

## Community Right to Build Orders – delegated procedure

Report to: **South Hams Executive**

Date: **4 th February 2016**

Title: **Community Right to Build Orders – delegated procedure**

Portfolio Area: **Place and Strategy**

Wards Affected: **all**

Relevant Scrutiny Committee: Internal

**N** Approval and clearance obtained: **Y**

Date next steps can be taken:  
(e.g. referral on of recommendation or implementation of substantive decision)

**Decision to be referred to Council on 11 February 2016**

Author: **Ross Kennerley and Graham Swiss** Role: **Lead Specialist Place and Strategy**  
**Specialist Place and Strategy**

Contact: [Ross.kennerley@swdevon.gov.uk](mailto:Ross.kennerley@swdevon.gov.uk)  
[graham.swiss@swdevon.gov.uk](mailto:graham.swiss@swdevon.gov.uk)

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### **Recommendations: That the Executive**

1. Recommends to Council that the authority to approve the Community Right to Build Orders Procedure set out in Appendix 2 be delegated to the Lead Specialist, Place and Strategy in consultation with the Lead Member for Business Development and Local Plan and the ward Member(s) for the relevant Neighbourhood area.
2. Subject to approval of recommendation 1 above, recommends that the appropriate changes be made to the Council's Neighbourhood Planning Protocol.

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### 1. Executive summary

Under the Town and Country Planning Act 1990, the Council has a statutory duty to assist communities in the preparation of Community Right to Build Orders (CRtBOs) which are a particular type of neighbourhood development order, and to take such Orders through a process of examination and referendum. CRtBOs may be applied for by community organisations for a specific site and are used to grant planning permission in full or outline for a particular type of development.

The Localism Act 2011 (Part 6 chapter 3, schedule 11) sets out the LPA responsibilities as:

- Designating the neighbourhood area
- Advising or assisting communities in the preparation of a CRtBO
- Checking a submitted Order meets the legal requirements
- Arranging for the independent Examination of the Order
- Determining whether the CRtBO meets the basic conditions and other legal requirements
- Subject to the outcome of the referendum, bringing the Order in to force (confirmation of the Order).

In addition and because a CRtBO is a type of Neighbourhood Development Order (NDO), the LPA is obliged under the TCPA 1990 S 61 E – Q, to provide advice and assistance to qualifying bodies (as the LPA considers appropriate) for the purposes of proposals for NDOs in its area.

NB: There is no requirement to give financial assistance to the qualifying body.

(Note: S 61 E – Q of the TCPA 1990 was inserted by Schedule 9 Part 1 of the Localism Act 2011).

This report sets out the case for adoption of a delegated process to enable CRtBOs to be processed through delegation to lead officers with the relevant and necessary safeguards and referral to the lead Member for Business Development and Local Plan in consultation with the ward Member(s) as and when required.

It is also recommended that the existing Neighbourhood Planning Protocol be updated. This has clear links to the recommendation made in relation to *Our Plan* to provide updated guidance to Neighbourhood Plan groups.

**The statutory process requires Examination of all CRtBOs by an independent expert followed by a public referendum. The delegated process simply takes the draft CRtBO as far as the independent Examiner and is not a substitute for the ultimate decision which is taken by public referendum. If the referendum**

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**results in 50% plus one vote in favour of the proposed Order, the Council MUST confirm the Order.**

### **2. Background**

- 1)** South Hams District Council has received a draft CRtBO in Totnes from the Totnes Community Development Society (TCDS). It follows that the Council must be ready to meet its statutory obligations to advise, assist and implement the process prescribed under the Localism Act 2011 (outlined above) and, if appropriate confirm the required Neighbourhood area (already designated) and Order.
- 2)** The TCDS published the draft Order for consultation last November and is currently revising the Order in light of the responses received. There will be a full consultation period with the statutory consultees and the public when the draft Order is formally submitted to the Council (at the time of drafting this report this was anticipated by the end of January 2016).
- 3)** The Council has the appropriate power to accept an application for a CRtBO under the Localism Act, but in order to meet the tight deadlines and in the interests of efficiency the process may be delegated to officers, provided that there is appropriate consultation with affected Ward Members, Lead Member(s) and the option to refer such an application to the relevant committee in difficult, contentious or high profile applications.
- 4)** All Councils need to be ready to comply with and embrace Localism in line with national policy as well as the statutory requirements. The CRtBO represents a direct interaction with community aspirations for the development they want to see in their own neighbourhoods. Being ready to accept and process these applications will demonstrate the Council's commitment to achieving its stated priorities including 'helping communities to help themselves'.
- 5)** The issues here are relevant to the Members, the relevant officers in Development Management, Place and Strategy, Legal and Support Services and the community at large. It is also important for the Council as a whole to be able to demonstrate to the wider public and to the DCLG that it can meet its obligations under Localism effectively and in a timely and cost effective manner.

### **3. Outcomes/outputs**

Ideally, the Council should have a formal delegated process adopted by Full Council before a CRtBO or Neighbourhood Area application is submitted for Examination; this will enable the relevant officers to

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scrutinise the application and check that it meets what the regulations describe as 'the basic conditions' (*see definition below, Appendix 1*). It will also enable the relevant officers to decline the proposed Neighbourhood Area or CRtBO proposal if it does not meet the requirements. Written reasons must be given if a proposed Neighbourhood area or CRtBO is declined.

If the CRtBO application meets the basic conditions, the LPA **must** refer the application onwards for Examination. If there are difficult and outstanding issues about the planning merits or proposed conditions at this stage, officers may refer the application to the relevant Committee for a decision before Examination but this would need to take place within the statutory time limits (*see Appendix 2*).

Success or otherwise cannot really be assessed until after the independent Examination. If the CRtBO application is acceptable to the Examiner in planning terms, this could be regarded as 'success'. It is perhaps also worth mentioning that an application which does not meet the basic conditions will be returned to the qualifying body and they will have to decide whether to amend or withdraw the Order. This 'gate-keeping' principle might also be described as another measure of 'success' as it avoids the unnecessary expense and time of a futile independent Examination.

Interestingly, if the proposed Order is accepted by the independent Examiner, the application will become the subject of a public referendum. At this point the community has to decide whether or not they accept the proposed development. A vote of 50% plus one vote in favour of the proposal will ensure that the LPA must confirm the Order – this is effectively permission to commence the development (subject to any conditions) without further recourse to the LPA.

There is opportunity to seek additional funding from the DCLG for fixed payments at various trigger points namely;

- Designation of Neighbourhood area (if needed) (£5,000)
- Submission of the Order (£5,000)
- Completion of a successful Examination (£20,000)

These payments are to recognise the cost to the authority in supporting the CRtBO process, including the Examination and referendum fees.

### 4. Options available and consideration of risk

1) What alternative approaches could we take?

a) Do nothing

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- b) Adopt an alternative procedure which relies on Member approval of the proposed Order at each of the key stages

### 2) Assessment of potential impacts and risks of these options

- a) Referral to the Executive or Full Council, with attendant preparation and consideration of officer reports, would slow down a process that has a short statutory timescale and duplicate work that will be scrutinised by an independent third party in any event. (The referral to the independent Examiner is a mandatory requirement not a discretionary one). There is a role for the relevant committee should any applications touch on highly controversial issues or detail but the discretion to take the matter to committee when necessary should not detract from the thorough preparatory work, consultation and specialist consideration which will be required in every case.

## 5. Proposed Way Forward

- 1) To adopt the proposed recommendations
- 2) The justification for the recommendations is as set out above
- 3) The identified risks can be mitigated by consultation with Members and referral to the relevant Council body when necessary.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<ul style="list-style-type: none"> <li>• Town and Country Planning Act 1990</li> <li>• National Planning Policy Framework (NPPF)</li> <li>• Localism Act 2011</li> <li>• Neighbourhood Planning (General) Regulations 2012</li> </ul>
Financial	Y	<p>TCPA 1990 Schedule 4B para 7 refers to the LPA duty to arrange (and pay for) the independent Examination.</p> <p>The LPA will also be responsible for making the arrangements for a referendum when required.</p> <p>Fixed amount claims can be made to DCLG to assist with these 'additional burdens' at various stages of the process as set out above.</p>

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		The process will not generate additional income through CRtBO applications within the district, but it does introduce the possibility of being asked to provide an independent Examination for another authority. Once we have been through a complete cycle it may be worth promoting this idea to other authorities so that we receive the Examination costs.
Risk	Y	Delay to delivery of CRtBOs: The increased delegation seeks to streamline the ability of the Council to respond to the stages of CRtBO preparation in a proportionate manner. Reputation: These applications will by their nature always have a high profile in the community and delay or uncertainty by preparation and consideration of Council reports could slow the process and raise concerns over the authority's commitment and support to the Neighbourhood Planning processes.
Comprehensive Impact Assessment Implications		
Equality and Diversity	Y	Any application should support Equality and Diversity in the proposed Order
Safeguarding	N	No specific implications
Community Safety, Crime and Disorder	N	No direct consequences
Health, Safety and Wellbeing	Y	The proposed CRtBO should support health, safety and well-being
Other implications	N	

### **Supporting Information**

#### **Appendices:**

Appendix 1: PAS / LGA Guidance at  
<http://www.pas.gov.uk/documents/332612/1099329/Legal+requirements+guide+CRtBO.pdf/b01830df-89cf-4170-8e2a-031de6e9cfe2>

Or as attached.

Appendix 2 attached.

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### Background Papers:

CRtBO Guidance note

### Approval and clearance of report

Process checklist	Completed
Portfolio Holder briefed	Yes
SLT Rep briefed	Yes
Relevant Exec Director sign off (draft)	Yes
Data protection issues considered	Yes
If exempt information, public (part 1) report also drafted. (Committee/Scrutiny)	N/A

### Appendix 2: Community Right to Build Procedures

No	Relevant stage of the NP process	Specific requirements of delegated authority
1	<u>Designate the Area</u>	Delegated authority to approve the Neighbourhood Area if not already designated.
2	<u>Regulation 21 Pre-submission publicity and consultation</u> The Qualifying Body (the CRtB organisation) are required to consult on their draft plan by conducting a Reg 21 consultation. The Local Planning Authority is a consultee in this process and has the opportunity to assess the contents of the draft order to ensure compliance with local and national planning policy.	Delegated authority to provide feedback to the Qualifying Body in response to the Regulation 21 consultation that confirms that the <i>basic conditions</i> of Schedule 4B to the 1990 Town & Country Planning Act have been met, or details of the matters that the LPA consider need to be addressed before the <i>basic conditions</i> can be met.
3	<u>Regulation 23 publication</u> The Local Planning Authority is required to publicise a final draft of a Community Right to Build Order as submitted by the appropriate qualifying body. This consultation will run for no less than 6 weeks.	Delegated authority to issue the Reg 23 Order, to make further LPA comments as necessary and publicise all responses to the Regulation 23 consultation, as required by Regulation 21.

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4	<p><u>Regulation 24 Appointment of Examiner and issuing of Examination report</u></p> <p>The LPA and appropriate qualifying body need to work together to appoint an independent Examiner. Regulation 25 Publication of Examiner's report and decisions.</p>	<p>No delegation necessary as this stage, as it is triggered by process. SHDC to approach the Neighbourhood Planning Independent Panel and Referral Service (NPIERS) to propose suitably qualified Examiners who can conduct an independent Examination of the draft Order and to appoint an Examiner in conjunction with the qualifying body. SHJDC publish the Examination report and any proposed modifications along with a decision statement.</p>
5	<p><u>Referendum</u></p> <p>The LPA is required to place the CRtBO (as revised in accordance with the Examiner's report) to a local referendum.</p>	<p>No delegation necessary as this stage, as it is triggered by process. SHDC to undertake a referendum, the terms of which are defined in <a href="#">Neighbourhood Planning (Referendum) Regulations 2012</a> (as amended by the <a href="#">Neighbourhood Planning (Referendum) (Amendment) Regulations 2013</a> and 2014) and the <a href="#">Neighbourhood Planning (Prescribed Dates) Regulations 2012</a>.</p>
6	<p><u>'Making' the Order (Regulation 26)</u></p> <p>The requirement lies with the LPA to make the Order (the legal process by which the Order becomes part of the development plan).</p>	<p>Subject to retained approval by the Executive.</p>