

A Guide for Councils: Meeting your authority's legal requirements for Community Right to Build Orders

Introduction

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 which are a particular type of neighbourhood development order and to take orders through a process of examination and referendum. 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 community right to build order
- Checking a submitted order meets the legal requirements
- Arranging for the independent examination of the order
- Determining whether the community right to build order meets the basic conditions and other legal requirements
- Subject to the results of the referendum bringing the order into force

In addition legislation sets out who the relevant councils are with responsibility for arranging the referendum/s.

1990 Act Schedule 4B para 3 states:

“A local planning authority must give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for NDOs in relation to neighbourhood areas within their area”. This applies to NDO's through S61E-Q of the Town and Country Planning Act 1990. There is no requirement to give financial assistance. As a type of NDO the CRTBO falls within this requirement.

This guide sets out the legal responsibilities and timeframes for the Council's work on CRTBO's. It provides references back to the relevant acts and regulations. For further information on Neighbourhood Planning and process refer to the online Planning Policy Guidance at <http://planningguidance.planningportal.gov.uk>.

Notes on this guide

Text that appears in italics is for information rather than requiring action by the Council.

Throughout the text below the term 'community organisation' also applies to 'town or parish council'.

*Throughout the text below unless stated otherwise the term 'publicise' means to place on the website and publicise through other means in order to bring it to the attention of people who live, work or carry out business in the neighbourhood area.

'Convention rights' has the same meaning as the Human Rights Act 1998.

Unless otherwise stated the regulation references are to the Neighbourhood Planning (General) Regulations 2012.

Abbreviations used in this checklist

LPA Local Planning Authority

CRTBO Community Right to Build Order

Designation of a Neighbourhood Area for CRTBO purposes

Stage	Description	Relevant legislation and regulations
Definition of a neighbourhood area	<p><i>An area subject to a proposal (or anticipated proposal) for a CRTBO that consists of or includes the area for which the community organisation was set up, and at the time of application more than half of the members of the organisation live in the area specified. The neighbourhood area is designated by the LPA.</i></p> <p><i>The application made by the community organisation may specify any area</i></p>	<p>1990 Act 61G (1) (2)</p> <p>Schedule 4C (5)</p>

	<i>within the LPA area whether or not any part of the specified area falls within the area of a parish council.</i>	
Information on receipt of area application for a CRTBO	<p>The information that should be submitted to the LPA is:</p> <ol style="list-style-type: none"> 1. A map identifying the area 2. Statement explaining why it is considered an appropriate neighbourhood area 3. Statement that the organisation making the application is a relevant body. <p>If the application does not contain this information it should be returned.</p> <p><i>NB the LPA can decline to consider an area application if the body has already made an area application and is awaiting a decision upon it subject to the provision in 'Body Proposing a CRTBO' below.</i></p>	Regulation 5 1990 Act 61G (2) b.
Determining the application criteria for a neighbourhood area	<p>In determining the application, the LPA must consider:</p> <ol style="list-style-type: none"> 1. how desirable it is to designate the whole of the parish area as a neighbourhood area, and 2. how desirable it is to maintain the existing boundaries of areas already designated as neighbourhood areas (as areas designated as neighbourhood areas must not overlap) 	1990 Act 61G (4) (7) 61H (1)
Publicising the application for the area CRTBO	<p>The LPA should, as soon as possible after receipt of the application for area designation, publicise* the application (on its website and in such other manner as they consider is likely to bring the area application to the attention of people who live, work or carry on business in the area to which the application relates) and invite representations. The information to be publicised is:</p> <ol style="list-style-type: none"> 1. a copy of the area application 	Regulation 6 and 6A

	<ol style="list-style-type: none"> 2. details of how to make representations 3. details of the deadline for representations to be not less than 4 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council and not less than 6 weeks in all other cases. Timings start from the date on which the area application is first publicised. 	
Prescribed date for determination of an area application	<p>The LPA must determine the application within the following timescales from the day immediately after that on which the application is first publicised:</p> <ol style="list-style-type: none"> (a) 20 weeks in a case where the area to which the application relates falls within the areas of two or more local planning authorities; (b) 8 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council; (c) 13 weeks in all other cases. 	Regulation 6A
Modification of an existing neighbourhood area	The LPA can modify the boundary of an existing neighbourhood area	1990 Act 61G (6)
Publicising a designation of a neighbourhood area	<p>If the LPA approves the application it should publicise* its decision and:</p> <ol style="list-style-type: none"> 1. the name of the neighbourhood area 2. a map identifying the area 3. the name of the community organisation who applied for the designation. <p><i>Refusals should be based on planning reasons or the validity of the application.</i></p>	Regulation 7
Refusal of a proposal for a	If the LPA refuses the application for a neighbourhood area then it must	Regulation 7

neighbourhood area	publicise on its website* : <ol style="list-style-type: none"> 1. the decision and statement of reasons for making decision (called a 'decision document') 2. the details of where and when the decision document can be inspected 	1990 Act 61G (9)
Refusal of a proposal for a neighbourhood area because the area is not considered appropriate	If a valid application is made, and some or all of the specified area proposed is not designated as a neighbourhood area and the refusal is because the LPA considers the area isn't suitable, then the LPA must ensure that some or all of the area specified in the original application forms part of one or more areas designated or to be designated as neighbourhood areas.	1990 Act 61G (5)
Designation of cross local authority boundary neighbourhood areas	The powers of designation and modification must be exercised by all the relevant authorities when the area proposed crosses local authority boundaries.	1990 Act 61I
Keeping a map of neighbourhood areas	The LPA must publish a map setting out the current neighbourhood areas designated, and indicate those which are business areas.	1990 Act 61G (8) 61H
Set up of a 'community organisation'		
Definition of a Community Organisation	<i>Town and Parish Councils can be a community organisation for the purpose of a CRTBO. However, for other organisations including Neighbourhood Forums to qualify additional conditions apply, noted below.</i>	1990 Act Schedule 4C (3)

	<p><i>A community organisation is a body corporate (i.e. a legal entity) e.g. a company limited by guarantee with charitable status or a registered charity and meet the conditions below:</i></p> <ol style="list-style-type: none"> <i>1. 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</i> <i>2. Individuals who live or work in the particular area must be entitled to become voting members of the community organisation (whether or not others can also become voting members).</i> <i>3. The constitution must:</i> <ol style="list-style-type: none"> <i>a. give the individuals who live in the area collectively, majority voting rights and the majority on the board of directors or governing body of the community organisation,</i> <i>b. include a statement that the community organisation will undertake its activities for the benefit of the community in the particular area or a section of it and explain how its activities will do so,</i> <i>c. ensure that the assets of the community organisation cannot be disposed of, improved or developed except for the benefit of the community in the particular area or section of it,</i> <i>d. ensure that profits can only be used to benefit the community in the particular area or a section of it (this does not mean that payment of profits to members or directors are considered to be a community benefit),</i> <i>e. ensure that in the event of winding up or other circumstances where the organisation ceases to exist its assets are transferred to another body which has a similar objective, and</i> 	<p>Regulation 13</p> <p>1990 Act 61E (1)</p>
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	<i>f. ensure that the organisation has at least 10 members living in different dwellings to each other in the particular area.</i>	
Body proposing a CRTBO	<p>A 'qualifying body' is a parish council or a community organisation (which can also be a Neighbourhood Forum subject to meeting the conditions set out above).</p> <p>A community organisation can make a proposal in relation to the neighbourhood area whether or not it falls within a parish council area if at the time of the proposal more than half of the members of the organisation live in the neighbourhood area.</p> <p>If a community organisation is also a Neighbourhood Forum it can put forward a proposal for a CRTBO whether or not it has another proposal outstanding.</p>	<p>1990 Act Schedule 4C 4 (1) and 5 (1)</p> <p>4C4 (4)</p>
<p>The process of producing a Community Right to Build Order</p> <p>NB the community organisation will produce the proposals but this should be supported by the Council in its role to advise and assist.</p>		
Definition and scope of a CRTBO	<p>A particular type of neighbourhood development order which:</p> <ol style="list-style-type: none"> 1. is a result of a community organisation proposal, 2. grants planning permission for specified development on a specified site in a specified neighbourhood area, all of which are specified by the order, and 3. the development specified in the CRTBO doesn't exceed prescribed 	<p>1990 Act Schedule 4C para 2.</p>

	<p><i>limits (that regulations may prescribe by reference to the area to be developed, the number or type of operations or uses of land and any other factor).</i></p> <p><i>A CRTBO can remove the ability of a lessee to exercise their rights to acquire the freehold of a house, the freehold of flats and the right to acquire social housing – effectively ensuring that the development continues to be rented. (These are known as enfranchisement rights).</i></p> <p><i>This can only apply to property that is not an existing residential property so does not remove the rights of existing residential occupiers. It can only occur if the community organisation has specified in the proposal the rights which are not exercisable and the properties or types of properties to which this applies.</i></p>	<p>1990 Act Schedule 4C para 11 (2) Regulation 28</p>
<p>The type of permission CRTBO can grant <i>NB – see note below re permissions that cannot be granted</i></p>	<ol style="list-style-type: none"> 1. <i>Unconditional</i> 2. <i>Subject to conditions or limitations specified in the order which can include:</i> <ul style="list-style-type: none"> ○ <i>Obtaining the approval of the LPA</i> ○ <i>Specifying the period within which the application may be made to the LPA for approval of any matter specified in the order</i> ○ <i>Specifying the period within which the development must begin.</i> 	<p>1990 Act 61L (1) (5)</p> <p>61L (2)</p> <p>1990 Act 61L (5)</p>
<p>Permissions a CRTBO cannot grant</p>	<ol style="list-style-type: none"> 1. <i>Grant of permission of excluded development (see definition below)</i> 2. <i>Grant of permission for any development in any case where planning permission is already granted</i> 3. <i>Permission on land in more than one neighbourhood area</i> 	<p>1990 Act 61J and Schedule 1</p> <p>Schedule 1 of the</p>

	<p>4. <i>Permission which would be contrary to the EIA Regulations see 'Screening for EIA Regulations' below</i></p> <p>5. <i>Permission which would be likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site.</i></p>	<p>Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended).</p> <p>Regulation 78A Conservation Habitats and Species Regulations 2010 as amended by Schedule 2 of the Neighbourhood Planning (General) Regulations 2012</p>
<p>Definition of 'excluded development'</p>	<p>a) <i>Is a 'county matter' (schedule 1 of 1990 ACT) i.e. relating to minerals</i></p> <p>b) <i>Any operation or class of operation relating to waste development</i></p> <p>c) <i>Development that falls within Annex 1 to Council Directive 85/337/EEC i.e. Oil refineries, power stations, radioactive waste disposal, iron and steel smelting, asbestos operations, chemical installations, motorways, airports, ports and toxic and dangerous waste disposal.</i></p> <p>d) <i>Development consisting wholly or partly of a national infrastructure project</i></p>	<p>1990 Act 61K and Schedule 1</p> <p>Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended)</p>

Pre submission consultation and publicity by the community organisation of the proposed

Community Right to Build Order		
Consultation by the community organisation	<p><i>Before submission to the LPA the community organisation should:</i></p> <ol style="list-style-type: none"> <i>1. publicise (but this does not have to be on a web site) in a way that is likely to bring to the attention of people who live work or carry on business in the area details of :</i> <ol style="list-style-type: none"> <i>a. the proposals,</i> <i>b. when and where they can be inspected,</i> <i>c. how to make representations, and</i> <i>d. the deadline for making representations – not less than 6 weeks from first publicised</i> <i>2. consult any consultation body listed in Note 1 below whose interests they consider may be affected by the proposals for a CRTBO.</i> <i>3. send a copy of the CRTBO to the LPA.</i> 	<p>1990 Act Schedule 4B 1 (2)</p> <p>Regulation 21 and Schedule 1</p>
Receipt of a CRTBO proposal by the LPA		
CRTBO proposals	<p>The proposal must include:</p> <ol style="list-style-type: none"> 1. A statement that it is a CRTBO 2. A map identifying the land to which the proposal relates 3. A consultation statement which contains details of those consulted, how they were consulted, summarises the main issues and concerns raised and how these have been considered, and where relevant addressed in the proposed CRTBO 4. The proposed CRTBO and a statement containing a summary of 	<p>Regulation 22 1990 Act Schedule 4C 4(7)</p> <p>1990 Act Schedule 4B 1 (2)</p>

	<p>the proposals and explaining why an order should be made.</p> <ol style="list-style-type: none"> 5. Where the qualifying body considers appropriate, following consultation with English Heritage, an archaeology statement 6. A statement explaining how the CRTBO meets the basic conditions in the 1990 Act see Note 2. 7. Where it is Schedule 2 development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 an environmental statement 8. An environmental statement under the EIA Regs 2010 as amended. <p><i>refer also 'screening of CRTBO proposals under EIA Regulations'</i></p>	<p>4B 8 (2)</p> <p>Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended)</p> <p>The Conservation of Habitats and Species Regulations 2010 as amended by Schedule 2 of the Neighbourhood Planning (General Regulations) 2012. i.e. Regs 102 and 102A</p>
<p>The LPA's assessment of the proposed CRTBO</p>		
<p>Reasons for a LPA declining to consider the proposal for the CRTBO</p>	<p>The LPA can decline to consider a proposal if it is a repeat. To qualify as a repeat proposal:</p> <ol style="list-style-type: none"> 1. the authority has refused the same or similar proposal within the 	<p>1990 Act Schedule 4B</p>

	their reasons for declining to consider it.	4 (6) & 6 (3)
Criteria that the LPA must consider when assessing a community right to build order	<p>The LPA must consider:</p> <ol style="list-style-type: none"> 1. whether the community organisation is authorised to act (see 'definition of a community organisation' and 'Body Proposing a CRTBO'), 2. whether the proposal and accompanying documents <ol style="list-style-type: none"> a. comply with the rules for submission to the LPA (see 'receipt of a CRTBO proposal by the LPA'), and b. meets the 'definition and scope of a CRTBO' and c. the 'type of permission a CRTBO can grant' 3. whether the community organisation has undertaken the correct procedures in relation to consultation and publicity (see 'pre submission consultation and publicity by the community organisation of the proposed CRTBO') 	<p>1990 Act Schedule 4B Para 5 & 6 ,</p> <p>section 61F, 61E(2) 61J and 61L and Schedule 4C as it applies to 4B</p>
LPA decision grounds for refusal	The LPA must inform the qualifying body of whether it considers the proposal has complied with the legislation and if any of the matters above do not apply and where not satisfied, refuse the proposal and explain why.	<p>1990 Act Schedule 4B</p> <p>Para 5 and 6 (4) (a) (b)</p>
Publicising the CRTBO proposal	<p>As soon as possible after receipt of the draft order the LPA must publicise*</p> <ol style="list-style-type: none"> 1. the details of the order proposal, 2. where and when it can be inspected, 3. how to make representations on the order proposal, 4. that a representation can include a request to be notified of the LPA decision in relation to the CRTBO, and 	Regulation 23

	<p>5. the deadline for receipt of the representations (this must be not less than 6 weeks from the first day the proposed plan is publicised).</p> <p>For an order proposal to which Reg 29A of the EIA regulations apply the LPA must also publicise the environmental statement as well as using a site notice for not less than 21 days and publicity in a local newspaper with appropriate circulation for the site. (<i>refer also 'screening of CRTBO proposals under EIA Regulations'</i>)</p> <p>The LPA must also notify any body in the consultation statement that the order proposal has been received.</p>	
Appointment of examiner	<p>The LPA must consider whether the submitted draft community right to build order meets the requirements set out in the 1990 Act and notify the qualifying body as to whether or not they are satisfied (see above). Once satisfied the LPA may appoint an independent inspector with the consent of the community organisation submitting the proposal. (If there is no agreement the Secretary of State can appoint).</p> <p><i>N.B The Council is responsible for paying the costs of the examination so it is in the Council's interests to ensure that the proposal meets the requirements.</i></p>	1990 Act Schedule 4B para 6 & 7
LPA submits order for examination		
LPA submits order for examination	After appointment of the examiner, the LPA submits the following for independent examination as soon as possible:	1990 Act Schedule 4B (7)

	<ol style="list-style-type: none"> 1. A map identifying the land to which the proposal relates 2. The consultation statement 3. The proposed CRTBO 4. A statement containing a summary of the proposals and reasons why an order should be made in the proposed terms 5. Where the community organisation considers appropriate, following consultation with English Heritage, an archaeology statement 6. A statement explaining how the NDO meets the basic conditions in the 1990 Act see Note 2. 7. Details of any restriction on the ability of the lessee to exercise their rights, and the properties, or types of properties, in relation to which, the qualifying body proposes that right is not exercisable. (refer to 'Definition and scope of a CRTBO' above with respect to enfranchisement rights) 8. An environmental statement if it applies 9. The information required to make a Habitats Regulation Assessment 10. Any other document submitted to the LPA by the qualifying body in relation to the draft order 11. A copy of any representations received in response to the draft order 	Regulations 22 and 24
Examination of CRTBO		
The LPAs role in examination	The LPA makes the arrangements they consider appropriate to holding the examination.	1990 Act para 7 (3) Schedule 4B

<p>The examiners role</p>	<p>The examiner must only consider:</p> <ol style="list-style-type: none"> 1. whether the draft CRTBO meets the basic conditions (see Note 2) which include the impact on European sites, 2. whether the draft CRTBO complies with the definition of a CRTBO and the provisions that can be made by a CRTBO and permissions that can be granted 3. whether any period for applications to be made or development to begin are appropriate 4. whether the area for referendum should extend beyond the neighbourhood area, and 4. whether the draft order is compatible with the Convention rights. 	<p>1990 Act para 8 Schedule 4B,</p> <p>61 E (2), 61J and 61L (2) (b) or (5) as appropriate</p>
<p>A suitable examiner</p>	<p>The LPA must be satisfied that the examiner is:</p> <ol style="list-style-type: none"> 1. independent of the community organisation, 2. has no interest in any land that may be affected by the draft order, and 3. has appropriate qualifications and experience. <p>The examiner can be the employee of another local authority or the secretary of state and undertake the work for payment.</p>	<p>1990 Act para 7 Schedule 4B (6) (7)</p>
<p>The form and conduct of the examination</p>	<p>As a general rule examination is by written representations. However, oral representations must be heard, in public, if the examiner considers they are needed to ensure adequate examination of an issue or for a person to have a fair chance to put a case.</p> <p>If there are oral representations then the following people can speak:</p> <ul style="list-style-type: none"> • The community organisation 	<p>1990 Act para 9 Schedule 4B</p>

	<ul style="list-style-type: none"> • <i>The local planning authority</i> • <i>Where the hearing is held to give a person a fair chance to put their case, that person.</i> <p><i>The examiner decides on the conduct of the hearing including:</i></p> <ul style="list-style-type: none"> • <i>Whether the speaker may be questioned and the matters that they can be questioned upon</i> • <i>The amount of time given to a person to speak and for questioning.</i> <p><i>The examiner should undertake the questioning unless s/he considers that questioning by another person is necessary to ensure adequate examination of an issue or for a person to have a fair chance to put a case.</i></p>	(5)
<p>The examiners report on a CRTBO</p>		
<p><i>The contents of the examiners report</i></p>	<p><i>The examiner must make a report with recommendations, the reasons for them and a summary of findings, only as follows:</i></p> <ol style="list-style-type: none"> <i>the report must recommend either:</i> <ol style="list-style-type: none"> <i>the draft order is submitted to referendum,</i> <i>modifications specified in the examiners report are made and the draft order as modified is submitted to referendum, or</i> <i>the proposal for the order is refused.</i> <i>Modifications can only be those that the examiner thinks are needed to:</i> <ol style="list-style-type: none"> <i>make the order conform to the basic conditions (Note 2)</i> <i>make the order compatible with the Convention rights</i> 	<p>1990 Act para 10 Schedule 4B</p> <p>1990 Act para 8 Schedule 4B, 61E (2) 61J and 61L</p> <p>para 10(3) (d)</p>

	<p>c. make the order comply with definition of a CRTBO and the provisions that can be made by a CRTBO</p> <p>d. alter timescales in relation to periods for receipt of applications and start dates for development</p> <p>e. to correct errors.</p>	
Recommendation to go to referendum	<p><i>The examiner cannot recommend the order goes to referendum if it does not meet the basic conditions or comply with the definition of a CRTBO or the provisions that can be made by a CRTBO, or the EIA Regulations. Refer also 'screening of CRTBO proposals under EIA Regulations'.</i></p> <p><i>If a recommendation to go to a referendum is made it must be accompanied by a recommendation as to whether the area for the referendum should go beyond the neighbourhood area, and if so what the extended area should be.</i></p>	<p>1990 Act Schedule 4B 61E (2) 61J and 61L</p> <p>1990 Act para 10 (5)</p>
Parties issued with the examiners report	The LPA, and community organisation is sent a copy of the examiners report. The LPA is responsible for arranging the publication of the report as soon as possible.	1990 Act para 10 (7 & 8) Schedule 4B
LPA consideration of examiners recommendations on CRTBO		
Consideration of examiners recommendations	The LPA must consider each of the examiners recommendations and the reasons for them and decide what action to take in response to each.	1990 Act schedule 4B para 6 para 12 (2),
Action the LPA can take	Once the LPA has considered each of the examiners recommendations	

<p>following consideration of the examiners recommendations</p>	<p>and determined its response it</p> <ol style="list-style-type: none"> 1. Must refuse the draft order if the examiners report recommends this 2. Must hold a referendum on the making of the CRTBO if the examiners report recommends this <p>Can make modifications:</p> <ol style="list-style-type: none"> 1. The authority consider need to be made to secure that the order doesn't breach, and is otherwise compatible with, EU obligations, 2. That the authority consider need to be made to secure that the order is compatible with the Convention rights, and 3. For the purpose of correcting errors. <p>Can extend the area to which the referendum is to take place based on the examiners recommendation. If the authority decides to extend the area for referendum it must publish a map for that area.</p>	<p>1990 Act Schedule 4C 10 (2) (3)</p> <p>(4) & (5) 1990 Act schedule 4B para 12 and 4C para 6 Regulation 25</p> <p>4B para 12 (8) (9) and 4C para 6</p>
<p>When the LPA proposes to make a decision that differs from the examiners recommendation</p>	<p>...and the reason for the difference is wholly or partly as a result of new evidence or a new fact or a different view taken by the LPA about a particular fact the LPA:</p> <ol style="list-style-type: none"> 1. notifies all those identified on the consultation statement of the community organisation and invites representations 2. may refer the issue to a further independent examination if they think it appropriate. <p>The LPA cannot make a decision that differs from the examiners' recommendations about the referendum area.</p>	<p>1990 Act schedule 4B para 13</p> <p>Para 13 (4)</p>
<p>Content of decision</p>	<p>If the LPA is satisfied then it publicises its decision (a decision statement)</p>	<p>1990 Act Schedule</p>

	and moves to a referendum – see ‘decision to take the order forward’	4C Para 10 & 4B Para 12 (11) Reg 25
Publication of the examiners report and the LPAs decision on CRTBO		
Decision to take the order forward	As soon as possible after considering the examiners recommendations and deciding to take forward a CRTBO the LPA must publish its decisions and reasons in a ‘decision statement’. Details of where and when the decision statement can be inspected and the examiners report are published. The LPA sends a copy to the community organisation and anyone who asked to be notified of the decision.	1990 Act schedule 4B para 12 (11 & 12) Regulation 25
Screening of CRTBO proposals under EIA Regulations		
CRTBO proposals falling within the scope of EIA Regulations	Where the development proposed by the CRTBO falls within the scope of the EIA Regulations a screening opinion has been adopted, or the SoS makes a screening direction, no referendum may be held on a CRTBO which would grant permission for schedule 2 (EIA Regulations) development likely to have significant effects on the environment by virtue of factors such as its nature, size or location unless: <ul style="list-style-type: none"> • An environmental statement has been prepared in relation to this development • The LPA are satisfied that the having regard to all material 	1990 Act Schedule 4C para 6. Regulation 29 of Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as

	<p>considerations it is appropriate that the CRTBO is made</p> <ul style="list-style-type: none"> The LPA has first considered the environmental information and states that they have done so in their decision 	<p>amended by the Neighbourhood Planning (General) Regulations 2012 Regulation 33</p>
<p>Referendum for a CRTBO</p>		
<p>Responsibility for the referendum</p>	<p><i>The relevant district, London Borough, metropolitan borough, district or county council (in relation to an area where there is no district) is responsible for making arrangements for the residential referendum to take place for the area where the referendum area and the councils' area coincide.</i></p> <p><i>There is only one referendum for CRTBO - a residential referendum.</i></p>	<p>1990 Act Schedule 4B para 14</p>
<p>What the Council has to do</p>	<p>At least 28 days (not including weekends, bank holidays, days of public thanksgiving) before the referendum the proper officer of the Council must ensure the information statement (see below) and specified documents (see below) are published on the website. These documents must also be made available during the referendum period (see below) for inspection at the main offices of the Council, and at least one other premise open to the public in the Councils control considered appropriate by the Council to achieve geographical distribution.</p> <p>The information statement and specified documents must remain available throughout the period of the referendum in the original form published as far as is reasonably practical.</p> <p><i>The Neighbourhood Planning (Referendums) (Amendment) Regulations</i></p>	<p>Regulation 17 of the Neighbourhood Planning (Referendums) Regulations 2012</p> <p>Reg 4 the Neighbourhood Planning (Referendums) Regulations 2012, The Neighbourhood Planning (Referendums)</p>

	<p><i>20014 contain template forms for residential neighbourhood planning referendums when held alone or combined with other polls.</i></p>	<p>(Amendment) Regulations 2013, The Neighbourhood Planning (Referendums) (Amendment) Regulations 2014;</p>
<p>The information statement</p>	<p>The information statement prepared by the Council must include the following information:</p> <ul style="list-style-type: none"> a. that a referendum will be held b. the date of the referendum c. the question to be asked (the question is set out in legislation – see note below) d. a map of the referendum area e. where the referendum area and neighbourhood area are not identical a map of the neighbourhood area f. a description of those entitled to vote in each referendum g. the referendum expenses limit applicable and the number of people identified as entitled to vote on which the limit was calculated h. that the referendum will be conducted in accordance with procedures similar to those for local government elections, and i. the address and times at which a copy of the specified documents can be inspected. <p>Schedule 1 of the Regulations sets out the referendum questions. The question for a CRTBO is: Do you want development in the community right to build order for (insert name of neighbourhood area) to have planning permission?</p>	<p>Regulation 4 the Neighbourhood Planning (Referendums) Regulations 2012</p> <p>The Neighbourhood Planning (Referendums) Regulations 2012 Schedule 1</p>

<p>The ‘specified documents’</p>	<p>The specified documents to be published by the Council on the website (made available for inspection) are:</p> <ol style="list-style-type: none"> a. Draft CRTBO b. Examiners report c. Summary of representations submitted to examiner d. A statement that the independent examiner has recommended that the draft order is submitted to a referendum e. A statement that sets out general information as to town and country planning (and neighbourhood planning) and the referendum (prepared having regard to any guidance issued by SoS) f. A statement that sets out details of any restriction on the ability of the lessee to exercise their rights, and the properties, or types of properties, in relation to which, the qualifying body proposes that right is not exercisable. (refer to ‘Definition and scope of a CRTBO with respect to enfranchisement rights) 	<p>Regulation 4 (3) the Neighbourhood Planning (Referendums) Regulations 2012</p> <p>1990 Act Para 8 Schedule 4B and 61E(2), 61J and 61L</p>
<p>Qualifying to vote in a residential referendum</p>	<p><i>Anyone on the prescribed date can vote in a residential referendum if they:</i></p> <ol style="list-style-type: none"> a. <i>are entitled to vote in an election of any ward councillor of the relevant council whose ward is in the referendum area and whose qualifying address for the election is in the referendum area.</i> b. <i>In the case of the City of London the person can vote if they are entitled to vote in an Authority election and the persons qualifying address is in the City of London.</i> 	<p>1990 Act Schedule 4B para 14 (4- 7)</p>
<p>Referendum not arranged by the Council</p>	<p>When a relevant Council is not the LPA the relevant Council and LPA must co-operate in the holding of referendum as follows:</p>	<p>Regulation 16 the Neighbourhood</p>

	<ol style="list-style-type: none"> 1. The proper officer of the LPA must inform the proper officer of the Council as soon as they know a referendum is required, provide summary of written representations and information and copies of documents held by the LPA which the proper officer of the relevant Council requires to comply with 'what the Council has to do' namely the 'information statement' and the 'specified documents'. 2. Both must respond to each other as soon as possible in relation to requests for information relating to the holding of the referendum. 3. The proper officer of the relevant Council must as soon as possible inform the proper officer of the LPA of the results of the referendum. 	Planning (Referendums) Regulations 2012
Following the referendum on a CRTBO		
Referendum results	If a referendum results in more than half those voting (i.e. 50% plus 1), voting in favour of the order the LPA must make the CRTBO as soon as reasonably practical unless: it considers that this would breach, or be incompatible with any EU obligation or any of the Convention Rights.	1990 Act 61E (4) and (8)
Publication of the decision on the CRTBO by the LPA	If a referendum is held and there is a vote in favour (50% plus 1) the LPA must publicise their decision and reasons for the decision – called a 'decision document', and details of where and when it can be inspected. They should send a copy to: <ul style="list-style-type: none"> • The community organisation as relevant • Any person who asked to be notified of the decision 	1990 Act 61E (11) (12) Regulation 26
Publicising the CRTBO	As soon as possible the LPA should publish the order, details of when and	1990 Act 61E (13)

	where it can be inspected and notify any person who has asked to be notified that it has been made and where and when it may be inspected.	Regulation 27
Revocation of a CRTBO	<p>The SoS may revoke a CRTBO or a LPA may revoke with permission of SoS. Reasons must accompany revocation. As soon as possible after revoking the CRTBO the LPA must publish 'the revocation document' which sets out a statement of the revocation and the reasons for it, details of where and when it can be inspected.</p> <p>It also informs the community organisation and any person the authority previously notified in relation to the making of the order together with any person it considers necessary to bring the revocation to the attention of who live, work or carry out business in the area. In addition the owner or tenant of any part of the land to which the order applies.</p> <p>It removes the order from its website and any other place it was available for inspection.</p>	<p>1990 Act 61M</p> <p>Regulation 31</p>
Modification of a CRTBO	<p>LPA may modify an NDO to correct errors by replacing it with a new one that contains the modification but only with the permission of the qualifying body if it is still in place.</p> <p>As soon as possible after modifying the LPA publishes 'the modification document' which sets out the details of the modification, and details of where and when it can be inspected. It also informs the community organisation and any person the authority previously notified in relation to the making of the order.</p>	<p>1990 Act 61M (4) (5) (6)</p> <p>Regulation 30</p>

Legal challenge to CRTBO

<p>Reasons for legal challenge to CRTBO</p>	<p><i>A legal challenge can be made in relation to:</i></p> <p><i>1. a LPA declining to make a CRTBO if an applicable referendum resulted in over half of those voting (50% plus 1) in favour, as soon as reasonably practical. The LPA is not to be subject to the duty if they consider that the making of the plan would breach, or otherwise be incompatible with any EU obligation or any of the Convention rights within the meaning of the Human Rights Act 1998.</i></p> <p><i>only if proceedings are brought by a claim for Judicial Review within 6 weeks of the day on which the decision is published.</i></p> <p><i>2. The consideration of inspectors recommendations and decisions made upon them</i></p> <p><i>only if proceedings are brought by a claim for Judicial Review within 6 weeks of the day on which the decision is published.</i></p> <p><i>3. The conduct of the referendum</i></p> <p><i>Only if the proceedings are bought by a claim for judicial review and this is filed within 6 weeks beginning the day on which the results are published.</i></p>	<p>1990 Act Schedule 4B 61N (1)</p> <p>Schedule 4C(10)</p> <p>1990 Act Schedule 4B para 12 and 61N (2)</p> <p>1990 Act Schedule 4B para 14 or 15 61 N (3)</p>
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Note 1
Part 6 of The Neighbourhood Planning (General) Regulations 2012

Regulation 21 and Schedule 1 requires the following consultation:

Consultation bodies for the CRTBO

Schedule 1

2 (a)

- Any person to whom the electronic communications code applies, or who owns or controls electronic communications apparatus situated in any part of the area of the local planning authority
- Where they exist a Primary Care Trust, licensee under the Electricity Act 1989, Licensee of the Gas Act 1986, sewerage undertaker and water undertaker
- The parish council for the area or part of the area of the NDO
- Any parish council or Neighbourhood Forum for an area adjoining the area of the NDO
- For any development, English Heritage
- For development that falls within Schedule 5 to the Town and Country Planning (Development Management Procedure) (England) Order 2010 – the person mentioned in relation to that category in the order
- For development of or in the neighbourhood of a civil aerodrome or technical site, or involving construction of building or works extending above ground for 91.4 metres or more the Civil Aviation Authority and NATS Holdings Ltd
- For development forming the site of or in the neighbourhood of a military aerodrome, technical site or explosives storage area ; or the construction of any highway or formation, laying out or alteration of access to a highway, which is planned to run within 300 meters of the perimeter of a military aerodrome the Secretary of State for Defence
- For development which, in the opinion of the Parish Council or Neighbourhood Forum, is likely to affect a registered garden or park of special historic interest the Garden History Society
- For development in the area of a London borough council to which any Protected Vista Directions issued by the Secretary of State for Communities and Local Government in July 2010 apply the Mayor of London and, in relation to the protected vista of the Tower of London from outside City Hall on Queens Walk, the Historic Royal Palaces Trust
- For development described in article 26 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 affecting existing or proposed highways the Highways Agency

Note 2

Schedule 4C to the Town and Country Planning 1990 Act, as inserted by the Localism Act Section 116 is “Community Right to Build Orders” this modifies Schedule 4B “Process for making of Neighbourhood Development Orders “to apply to community right to build orders.

The basic conditions to be met by a draft CRTBO are set out in para 8 (2) – (6) of Schedule 4B. A draft order meets the basic conditions if:

1. It has regard to national policy and guidance from SoS
2. Doesn't damage a listed building or setting or any features of architectural or historic interest it possesses – if the order grants permission for development that affects the building or its setting
3. Doesn't damage character or appearance of a conservation area – if the order grants planning permission for development in relation to buildings or other land in the area
4. Contributes to sustainable development
5. General conformity with the strategic policy of the development plan for the area or any part of that area
6. Doesn't breach or is otherwise compatible with EU obligations – this includes the SEA Directive of 2001/42/EC
7. CRTBO may not grant planning permission for a development which is likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species regulations 2010 (d) or a European offshore marine site (as defined by the Offshore Marine Conservation (Natural Habitats & C) regulations 2007 9(e) (either alone or in combination with other plans or projects) and is not directly connected with or necessary for the management of the site
8. Where development in the proposal is EIA development, having regard to all material considerations it is appropriate that the CRTBO is made (Schedule 3 of The Neighbourhood Planning (General) Regulations 2012 Reg 33).

Complies with provisions in Schedule 4B para 8 (2)

Schedule 4C Paragraph 2 – a definition of a CRTBO

61J – provisions for CRTBO

61L – permission granted by a CRTBO

8 (1) (c) – appropriateness of the periods specified

8 (1) (d) - whether the referendum area should extend beyond the neighbourhood area.

References

The Acts

For CRTBO – look at the provisions for the CRTBO (Schedule 9 of the Localism Act 2011 which amends the 1990 Town and Country Planning Act by inserting Sections 61E-P,) but this is modified as it applies to CRTBO by Schedule 4C, also Schedule 12 consequential amendments to the 1990 Act and 2004 Act.

Regulations

Regulations that apply to CRTBO are found in the Town and Country Planning Neighbourhood Planning (General) Regulations 2012; The Neighbourhood Planning (Referendums) Regulations 2012; The Neighbourhood Planning (Prescribed Dates) Regulations 2012; The Neighbourhood Planning (Referendums) (Amendment) Regulations 2013; The Neighbourhood Planning (Referendums) (Amendment) Regulations 2014; The Neighbourhood Planning (General) (Amendment) Regulations 2015; Re: Conservation Habitats and Species Regulations 2010; The Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The Town and Country Planning (Development Management Procedure) Order 2010, as amended.