

# My Community Rights

## Community Right to Build Understanding the Community Right to Build



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The Community Right to Build is one of a raft of new initiatives introduced in the Localism Act which came into force as of 6 April 2012. The Community Right to Build aims to make it easier for local people to initiate and deliver small scale developments they would like to see in their area.

## Background

### The Localism Act

The Localism Act, introduced in 2010 and passed in November 2011, was conceived to fulfil the Government's stated commitment to decentralising control over public services, assets and planning from central government to local government and from local government to communities. The Localism Act contains measures which pertain to dozens of areas, including housing, planning, local services, and local governance structures.

One of these areas is the Community Rights agenda, which includes the Community Right to Bid, Community Right to Challenge and Community Right to Build. The Government believes that for too long local communities have been prevented from doing things for themselves because of cumbersome local authority processes and too much red tape. Community Rights were conceived to address this issue, giving communities explicit powers in the areas of local assets, local services, planning and developing.

### Community Right to Challenge

The Community Right to Challenge aims to help communities bid to take over local authority and fire and rescue authority services that they feel they could run better or differently on behalf of the authority. If a community group, charity, parish council or group of staff is able to identify a service that they would like to run, the Community Right to Challenge gives them the power to submit an expression of interest to the authority to take it over. If the local authority accepts the expression of interest, they must run a competitive procurement exercise for the service which the interested group takes part in.

### Community Right to Bid

The Government has aimed to address concerns that too often local buildings and land that are of great value to the community, such as a village hall or local pub, go up for sale and are purchased by a private bidder before the community has the opportunity to put together funding and take it over themselves. The Community Right to Bid gives communities the power to submit assets of community value to be kept on a list by the local authority. If any of these buildings or land are put up for sale, a six week window of opportunity is triggered during which the community group may express an interest to purchase the asset. If they do express an interest, a further four and a half month window of opportunity is given so that the group may have time to find funding and put together a bid to purchase the asset on the open market.

## Planning system

In March 2012, the Government published the National Planning Policy Framework (NPPF) which sets out their requirements and strategy for economic, environmental and social planning policies in England. The NPPF is important to communities because it will affect what sort of building and development happens, and when and how communities can influence development in their area. The 50 pages of the Framework replace over 1,000 pages of guidance and rules in planning policy statements, planning policy guidance and planning circulars.

The seven main features of the NPPF are:

1. Fewer rules about what can be built, where and how
2. A presumption in favour of sustainable development
3. The local plan (plans for development in a local authority area, usually for 15 years) becomes (even) more important
4. Supports a growth agenda
5. Introduces a duty to cooperate
6. Replaces targets for development with incentives
7. Supports neighbourhood planning and sets out expectations on consultation with communities by local authorities and developers.

Neighbourhood Planning and Community Right to Build Orders must be in line with the National Planning Policy Framework (NPPF) and in general conformity with strategic elements of any local plans, but the NPPF is designed to be in favour of local development by removing many previously existing restrictions.

## Neighbourhood Planning and the Community Right to Build

In the context of the localism agenda, Neighbourhood Planning and the Community Right to Build are the initiatives introduced which aim to decentralise power over planning directly into the hands of local communities and cut red tape for areas that wish to encourage local development.

Neighbourhood Planning allows local areas to come together to establish general planning policies for development and use of land in their neighbourhood, which then becomes part of the local plan.

Neighbourhood plans already exist in some areas, usually called parish plans, but the Localism Act makes neighbourhood plans part of the legal framework. The Community Right to Build goes hand in hand with this process and allows a community to draw up a Community Right to Build Order which, if supported in a local referendum, enables small local development to go ahead without going through the normal planning application process.

## The Community Right to Build – What does it do?

The Community Right to Build is a particular type of neighbourhood development order, meaning that it allows people to propose a development in their local area and obtain permission for it, without having to go through a lengthy and cumbersome planning process. A proposal can be developed as part of a full neighbourhood planning process, or on its own.

It is an alternative route to encouraging development, allowing communities to decide for themselves what is built. The introduction of the Community Right to Build will be a benefit to community groups who have a specific development (either

new build or conversion of existing buildings) in mind but have been prevented from taking this forward due to the red tape and time consuming processes of the planning system. It is up to the community to decide the type, quantity and design of properties for the development. It can be used to approve the building of homes, shops, businesses, affordable housing for rent or sale, community facilities or playgrounds; or the conversion of disused buildings into affordable housing. Provided the proposed development does not breach and is compatible with EU and Human Rights obligations, it is up to the community what they want to see for the benefit of their local area. A particular advantage of using Community Right to Build is that groups can ensure that affordable housing remains affordable in perpetuity. It is also possible for development brought forward under a Community Right to Build Order to be located in the Green Belt, so long as it meets certain tests set out in the National Planning Policy Framework. However, there are certain categories which are excluded because they are better dealt with at a larger scale (regional or national), for example: nationally significant infrastructure projects, and minerals and most waste development.

It can be used in any area, urban or rural, but the Government expects it to be of particular benefit to rural communities who have an urgent need for housing, facilities and local businesses to be built, as well as the land available for these type of developments and more easily defined neighbourhood boundaries. And finally, the financial benefit of these new developments is intended to benefit the local area, so that using the Community Right to Build and increasing development spurs local economic growth.

## Benefits

Any revenue directly generated from the development through a Community Right to Build order is retained by the community, whether or not the community organisation owns the development. If it is built by a developer, for example, the community benefits through either a Community Infrastructure Levy (which is a charge on developers to pay towards the cost of local infrastructure that the local authority, or local community, have identified) or the New Homes Bonus (money that the government pay to local authorities where for six years they will match the council tax raised from new homes, with a bonus if those homes are affordable). The Government also envisages that any increase in housing stock etc. for the neighbourhood could have other benefits than simply financial, including boosting the local economy and increasing employment.

The Government has also suggested that the Community Right to Build could be used in conjunction with the Community Right to Bid or the Community Right to Challenge as part of a wider proposal - combining the local development with expressing an interest to take over running a local authority service or using the Community Right to Bid to acquire land or buildings. New buildings could be built and/or acquired under Community Rights which are then used to house or provide public services to the community, for example. However, it should be noted that the different timescales involved in utilising each Community Right might make this simultaneous use of the Rights quite difficult.

In terms of less tangible benefits, it is hoped that community involvement and engagement in planning and making decisions about development will lead to an increase in community spirit and a feeling of ownership. Government hopes that by

giving people the power to decide what kind of development should occur in their area, they will generally feel more positive about their community and feel that the decisions made in their area reflect their vision and ambitions.

## Limitations

The Community Right to Build may only be used by community organisations in which local people, meaning people that live or work in the relevant neighbourhood area, have a majority of the voting rights and directorships of the organisation and include different people from at least 10 different addresses within the area. This means that it cannot be used by property developers hoping to gain easy planning permission for a development they wish to lead - unless that development is something that the community wishes to see and which the community initiates. It is also only meant for small scale developments, which have been limited in order to prevent overdevelopment and to ensure that development is sustainable.

Proposals that would require an Environmental Impact Assessment (an assessment of the possible positive or negative impact a project may have on the environment, covering environmental, social and economic aspects) or have significant impacts in terms of Habitats Regulations are not eligible to use the Community Right to Build. The proposal must not be at odds with laws to protect any listed buildings or conservation areas. In addition, any Community Right to Build proposal must not be at odds with national planning policy or strategic elements of the local plan for the area (which is established by the local authority) as well as the neighbourhood plan, if there is one.

The Community Right to Build only gives community groups the right to bypass the normal planning consent route. The group may need to acquire the land on their own or engage with a developer who wishes to do so, and must ensure that they have met other building regulations. The community organisation developing the Community Right to Build Order must also find financing to cover the costs of the process. There will be support available to help groups who wish to take forward any Community Right to Build proposals, in the form of guidance and advice as well as sources of revenue. You will want to identify local funding opportunities, or engage with your local authority, housing association or other local organisations who might be able to help you find funding.

## How can it be used?

### Setting up a corporate body

In order to use the Community Right to Build, a group of local people who are committed to putting forward a local development must form a legally constituted organisation. This could be a company limited by guarantee with charitable status, a registered charity, a CIC or an Industrial and Provident Society. Regardless of the form of corporate body chosen, the Localism Act specifies that the community organisation must be 'established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live, in a particular area'. Town and parish councils (and some neighbourhood forums) are also eligible to produce a Community Right to Build order as may be some other existing community organisations (such as tenants and residents associations) although the latter may need to make some changes to their constitution, or form a new organisation. Government

regulations include stipulations that the community organisation must be open to membership of all individuals who live and work in the particular area to become voting members, and that the organisation's constitution must provide that local residents hold majority voting rights and have the majority on the board of directors.

### **Engaging the community**

To start, the community organisation determines the boundaries of the neighbourhood concerned, as the scheme must take place within a defined area. The group must apply to the local planning authority (the authority responsible for planning decisions in your area- usually your local council) with their proposed neighbourhood boundaries. In areas with parish councils, it is the parish council who must apply to the authority to have an area designated – this can be either for the whole or just a part of their area. Before making an application it is worth checking with the authority whether a defined neighbourhood area already exists. If an application to designate an area is needed, the authority will consider it, and it will then be approved, or declined if they think the area is not appropriate to be designated. If an application is declined, the authority must give their reasons for doing so and designate a different neighbourhood area.

Regulations specify that the following information must be included when submitting an application to the local planning authority for a definition of a neighbourhood area:

- A map which identifies the area to which the area application relates
- A statement explaining why this area is considered appropriate to be identified as a neighbourhood area
- A statement that the organisation or body making the area application is a relevant body.

Once the application for designation of a neighbourhood area has been approved, the local planning authority must publish the information on its website.

The community organisation must engage with the local community to gauge support for the development they seek to approve. Doing this could be a part of producing a neighbourhood plan, which would provide an outline of any development to take place in the following 10 years in addition to approving a specific development via a Community Right to Build order. It's important to establish what community members want to see in the area and establish a support base for any proposals developed. There are lots of resources available to give you an idea of interesting and effective ways of involving local community members. At this stage, you should also be discussing opportunities and possible design with land owners, designers or architects and working to identify financing opportunities.

### **Community Right to Build order**

Next, the organisation pulls together their development proposals and draws up a draft Community Right to Build order. The proposal must include: a map which defines the neighbourhood, a consultation statement (which contains details of who was consulted, how they were consulted and the main issues raised), the Community Right to Build order (e.g. what you want to see built), and a statement explaining how the development plan meets planning regulations. The proposed order must then be publicised in a way that will bring it to the attention of the people who live, work or carry on business in the neighbourhood area and appropriate consultation undertaken.

Next the order must be submitted to the local planning authority who will arrange for it to be examined by an independent examiner (an individual or body separate from the local planning authority), who is appointed by the local authority but must be acceptable to the community organisation submitting the order. The independent examiner will ensure that the proposal is from an eligible community organisation, that it does not cover excluded development, as well as whether:

- The proposal against national policy
- The proposal is in general conformity with strategic policies in the development plan for the area
- Making an order would breach or is otherwise incompatible with EU regulations
- The proposal is consistent with human rights law
- The proposal has special regard to the desirability of preserving any listed building or its setting and to enhancing the character or appearance of a conservation area
- The geographical extent of the referendum is specified.

The independent examiner will then publish a report and can refuse, ask for modifications or simply accept the Community Right to Build order. The Local Planning Authority will then publish the decision and order and organise a referendum if the independent examiner so recommends.

### Local referendum

On the basis of the above, the local council will organise a referendum of voters in the defined neighbourhood area to decide whether they support the Community Right to Build order – even if the local authority is against it. People in other nearby neighbourhoods may also be included if there are significant implications for a wider

area. If the referendum receives over 50% support from those voting, the local planning authority must grant planning permission for the development to go ahead. The intention is that by allowing communities to decide on a development via a referendum, it gives direct control to local people as opposed to being consulted by the local planning authority, when their voices might be drowned out.

Then you're ready to build! The community organisation then oversees completion of the development and determines how any profits will be utilised.

## Glossary

**Community Infrastructure Levy:** a charge levied by local authorities on developers

**Community organisation:** the neighbourhood group which initiates the Community Right to Build proposal. This organisation must become a corporate body to be eligible, and must meet other criteria set out in regulations.

**Community Right to Build order:** a particular type of Neighbourhood Development order which allows community organisations in some cases to bring forward small scale development on specific sites without following the usual planning permission process.

**Corporate body:** organisation set up for the purpose of producing a Community Right to Build order. This could be a company limited by guarantee with charitable status, a registered charity, a CIC or an Industrial and Provident Society.

**Environmental Impact Assessment:** an assessment of the possible positive or negative impact a project may have on the environment, covering environmental, social and economic aspects.

**Independent examiner:** an individual or body separate from the local planning authority who is nominated by the community organisation and appointed by the local authority to approve a Community Right to Build proposal to be sent to referendum.

**Local Plan:** plans for development in a local authority area, usually for 15 years.

**Local planning authority:** authority responsible for planning decisions in your area, usually your local council. To find details of your local planning authority, enter your post code here:  
[http://www.planningportal.gov.uk/wps/portal/genpub\\_LocalInformation?docRef=LocalInformation&scope=202&langid=0](http://www.planningportal.gov.uk/wps/portal/genpub_LocalInformation?docRef=LocalInformation&scope=202&langid=0)

**Neighbourhood area:** Defined local area. In the case where a parish council already exists, these boundaries will pertain. If there is no parish council, the community organisation must have their proposed neighbourhood boundaries approved by the local authority.

**Neighbourhood Development Orders:** development permitted to take place in a neighbourhood, proposed by either a Town or Parish Council or neighbourhood forum, voted on by the community.

**New Homes Bonus:** money from national Government to local authorities to match money raised in council tax from new homes built or brought back into use.

**National Planning Policy Framework:** document setting out the national government's main policies on planning.

**Neighbourhood Plans:** plans for an area within a local authority, proposed by either a Town or Parish Council or neighbourhood forum, voted on by the community.

**Referenda (or community referenda):** a vote by those eligible to vote in elections, within the area designated as a neighbourhood for the purposes of Neighbourhood Planning.