

Self-Build: Regulation and Appeals

RTPI Independent Consultants Network
Conference

May 15th 2024

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Objectives for the session

1. Brief overview of Self/Custom-Build Acts n Regs
2. NPPF, NPPG, Local Plan issues
3. A few basics: registers, land supply, definitions, conditions/UUs
4. Appeals
 1. Scope of what's rolling
 2. A few headline appeals
 3. **Key to success**



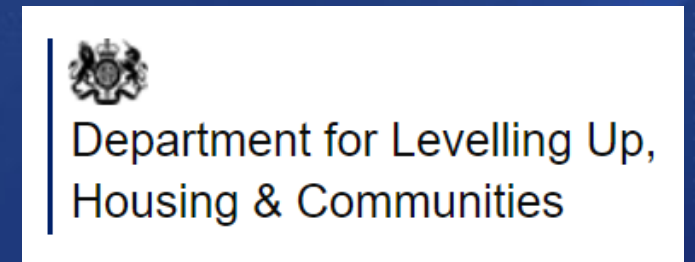
Right to Build Task Force

DLUHC-funded task force to increase opportunities for self/custom build, primarily through engagement with LPAs. Provides a range of advice and support for free via our website.

Register at www.rightrightto.org.uk to receive:

- notice of CPD
- Good Practice Guidance (planning & delivery)
- Advice Notes
- Consultancy Support to Councils

National Custom and Self Build Association –
Commercial lobbying and support
Membership just £210 pa for Sole Trader



It Ain't going away

- Govt support pre-dates the 2010 Coalition govt
- In since 1st NPPF release in 2012
- Homes England Self Commission Housing Unit
- LURB changes to legislation
- **BNG Exemption**

“All things considered, it seems likely that the true demand for CSB in England is at least 30,000 a year, as a minimum, and could be as high as 100,000 homes a year”

Bacon review economic analysis



Part I: Statute and Policy

The only *type* of housing which planning authorities are required, by statute, to provide.

'Right to Build' duties on Councils

Statutory duties on Councils

Self-build and Custom Housebuilding Act 2015:

- **Keep and publicise a Register** of people who want to self- or custom build in their area;
- **Have regard to Register** when exercising planning, housing, land disposal, regeneration functions (s2(1))

Housing and Planning Act 2016:

- Duty on Councils to **meet demand** (target number based on Register number) by granting **'development permissions' for enough serviced plots to meet demand on rolling annual basis** (three years to deliver)

2A Duty to grant planning permission etc

(1) This section applies to an authority that is both a relevant authority and a local planning authority ...

(2) An authority ... ~~must give suitable development permission in respect of enough serviced plots~~ **for the carrying out of self-build and custom housebuilding on enough serviced plots** of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.

(3) Regulations must specify the time allowed for compliance with the duty under

117 Duty in relation to self-build and custom housebuilding

(1) In section 2A of the Self-build and Custom Housebuilding Act 2015 (duty ...permissions etc)—

“(a) the **demand for self-build and custom housebuilding** in an authority’s area in respect of a base period **is the aggregate of**—

- (i) the demand ...arising in the authority’s area in the base period; and
- (ii) any **demand** ...that arose in the authority’s area in an **earlier base period** and in relation to which—
 - (A) **the time allowed for complying with the duty expired during the base period ...**
 - and*
 - (B) **the duty in subsection (2) has not been met.**

Legislation Issues

- **Duty** is in relation to providing **permissions**
- **Definition** of self build in relation to **delivery** (final as built)
- **Register** is there to help engage with individuals, and provides a proxy number in relation to meeting the duty – it does not represent the full demand (for plan making *or* decision taking)

Whether applicant is on register or not is not material
but please, *please get any/all applicants to register so LPAs have better measure of the demand*

BNG Exemptions Regs 2024

Self-build and custom build applications.

8.—(1) The biodiversity gain planning condition does not apply in relation to planning permission for development which—

(a) consists of **no more than 9 dwellings**;

(b) is carried out on a **site which has an area no larger than 0.5 hectares**; and




(c) **consists exclusively of dwellings which are self-build or custom** housebuilding.

(2) In this regulation “self-build or custom housebuilding” has the same meaning as in section 1(A1) of the Self-build and Custom Housebuilding Act 2015(a).

Definition of Self Build

- **CIL definition doesn't come into it** (3 years disqualifying etc).
- SB&C Act 2015:
Individuals & associations of individuals ... seeking to acquire serviced plots of land ... In order to build houses for those individuals to occupy as homes.
 - 2nd/Holiday homes can't count; caravans & pitches don't count; extensions/refurbs can't count
- NPPG:
In considering whether a home is a self-build or custom build home, ... must be satisfied that the initial owner of the home will have primary input into its final design and layout.
Off-plan housing, homes purchased at the plan stage prior to construction and without input into the design ... are not considered to meet the definition of self-build and custom housing.

Self Build Definition for Land Supply

 <p>Definitely CSB</p>	<ul style="list-style-type: none">■ Permission with signed Unilateral Undertaking committing to self-build;■ Permission with condition or agreement for CSB opportunity;■ Permission that creates a new dwelling and has a submitted Form 7: Self Build Exemption Claim Form - Part 1 (<u>and</u> Part 2).
 <p>Possibly CSB evidence required</p>	<ul style="list-style-type: none">■ Outline permissions; Full permission with unknown intent;■ Rural/Agricultural worker's dwelling;■ Multi-unit flat where the owner creates multiple flats, and intends to occupy one as principle residence;■ Permitted Development/ Prior Approval (conversions);■ Dwelling demolition and redevelopment;■ Community Land Trusts.
 <p>Definitely Not</p>	<ul style="list-style-type: none">■ Certificate of Lawfulness for a dwelling;■ Caravans are not self-build;■ Build to Rent development;■ A substantial enlargement or redevelopment that creates new floorspace or a new dwelling



Policy

NPPF



63 Councils need to make sufficient provision of land with permission and bring this forward without delay to meet the needs of different groups ... including *“people wishing to commission or build their own home”*

70 Small / Medium Sites

a) identify ... land to accommodate at least 10% of their housing requirement on sites no larger than one hectare

70 b) **seek opportunities, through policies and decisions, to support small sites to come forward for ...self-build and custom-build housing;**

66 exempts self / custom build from 10% affordable minimum on MAJORS

ANY evidence that they are affording weight to self build in ANY decisions?

Types of policies

- ✓ Percent Policies / percent in Large site allocations
- ✓ Housing Mix
- ✓ Exceptions / Criteria-based support
- ✓ Small site allocations
- ☹️ ☠️ ☠️ ☠️ General Support Policies

Most Local Plans now only go for percent policy. Fails to meet the need or support the sector. And vol builders object.

LP Self Build Policy Silent/ineffective? *Might* trigger presumption

Part III: Appeals

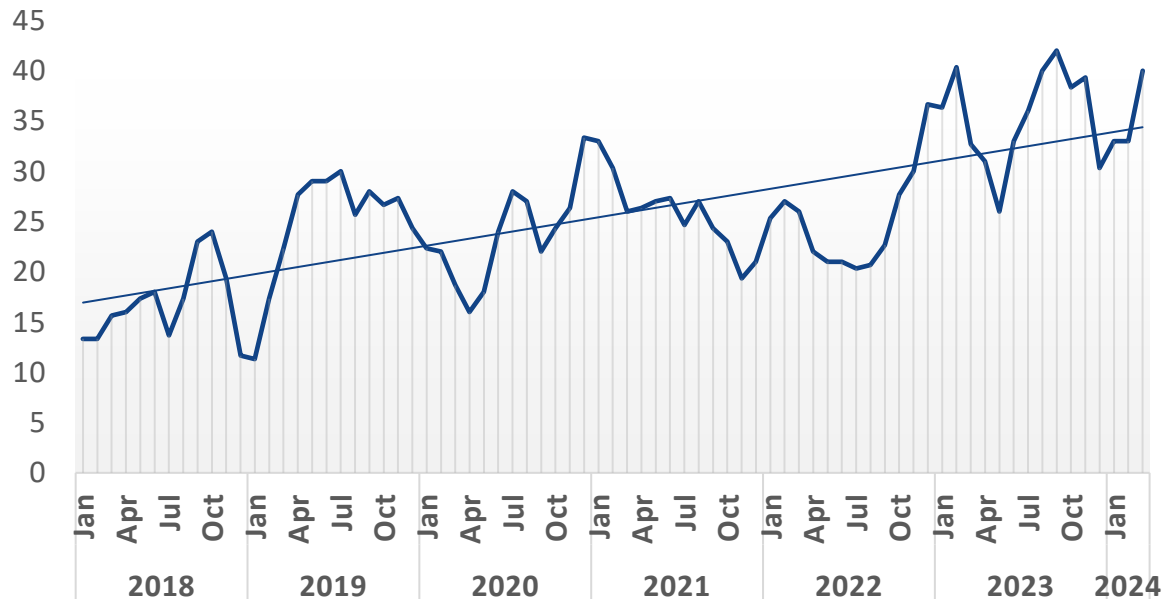
	Inquiry (6%)	Hearing (5%)	Written Reps (89%)	All Appeals
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Allowed	56%	33%	12%	15%
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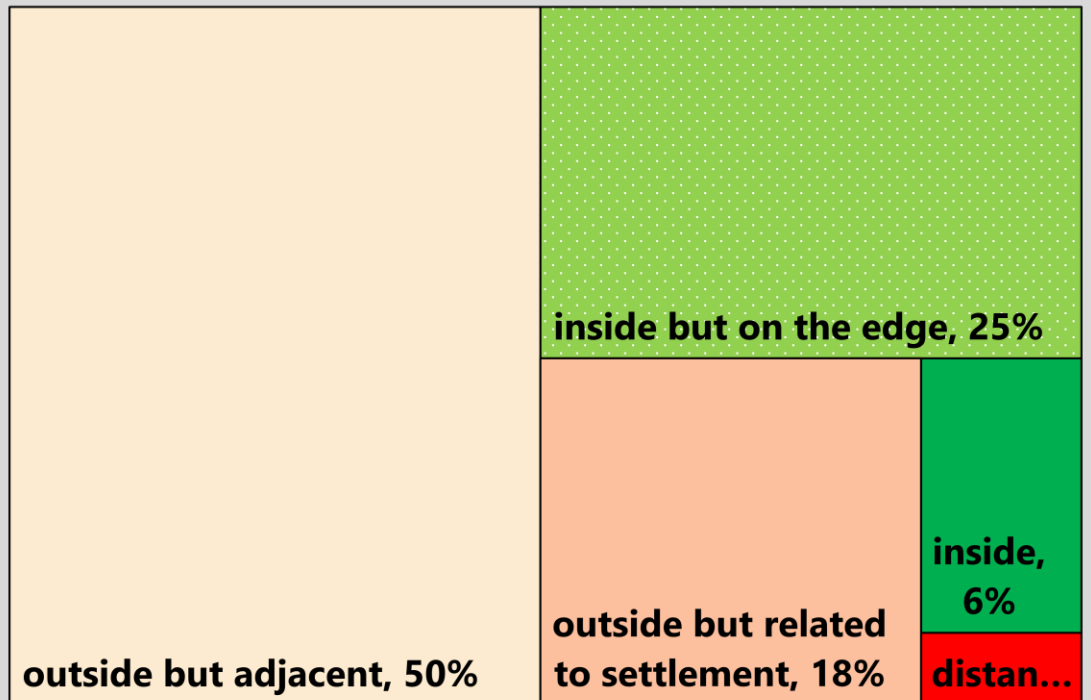
Dismissed	44%	67%	88%	85%
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Analysis 1800+ appeals self/custom build or including an element of self/custom build

Monthly Self Build Appeals rolling 3-month average



Location of devel – sample of self build appeals



Issues for Self Build Appeals

Self-Build Land Supply

- Definitions
- Unreliable CIL Exemptions

Demand

- Suppression of the register
- Additional sources of data

LPAs' self and custom build policies

Securing Delivery

- Need for UU
- Conditions

Weight attributed to Self-build

Weight Attributed

- Large/strategic site appeals: delivering policy compliant num plots for self/custom build often = *substantial weight*.
- Individual / small builds often *given only slight/moderate* to 1 new dwelling
- 5YHLS separate issue
 - **Land at Sutton Lane, Sutton in the Elms (Feb 2023) Harborough**
“The Council’s poor performance against its statutory duty in relation to self and custom build outweighs the schemes conflict with the development plan” Appeal Ref: APP/F2415/W/22/3303898
 - **Radwinter Road, Swards End, Saffron Walden (Oct 2022), Uttlesford DC**
“The benefits arising from the proposed development would be substantial. I have concluded that the benefits of housing delivery, affordable housing and custom build housing should all individually carry substantial weight” Appeal Ref: APP/C1570/W/22/3296426

Green Belt – Very Special Circumstances

Land adjoining Pondview, Sturt Green, Holyport, RB Windsor & Maide4nhead

Hearing: Allowed: Ref: APP/T0355/W/23/3314990

- Overriding weight given to CSB in the green belt
- Council's data records permissions granted for 111 units, and a shortfall of 318 units.
- Inspector enquired as to the Council's intent in addressing shortfall and commented that *"the projected SBCH delivered on large sites under the Council's policy would fall significantly short of meeting the outstanding demand for plots, let alone future base periods"* and that *"**given that 83% of the Royal Borough is covered by Green Belt, it seems inevitable that some of the demand for SBCH will have to be met on sites within the Green Belt**"*.
- Inspector concluded *"the proposal would amount to inappropriate development as set out in the Framework, which is, by definition, harmful to the Green Belt.....provision of four SBCH dwellings in the face of a substantial shortfall in delivery of such housing against statutory requirements is a matter of overriding weight in each case.... Taken as a whole, therefore, the other considerations in each case clearly outweigh the totality of the harm identified to the Green Belt. Consequently I conclude that the very special circumstances exist in each appeal"*

Land Supply / Definitions

- Windfalls & CIL form 7 part 1 isn't sufficient: condition/UU are definite.
- Be prepared to FoI early & carefully examine
- Limagrain UK Ltd, Station Road, Docking (Oct 2023) Kings Lynn
 - *“Based on all the above, there would be a significant shortfall in the provision of development permissions for plots for self-build and custom homes. **While some plots could ultimately be capable of contributing to meeting the Council’s duty, the absence of other evidence for plots included solely based on CIL Part 1 Exemption Forms, provides too much uncertainty.**”*
- Bovey Tracey Hospital, Bovey Tracey. (Dec 2022) Teignbridge
 - *However, (use of s73 to customise) is of little comfort that the obligations would be directly related to the development before me, which **does not appear to strictly conform to the first principles of self/custom build, being promoted by a single developer with a number of off-plan house types specified for which an inflexible permission is sought**”*

Land Supply / Mechanisms

- S106/UU most robust
- Conditions can work – may see more use in BNG
- Land off Hepworth Road, Woodville (June 2019) NW Leicestershire; can't just count all windfall/single permissions: *“This raises considerable doubts as to whether any of the single dwelling permissions would count towards the number of planning permissions the Council has granted for serviced plots and thus whether these consents would actually contribute towards the delivery of self-build and custom housebuilding in the district”*. Written Reps APP/G2435/W/18/3214451 & APP/G2435/Q/18/3214498
- Corner Mead, Newland Lane, Droitwich Spa, July 2020, Wychavon; can't count all CIL Part 1 of form 7. Not all self build (e.g. policy compliant) would require a Unilateral Undertaking, but description of development not sufficient to count as self build.... *“It is not sufficient to rely on CIL exemption forms without this type of further analysis, which is lacking in the Council's evidence.”* Hearing, APP/H1840/W/19/3241879

Demand / Registers

- Demand
 - Use register figures as reported and work from the cumulative total reported (“removing” isn’t a thing)
 - ‘calibrate’ with reference to register number undercounting (by up to 80%)
 - ‘calibrate’ with 10% new build aspiration figure
 - Check the SHMNA (see NPPG) if only reference is to register, possible local policy ineffective – even if they have % policy
 - Throttle on register (2-part, charges, etc) must be justified – is there a committee report with justification?
 - **Pear Tree Lane, Euxton, Chorley (11 August 2020)” PPG advises that data on registers can be *supplemented from secondary data sources to obtain a robust assessment of demand*” APP/D2320/W/20/3247136**
 - **Corner Mead, Droitwich Spa (23 July 2020) Wychavon “local connection lacking in justification” APP/D2320/W/20/3247136**

Home > [Housing, local and community](#) > [Planning and building](#) > [House building](#)
> [Self-build and custom housebuilding data: 2016 to 2021-22](#)



[Department for Levelling Up, Housing & Communities](#)



[Ministry of Housing, Communities & Local Government](#)

Research and analysis

Data release: Self-build and custom housebuilding data: 2016 to 2021-22

Updated 31 March 2023

Applies to England

Contents

[In this release](#)

In this release:

“live tables” are in there but link down in text
See also <https://livedin.co.uk/localauthorities/>

LPA Policy – or not

- **Land at Duckmoor, Billingshurst, Horsham (Jan 2023)** Horsham District Planning Framework (2015) Policy SD4, states:

*“Housing Needs: ... taking into account the local demand for custom build and other specialist housing, including extra care” BUT The Policy only applies to Policy SD1: Strategic Land North of Horsham for at least 2,500 homes. “The Plan has no other policy mechanism for securing plots – hence the significant shortfall” ... *These units would contribute to meeting part of a different housing need in the area and should also be attributed substantial weight”*
APP/Z3825/W/21/3283823*

- **Land at Dunsfold Common, Godalming, Waverley (Dec 2022)**

Waverley Local Plan Part 1 (2018) Policy AHN3: Housing Type and Sizes, states:

“The Council will require proposals to make provision of an appropriate range of different types and sizes of housing to meet the need of the community, reflecting the most up to date evidence in the West Surrey SHMA.” **Yet there was no specific mechanism or target within the policy itself.** APP/R3650/W/22/3300262

Keys to Success

Key to Success

- **Submit a UU with all appeals**
- **Focus on statutory requirement;** benefit is not so much in a dwelling or two but benefit is **not breaking the law.** *More than just a material consideration*
- **Get your FOI in early;** if LPA hasn't published details of the permissions their counting you'll need to ask
- **If LPA meeting minimum number, highlight**
 - a) registers undercount
 - b) Lack of SHMNA target / alternative target
 - c) As with all housing it's a minimum & goal is to increase

*The appellant stated that the dwellings would be self-build, which is supported by local and national policy. They indicated that the Council has a significant shortfall of self-build permissions compared to registrations. **However, (no) mechanism to secure the dwellings as self-build has been provided. Consequently, I can give this no weight in my assessment.***

Appeal Ref: APP/P0119/W/23/3316108 13 Engine Common Lane, Engine Common, Yate, BS37 7PX

Key to Success

- **Hearing** is better odds;
Supply/demand issues need exploring/challenging.
If there is any disagreement between appellant's view of self build land supply & the councils a hearing will be needed to challenge.
- Don't conflate self-build with para 84 (e). Housing Mix policies still apply; rural often oversupplied with big detached; para 84(e) often ends up as holiday home/let (doesn't qualify).
- **Promote it; don't abuse it!**



Thank you