

# Exemption from ‘duty to permit’ – base period 5

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Planning

*28 April 2021*

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# Annual refresh of exemption from section 2A of the Self-build and Custom Housebuilding Act 2015 in relation to the duty to grant sufficient planning permissions for Self-Build and Custom Housebuilding

The purpose of this note is to assess if London Borough of Richmond upon Thames will still be exempt to 'a duty to grant planning permission etc' for base period 5.

Previously, the Council received letters from Government dated 30 November 2017 and 18 September 2018 in response to our applications, granting exemptions specifically for the first and second base periods, respectively. The Council also applied for the exemption for the third and fourth base periods on 30 April 2019 and 30 April 2020, respectively. Although, the Council continues to await a reply from Government in relation to the exemption for the third and fourth base periods, it is acknowledged that the London Borough of Richmond upon Thames is noted as a local authority with an exemption in the right to build registers monitoring [data published by Government](#). This therefore confirms that the Government has granted exemptions for the third and fourth base periods. The below note in relation to the fifth base period will also be submitted to Government.

## **Policy context**

**Section 2A of the Self-build and Custom Housebuilding Act 2015 states:**

### ***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 within the meaning of the Town and Country Planning Act 1990 ("the 1990 Act").*

*(2) An authority to which this section applies must give suitable development permission in respect of 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 subsection (2) in relation to any base period.*

*(4) The first base period, in relation to an authority, is the period—*

*(a) beginning with the day on which the register under section 1 kept by the authority is established, and*

*(b) ending with [30 October 2016].*

*Each subsequent base period is the period of 12 months beginning immediately after the end of the previous base period.*

*(5) In this section "development permission" means planning permission or permission in principle (within the meaning of the 1990 Act).*

*(6) For the purposes of this section—*

*(a) the demand for self-build and custom housebuilding arising in an authority's area in a base period is the demand as evidenced by the number of entries added during that period to the register under section 1 kept by the authority;*

*(b) an authority gives development permission if such permission is granted—*

*(i) by the authority,*

*(ii) by the Secretary of State or the Mayor of London on an application made to the authority, or*

*(iii) (in the case of permission in principle) by a development order, under section 59A(1)(a) of the 1990 Act, in relation to land allocated for development in a document made, maintained or adopted by the authority;*

*(c) development permission is “suitable” if it is permission in respect of development that could include self-build and custom housebuilding.*

*(7) A grant of development permission in relation to a particular plot of land may not be taken into account in relation to more than one base period in determining whether the duty in this section is discharged.*

*(8) No account is to be taken for the purposes of this section of development permission granted before the start of the first base period.*

*(9) Regulations under subsection (3)—*

*(a) may make different provision for different authorities or descriptions of authority;*

*(b) may make different provision for different proportions of the demand for self-build and custom housebuilding arising in a particular base period.]*

#### **Regulation 11 of the Self-build and Custom Housebuilding Regulations 2016 states:**

##### ***Exemption from duty in section 2A of the Act***

*11.—(1) A relevant authority may apply to the Secretary of State under section 2B(1) of the Act(1) for exemption from the duty in section 2A of the Act in the circumstances specified in paragraph (2).*

*(2) The circumstances are that for any base period the demand for self-build and custom housebuilding (“demand”) is greater than 20% of the land identified by the relevant authority as available for future housing (“land availability”).*

*(3) For the purposes of this regulation for any base period—*

*(a) demand is to be taken to be the aggregate number of new entries in Part 1 of the register in that base period and the two preceding base periods; and*

*(b) land availability is to be taken to be the total number of new houses on land in the area of the relevant authority, assessed by that authority as being likely to be deliverable in that base period, the two preceding base periods, and the two following base periods.*

*(4) For the purposes of paragraph (3) no account is to be taken of any demand or land availability in any year before the first base period.*

*(5) An application of the description in paragraph (1) must be made within 6 months of the end of the base period for which the circumstances specified in paragraph (2) apply and must be in writing and accompanied by the following information—*

*(a) details of demand and land availability for the base period in question and any other relevant base periods;*

*(b) evidence of demand for other types of housing in the area of the relevant authority;*

*(c) where no local connection test has been set, details of the number of individuals entered in the register who would be likely to meet a local connection test if one applied;*

*(d) details of the relevant authority's policies for self-build and custom housebuilding including how those policies would apply if an exemption were to be granted;*

*(e) such other information as the relevant authority considers relevant to its application.*

*(6) Where a relevant authority has been granted an exemption under section 2B of the Act in respect of a base period, no application is required in respect of any subsequent base periods in which the circumstances specified in paragraph (2) continue to apply unless the Secretary of State gives notice in writing to the authority that an application is required in respect of any base period.*

*(7) A relevant authority that is granted an exemption under section 2B of the Act must notify any person entered on Part 1 of the register kept by that authority for the base period to which the exemption relates.*

**The NPPG states:**

***When can a relevant authority apply for an exemption to the 'duty to grant planning permission etc'?***

*A relevant authority may make an application for an exemption if for any base period (see the section on what having a 'duty to grant planning permission etc' means) the demand for self-build and custom housebuilding is greater than 20% of the land identified by that relevant authority as being available for future housing.*

*As relevant authorities have 3 years in which to permission sufficient land to match demand, demand should be assessed over 3 base periods. For this purpose demand is the aggregate number of new entries on Part 1 of the register in that base period and the 2 preceding base periods. For the first 2 years, there will not be 3 base periods so relevant authorities should rely on the current base period and any previous base period (if applicable).*

*Land availability is the total number of new houses on land in the area of the relevant authority, assessed by that authority as being deliverable in that base period, the 2 preceding base periods, and the 2 subsequent base periods.*

*Paragraph: 030 Reference ID: 57-030-20170728*

***If demand for self-build and custom housebuilding in an area is significantly more than 20% of the identified land for housing would the relevant authority be automatically exempt from the 'duty to grant planning permission etc'?***

*No. The first time that a relevant authority determines that the demand on their register is greater than 20% of its future deliverable housing supply, that authority may apply to the Secretary of State for an exemption. The authority is assumed to not be exempt until the Secretary of State has considered the application and written to the relevant authority informing them of the outcome of their application.*

*When deciding whether to grant an exemption, in order to ensure that an exemption is appropriate, the Secretary of State will consider the level of demand on the register compared with land supply for future housing, and other relevant factors such as whether a local connection test has been considered and how the authority would continue to support self-build and custom housebuilders in their area.*

*An exemption is only granted in relation to a given base period. At the end of each subsequent base period authorities must calculate demand on their register as a percentage of the deliverability of housing over the next 3 years. If, at the end of any given base period, the demand in that base period, when expressed as a percentage of future land availability, is assessed to be 20% or below, the authority is deemed to no longer be exempt and must inform the Secretary of State that this is*

*the case. For these no longer exempt authorities, should demand as a percentage of future land availability increase to over 20% in subsequent base periods they may again apply for an exemption.*

*Where a relevant authority has been granted an exemption in respect of a base period, no further application is required in respect of any subsequent base periods provided the demand on their register remains greater than 20% of its future deliverable housing supply, unless the Secretary of State gives notice in writing to the authority that an application is required in respect of any base period.*

*To help the Secretary of State decide whether to give such notice in writing, the Secretary of State may ask for details and all relevant background information in the current base period.*

*To ensure that relevant authorities have sufficient time to permission sufficient land, it is expected that the Secretary of State will only direct that an exemption would apply for the base period that follows the base period in which the exemption is granted. This ensures that relevant authorities have the full 3 years in which to permission sufficient land.*

*Once an exemption has been granted, the Secretary of State would not revoke an exemption, unless there were exceptional circumstances and confidence that the authority could meet its duty to grant planning permission etc within the required 3 years.*

*Relevant authorities must continue to permission sufficient suitable land to match demand in the base periods prior to being granted an exemption and in subsequent base periods if they are no longer exempt.*

*Paragraph: 031 Reference ID: 57-031-20210508*

## **Methodology**

Both the Self-build and Custom Housebuilding Regulations 2016 and relevant planning practice guidance make it clear that where a relevant authority has been granted an exemption under section 2B of the Act in respect of a base period, no application is required in respect of any subsequent base periods provided that the circumstances continue to apply. Although, the regulations and guidance respectively set out different methodologies for monitoring whether the circumstances continue to apply in the subsequent base periods, the guidance on Self-build and Custom Housebuilding was last updated on 8 February 2021, and therefore this note will follow the methodology it sets out.

Paragraph 031 (ref. ID: 57-031-20210508) of planning practice guidance states that no application is required in respect of any subsequent base periods as long as the demand on their register remains greater than 20% of its future deliverable housing supply. 'Demand' is the aggregate number of new entries in Part 1 of the register in that base period and the two preceding base periods. 'Deliverable housing supply' is the deliverability of housing over the next 3 years", i.e. three following base periods. The guidance states that at the end of each subsequent base period authorities must calculate demand on their register as a percentage of the deliverability of housing over the next 3 years.

## **Results**

The "demand" is the aggregate number of new entries in Part 1 of the register in that base period and the two preceding base periods. The register for the borough has a very high number of entrants:

- 417 individuals and 1 group (seeking 6 plots) on the Register in the first base period (from April to October 2016)

- 322 individuals and 1 group (seeking 4 plots) on the Register in the second base period (October 2016 to October 2017)
- 91 individuals and 2 groups (seeking 15 plots) on the Register in the third base period (October 2017 to October 2018)
- 156 individuals and 3 groups (seeking 7 plots) on the Register in the fourth base period (October 2018 to October 2019)
- 140 individuals and 1 group (seeking 1 plot) on the Register in the fifth base period (October 2019 to October 2020)

The total number of entries on to the Register for the fifth base period and the two preceding base periods is 387 individuals and 6 groups (seeking 23 plots) meaning a total demand of 410.

The “land availability” is the deliverability of housing over the next three years (three following base periods).

The [2019/20 AMR](#) housing trajectory provides numbers on the past and projected completions for any period starting on 1 April and ending on 31 March. This is not perfectly aligned with the timeframes of base periods which run from 31 October to 30 October of any given year. In order to ensure that the land availability calculation covers the relevant base periods, the number has been calculated as follows:

- 58% of projected completions in 2020/2021 – 157
- 100% of projected completions in 2021/2022 – 182
- 100% of projected completions in 2022/2023 – 433
- 42% of projected completions in 2023/2024 – 269

The above completion numbers correspond with the timeframes for the three following base periods (October 2020 – October 2021, October 2021 – October 2022; and October 2022 – October 2023). The total number of past and projected completions for the relevant base periods equates to 1,041 dwellings.

Demand as a proportion of supply as defined in the PPG would therefore equate to 39.38% (410/1,041), significantly above the 20% required for exemption.

## **Conclusions**

The figure significantly exceeds 20%, and therefore the exemption continues for base period 5. It is therefore confirmed that the London Borough of Richmond upon Thames will still be exempt and should not need to apply to the Secretary of State, as the previous circumstances remain the same; however for certainty this note will be submitted to Government.