

**Welcome** to the Planning Bulletin prepared by **Tetlow King Planning**. This Bulletin provides an update of recent publications across the housebuilding and planning sectors from a wide range of public, private and quasi-governmental organisations.

## What Does the Government's Response to the Bacon Review Mean for the Self and Custom Build Sector?

**The Government's long awaited response to the Bacon Review was published on 24 June and contains information on the direction of travel in terms of which recommendations from the Bacon Review will be taken forward, and to what extent. Tetlow King Planning Director Andy Moger provides his thoughts on the Government's response:**

Of particular interest is the Government's response to 'Recommendation 5: Support Custom and Self-built housebuilding through the Planning Reforms'. Here the Government sets out that in the last reporting period, there were a total of 59,572 entries on registers across England and that authorities have permissioned 44,244 serviced plots for self and custom build.

However, this does not tell the full story. In our extensive experience of examining self build register data for applications and appeals across the country relating to self and custom there are still a very considerable number of authorities that count permissions which are not - and have no chance of ever being – for self and custom build development.

Therefore, to suggest that 74% of all register demand is being met is not reflective of what we see happening on the ground. The reason for this discrepancy is that this data the Government reports is based upon local authorities' own data returns to central Government which are not interrogated for accuracy to ensure permissions that they are counting meet the legislative definitions for what constitutes self and custom build.

As we already know, the indications are that the scope of the planning reforms will be considerably scaled back from that proposed by the Planning for the Future White Paper so it was welcome to see the Government's response here commit to bringing forward legislation to clarify what counts as a 'suitable permission' in the context of the Self-Build and Custom Housebuilding Act (as amended).

As ever of course, the devil is in the detail, but this commitment to legislative change suggests that the Government has listened to the issues raised through both the Bacon Review and the Expert Advisory Group about local authorities counting permissions that are plainly not for self or custom build to try to demonstrate statutory duty compliance has been achieved.

We await with considerable interest precisely how the legislative changes required to close some of the current

loopholes in the 2015 Act (as amended) are proposed to be dealt with when legislation is brought forward through the Levelling Up and Regeneration Bill which was introduced to Parliament in May 2022.

Linked to this is the Government's commitment to consider where additional changes are needed to the NPPF. The Bacon Review recommendation was of course for self and custom build to attract 'substantial weight' as a material consideration through amendments to the NPPF. We should know more about this next month when the Government's document outlining how it intends to change national policy is released as recently announced by the Secretary of State, Michael Gove.

For the time being unfortunately it continues to be a case of 'watch this space', but the commitment to clarify what constitutes a 'suitable permission' within the Act is greatly welcomed and would assist with addressing one of the big problems that currently exists in the form of a considerable number of errant local authorities counting permissions that are plainly not for self and custom build and then claiming to have met their statutory duty as a result and using this as a reason not to grant permissions that actually do provide self and custom build plots.

Another major problem that we do not yet have any commentary from the Government on in response to the Bacon Review is that of the lack of any clear sanction where the demand from registers is not met. Until this matter is resolved then unfortunately, we will continue to see some authorities fail to effectively support the growth of this sector by continuing to falsely inflate permissions issued by counting those that do not in fact provide any boost to the supply of self and custom housebuilding.

Read more on the story [HERE](#)

For further advice on self and custom build housing please contact [andy.moger@tetlow-king.co.uk](mailto:andy.moger@tetlow-king.co.uk) or [andrew.jones@tetlow-king.co.uk](mailto:andrew.jones@tetlow-king.co.uk).



## Latest Self-Build Data Indicates Opportunities Abound In The Sector

In another article on self and custom build housing, Tetlow King Planning seeks to answer what does the latest self build and custom housebuilding data release mean for those wishing to build their own home, as well as landowners and developers in the sector? New analysis and research undertaken by Tetlow King Planning Senior Planner, Andrew Jones considers some of the issues around self and custom housebuilding revealed by the latest data release from the Department for Levelling Up, Housing & Communities (DLUHC).

Tetlow King Planning's analysis shows that **60% of Councils have failed to meet their statutory duty in all three years to date; Over 130 Councils have not met their statutory duty in a single year; and 36 Councils have never consented a single self build proposal.** Our research demonstrates that where local authorities are failing in their statutory duty to meet self build register demand, real opportunities exist for self builders, landowners and those working in the sector.



### Data Release

Our analysis of data published in May 2022 by the DLUHC based on monitoring returns by English local authorities relating to self build and custom housebuilding shows that real opportunities exist for those wishing to build their own home, as well as for landowners and developers.

The data set gives an indication as to whether the statutory duties are being met in respect of meeting the needs of self and custom builders as set out in the Self-Build and Custom Housebuilding Act (2015 as amended). Where a Council is failing in its duty to provide enough serviced plots to meet identified demand, we are of the view that substantial weight should be attributed to the provision of self build and custom housebuilding within the planning balance in the determination of planning applications.

You don't just have to take our word for it. The Bacon Review published in late 2021 and commissioned by the Prime Minister includes the recommendation that the Government gives substantial weight to self and custom build as a material consideration.

Such weight, if applied correctly, can potentially bring sites into play which would otherwise be considered contrary to policy and therefore inappropriate. Sites outside of, but well-related to, existing settlements in sustainable locations, for example, may have potential for development where the Council is running a shortfall against its statutory duty. Tetlow King Planning has argued successfully in the past that such a conflict with policy can be outweighed by the application of

the appropriate weight that a scheme constitutes, or simply includes a proportion of, self build and custom housebuilding.

An article in Planning Resource reported that 67 Councils failed to grant permission for even a single self build plot in the monitoring year 2020/21, and that authorities with as many as 500 entrants on their self build register were included in this group.

### Delivery Across England

TKP's analysis looked at Councils' monitoring returns to DLUHC since 2016. According to the data, there have been a total of 76,768 entrants added across all the self build registers in England. In that time Councils have permitted 43,676 plots which they consider suitable for self and custom build. Given that they have up to three years to permit an equivalent number of plots of land as there are entries for that base period, Councils still have time to meet the needs of any entrants added to the register in 2018/19 or after. As such, comparing total permissions against register entries up to 2017/18 gives us a clearer picture of whether Councils are meeting their duty.

As of 30 October 2018, a total of 43,827 entrants had been added to self build registers across the country, meaning that the number of permissions granted equates to 92% of entrants, which appears to be a healthy return. Two councils, Cherwell and Cornwall, were significant outliers however, with these authorities claiming to account for 11,515 of those permissions between them - meaning the remaining authorities had delivered just 81% of the plots required.

## Failing the Duty

The variation in how Councils have performed is significant. Whilst vanguard authorities such as Cherwell appear to have performed very strongly, others have performed poorly. Of the Councils that have provided a data return every year, 36 admit to not having permitted a single plot since 2016. The data therefore indicates that these Councils must be failing their statutory duty towards their register entries by their own admission.

A further 25 Councils have delivered fewer than 10 plots since 2016/17 and 44 have delivered more than 10 but fewer than 25 plots. In total 105 Councils have delivered fewer than 25 plots since 2016/17 - this equates to nearly a third of all Councils in England delivering fewer than five self and custom build plots a year.

In total just 135 councils, or 40%, claim to have met their statutory duty across all three base periods: 1 (2016-19), 2 (2017-20) and 3 (2018-21). In the same timeframe 138, or around 41%, of Councils failed to meet their statutory duty in a single base period. Such total failure further underlines that large numbers of Councils are ignoring their statutory duty and failing to plan for those who wish to build their own home, a requirement first identified in the original 2012 NPPF and which has been carried forward in every iteration since.

The disparity in how Councils are performing across the country is further underlined by the fact that of the 318 Councils that have submitted data returns in at least four out of the five monitoring periods so far, some 142 Councils claim that they are running a surplus totalling 20,298 plots to the end of base period 3 (of which Cherwell and Cornwall are responsible for over 6,000 surplus plots between them), whilst 176 Councils are running a shortfall totalling 20,605 plots. Bury considers that it has met the numbers required to address its duty exactly.

There are a number of Councils with very significant shortfalls over the three base periods completed so far including Richmond upon Thames (796 shortfall against its

self build register); Bristol (569); Waltham Forest (519); Bath and North East Somerset (429); West Oxfordshire (418); and Mid Sussex (380).

## It Could Be Worse

Andrew Jones reports that it is important to remember that Council data returns to Government rarely tell the whole story in respect of their self build delivery. "In my experience it is often the case that, when a Council's claimed supply of plots is examined in detail, the vast majority can be discounted due to them not meeting the legislative and/or regulatory requirements. Many Councils count single plot sites, regardless of whether there is any evidence to suggest it will be delivered as a genuine self or custom build opportunity. Others take the submission of a CIL Form 7 Part 1 as proof that a site will be delivered as self build, whereas it is my view that this alone is not sufficient to satisfactorily demonstrate that the initial owner of the home will have primary input into its final design and layout."

## Give It Some Weight

Recent Secretary of State and appeal decisions demonstrate the importance of delivering self and custom build opportunities. The appeal decision at Pear Tree Lane, Euxton sided with Tetlow King Planning for the appellant. We successfully argued that secondary data sources proved demand for self build far exceeded the numbers on the Council's register, and the Inspector attributed "significant weight" to the 10% provision of serviced plots in allowing the appeal. In the appeal decision for the erection of nine dwellings at St Peters Street, Caxton, the Inspector found that "in the circumstances, the benefit of making up part of the deficit in self- and custom-build plots carries substantial weight".

Read more [HERE](#)

For further advice on the self and custom build research please contact [andrew.jones@tetlow-king.co.uk](mailto:andrew.jones@tetlow-king.co.uk) or [andy.moger@tetlow-king.co.uk](mailto:andy.moger@tetlow-king.co.uk).





## Not enough brownfield land capacity to meet housing demand

**'Banking on Brownfield' published by the Land Promoters and Developers Federation (LPDF) and compiled by Lichfields. The study finds that it is not possible for previously developed land to supply enough of the right type of homes in the right places.**

The report has been commissioned to respond to the levelling up white paper, speeches at the 2021 Conservative Party Conference, and the £1.5 billion brownfield housing fund – all of which suggest that such land will satisfy housing need.

According to the report, the estimated capacity for land on brownfield registers is 1.4 million. This is the figure after 58,000 have been disregarded for double counting.

Of the potential homes on the registers, 48 per cent are estimated to be flats but only 17 per cent of households are likely to live in flats.

Banking on Brownfield states that brownfield registers suggest that 81 per cent of new homes that could be delivered in 19 urban authorities with uplifted housing requirements will be at apartment densities, rather than family houses. It goes on to highlight that there are viability challenges in these areas that could contribute to the limited delivery of affordable homes.

Paul Brocklehurst, chairman of the LPDF, said: "If the Government wants to meet its target of building 300,000 homes each year, no source of land can be 'off the table'. Our analysis in this

report shows that there is simply not enough brownfield land in any part of the country to meet housing needs alone."

"The reorientation of housing policy, and Homes England efforts towards brownfield regeneration, may help support the conditions where viable and developable land can come forward, but many of these sites will also require grants to unlock them, at greater expense to the taxpayer. Even with this policy support, greenfield land development will still be needed in every region, to meet current housing need."

"Our research finds the opportunity cost of prioritising brownfield land for housing rather than employment is significant in pricing out industrial and office development to potentially suboptimal locations."

The report also notes that brownfield registers do have shortcomings, in particular in evaluating the quantum of developable land overall, which makes them an unreliable basis for policymakers to decide on the number of homes that can be built in different areas.

Read more [HERE](#)



## Changes Made to Approved Documents for Building Regulation Requirements

**On 15 June 2022, changes were made to the Approved Documents which make up the Building Regulation requirements.**

The changes effect Approved Document F (Ventilation) and L (Conservation of fuel and power), while also introducing Approved Document O and Approved Document S. The new documents, O and S, focus on overheating in buildings and infrastructure for the charging of electric vehicles respectively.

Planning Portal reports that the change in requirements comes alongside the Government's wider aim of reducing the UK's carbon emissions, with a goal of becoming net-zero by 2050. This will be aided by a 30 per cent reduction in carbon emissions in new build homes and 27 per cent in new commercial buildings as a result of the adjustments. The aim is to create a shift towards a greener built environment and eco-friendly planning system.

Building work will have to adhere to the new building regulations if the initial notice is submitted after the 15 June 2022. If an initial notice is submitted before 15 June 2022 and work begins before 15 June 2023 then the previous building regulations will apply. Both the new and previous are available through the relevant Approved Document pages on the Planning Portal website.

Planning Portal reports that these changes provide a vital shift towards greener planning and building services, acting as a healthy step forwards into the future of planning and net-zero.

Read more [HERE](#)



## Nearly 10,000 new homes will need to reapply for planning permission due to new environmental rules

The Home Builders Federation reports on an article by iNews that builders of nearly 10,000 new homes will need to reapply for planning permission due to new environmental rules. Some 9,385 planning consents will need to be reapplied for, as a leaked letter shows a delay in critically important technology is putting a Government emissions target in doubt.

iNews refer to a Government source who acknowledged that builders on larger sites will almost certainly need to reapply for planning consents because many would not be able to begin building by the end of a transition period between the old and the new regime. The changes will not have any impact on houses that have already been built or reserved as part of a pre-sale process, but they are likely to further stymie house building in the UK.

iNews claims that the Government's goal to cut emissions by 30 per cent is also in doubt, as software to track emissions for new build homes is yet to be completed a week after the legislation has come into effect, according to sources in the housebuilding industry. One in four new build homes will be unable to adhere to new environmental standards due to a lack of software.

In a letter to Housing Secretary Michael Gove from the HBF, who first raised concerns about the lack of available software in July 2021, the group strongly criticised a lack of planning from the Government, which has led to uncertainty among housebuilders.

Stewart Baseley, chairman of the HBF, said that Government administration of the policy has led to "widespread delay" due to "unjoined up administration". Mr Baseley said: "We have been left disappointed and frustrated that Government's preparedness has not matched that of our members and the industry's supply chain. Smaller house builders and supply chain firms are particularly affected by the inability of Government to prepare adequately."

A Government source said that they expected the technology would be fully in place by the end of July, and that it was not expecting a "significant" impact on carbon emissions from the delay.

HBF's letter added: "It is becoming apparent that the new regulations are riddled with impracticalities and may require tens of thousands of permissioned homes to go back through the planning process at a time when local planning resources are strained to their core...[it is] simply impossible to follow the letter of the regulations".

Read more [HERE](#)

### In the News



#### New NPPF

Gove issues correction over suggestion that new NPPF will be published next month.

[CLICK HERE](#)



#### Local Plan Slowdown

Planning authorities are halting or revising their local plans due to policy uncertainty.

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#### Falls in housing

Government figures show falls in housing starts and completions.

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#### Intention of Levelling Up

What is the intention of levelling up and how will it work in practice?

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#### Revised Building Regulations

Chief planner warns Councils to expect rise in permission amendment bids due to revised building regulations.

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## About Us

Tetlow King Planning is a leading town planning and development consultancy operating nationwide, with specialisms in housing, affordable housing, care, custom and self-build housing. We have been established for over 35 years and operate from our offices in Bristol and West Malling, Kent. Testimonials and news stories on development proposals are available to view on our website [www.tetlow-king.co.uk](http://www.tetlow-king.co.uk). Follow us on social media at:



## Tetlow King Planning News and Successes

### West Malling Office Update

Jonathan Lee has recently joined Tetlow King Planning as an Associate Director in the West Malling Office. Jonathan joins the team from Hobbs Parker, bringing with him considerable experience gained from previous roles for a local planning authority and private sector consultants over a career of nearly 30 years.

Jonathan has extensive experience in rural development encompassing matters such as new agricultural buildings, changes of use of rural buildings, listed buildings, agricultural occupancy conditions, estate management/redevelopment and land promotions for development. These particular skills will now be utilised to offer additional planning services to existing and new clients nationwide.

Do get in touch with Jonathan if you have any rural planning issue to discuss [jonathan.lee@tetlow-king.co.uk](mailto:jonathan.lee@tetlow-king.co.uk).

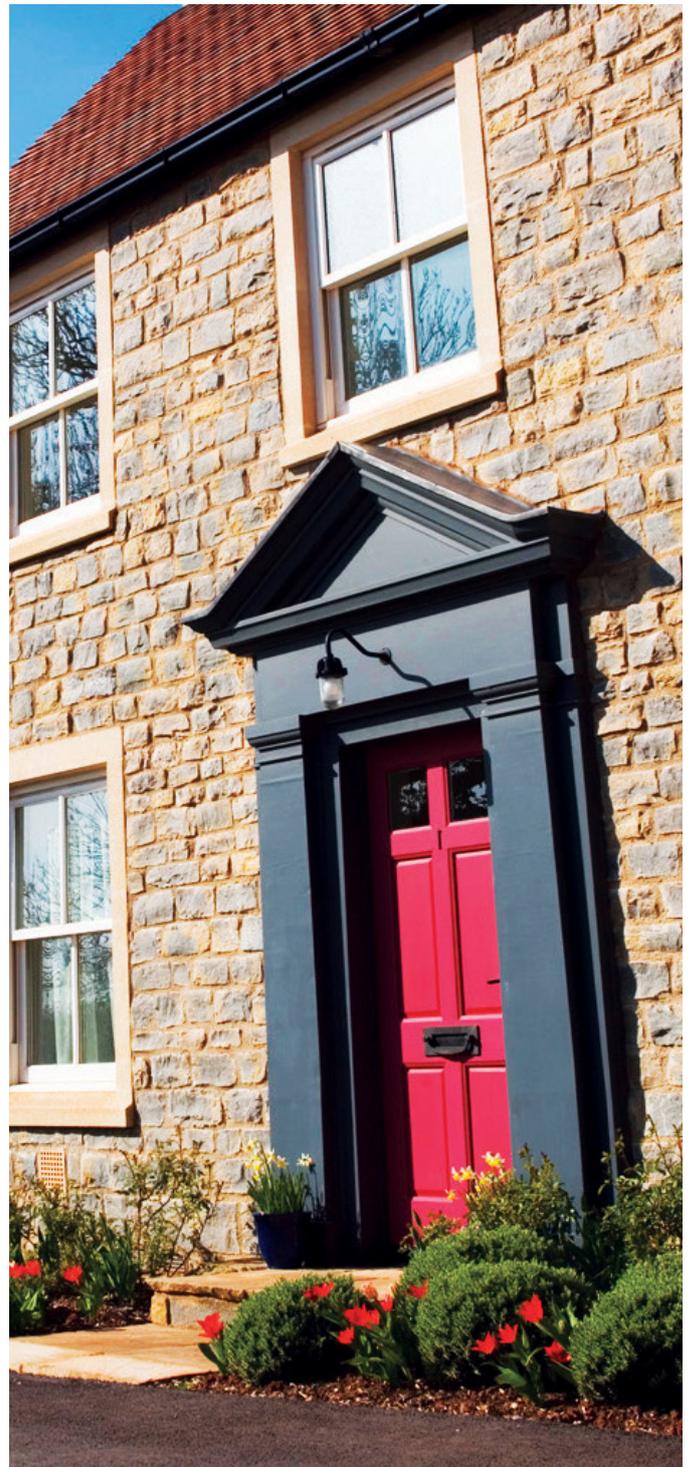
### Melksham, Wiltshire Appeal success

Tetlow King Planning is delighted to have secured outline planning permission for 50 affordable homes for Terra Strategic in Melksham, Wiltshire. The scheme will deliver a mix of house types and 60% affordable rent and 40% shared ownership. Other benefits include the provision of open space and contributions towards early years and primary education places, off-site play space, pedestrian crossing improvements and public art.

The appeal success was a team effort with Rosie Dinnen, Director appearing as planning expert witness, James Stacey, Senior Director as Affordable Housing witness, Jamie Roberts assisted with planning matters and five year housing land supply. Katie Machin, Director, Pegasus appeared as Landscape witness. The case was expertly led by Counsel Thea Osmund-Smith, No.5 Chambers.

Rosie Dinnen, Director said:

“Wiltshire Council’s struggle to demonstrate a continuous five year housing land supply is well known, with numerous appeals having been allowed in recent years. The appeal



in Melksham was unique and challenging as it was up against a recently made neighbourhood plan which made no allocations for the town itself nor did it seek to address affordable housing needs.

The acute need for affordable housing could not be ignored by the Inspector, especially as both parties had agreed affordable housing should be afforded substantial weight in the planning balance. Critically, the Inspector accepted that the site was in a sustainable location and the development would result in limited landscape harm therefore the pressing need for affordable housing outweighed any harm in the planning balance.”

The appeal decision is noteworthy, highlighting the importance of 100% affordable housing schemes addressing unmet affordable housing needs.

## Backwell, North Somerset Appeal Success

Tetlow King Planning is delighted to have assisted in securing permission for Persimmon Homes at appeal for up to 125 dwellings (including 30% affordable housing and 5% self and custom build) on land at Farleigh Farm, Backwell in North Somerset. The appeal site had previously been subject to three dismissed appeals, including most recently a Secretary of State call-in dismissal.

Senior Director, James Stacey gave evidence on affordable housing and Director, Andy Moger gave evidence on self build and custom housebuilding.

In setting out her decision, the Inspector agreed with our evidence on affordable housing in finding that delivery had fallen significantly short of meeting affordable housing needs and that deliverable housing supply suggests that the Council would continue to fall short of the needs identified in the Local Housing Needs Assessment. She also found that in line with the evidence of James Stacey, trends in affordability indicators highlight the increasing problem, particularly in terms of house prices and rent levels, noting that the interest of those households in need often go under-represented at inquiries.

The Inspector also agreed with our assessment that the Council had accrued a shortfall of 147 serviced plots for self and custom build and that the lack of target level provision

from the adopted Plan policies meant that future supply of plots was highly uncertain. Resultantly she found that the six serviced plots through the appeal proposals would assist with meeting unmet needs and provide social benefits.

The appellant team was led by Christopher Young QC, supported by Leanne B at No5 Chambers, who called Kathryn Ventham, Caroline Featherston, Nick Paterson-Neild at Stantec, Gary Holliday at FPCR, Gareth Howell at The Environmental Dimension Partnership, Sam Hurdwell, Graham Eves and Chris Charlton at Clarke Willmott to give evidence in their respective areas of expertise.

## Self Build Permission Secured

Tetlow King Planning is pleased to have secured outline planning permission for three self build plots in the village of Loggerheads, in Newcastle-under-Lyme borough. The decision provides a helpful example of how local planning authorities can consider the need for self build housing in the decision-taking process.

Critical to the success of the application was demonstrating that the self build scheme could address an unmet need in Newcastle-under-Lyme. The application was supported by detailed evidence from Tetlow King Planning that showed a significant shortfall in self build approvals, relative to the Council’s statutory duty to provide enough self build permissions to meet the level of demand. The Officer’s Report recognised the importance of delivering self build plots – particularly in the context of a dated Development Plan – and concluded that the self build element of the scheme merited substantial weight in the planning balance.

Commenting on the successful outcome, Tetlow King Planning Director, Andy Moger said:

“The Council has rightly recognised the importance of meeting its statutory duties for self build. Other site-specific factors also helped, including the good access to services and the character of the local area. Above all, the Unilateral Undertaking provided the Council with the assurances it needed to take a favourable view of the application, and we worked closely with officers to negotiate the eventual planning permission.”



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