

## SCHEDULES

### SCHEDULE 11

Section 116

#### NEIGHBOURHOOD PLANNING: COMMUNITY RIGHT TO BUILD ORDERS

This is the Schedule to be inserted as Schedule 4C to the Town and Country Planning Act 1990—

### “SCHEDULE 4C

Section 61Q

#### COMMUNITY RIGHT TO BUILD ORDERS

#### **Introduction**

- 1 (1) This Schedule makes special provision about a particular type of neighbourhood development order, which is to be known as a “community right to build order”.
- (2) In their application to community right to build orders, the provisions of this Act relating to neighbourhood development orders have effect subject to the provision made by or under this Schedule.
- (3) In its application to community organisations, section 61G (meaning of “neighbourhood area”) has effect subject to the provision made by this Schedule.

#### **Meaning of “community right to build order”**

- 2 (1) A neighbourhood development order is a community right to build order if—
  - (a) the order is made pursuant to a proposal made by a community organisation,
  - (b) the order grants planning permission for specified development in relation to a specified site in the specified neighbourhood area, and
  - (c) the specified development does not exceed prescribed limits.
- (2) Regulations under sub-paragraph (1)(c) may prescribe a limit by reference to—
  - (a) the area in which the development is to take place,
  - (b) the number or type of operations or uses of land constituting the development, or
  - (c) any other factor.
- (3) In this paragraph “specified” means specified in the community right to build order.

#### **Meaning of “community organisation”**

- 3 (1) For the purposes of this Schedule a “community organisation” is a body corporate—
  - (a) which is established for the express purpose of furthering the social, economic and environmental well-being of individuals living, or wanting to live, in a particular area, and

- (b) which meets such other conditions in relation to its establishment or constitution as may be prescribed.
- (2) Regulations under sub-paragraph (1)(b) may make provision in relation to—
- (a) the distribution of profits made by the body to its members,
  - (b) the distribution of the assets of the body (in the event of its winding up or in any other circumstances),
  - (c) the membership of the body, and
  - (d) the control of the body (whether by the exercise of voting rights or otherwise).

### **Proposals by community organisations for community right to build orders**

- 4
- (1) A community organisation is authorised for the purposes of a community right to build order to act in relation to a neighbourhood area (whether or not any part of the neighbourhood area falls within the area of a parish council) if—
    - (a) the area mentioned in paragraph 3(1)(a) consists of or includes the neighbourhood area, and
    - (b) at the time the proposal for the order is made more than half of the members of the organisation live in the neighbourhood area.
  - (2) Accordingly, the community organisation is in that case to be regarded as a qualifying body for the purposes of section 61E.
  - (3) Nothing in section 61F is to apply in relation to community right to build orders except subsections (12)(a) and (13)(d) of that section.
  - (4) In particular, the reference in section 61F(10) to a neighbourhood development order is not to include a reference to a community right to build order (in a case where a community organisation is also a neighbourhood forum).
  - (5) But a local planning authority may decline to consider a proposal for a community right to build order or other neighbourhood development order if—
    - (a) another proposal has been made for a community right to build order or other neighbourhood development order,
    - (b) the other proposal is outstanding, and
    - (c) the authority consider that the development and site to which the proposals relate are the same or substantially the same.
  - (6) If the authority decline to consider the proposal, they must notify the person making the proposal of that fact and of their reasons for declining to consider it.
  - (7) A proposal for a community right to build order must state that the proposal is for such an order.
- 5
- (1) A community organisation is to be regarded as a relevant body for the purposes of section 61G if—
    - (a) the area specified in the application made by the organisation consists of or includes the area mentioned in paragraph 3(1)(a), and
    - (b) at the time the application is made more than half of the members of the organisation live in the area specified in the application.

- (2) The application made by the community organisation may specify any area within the local planning authority's area, irrespective of whether or not any part of the specified area falls within the area of a parish council.
- (3) This paragraph applies only if the application by the community organisation under section 61G is made in connection with a proposal (or an anticipated proposal) for a community right to build order.

### **Development likely to have significant effects on environment etc**

- 6 (1) A local planning authority must decline to consider a proposal for a community right to build order if they consider that—
  - (a) the specified development falls within Annex 2 to the EIA directive and is likely to have significant effects on the environment by virtue of factors such as its nature, size or location, or
  - (b) the specified development is likely to have significant effects on a qualifying European site (whether alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of that site.
- (2) In determining whether or not the specified development is within sub-paragraph (1)(a), the authority must take into account any relevant criteria mentioned in Annex 3 to the EIA directive.
- (3) If the authority decline to consider the proposal as a result of sub-paragraph (1), they must notify the community organisation making the proposal of that fact and of their reasons for declining to consider it.
- (4) Regulations may make provision requiring the publication of any decisions made by a local planning authority under this paragraph.
- (5) In this paragraph—
  - “the EIA directive” means Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (as amended from time to time),
  - “qualifying European site” means—
    - (a) a European offshore marine site within the meaning of the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007, or
    - (b) a European site within the meaning of the Conservation of Habitats and Species Regulations 2010, and
  - “specified” means specified in the community right to build order.

### **Examination of proposals for community right to build orders etc**

- 7 The provisions of Schedule 4B have effect in relation to community right to build orders with the following modifications.
- 8 Any reference in that Schedule to section 61E(2) includes a reference to paragraph 2 of this Schedule.
- 9 Any reference in that Schedule to section 61F includes a reference to paragraph 4 of this Schedule.

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*Status: This is the original version (as it was originally enacted).*

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- 10 (1) The provision made by sub-paragraphs (2) to (5) of this paragraph is to have effect instead of paragraph 12(4) to (6) and (10) of that Schedule.
- (2) If the examiner’s report recommends that the draft order is refused, the authority must refuse the proposal.
- (3) If the examiner’s report recommends that the draft order is submitted to a referendum (with or without modifications), a referendum in accordance with paragraph 14 of that Schedule must be held on the making by the authority of a community right to build order.
- (4) The order on which the referendum is to be held is the order that the examiner’s report recommended be submitted to a referendum subject to such modifications (if any) as the authority consider appropriate.
- (5) The only modifications that the authority may make are—
- (a) modifications that the authority consider need to be made to secure that the order does not breach, and is otherwise compatible with, EU obligations,
  - (b) modifications that the authority consider need to be made to secure that the order is compatible with the Convention rights (within the meaning of the Human Rights Act 1998), and
  - (c) modifications for the purpose of correcting errors.
- (6) In consequence of the provision made by sub-paragraphs (2) to (5) of this paragraph—
- (a) paragraph 12(7) to (9) of Schedule 4B have effect as if the words “(or referendums are)” were omitted, and
  - (b) that Schedule has effect as if paragraph 15 (and references to that paragraph) were omitted.
- (7) Any reference in this Act or any other enactment to paragraph 12 of Schedule 4B includes a reference to that paragraph as modified in accordance with this paragraph.

### **Use of land**

- 11 (1) Regulations may make provision for securing that in prescribed circumstances—
- (a) an enfranchisement right is not exercisable in relation to land the development of which is authorised by a community right to build order, or
  - (b) the exercise of an enfranchisement right in relation to that land is subject to modifications provided for by the regulations.
- (2) Each of the following is an “enfranchisement right”—
- (a) the right under Part 1 of the Leasehold Reform Act 1967 to acquire the freehold of a house (enfranchisement),
  - (b) the right under Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (collective enfranchisement in case of tenants of flats), and
  - (c) the right under section 180 of the Housing and Regeneration Act 2008 (right to acquire social housing).
- (3) The regulations may—
- (a) confer discretionary powers on the Secretary of State, a community organisation or any other specified person, and

- (b) require notice to be given in any case where, as a result of the regulations, an enfranchisement right is not exercisable or is exercisable subject to modifications.

**Different provision made by regulations for community right to build orders**

- 12 (1) The provision that may be made by regulations under any provision of this Act relating to neighbourhood development orders includes different provision in relation to community right to build orders.
- (2) Sub-paragraph (1) is not to be read as limiting in any way the generality of section 333(2A) (which provides that regulations may make different provision for different purposes)."