfolio Holder's Views

28. *"The Self and Custom Build Register has shown us how much local interest there is for innovative housing delivery in the borough. In order to ensure we*

are able to process applications to the register effectively, I support the charging of a nominal administrative fee in line with government regulations and with other local authorities.”

Contact and Email

29. Matthew Nouch, Policy Planner - matthew.nouch@ashford.gov.uk

Legal Implications

Section 1 of the Self-build and Custom Housebuilding Act 2015 requires relevant authorities (defined in that section) to keep and publicise a register of individuals and associations of individuals who are seeking to acquire a serviced plot of land in the authority's area in order to build houses for those individuals to occupy as homes. The Schedule to that Act provides for regulations to make provision in relation to those registers. The Self-build and Custom Housebuilding (Register) Regulations 2016 (SI 2016/105) came into force on 1st April 2016.

Section 2A of the 2015 Act (inserted by the Housing and Planning Act 2016) requires those authorities to grant development permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in their area. Section 2A(3) provides that regulations must specify the time in which such development permissions must be granted.

Paragraph 6 of the Schedule to the 2015 Act permits regulations to provide for the payment of fees in connection with the functions of relevant authorities maintaining the register required by section 1 and complying with the duty imposed by section 2A.

Section 4 of the 2015 Act provides for regulations made under section 2A(3) of and paragraph 6 of the Schedule to, that Act to be by affirmative resolution procedure.

Data protection

Section 1(1) of the Data Protection Act defines 'personal data' as data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of the data controller; and it includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

'Sensitive personal data' is defined in section 2 of the Data Protection Act as personal data consisting of information relating to the data subject with regard to racial or ethnic origin; political opinions; religious beliefs or other beliefs of a similar nature; trade union membership; physical or mental health or condition; sexual life; the commission or alleged commission by the data subject of any offence; or any proceedings for any offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings.

Equality Impact Assessment

1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:

- (a) Eliminate discrimination, harassment and victimisation;
- (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.

6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:

- removing or minimising disadvantages suffered by people due to their protected characteristics.
- taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.

- encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.
8. In terms of timing:
- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
 - Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
 - The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
 - The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
 - The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
 - The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
 - It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
 - A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
 - A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

Case law principles

9. A number of principles have been established by the courts in relation to the equality duty and due regard:
- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
 - Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

Lead officer:	Matthew Nouch
Decision maker:	Cabinet
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	<ul style="list-style-type: none"> • Agree that a fee may be charged for entry onto the Self and Custom Build Register (SCBR), and for renewal on an annual basis, to fully cover the Council's reasonable costs. • Agree the fee amounts for the 'base period' 2017-18 are set at £30 for initial entry onto the register, and £15 annual renewal fee.
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	12 th October 2017
Summary of the proposed decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	<p>The requirement to maintain a Self and Custom Build Register (SCBR), introduced in April 2016, while useful in determining demand for this product, has resulted in an additional administrative requirement for the Local Authority. This has not only been in terms of registering applicants, but also trying to match these applicants to available land, and to ensure sufficient planning permissions are granted for the numbers contained in the register.</p> <p>The government's SCBR regulations allow local authorities to charge a discretionary fee to cover administrative costs, in addition to the requirement that all applicants are over the age of 18 and are nationals of the UK, EEA or Switzerland. The level of this fee has been determined locally, but is comparable with those authorities that have already introduced charging.</p> <p>This proposal will affect all those applying to be added to the Ashford SCBR, and those wishing to renew their application on the register beginning in the 'base period' 2017/18.</p>
Information and research: <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. 	<p>The current SCBR regulations allow local authorities to add additional eligibility criteria for entrance onto their register. These include the charging for an entry and renewal fee; the establishment of a local connections test; and a financial resources test. The present proposal only proposes the charging of an entry and renewal fee for the administration of the register.</p> <p>Other local authorities, both within Kent and nationally, charge this fee at a level comparable with that proposed here.</p>
Consultation: <ul style="list-style-type: none"> • What specific consultation has 	No consultation is required for this proposal; rather it is an issue of resourcing and finance.

<p>occurred on this decision?</p> <ul style="list-style-type: none"> • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics? 	
--	--

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Protected characteristic	Relevance to Decision High/Medium/Low/None	Impact of Decision Positive (Major/Minor) Negative (Major/Minor) Neutral
<u>AGE</u> Elderly	NONE	NEUTRAL
Middle age	NONE	NEUTRAL
Young adult	NONE	NEUTRAL
Children	NONE	NEUTRAL
<u>DISABILITY</u> Physical	NONE	NEUTRAL
Mental	NONE	NEUTRAL
Sensory	NONE	NEUTRAL
<u>GENDER RE- ASSIGNMENT</u>	NONE	NEUTRAL
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	NONE	NEUTRAL
<u>PREGNANCY/MATERNITY</u>	NONE	NEUTRAL
<u>RACE</u>	NONE	NEUTRAL
<u>RELIGION OR BELIEF</u>	NONE	NEUTRAL
<u>SEX</u>	NONE	NEUTRAL

Men		
Women	NONE	NEUTRAL
<u>SEXUAL ORIENTATION</u>	NONE	NEUTRAL

Mitigating negative impact: Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
---	-----

Is the decision relevant to the aims of the equality duty?	
Guidance on the aims can be found in the EHRC's <u>Essential Guide</u> , alongside fuller <u>PSED Technical Guidance</u> .	
Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	YES
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	YES
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	YES

Conclusion:	
<ul style="list-style-type: none"> Consider how due regard has been had to the equality duty, from start to finish. There should be no unlawful discrimination arising from the decision (see guidance above). Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified. How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported? 	<p>Due regard has been given to the Council's equality duty, but the establishment of this fee does not differentially benefit or harm any of the protected groups.</p> <p>It is already acknowledged that the SCBR legislation restricts entry onto the register to those aged 18 or over (therefore children are excluded), and to British, EEA or Swiss citizens.</p> <p>The monitoring of numbers of entries to the Ashford SCBR is an indicator required to be submitted to DCLG on an annual basis.</p> <p><i>The council's revised policy register will assist services to meet this</i></p>
EIA completion date:	18 th September 2017