

# Community Right to Build Guidance Note 1

# Producing a Community Right to Build Order

January 2013



The Community Right to Build has given communities the opportunity to deliver the homes, businesses and facilities they need without applying for planning permission - subject to certain conditions being met. This guidance note provides general advice in respect of producing a Community Right to Build Order, setting out their strengths and limitations in the process.

## Producing Community Right to Build Orders

The Community Right to Build (CRtB) is one of a raft of new initiatives introduced in the Localism Act (2011) and its purpose is to give communities direct control over the delivery of small scale, site specific local developments.

The 2011 Act contains measures which relate to a wide variety of areas including planning, housing, local services and local governance structures. One of these is the community rights agenda, which comprises the following initiatives in addition to CRtB:

- Community Right to Challenge (CRtC)
- Community Right to Bid (CRtBid)

The Community Right to Challenge and Community Right to Bid falls outside the remit of the planning system. Further details of these can be obtained from the Sustainable Communities team at Herefordshire Council.

### What does CRtB do?

Neighbourhood planning allows communities to come together to establish general planning policies for development and use of land in their neighbourhood, which then becomes part of the statutory development plan. The CRtB goes hand in hand with this process as it allows legally incorporated local groups (community groups) or parish councils to take forward small scale, site specific local development without the need for a planning application - so long as proposals meet certain criteria and there is community support in a local referendum. Development proposals can be incorporated as part of a Neighbourhood Development Plan, or on their own.

Any community can undertake a CRtB Order via their parish council or 'community group'.

The introduction of the CRtB will be of benefit to community groups who have specific development (either new build or conversion of existing buildings) in mind but have hitherto been unable to deliver it due to the complexities surrounding the planning system.

Provided the proposed development does not breach and is compatible with both European environmental legislation and Human Rights obligations, it is up to the community to decide what they want to see for the benefit of their local area.

Importantly, CRtB Orders can be drawn up in any area; rural or urban. Although, it is anticipated that they will be of particular benefit to those rural communities who have an urgent need for housing, facilities and local businesses to be built, as well as the land available for these types of developments. Importantly, the financial benefit of these new developments is intended to benefit the local area, so that using the CRtB and increasing development encourages local economic growth.

#### CRtB Orders can:

- Approve the building of homes, shops, businesses, affordable housing for rent or sale or shared ownership and community facilities
- Approve the conversion of disused buildings into affordable housing
- Decide the type, quantity and design of properties for the development
- Be prepared as part of a Neighbourhood Development Plan

#### CRtB Orders cannot:

- Be prepared by a third party (for example, property developers)
- Be used to prevent development
- Be in conflict with national and local planning policies (Core Strategy)
- Be in conflict with law to protect any listed buildings or conservation areas

### What are the benefits of CRtB?

Any revenue directly generated from the development through a CRtB Order is retained by the community, irrespective of whether the community group or parish council owns the

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development. If it is built by a developer, for instance, the community benefits through either a Community Infrastructure Levy or the New Homes Bonus.

Inevitably, there will be other benefits than simply financial, including boosting the local economy and increasing employment opportunities. The Government has also suggested that the CRtB 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. For example, new buildings could be built or acquired under community rights which are then used to house or provide public services for the community. However, it should be noted that the different timescales involved in utilising each community right make this simultaneous use of the rights quite difficult.

There are, of course, less tangible benefits, such as increasing the number of local people involved in decisions about development should lead to greater levels of satisfaction with community life and make them feel more positive about the environment in which they live.

### **What are the limitations of CRtB?**

The right to permit certain types of development without the need to go through the planning application process comes with caveats. For example, the CRtB may only be used by community groups and parish councils, meaning that it will not be of any use to property developers hoping to gain 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.

Development proposals that would require an Environmental Impact Assessment would not be eligible for inclusion in a CRtB Order. Further information about these requirements can be found in CRtB guidance note 6: Environmental Impact Assessment.

Equally, a CRtB Order cannot contain any proposal which is 'excluded development' for the purposes of section 61(K) of the Town and Country Planning Act (1990), as amended by the 2011 Act. Here, the following development is excluded:

- Mining Operations
- Waste Development
- Development requiring Environmental Impact Assessment
- Nationally significant infrastructure project

In addition, proposals must not be in conflict with laws to protect any listed buildings or conservation areas, and they have to be broadly in line with the National Planning Policy Framework, the strategic elements of the Local Plan (Core Strategy) and the Neighbourhood Development Plan, if there is one.

The CRtB only gives community groups or parish councils the right to bypass the normal planning permission route. As a consequence they will need to ensure that the land subject to a CRtB Order is within their ownership. If not, the land would have to be acquired by themselves or they would have to engage with a developer who wishes to do so, and must ensure that other building regulations have been met. It is also their responsibility to secure financing to cover the costs of the process. There may, however, be some sources of funding available.

### **What a CRtB Order might include**

As an alternative to the traditional application for planning permission, it gives communities the opportunity and responsibility to decide for themselves where something is built within their neighbourhood.

In general, communities will be able to build:

- Family homes to sell on the open market
- Affordable housing for rent or to convert disused farm buildings into affordable homes
- Accommodation above shops
- Sheltered housing for elderly local residents
- Low cost starter homes for young local families struggling to get on the housing ladder
- Facilities such as a new community centre or a children's playground

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This list is not exhaustive and much will depend on what local people decide their community needs. As mentioned previously, the benefits of these developments, such as any profits generated, will be managed by a community group or the parish council on behalf of the whole community.

## The process

For communities interested in using the CRtB, the process would be:

**Form a community group** - local people need to decide how they want to work together and create a formal community group. There are various legal options, but the group must be set up to improve the social, economic and environmental well being of the area. Further details are contained within Guidance Note 4: Setting up a community group. Form CRtB1 should be used to notify Herefordshire Council of your community group. Herefordshire Council will then confirm that your group meets the relevant requirements of the Neighbourhood Planning Regulations.

**Define the Neighbourhood Area** - the CRtB is part of the Neighbourhood Planning framework, so the community will need to define the Neighbourhood Area they wish to improve through their activity. Community group can only apply to designate a Neighbourhood Area through their parish council. Only one Neighbourhood Area can be designated in each parish therefore it is advised that the Neighbourhood Area follows the parish boundary to allow for a Neighbourhood Development Plan to be submitted at a later stage.

**Prepare the CRtB Order** - the community group then develop their proposals. These must be in line with local and national planning policies and other laws from the EU, as well as the Human Rights Act (1998). The proposals must be for small scale development and relate to a specific site. The community may want to talk to landowners, developers and architects to procure the land required for the proposal and to discuss financing opportunities. They must be able to show they have consulted widely with members of their local community.

The CRtB Order will include a map of the Neighbourhood Area, a statement of how they've

consulted locally (consultation statement), what you want to build, and an explanation of how the proposal meets planning regulations.

**Obtain an independent check** - once the Order is submitted to Herefordshire Council we will arrange for it to be examined by an independent examiner. This person checks that the Order meets the rules, and has been put together correctly. If changes are needed the community is given time to do this, so that it meets the standards.

**Hold a community referendum** - once the Order is approved Herefordshire Council arranges a local referendum of voters within the Neighbourhood Area. If the referendum receives over 50% of the votes cast in favour, the local planning authority must grant planning permission for the development to go ahead. If the parish is undertaking a Neighbourhood Development Plan also it may be worth considering combining the two together so that there will be the need for only one referendum. This will help to avoid confusion within the community and also help to encourage a higher turnout for the one referendum rather than two separate referendums.

**Complete the development** - the community can now oversee the development. Any profits are distributed by the community group or parish council for the benefits of local residents.

## What to do next

Further guidance sheets on CRtB, (including funding, getting started and setting up a community group), can be found on the Community Right to Build section on Herefordshire Council's website.

Further information about the CRtB can be found on the Governments community rights pages via the following [link](#), which includes an introduction and question and answer factsheet.

Form CRtB1 can also be downloaded from the Herefordshire Council website, this should be used to notify Herefordshire Council of your community group prior to work commencing on your order.

There is information on the Homes and Communities Agency website

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([www.homesandcommunities.co.uk](http://www.homesandcommunities.co.uk)) on funding provided by central Government, to support community groups and parish councils to establish groups, develop proposals and submit CRtB Orders.

### **What about funding?**

Information on funding is available within a separate guidance note, but there is a funding pot of £17.5 million available over the next three years (2012-2015) for communities in England.

### **What can you expect from Herefordshire Council?**

Herefordshire Council will have a role in ensuring development proposals meet the minimum criteria set out in the relevant regulations, supporting the independent examination and running the referendum. We will also be able to provide support and guidance whilst you develop your CRtB proposals. When you are beginning to set up your Community Right to Build steering group and your Neighbourhood Area has been approved, Herefordshire Council will supply you with a Service Level Agreement which will detail the help and support that you will receive from Herefordshire Council, this will need to be signed by both parties.

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**Community Right to Build guidance notes available:**

1. Producing a Community Right to Build Order
2. Getting started on your Community Right to Build Order
3. A guide to procedures - Community Right to Build
4. Setting up a community group
5. Funding a Community Right to Build
6. Environmental Impact Assessment
7. Glossary of terms

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