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| Is the final decision on the recommendations in this report to be made at this meeting? | Yes |
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Self-build and Custom Housebuilding Register: Proposed Local Connection Test

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| Final Decision-Maker | Cabinet |
| Portfolio Holder(s) | Cllr Alan McDermott – Leader and Portfolio Holder for Planning and Transportation |
| Lead Director | Lee Colyer – Director of Finance, Policy and Development |
| Head of Service | Stephen Baughen – Head of Planning |
| Lead Officer/Author | Tom Vint – Planning Officer |
| Classification | Non-exempt |
| Wards affected | All |

This report makes the following recommendations to the final decision-maker:

1. That the Council adopts a local connection test to its Self-Build and Custom Housebuilding Register, as set out in the report.

Explain how this report relates to the Corporate Priorities in the Five Year Plan:

Implementing a local connection test to the Self-build and Custom Housebuilding Register is important in informing and contributing to one of the Five Year Plan's Eight Big Projects: Creating a New Local Plan for the Borough.

The proposed test will assist in ensuring that the new Local Plan delivers housing growth that addresses and accommodates as a priority the specific needs of those with a local connection to the borough.

| Timetable | |
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| Meeting | Date |
| Agreed for publication by Head of Service | 29 April 2020 |
| Management Board | 06 May 2020 |
| Overview and Scrutiny Committee | 08 June 2020 |
| Cabinet | 25 June 2020 |

Self-build and Custom Housebuilding Register: Proposed Local Connection Test

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The purpose of this report is to seek approval from Cabinet on implementing a local connection test to the Council's Self-build and Custom Housebuilding Register, having regard to responses to the recent non-statutory 4-week public consultation on the proposal.
 - 1.2. A previous report was presented to Cabinet on 6th February 2020 which sought, and duly gained, approval from Cabinet to carry out consultation on the proposal to implement the local connection test. The report contained the appropriate and necessary background information on the relevant national and local policy context, as well as an explanation of the housing market circumstances that are considered to warrant giving priority to meeting the demand for self-build and custom housebuilding plots arising from those with clear connections to the Tunbridge Wells borough. The majority of this information has also been provided within this report.
 - a. As the consultation has now ended, this report provides a summary of the responses received from the consultation, highlighting those from key stakeholders/organisations, together with commentary on them. This report also provides detail on what the local connection test would involve, if implemented, as well as the next steps that would be undertaken.
 - b. Ultimately, the main recommendation of this report is that Cabinet approves the proposal to implement the local connection test to the Self-Build and Custom Housebuilding Register.
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2. INTRODUCTION AND BACKGROUND

- 2.1. Since April 1st 2016, it has been the statutory responsibility of the Council to keep a Self-build and Custom Housebuilding Register for the borough ("the Register"). This followed the introduction of the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) and subsequent Self-build and Custom Housebuilding Regulations 2016.
- 2.2. Defined simply, self-build and custom housebuilding is housing built by individuals or groups for their own use, either by building the home on their own or by working with builders. This means that anyone who wishes to build their own home within the borough can record their interest in doing so with the Council by signing up to the Register via the Council's Self-build and Custom Housebuilding Register webpage¹.
- 2.3. Inclusion on the Register does not confer any form of entitlement in terms of the provision of serviced plots. Rather, its purpose is to provide local planning authorities with demand data that they can use to understand and plan for the future need for

¹ Self-build and Custom Housebuilding Register:

<http://www.tunbridgewells.gov.uk/residents/planning/planning-policy/self-build-register>

this type of housing in their area. Authorities may, at their discretion, advise people on the Register of relevant proposals for development.

- 2.4 Additionally, authorities are expected to meet the level of need indicated by the Register, by permitting an equal number of serviced plots within the following three years to the number of registrations that are made over the preceding three years. This is a rolling requirement, running from the end of October each year. As of the end of the last base period (30th October 2019), there have been 228 registrations on the Register since its introduction. However, as of 17th April 2020, there are now 250 entrants on the Register (including 2 associations of individuals).

3. CASE FOR A LOCAL CONNECTION TEST

- 3.1 Information from the Register has informed the proposed policy (Policy H11) for self-build and custom housebuilding plots in the Draft Local Plan. The Draft Local Plan also notes that it is difficult to predict future needs due to people being able to be on the Register of more than one authority. As such, those on the Register currently do not have to have a local connection to the area. Also, there is no obligation for those on the Register to remove their registration if their demand ceases for any reason.

- 3.2 The Draft Local Plan indicates the intention to introduce a local connection test for entry onto the Register. This is provided for in Regulations, while the supporting Planning Practice Guidance² states:

'The Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) 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. We expect that relevant authorities will apply one or both of these tests only where they have a strong justification for doing so. They should ensure that they are proportionate and, on the case of the former, we expect these to be introduced in response to a recognised local issue. Relevant authorities should consider consulting on their proposals before they introduce the tests and should review them periodically to ensure that they remain appropriate and that they are still achieving the desired effect'

- 3.3. The number of entries currently on the Register suggests a potential demand for some 800 self-build and custom housebuilding plots over the Plan period (i.e. up to 2036). This is clearly a substantial number and may well be difficult to accommodate within the various environmental designations across the borough.
- 3.4 Indeed, the assessment of growth potential as part of the preparation of the Local Plan has found that there are already tensions in meeting the borough's identified housing need, such that the Council has had to advise that it is not in a position to meet any unmet general housing need from neighbouring local authorities. Furthermore, this combination of high housing pressures and the limited capacity to meet all needs supports prioritising the provision of suitable sized and priced homes to meet local needs, including for affordable housing.

² Self-build and custom housebuilding; Planning Practice Guidance (July 2017): <https://www.gov.uk/guidance/self-build-and-custom-housebuilding>

- 3.5 Given the above, it follows that it would be consistent to concentrate on meeting the *local* need in the new Local Plan with regard to self-build and custom housebuilding dwellings.
- 3.6 Analysis of the Council's Register indicates that only 63% of individuals on the Register for the first three base periods are local to the area (i.e. are within the borough): if a local connection test were to be introduced this would have a notable impact on the potential demand (as currently calculated), and therefore the overall requirements to be planned for. This is because the introduction of the local connection test will result in the Register being split into two parts. Part 1 will be for those on the Register who meet the local connection test and Part 2 will be for those on the Register who do not meet the local connection test. It is only Part 1 of the Register that the Council must count towards the number of suitable serviced plots that it must grant development permission for. Those registrations falling into Part 2 will not count towards the numerical requirements for suitable serviced plots, but the Council may still keep people informed of relevant developments. This proposal has regard to the Planning Practice Guidance (<https://www.gov.uk/guidance/self-build-and-custom-housebuilding>).
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4. LOCAL CONNECTION TEST CONSULTATION

What the Consultation Proposed

- 4.1 The question posed on the consultation form and on the online consultation portal was “*Do you support the proposal by Tunbridge Wells Borough Council to implement a local connection test to its Self-Build and Custom Housebuilding Register*”.
- 4.2 Essentially, as stated on the consultation form, the local connection test (if implemented) will add a set of local eligibility criteria to the Register that will apply to all new applicants to the Register as well as those already on the Register. The criteria are as follows and will require an applicant to meet at least one of the criteria in order to meet the local connection test:
- a) to have lived in the borough continuously for the last three years; or
 - b) to have previously lived in the borough for a total of five years out of the last 10 years; or
 - c) to have immediate family who have lived continuously in the borough for the last three years; or a total of five years out of the last 10 years; or
 - d) to be in, or about to take up, permanent employment in the borough; or
 - e) provides an important service that requires residence in the borough.
- 4.3 It is also noted that members (or recently retired) of the armed forces will also be deemed as having met the local connection test. With regard to criterion d), details on the permanent employment of the entrant will be required as part of filling out the registration form. Moreover, in relation to criterion e), this includes services such as a firefighter or a nurse that provides a service to residents.

Consultation Results

- 4.4 The non-statutory 4-week public consultation on the proposal to implement a local connection test to the Register was undertaken from 9th March 2020 – 6th April 2020 (closing at 5pm). In total, 15 responses were received (12 from individuals, 2 from organisations (including the National Custom & Self-Build Association (NaCSBA) and a planning agency (Barton Willmore) representing the major housebuilders Crest Nicholson, Dandara, Persimmon and Redrow (CN/D/P/R)), and 1 from Brenchley and Matfield Parish Council).
- 4.5 Of the 15 responses, 8 support the proposal, 6 objected to the proposal, and 1 stated no option / “don’t know”. It is noted that NaCSBA objected to the proposal, while Barton Willmore/CN/D/P/R and Brenchley and Matfield Parish Council support the proposal.

Summary of Consultation Comments and Officers’ Commentary

- 4.6 A general summary of the comments received, with an Officers’ commentary, is provided below:
- Excluding the two organisations and Brenchley and Matfield Parish Council that commented on the proposals, it is considered that, of the individuals that commented (based on information obtained from a combination of postal addresses supplied on response forms and information on local connection contained in the current Register), 8 individuals have a local connection to the borough and 4 do not. Although living outside of the borough does not necessarily mean that one does not have a local connection to the borough, it is also noted that a total of 7 individuals have a postal address within the borough, and of these individuals, 6 support the proposal, while 1 did not provide an answer (“don’t know”). As such, no one with a postal address in the borough voted in objection to the proposals.
 - Of the responses in objection (excluding the objection from NaCSBA), the reasons for objecting were mostly arising from personal circumstances, such as feeling that although they do not meet the proposed eligibility criteria, they deem that they still have a local connection to the borough due to, for example, frequent use of the borough’s services. One respondent believed that the proposed local connection test would significantly reduce the self-build options available and make acquiring a plot more difficult. Another respondent also stated that despite not meeting the criteria, they owned a plot in the borough.

Officer commentary: All comments are noted. While the local connection test may reduce opportunities to acquire a plot within the Tunbridge Wells borough (for those who do not have a local connection), it is noted that this does not mean that an applicant’s chances of acquiring a plot will be reduced in the district or borough in which they reside. Moreover, despite potentially not having a local connection to the borough, this will not have an impact on the chances of acquiring planning permission for a self-build scheme within the borough on land within their ownership. The Register is primarily of interest to people who do not currently own a plot, but wish to be informed if a serviced plot is consented and a developer wishes the Council to help advertise it to the market. In this event, the intention is

that the Planning Policy team would inform those on the Register of such opportunities.

- With regard to the responses in support (excluding the two comments in support from BW/CN/D/P/R and Brenchley and Matfield Parish Council), respondents mainly noted that people resident in the borough should have priority over upcoming plots than those who reside outside of the borough. Another respondent noted that the introduction of eligibility criteria would provide a more realistic number of people in need rather than people who have registered in multiple boroughs on the basis of not knowing nor minding where they live. However, it should be added that a further comment in support stated that those not currently meeting the criteria should also be considered.

Officer commentary: All comments are noted. With regard to those registered on Part 2 of the Register (i.e. those not meeting the eligibility criteria), while they will not contribute toward the numerical requirements for self-build and custom housebuilding plots to be planned for in the Local Plan, it is envisaged that the Local Plan policy will clarify that those on both Parts of the Register will have plots advertised to them equally (when such plots come forward).

- The objection from NaCSBA (representing self and custom housebuilders) argues that the proposal is “*contrary to both the spirit and the letter of the legislation, associated regulations and the National Planning Policy Guidance*”, stating that the Council has failed to make the case for the test’s implementation, that the Council cannot/should not attempt to retrospectively apply the test, and that the NPPF does not support the reduction of strategic demand for self-build and custom housebuilding through the application of a local connection test. International figures were also drawn upon, showing that the UK has far fewer new self-build homes than in other countries. NaCSBA also suggested that the Council considers both a proposed alternative mechanism for reducing the demand for plots (should the LPA consider it necessary) that “*is triggered by numbers exceeding 20% of the planned housing supply*”, and that, if a test is introduced, then it should follow the latest guidance. It is thought that, despite its coverage of Green Belt and AONB, the borough is not one of the small number of local authorities that are heavily constrained in terms of land supply and as such appears to be no inherent strong justification for implementing the test. It is also thought that the borough does indeed have capacity for sufficient plots for self-build needs even without the local connection test applied. It is also considered that the proposals fail to set out any process for periodic review in accordance with the guidance. With regard to splitting the Register into two parts, NaCSBA also has concerns with regard to updating existing records which may result in the removal of some of those Registered (which NaCSBA considers to be unacceptable) and that re-contacting existing entrants should not be undertaken as a means of reducing the number of entrants on the Register (while acknowledging that demand may be over-stated by not doing so, but is considered that this overstatement is likely dwarfed by the understatement resulting from the limited promotion of the Register to-date).

Officer commentary: The above comments from NaCSBA are noted. However, the proposal to implement a local connection test (as well as to contact those currently registered on the Register) is regarded as being in accordance with the Regulations and Planning Practice Guidance and that sufficient justification for the proposals

has been provided (as outlined in section 3 of this report). It is emphasised that the primary objective is to obtain a better indication of local need against a backdrop of significant environmental constraints on growth. It is noted that it is not proposed to suppress interest in being on the Register, which introducing a charge may well do. Furthermore, if demand is greater, then landowners and developers may respond by providing more plots than any minimum requirements.

With regard to the process for periodic review of the Register, this is noted and will be considered going forward.

- The comment in support from BW/CN/D/P/R noted that the local connection test can provide a greater understanding of the nature of demand for serviced plots in the area, but also suggested the additional introduction of a broader range of tests (such as a financial solvency test as well as a one-time registration fee and an additional annual subscription for remaining on the Register (as a means of reducing duplication across authorities and ensuring that the annual and ongoing “need” is more accurately reflected).

Officer commentary: As previously reported, it is currently not proposed to implement a financial solvency test nor a charging schedule, as it is considered not justified at present; however, this may be reviewed in the future. As above, the Council will consider undertaking a periodic review on the Register.

It is appreciated that BW and the housebuilders commented on the related Draft Local Plan policy, including in relation to marketing time periods, as well as the impact of self-build requirements on the delivery of larger schemes. These will also be taken into consideration as part of the review of the policy for the Regulation 19 version of the Local Plan.

- While Brenchley and Matfield Parish Council supports the proposal, a number of comments were also made:
 - i. Firstly, although “groups” were mentioned in the preamble to the information of the Register, their constitution requires further clarification, particularly as the Parish Council considers that any such group should have a social and community purpose and established status, such as a charity, building association, community land trust, cooperative housing, community benefit society, etc. Moreover, it is thought that there should be a chain of eligibility within Part 1 of the Register, with priority given to qualifying residents in the parish, followed by residents in adjoining parishes and finally residents in the wider borough (as suggested under the Council’s affordable housing policy).
 - ii. Clarification with regard to the function of Part 2 of the Register is requested.
 - iii. It is suggested that no charge for entry to the Register should be introduced if there had been any intention of the Council to do so. Moreover, it is questioned what would prevent individuals or groups applying for planning permission for a self-build scheme and subsequently selling the plot if they do not have the resources in the absence of a financial liability test and, consequently, whether any such conditions should be imposed to prevent this.
 - iv. It was also noted that the Draft Local Plan policy does not refer to smaller sites considered to be preferred by the majority of people currently on the Register.

As such it is suggested that the policy should be extended to reflect that smaller schemes/single dwelling sites, particularly within the rural areas of the borough, are most desirable and likely more common than the 100+ dwelling larger developments.

Officer commentary:

As mentioned above with regard to Part 2 of the Register, while they will not contribute toward the numerical requirements for self-build and custom housebuilding plots to be planned for in the Local Plan, it is envisaged that the Local Plan policy will clarify that those on both Parts of the Register will have plots advertised to them equally (when such plots come forward).

As mentioned above, there is not considered to be a good justification for introducing a charge for entry to the Register nor to implement a financial solvency test. In relation to the application of conditions to any planning permission, as well as the proposed additional policy wording with regard to smaller schemes/single dwelling sites, this will be considered as part of the review of the policy for the Regulation 19 version of the Local Plan. In relation to small self-build and custom housebuilding schemes, it is worth emphasising that proposals for such plots/dwellings will be treated in a similar way to any other housing proposal; they do not have the same status as affordable homes, for which there may be “rural exception sites”. However, it should be noted that in some cases it can be considered by developers of such small schemes that an under-supply of self-build and custom housebuilt dwellings (in relation to meeting demand on the Register) would represent a material consideration to warrant a departure from particular Local Plan policies (as an exceptional circumstance).

- With regard to the 1 “don’t know” response, within the context of planning permission potentially being sought, it was asked where land owners would stand in light of the local connection test, and whether owning land would count as a local connection.

Officer commentary: As mentioned above, not being on Part 1 of the Register does not mean that the likelihood of gaining planning permission on land owned by an applicant is reduced for a self-build scheme. The Register is primarily of interest to people who do not currently own a plot, but wish to be informed if a serviced plot is consented and a developer wishes the Council to help advertise it to the market. In this event, the intention is that the Planning Policy team would inform those on the Register of such opportunities.

Consultation Outcome

- 4.7 Having given due consideration to the comments received to the consultation, it is considered that there is sufficient justification for the proposal to implement a local connection test to its Self-build and Custom Housebuilding Register. Queries relating to the wording of the Local Plan policy, and its future operation, will be addressed as part of the preparation of the Regulation 19 version of the Local Plan.
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5. AVAILABLE OPTIONS

- 5.1 Option A): ‘not introducing a local connection test’ – the ‘do nothing scenario’: This option would involve not implementing a local connection test to the Self-build and Custom Housebuilding Register. A consequence of this would be that the numerical requirements for self-build plots within the new Local Plan period will be based on all those both with and without a local connection to the borough.
- 5.2 Option B): ‘introducing a different local connection or other test’: This option would involve introducing a different test, whether it be based on an alternative local connection test with different criteria to those proposed, or a financial solvency test and/or to implement a charge for entry on to the Register. Careful consideration has been given to the criteria, and for the reasons set out above it is not recommended that solvency tests or charges be implemented.
- 5.3 Option C): ‘introducing the local connection test as set out in this report’: This option will involve the implementation of a local connection test to the Council’s Self-build and Custom Housebuilding Register following on from the 4 week public consultation recently carried out on the proposal. The local connection test will require certain eligibility criteria to be met from an applicant to the Register as set out in this report. Consequently, this will also mean that the numerical requirements for self-build plots to be delivered within the new Local Plan period will be based on the number of people who have a local connection to the borough (i.e. those on Part 1 of the Register).
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6. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 6.1 The option being recommended is Option C): ‘introducing the local connection test as set out in this report’.

Reasons for recommendation:

- 6.2 As above, Option C is recommended (i.e. to implement a local connection test to the Self-build and Custom Housebuilding Register). This is primarily to ensure that the new Local Plan proposes to deliver a number of suitable serviced self-build plots in accordance with the local demand as identified on Part 1 of the Register (i.e. the number of applicants on the Register who meet the local eligibility criteria proposed within this report). Moreover, as outlined within this report, due to the combination of high housing pressures within the borough and the limited capacity for growth (as well as the fact that the Council has advised it is not in a position to meet any unmet need from other local authorities), it is considered appropriate and consistent to prioritise the provision of suitable sized and priced homes to meet local needs only.
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7. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 7.1 The results of the non-statutory consultation are set out above.
- 7.2 This report was also presented to Management Board on 6th May 2020, followed by a presentation to the Planning Policy Working Group on 12th May 2020. No questions or comments arose at either meeting and the report was agreed to proceed to Cabinet.

8. NEXT STEPS

- 8.1 Subject to Cabinet determining that the test be introduced the Council's registration forms will be updated for all new applicants. Moreover, all people already on the Register will be contacted and required to update their details accordingly. At this time, the Council will also request confirmation from all people already on the Register whether they still have an interest in a self-build or custom housebuilding plot in the borough.
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9. CROSS-CUTTING ISSUES AND IMPLICATIONS

| Issue | Implications | Sign-off |
|---|---|--|
| Legal including Human Rights Act | The proposal within this report complies with the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) and also the National Planning Practice Guidance. | Cheryl Parks, Mid Kent Legal Services (Planning) 16/12/19 / 29/04/2020 |
| Finance and other resources | There is no cost to the council of implementing a local connection test to the Self-Build and Custom Housebuilding Register. | Jane Fineman Head of Finance, Procurement and Parking 05/12/2019 / 01/06/2020 |
| Staffing establishment | There are no staffing implications. | Thomas Vint Planning Policy Officer 18/12/2019 / 30/04/2020 |
| Risk Management | All risks associated with this report are within the Council's current risk appetite and managed in accordance with its risk management strategy. | Steve Baughen Head Of Planning 10/12/2019 |
| Data Protection | <p>The maintenance of the self-build and custom housebuilding Register involves the processing of personal data. Individuals are informed about the use of their data in Section F of the registration form.</p> <p>The Council is not required to publish the Register. However, it will publish general information on the demand for self-build and custom housebuilding in its Authority Monitoring Report, with personal details</p> | Abigayle Sankey Corporate Governance Officer 04/12/2019 / 01/06/2020 |

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| | <p>such as names and addresses not published.</p> <p>Therefore there is no identified risk to individuals' interests under the General Data Protection Regulation.</p> | |
| Environment and Sustainability | No environmental and sustainability implications are identified. Any 'Self-Build and Custom House-Build' dwellings would still be required to meet all relevant environmental and energy efficiency standards. | <p>Karin Grey Sustainability Manager 28/11/2019 27/05/2020</p> |
| Community Safety | No community safety issues arise as a result of this report. | <p>Terry Hughes Community Safety Manager 22/11/2019 / 29/04/2020</p> |
| Health and Safety | No health and safety issues arise as a result of this report. | <p>Mike Catling Corporate Health and Safety Advisor 25/11/2019 / 29/04/2020</p> |
| Health and Wellbeing | No health and wellbeing issues arise as a result of this report. | <p>Thomas Vint Planning Policy Officer 18/12/2019 / 30/04/2020</p> |
| Equalities | Having regard to the requirements under the Public Sector Equality Duty (s149 of the Equality Act 2010), it is not considered that the decision recommended through this report is likely to have any differential impact on people with protected characteristics. | <p>Sarah Lavallie Corporate Governance Officer 17/12/2019 / 01/05/2020 Steve Baughen Head Of Planning 18/12/2019</p> |

10. REPORT APPENDICES

The following documents are to be published with, and form part of, the report:

- None
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11. BACKGROUND PAPERS

- Self-build and custom housebuilding; Planning Practice Guidance (July 2017):
<https://www.gov.uk/guidance/self-build-and-custom-housebuilding>
- Housing Supply and Trajectory Topic Paper:
https://beta.tunbridgewells.gov.uk/_data/assets/pdf_file/0020/300764/Housing_Supply_and_Trajectory_Topic_Paper.pdf