



# Action with Communities in Rural England

## **ACRE Briefing: Community Right to Build Orders**

February 2011

Under the Localism Bill provisions, a **Community Right to Build Order**<sup>1</sup> will allow a local community group to bring forward a small development for one or more purposes, including new homes, businesses and community facilities, but it must be small scale in comparison to the size of settlement. The Bill requires that a community organisation (existing or new) takes on this role but its constitution and purpose must relate to furthering the social, economic and environmental well-being of residents in the area in which the site is located, which must be stated in the application. The community can work with partners or go it alone by setting up, for instance, a Community Land Trust. Further regulations may be prescribed at a later date concerning the constitution of the group, disposal of assets and distribution of any profits should the community take ownership of the site.

A Right to Build Order requires a test of community support the threshold for which is now **50% of the vote of the electorate** in the area, rather than the much higher threshold originally announced for Local Housing Trusts. The designation of a Right to Build site is through a **Neighbourhood Development Order**, using a process similar to that which is required for adoption of a neighbourhood development stemming from a Neighbourhood Plan, but with some important differences.

- A community group that meets the conditions laid down in the Bill submits a site-specific Community Right to Build application to the local authority
- The local authority assesses the application against criteria which includes the scale of the development and environmental constraints
- If it is accepted, the local authority makes arrangements for an independent examination of the proposal and pays the costs that this entails
- If the examiner agrees to the proposed neighbourhood development order, the local authority is required to mount a referendum of the electorate in the specified area. A simple majority of the vote is required for the local authority to proceed to making a neighbourhood development order
- The neighbourhood development order may include specification of conditions to be attached to the grant of planning permission. Once made, the neighbourhood development order may enable the site developer to go ahead without the need for a further planning application.

The **crucial differences** between neighbourhood development orders that result from Community Right to Build Orders and neighbourhood development orders resulting from a Neighbourhood Plan are outlined overleaf.

---

<sup>1</sup> <http://www.publications.parliament.uk/pa/cm201011/cmbills/126/11126.i-v.html> (Schedule 11 page 309)

Firstly, an appropriately **constituted community group** must put forward a Right to Build site application, rather than the parish council, and regardless of whether any of the area specified is covered by a parish council. The group must be established for the express purpose of furthering the social, economic and environmental well-being of the individuals living, or wanting to live in the area. More than half of the members of the organisation must live in the neighbourhood area specified in the application.

Secondly, it is a **site-specific** application limited to the development site, and cannot include other aspects required, for instance, in a wider designated neighbourhood area. Limits on the scale of the development site, compared with the size of the community, will apply although those limits have not yet been specified.

Thirdly, we believe that the examiner cannot refuse the application just because it is not **'in conformity'** with strategic policies in the local plan', although interpretations on this vary. The main grounds for refusal include European-designated environmental sites, contravention of Human Rights legislation and lack of conformity with the overarching National Policy Planning Framework (which does not yet exist). It has very recently been confirmed that **Green Belt policy** is included in the latter, so Right to Build sites cannot be on Green Belt land.

Lastly, a **restriction on 'enfranchisement'**, i.e. the right of the occupier of rented or shared ownership housing to buy the property, can be applied to a Right to Build site, which is the means by which affordable housing in rural areas can be retained to meet local need 'in perpetuity'.

The **costs** of getting a proposal up to the stage of a referendum will fall mainly on the community itself. The appropriate 'referendum area' to pass the test of community support will need to be defined by the local authority and/or the independent examiner.

The **relationship between a Neighbourhood Plan** and a **Community Right to Build order** application in the same community is confusing. Both are delivered through the creation of a neighbourhood development order, and both require a referendum to demonstrate community support. But the Bill appears to state that a neighbourhood plan cannot include a Community Right to Build site. Furthermore, a local authority can decline a Right to Build site application if there is a proposal outstanding for another neighbourhood development order resulting from either a Neighbourhood Plan or a Right to Build order. Clarity will be required on this before a community can decide which option to go for if they wish to bring forward a local development site.

The main difference between a Right to Build site and the **current exception site approach** to achieving affordable housing in rural villages is that a Right to Build site can include any type of development – open market housing, affordable housing, employment, community facilities, open space or even a renewable energy scheme. It can be developed in conjunction with a third party such as a housing association. The mixed development is a means by which some **cross-subsidy** or potential for earning income can pass to the community to either ensure rents are affordable or fund the construction and maintenance of community facilities.

For more information on other aspects of the Localism Bill, see ACRE's briefings on the overall Bill and Neighbourhood Plans.