

5. Options for shaping your LDO

An LDO should make the planning process more streamlined and straightforward (i.e. fewer pre- start conditions) than the conventional route to getting a planning permission. It can work to encourage development to come forward on sites that have not responded to the usual tools (plan allocations, development briefs, masterplans or AAPs) only if the council is prepared to

- put in up- front investment in understanding the site as discussed in the last section and
- create a simpler, more assured path to a “shovel ready” permission.

The form of the LDO; the development granted permission, use of simple conditions that do not constrain future development and clear procedural guidance should all be considered in the light of helping developers navigate this alternative route to delivery.

There are bound to be tensions between ensuring the LDO is permissive and flexible to encourage development but with sufficient process of review built in to reassure members and the community that development quality will not be compromised. Where the balance point comes will depend on local circumstances; too much caution and the LDO will not be worthwhile, too little process and design quality and community acceptance may be compromised.

5.1 Description of development

The LDO is required to set out the development for which permission will be granted. Most of the pilot LDOs have used this opportunity to specify the development along with reference to the constraints e.g.

“The Local Development Orders will grant planning permission for assisted living bungalows for the benefit for elderly people with specialist care needs, people with complex physical disabilities and people with autism. Assisted living bungalow development will only be allowed by the Local Development Orders upon development proposals demonstrating compliance with the LDO’s design framework and Conditions.”

Or:

“Within the boundaries of the plan in Schedule 1, this draft LDO will permit planning permission exclusively for land use, buildings and ancillary facilities; and associated development in the following use classes: (as set out) Provided that the requirements and conditions identified in Tables 1 and 2 of Schedules 3 (prior information and requirements) and 4 (conditions) are satisfied”

The legislation is not prescriptive in relation the way development is described or how restrictions are expressed. This accentuates the flexibility of the LDO to respond to what the council wants to achieve and the particular circumstances of the development site.

5.2 Lifetime of the LDO

LDOs can be permanent or can be for a designated time period, following which there may be either a review or the LDO ceases to exist. It is good practice to set this out within the LDO. It is also helpful to explain the consequences of this on development that may have commenced but not completed within

the period during which the LDO exists. This is especially helpful where there is some kind of prior approval stage required in order for development to come forward under the LDO.

5.3 Conditions

An LPA can impose planning conditions on development permitted through an LDO in much the same way as the Secretary of State can impose conditions on permitted development rights in the General Permitted Development Order. The conditions are likely to be the same conditions normally used in a planning permission, and as such should be capable of passing the six tests (NPPF para 206).

Some conditions will set the parameters for acceptable development. This may include conditions that set out time limits for completion or commencement of the development. They might also cover maximum heights in relation to other buildings or slab levels in relation to flood mitigation measures. Similarly such conditions can relate to the future use of the buildings, such as occupancy conditions.

Equally, some conditions may set out the process by which details of the development are to be considered, e.g. submission of details either pre-commencement or prior to some other key milestone.

5.4 Developer contributions

The PPG on LDOs (para [084](#)) specifies that section 106 obligations cannot be required under an LDO, but goes to state that it is possible for a section 106 agreement to be offered by a developer in order to satisfy a condition requiring mitigation of an impact. The guidance quotes an example of a condition attached to a LDO requiring mitigation of an impact from development in which case a section 106 agreement could be used to secure this.

As with the normal planning application process, a contribution of money or other considerations can't be required when granting permission (PPG para [005](#)).

Para 084 of the guidance is not therefore a prohibition on s106 agreements for LDOs. Reading beyond the first sentence, it leaves the door open for the effects of a development (including increased need for infrastructure provision) to justify a condition preventing development until a specified action has been taken i.e. entering a planning obligation for a contribution towards the provision of supporting infrastructure. This is commonly referred to as a negatively worded condition and would accord with that envisaged in PPG paras 005 and [010](#).

Development carried out under an LDO will be liable to pay a charge under the community infrastructure levy (CIL) if a charging schedule has been adopted by the LPA. In some of the pilots, the CIL rates are set out in the LDO documentation alongside the requirements for developer contributions to mitigate the impacts of the development (both site specific such as access to the highway and sewage and drainage improvements etc. and contributions to non CIL infrastructure).

The clearer and more certain the requirement for such contributions in the LDO, the more certainty a future developer will have as to the development costs. If the viability information obtained to inform the LDO is sufficient, it should be possible to give a clear indication of what the level of developer contribution will be, although it may be considered useful to have a review period during the life of the LDO in order for the changes in circumstances to be taken into account. Providing greater clarity as to these policy costs will also help to ensure that for "enabling LDOs" the price of land will more accurately reflect the real cost of bringing development forward.

5.5 Prior approval or other forms of certification

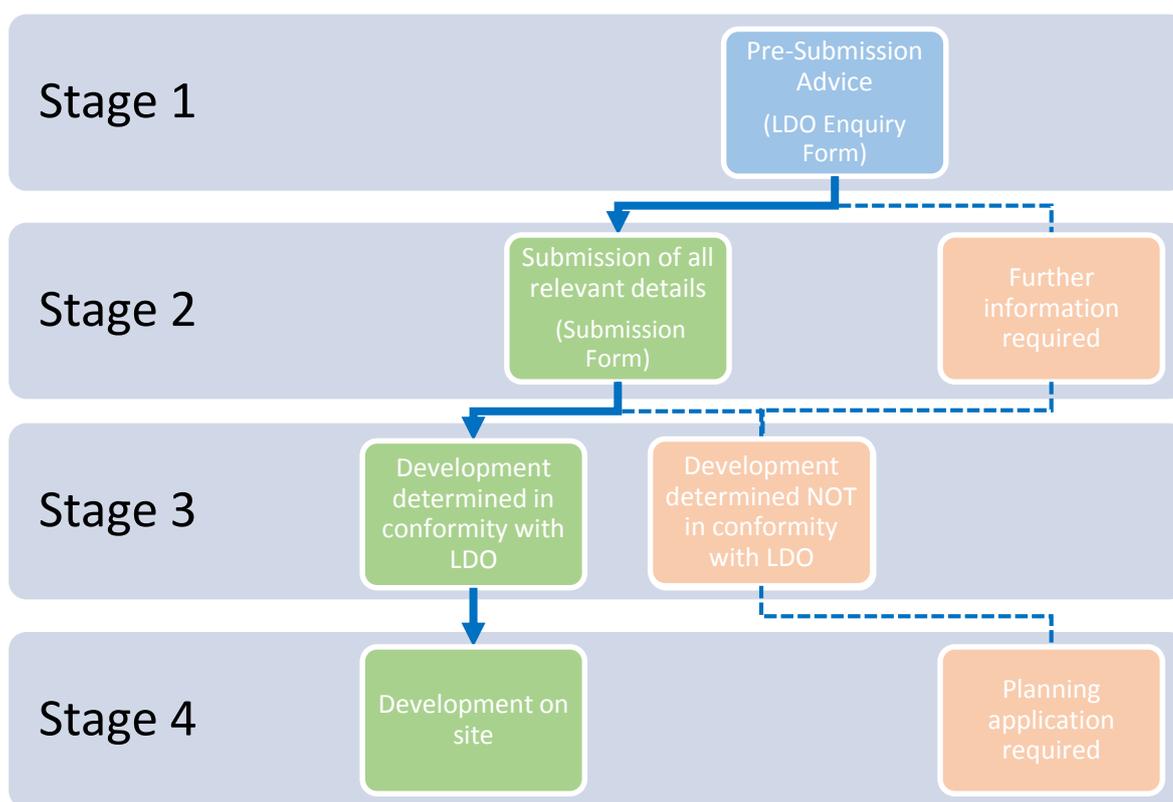
It is altogether possible for an LDO to simply grant permission for the stated development subject to conditions without any need for subsequent process. This is certainly a simplification of the planning

process. It allows the developer flexibility to design and build a proposal within the criteria set out in the LDO without further recourse to the LPA unless a certificate of lawful proposed development is sought. This approach can be suitable for the “routine LDO” described in section 3.

In practice, the pilot LDOs have required a further process step whereby the developer submits plans and details to the council, who in turn provide a formal certificate of compliance or prior approval that the development does conform or comply with the terms of the LDO. In some cases, this process step is not unlike a reserved matters approval, the LDO having performed the role of an outline approval. Where sites are large or ownership is fragmented, some LDOs allow for development proposals on parts of the site to come forward ahead of other parts.

During the pilots, each LPA has developed its own preferred mechanism for the follow on approval of a development proposal under the umbrella of its LDO. It has been encouraging to see that some LPAs have also included an obligation on themselves to consider a submission for certification of conformity/ prior approval etc within a specified timeframe. This helps to provide assurance to a potential developer that the LPA is committed to getting good development happening on the site.

The diagram below illustrates the approach used by Teignbridge in their LDO and shows a typical process by which the LPA will determine conformity with the LDO.



5.6 Fees

It is possible for the costs of the work to create the LDO to be recovered, at least in part, if a fee proportionate to the costs is charged at the point where a certificate of conformity/prior approval submission is made. It will be for the LPA to reach a decision on whether to reclaim these costs taking into

account various circumstances including whether the LDO has been developed collaboratively with the landowner developer with some elements of cost sharing and how important a priority the regeneration is for the council's agenda.

Similarly the costs involved in considering the conformity and or conditions submissions can be reimbursed through a fee proportionate to the costs involved.

For the landowners and development community there are clear benefits to working collaboratively and sharing costs with the council in order to gain a surer and quicker route through the planning system. Alternatively, paying a fee at the time that a conformity certificate application is submitted – even if that fee is higher than a normal planning application fee - also probably represents a good deal to the developer in the context of not having had to undertake the preliminary site investigations as part of the pre-application/design phase.



**Brunswick Street
Local Development Order and
Statement of Reasons (DRAFT)**

July 2015



5.7 Template for an LDO

Introduction	Purpose of the LDO Other Consents (note that other permissions are not encompassed by the LDO)
The Site	Description of the LDO site
Statement of Reasons	Overall Objective for the LDO Site Location Description of Development Permitted Existing planning permissions (if any) Relevant policy considerations Environmental Context Consultation and Engagement Environmental impact assessment (if applicable)
The LDO	LDO Site Boundary (Schedule 1 - description including map/plan) Description of Development Permitted by the LDO (Schedule 2) Lifetime of the LDO Conditions (schedule 3) Developer Contributions (including heads of terms)/ CIL Conformity processes (Schedule 4 – process and costs of submission)
Development Considerations	Development Considerations <ul style="list-style-type: none"> - Access - Urban design considerations - Highways - Flood Risk - Ecology - Archaeology - Ground Conditions and Contamination - Environmental mitigation
Illustrative development material	As appropriate to guide prospective developers: <ul style="list-style-type: none"> - Design options material - Highways access - Groundworks - Landscaping - Public realm material (using evidence and site studies done during preparation of the LDO)