

**WELSH GOVERNMENT**

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**GUIDANCE ON USING A LOCAL DEVELOPMENT ORDER**

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# **Guidance on Using a Local Development Order**

## **Introduction**

- 1.1 A Local Development Order (LDO) grants permission for the type of development specified in the LDO and by so doing, removes the need for planning applications to be made by the developer. Certain types of development are already permitted without the need for planning permission. These permitted development rights are set out in the Town and Country Planning (General Permitted Development) Order 1995 (PDO). The PDO grants a general permission for various types of relatively small scale and normally non contentious development without the need to make a planning application to the local planning authority (LPA).
- 1.2 Permitted development rights under the PDO are set at the national level. LDOs can therefore be seen as an extension of permitted development, but decided upon locally in response to local circumstances. LDOs allow LPAs to act proactively to implement a planning policy within their area.
- 1.3 As LDOs remove the need to apply for planning permission the potential developer is able to progress with greater speed and certainty (subject to the development complying with the terms and conditions of the LDO). Associated costs may well be lower with an LDO as there will also not be a planning application fee or need to commit the resources associated with the preparation of an application.

## **Legislative Provision**

- 1.4 Sections 61A (local development orders), 61B (Intervention by Secretary of State or National Assembly) and 61C (Permission granted by local development order) were inserted into the Town and Country Planning Act 1990 (“TCPA”) by section 40(1) of the Planning and Compulsory Purchase Act 2004 (“PCPA”). Section 61D (Effect of revision or revocation of development order on incomplete development) was inserted into the TCPA by section 41 of the PCPA. The Secretary of State has commenced sections 40 and 41 in relation to Wales.
- 1.5 Using the power conferred by section 203 of the Planning Act 2008 (the 2008 Act), the Welsh Ministers have made provision which has an effect in relation to Wales that corresponds to the effect section 189 of that Act has in relation to England.
- 1.6 Section 188 of the Planning Act 2008 (“the 2008 Act”) amends section 61A to remove the requirement that a local development order can only be made to implement a policy in a local development plan. The Welsh

Ministers have commenced section 188 of the Planning Act 2008 in relation to Wales by virtue of section 241(3) of that Act.

- 1.7 Section 189 of the 2008 Act amends section 108 of the TCPA. Section 108 of the TCPA extends the entitlement to compensation to circumstances where planning permission granted by a local development order is withdrawn. Section 189 applies to England only but section 203(1) of the 2008 Act gives the Welsh Ministers power to make provision which has an effect in relation to Wales that corresponds to the effect section 189 has in relation to England. Such order is subject to affirmative procedure and was approved on 6 December 2011 by the National Assembly for Wales.
- 1.8 The Community Infrastructure Levy Regulations 2010 provides a definition of key terms, and at regulation 5 (3)(a) (ii) it includes planning permission granted by a local development order within the meaning of “planning permission”. This means that any development exempted from the need to apply for planning permission by a local development order but where the community infrastructure levy would apply, will still be charged the levy. Where no planning permission is required due to a local development order being in place, a notice of chargeable development under regulation 64 of the Community Infrastructure Levy regulations would be required to be submitted to the collecting authority, that is, the local planning authority in Wales.

## **Defining the Scope**

- 1.9 It is at the discretion of an LPA as to whether to make an LDO. The LDO could relate to all land in an LPA area or only to a part of that land including specific sites. This power is discretionary and intended to help speed up the planning system as LDOs will, in effect, grant permission for the development to which they relate and thus remove the need for a planning application and the associated application fee.
- 1.10 The content of LDOs will be decided upon locally in response to local circumstances. For example, an LPA may wish to make an LDO to assist in the regeneration of an employment area or industrial estate or guide development in [to?] areas where significant change is anticipated. It could also encourage the provision of housing on a particular site.
- 1.11 LDOs can operate at a variety of scales and can be made to achieve a variety of objectives. Specific developments or specified classes of development can be defined. In this way, LDOs can be used to achieve a wide variety of objectives and promote a wide variety of behaviour by developers to achieve community, planning, environmental or regeneration objectives. However, there will be limited exclusions:
  - a) An LDO may not grant planning permission for development which is likely to have a significant effect on a European Site or a European offshore marine site (either alone or in combination with other plans

and projects) unless the development is connected with or necessary to the management of the site;

- b) The precise number and nature of developments permitted by an LDO will not normally be known in advance of making it, and it may thus be difficult to assess the environmental impact of an LDO in compliance with the Environmental Impact Assessment Directive. A precautionary approach has been adopted that excludes from the scope of LDOs any development which is Schedule 1 development or Schedule 2 development as defined by the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (S.I. 199/293 as amended);
- c) In order to ensure the continuing protection of the built heritage of Wales, development which would affect a listed building is also excluded from the scope of LDOs.

1.12 Where a Local Development Order is in place and therefore a general consent has been given for a certain form of development, a design and access statement would not be required as there would be no “application for planning permission” (Section 42 (5) of the Planning and Compulsory Purchase Act 2004) for that specific development.

### **Making an LDO**

1.13 LPAs are encouraged to make an LDO at the same time as the local development plan. This will enable the authority to carry out consultation at the same time and thereby potentially reduce the overall resource cost of preparation. It will also allow those being consulted to see at the earliest possible stage how the authority intends to use an LDO to implement policies in the local development plan. However, there is no requirement for an LDO to be made at the same time.

### **Conditions and limitations**

1.14 Although an LDO can be made without conditions, it will often be necessary to impose conditions in the LDO to ensure that it is capable of delivering the objectives for which it is made. An LDO will grant planning permission subject to any conditions and limitations specified in the Order (section 61C of the TCPA). Conditions and limitations should set out clearly what development is and is not allowed and how it should be carried out. In some cases it may be appropriate to require that development is in accordance with supplementary planning guidance or a similar document.

1.15 A **specified design code** will be attached to an LDO by a condition, whereby the LDO grants permission for the development specified by the LDO, but subject to a condition that the development complies with the specified code. When seeking to impose conditions in an LDO the LPA should consider their suitability in the same way as they would for an

ordinary planning permission. Failure to comply with a condition attached to an LDO will be enforceable by the LPA in the normal way.

### **Statement of Reasons**

1.16 LPAs are required to prepare a Statement of Reasons for an LDO in order to support consultation, registration and reporting requirements. The Statement will have to include a description of the development permitted; a statement of the policies relevant to the order and the effect the order is anticipated to have in relation those policies; and a plan or statement identifying the land to which the LDO applies.

### **Consultation, Publicity and Adoption**

1.17 It is essential that relevant stakeholders and the community are fully involved in the formation of an LDO from the earliest stages and the Welsh Government recommends LPAs carry out targeted and effective engagement activities prior to the statutory process.

1.18 The LPA must consult such of the following whose interest the authority considers will be affected by the order, if made :

- An LPA or community council, any part of whose area is in or adjoins the authority's area
- The Countryside Council for Wales
- The Environment Agency Wales
- The Welsh Ministers
- Any person to whom the electronic communications code applies by virtue of a direction given under section 106(3)(a) of the Communications Act 2003 (application of the electronic communications code)
- Any person who owns or controls electronic communications apparatus situated in any part of the authority's area
- Any of the following persons who exercise functions in any part of the authority's area :-
  - Local Health Board
  - Any person to whom a licence has been granted under section 6(1)(b) and (c) of the Electricity Act 1989 (licences authorising supply etc)
  - Any person to whom a licence has been granted under section 7(2) of the Gas Act 1986 (licensing of gas transporters)
  - Sewerage undertaker
  - Water undertaker
- Voluntary bodies some or all of whose activities benefit any part of the authority's area
- Bodies which represent the interest of different racial, ethnic or national groups in the authority's area

- Bodies which represent the interests of different religious groups in the authority's area
  - Bodies which represent the interests of disabled persons in the authority's area
  - Bodies which represent the interest of persons carrying on business in the authority's area
- 1.19 The LPA must also consult any person with whom they would have been required to consult on an application for planning permission for the development proposed to be permitted by the order.
- 1.20 The independent, expert comment of the Design Commission for Wales represents a material consideration in the planning process. Consultation with the Design Commission for Wales is appropriate in normal circumstances where good or best practice is to be demonstrated. It is also appropriate where an LDO is intended to embrace important matters of good design for significant sites or areas.
- 1.21 Consulting with the Design Commission for Wales helps to create the maximum potential for good quality in development.
- 1.22 In addition the LPA must send a copy of the draft Order and Statement of Reasons to the consultees for a specified consultation period of not less than 28 days and take account of all representations received by them during the specified period.
- 1.23 The LPA must, during any consultation period:
- make a copy of the draft LDO and Statement of Reasons available for inspection at the authority's principal office during normal working hours and at such other places within the authority's areas as the authority considers appropriate
  - publish on the authority's website :
    - the draft LDO and Statement of Reasons
    - a statement that those documents are available for inspection and the places where and when they can be inspected
    - the date by which representations on the draft LDO must be received, which shall be not less than 28 days after the date of the first publication on the website.
- 1.24 The legislation provides for the Welsh Government to be able to direct that any draft LDO is submitted to it for its approval or to be modified (section 61B of the TCPA). To secure appropriate national oversight of the process, after carrying out consultation, but before adopting the LDO, the LPA must send the draft LDO and the Statement of Reasons for making the LDO to the Welsh Government.
- 1.25 The LPA will not then be able to adopt the LDO until either:
- (a) the Welsh Government has confirmed it does not intend to make a direction requiring the submission of the LDO for approval,

or

(b) 21 days has elapsed and the Welsh Government has not notified the LPA that it either intends to make a direction or requires more time to make a decision.

1.26 If a direction is made, the Welsh Government will then approve or reject the LDO, or require it to be modified. The LPA will, however, remain free to abandon the LDO if it wishes.

### **Planning Register**

1.27 All LDOs must be included on the Planning Register. LPAs will also be obliged to report each year to the Welsh Government on the extent to which it is achieving its purpose as part of the Annual Monitoring Report. The form and content of the report as it relates to LDOs has not been prescribed but is left to the reasonable discretion of LPAs



## **Guidance on the Local Development Order Process**

**This guidance has been developed from those set out in the Planning Advisory Service Local Development Orders Stage 1 Research Report on Stakeholder views and Practice issues dated March 2009.**

The emphasis of the guidance is on practical and policy aspects of Implementation of the regime, and is intended to set out the Welsh Government's position on the key stages and issues in the LDO process.

### **Informally consult with interested parties**

- 2.1 A fundamental feature of LDOs in practice should be that they represent a partnership approach to development management in appropriate circumstances. How close that partnership will be, and who it will involve, will depend on the circumstances of the LDO. Some LDOs may be geared to achieving a specific change across a wide area whilst others may be focused on specific sites, their owners and developers in specific contexts. It follows that although the legislation only requires consultation on an LDO once a draft has been prepared, the context of most LDOs will in practice make it desirable to carry out an informal, pre-statutory, consultation process.
- 2.2 Consulting the Design Commission for Wales early, in relation to the use of Design Codes in the making of an LDO can help to ensure that:
  - The essential masterplanning processes and documentation on which such coding must be based, are present
  - The principles of good, sustainable, inclusive design are properly considered, expressed and adhered to
  - The content and scope of design codes and/or guides are appropriate
  - The quality and status of such documents are appropriate to the LDO
  - The processes for the application and implementation of codes is clear and robust
- 2.3 This will require an approach which garners support at the outset for the concept of the LDO and its objectives, both among the direct participants and wider stakeholders, by identifying and responding to their needs and concerns. Adequate time should be allowed for community groups and volunteers to be fully involved. Whilst it will no longer be a requirement that an LDO implement identifiable local development plan policies, LDOs should nevertheless be in accordance with the local development plan, and a clear link to the achievement of planning policies and objectives will aid the process of stakeholder and community involvement.
- 2.4 When adopted, on-going benefits from LDOs could accrue to landowners and developers who no longer need to prepare and submit planning applications for certain types of development. They should therefore be prepared to assist the LPA's consideration of whether an LDO would be

appropriate by responding positively and constructively to LPA requests to prepare and share information or consider the practical effects of a particular LDO.

### **Identify the Developments to be Permitted by the LDO**

- 2.5 LDOs can operate at a variety of scales and can be made to achieve a variety of objectives. LDO rights can be conferred on specific developments or specified classes of development, but this is subject to the limited exceptions described in **Annex 1**. As with national permitted development rights, an LDO may also impose limitations, e.g. by granting permission for a class of development but excluding specified types of development within that class, or development of that class which would be within a specified area or building. This can be an effective way to ensure that an LDO is as flexible and comprehensive as possible, whilst avoiding unacceptable development management outcomes in particular circumstances.
- 2.6 It is also possible for an LDO to reserve the right to the LPA to direct that the planning permission granted by the LDO will not apply to a particular development or development in a particular area. However, an LDO should be prepared in the expectation that such a direction power would in practice be used only exceptionally: LPAs should satisfy themselves that their choice of subject matter for the LDO, combined with the limitations and conditions they have specified, will achieve appropriate development management outcomes.
- 2.7 It follows that LDOs could be used to achieve a wide variety of objectives and promote a wide variety of behaviours by developers to achieve community, planning, environmental or regeneration objectives. There is no one “right answer”: LPAs should seek to identify and focus on situations in their areas where an LDO could make a real difference to the effectiveness and efficiency of development management.

### **Identify the Area to which the LDO Applies**

- 2.8 Similarly, the geographical area over which an LDO can apply is also wide. In theory, an LDO could apply across an entire authority area (but this is unlikely to be appropriate in practice), to a specific single development site, or a range of areas in between.
- 2.9 The area must be specifically identified by a plan or written statement. Local authorities will need to carefully consider the geographical scale of their LDOs, as this will have a direct relationship with the level of detail and specificity which can be included in the LDO. This in turn will affect the nature and scale of development which can appropriately be permitted through the LDO area: in general, the wider the area, the more complex and varied will be the planning issues which it raises. LPAs will therefore also need to consider the relationship of the scale of LDO with the quantum of development which might be permitted through it.

## **Identify the Supporting Framework for the LDO**

- 2.10 LDOs will be formed from a consideration of development and geographic type and scale. For example, LDOs applying across an entire local authority area will most likely need to be fairly limited in scope, easy to interpret, monitor and enforce. LDOs at this scale could be geared toward achieving a policy objective through many small developments, whereas LDOs identified to cover specific sites could have securing comprehensive development as a key objective. Here, the LDO might need to be very specific on the design and detail of developments to be permitted within the LDO area.
- 2.11 However, in relation to any LDO it is important to bear in mind that the LDO does not exist in isolation. Its context will, of course, be informed by the development plan and relevant national planning policies. However, there may be documents of a more local or specific nature which will be relevant, for example the LPA's planning guidance, design codes for an area or site, or even existing planning obligations. The LPA should also consider preparing guidance to accompany the LDO: although the effect of an LDO should be entirely clear on its face, there may be a role for guidance in explaining its background and relevant aspects of its intended operation.
- 2.12 Some specific issues arising from documents of this nature are considered below. But at a general level, LPAs should always consider their significance and usefulness in considering any proposed LDO. They may provide, by defining planning objectives to which the LDO will contribute, an important element in the background to and justification for the LDO. The LPA should also bear in mind that, once made, an LDO removes the LPAs discretion in managing the development to which it relates. The supporting framework may therefore provide reassurance that adverse planning consequences which appear possible on the face of the LDO will in fact not arise or will be managed effectively elsewhere. And in appropriate circumstances, documents within the supporting framework could be incorporated within the conditions of the LDO.
- 2.13 The role and nature of the supporting framework will vary greatly according to the nature of the LDO proposed. However, it is clear that together, they could provide an appropriate level of justification and secure the appropriate level of certainty over delivery of key planning outcomes. LPAs will therefore need to consider not only whether there are existing documents which will form part of the supporting framework, but also whether any new documents are required. If they are, they will need to be finalised before the LDO is made. Timescales and resources for the preparation of supporting documents will therefore need to be built into the overall LDO process.

## Prepare the Draft LDO

2.14 The following issues are relevant to the form and content of a draft LDO:-

- a. **The LDO generally** – All elements of the LDO itself - the description of development for which permission is granted, and any limitations and conditions which are imposed – should be clear, tightly defined and unambiguous. It should be obvious to prospective developers what is permitted, and what they will have to do in carrying out the development permitted by the order. Clarity in the order will also be essential to effective monitoring and enforcement of the order.
- b. **Conditions** – A range of planning conditions can be attached to an LDO in the same way that they are attached to a planning permission. However, whilst the legislation confers a broad discretion to impose conditions, the Welsh Government will expect that conditions are in general accordance with its national policy and guidance. They should therefore be imposed only where they are necessary, relevant to planning, relevant to the development permitted by the LDO, enforceable, precise, and reasonable in all other respects.
- c. **Conditions linked to design codes and similar documents** – Conditions could define requirements for compliance by reference to other documents such as that contained within supplementary planning documents and design codes, For example, such a condition should be used to attach a set of design ‘rules’ for development permitted by LDO.
- d. A **specified design code** should be attached to an LDO by a condition, whereby the LDO grants permission for the development specified by the LDO, but subject to a condition that the development complies with the specified code. Any non-compliance or breach of development control would be subject to normal enforcement powers.
- e. Through appropriate conditions of this nature and suitable detailed design guidance, it could be possible to ensure compliance with, for example, appropriate environmental building standards.
- f. The document referred to in the condition will need to meet the normal tests for conditions. The **Specific design code** attached to the LDO needs to be sufficiently detailed so as to allow for a clear interpretation of what is allowed under the LDO.
- g. Attached at **Annex 2** is ‘**Design Quality in Local Development Orders**’ written by the Design Commission for Wales and is intended as an aid to understanding the use of Design Codes with Local Development Orders. Care needs to be taken not to ‘over-specify’ the LDO and any associated guidance, which could remove flexibility which is a key potential benefit of LDOs. The specificity of guidance and conditions will depend on the circumstances of the LDO and the

type of development involved. The LDO will specify the particular design code which will apply in each case.

- h. In addition, to ensure that there is certainty as to the ongoing effect of the condition, the document must already exist and the reference to it in the condition **should not allow** the document to be substituted by a new version. That would have the unacceptable effect of allowing revisions to the LDO without complying with the normal statutory publicity and consultation requirements.
- i. **Conditions requiring specific actions** – It may be appropriate for the LDO to impose conditions requiring specific actions by developers. For example, a condition could create safeguards for the LPA by requiring provision of appropriate information provision before development commences. Other requirements could include consultation and agreement by the LPA to certain matters specified in the LDO.
- j. **Provide a Clear and Concise ‘Statement of Reasons’** - LPAs must prepare a statement of reasons alongside the draft LDO for statutory consultation and publicity purposes. The statement must include as minimum:
  - A description of the development which would be permitted
  - A statement of the policies relevant to the order and the effect the order is anticipated to have in relation to those policies
  - A plan or statement identifying the land to which the LDO would apply;
- k. The second of these requirements reflects that fact that whilst the 2008 Act removes the need for an LDO to implement identifiable local development plan policies, an LDO will nevertheless be an integrated part of the planning regime. It is therefore appropriate to require LPAs to explain how the proposed LDO relates to relevant policies, and an LDO should be able to demonstrate compatibility with planning policies, objectives and priorities and the potential to deliver positive outcomes in that context.
- l. Whilst the Statement of Reasons should be concise, it should also be comprehensive. This is essential to securing that statutory consultation on the proposed LDO is fully informed and effective. For example, there may be benefits arising from the LDO, such as the ability to provide flexibility for developers, or greater efficiency in managing developments which are similar and occur regularly, (with benefits to both the LPA and the applicant) which may not have a development plan policy context, but could nevertheless be important reasons for making an LDO. It will also be important to explain the factual background, and detail why it is that any limitations and conditions are necessary.

- m. Where key documents in the supporting framework are essential to an understanding of the proposals, these should be referred to and made available to consultees. LPAs should also, of course, have regard to and comply with relevant general statutory duties (e.g. those relating to discrimination) in preparing the LDO and Statement of Reasons.
- n. Where a proposed LDO raises complex issues, or in other appropriate cases, the LPA may wish to consider preparing a formal impact assessment to support and accompany the Statement of Reasons.
- o. **Formal statutory consultation on LDO and Statement of Reasons**  
The consultation and publicity requirements are set out in sections 1.18 – 1.22 above and the statutory instrument at **Annex 3**. The following points are appropriate to emphasise here:
  - A list of consultees - the LPA is only obliged to consult a specified person or body where it considers that the interest of that person or body would be affected by the LDO. This is matter for the reasonable judgement of the LPA: for example, consultation with the Design Commission for Wales would be appropriate where an LDO is intended to cover design issues for significant sites or areas.
  - LPAs must consult anybody who would have been a statutory consultee for an application for planning permission for the development which will be permitted by the LDO
  - Given the broad scope of LDOs, it is not possible to specify in legislation an exhaustive list of all bodies and persons who might be materially affected by any potential LDO. LPAs should therefore consider consulting beyond the specified list where this could secure useful input to the LDO
- p. The information required to be published and provided to consultees is a copy of the draft LDO and a copy of the Statement of Reasons. However, where an additional document in the supporting framework is essential to a proper understanding of the proposals, the LPA should either provide a copy or provide a means of accessing it (e.g. through its website)
- q. Consultees, and the public where responding to publicity by local advertisement, must be provided with at least 28 days to make representations
- r. All draft LDOs and their Statements of Reason must be placed on the Planning Register at the same time as they are sent to consultees

- s. Few developments which are permitted by LDOs are likely to be completely free of any impacts, and LDOs are a new and different mechanism which recognises difference in a system which has traditionally been seen to be uniform. Local planning authorities will therefore need to create effective strategies to communicate the purposes and working arrangements for their LDOs.

### **Consider modifications**

- 2.15 LPAs will be required, having carried out statutory consultation, to consider whether the draft Order and Statement of Reasons should be modified before proceeding further.

### **Notify the Welsh Government**

- 2.16 Before adopting an LDO (whether as consulted on or as modified), the LPA must send a copy of the draft LDO and Statement of Reasons to the Welsh Government. The purpose of the requirement is to ensure that the Welsh Government is formally made aware of the LPA's proposals so that it can consider whether it is appropriate to require Welsh Government approval of the proposed LDO.
- 2.17 The LPA must not adopt the LDO before either receiving confirmation that the Welsh Ministers do not intend to make a direction under section 61B (1) of the TCPA; or, 21 days have passed without notification of this or notification that the Welsh Ministers require more time. The Welsh Government also has discretion to require modifications to an LDO at any time before it is adopted if it thinks that the LDO is unsatisfactory (section 61B(6)).

### **Adopt the LDO**

- 2.18 Local planning authorities are required to adopt LDOs before they can take effect. An LDO is of no effect unless it is adopted by resolution of the LPA (Schedule 4A, para 3). In conjunction with adoption, it will be important to carefully consider the ongoing development management impacts of the LDO on the LPA as a service provider and regulator, the developer as applicant and the general public (as all will be potentially affected by the developments permitted by the LDO).

### **Place the LDO on the Planning Register**

- 2.19 All draft LDOs and their Statements of Reasons must be placed on the Planning Register. The register will contain all LDOs in force, all LDOs once in force but revoked, and all LDOs for which preparation has started (reaching at least Statement of Reasons stage) but which have not yet been adopted, or on which work has stopped. LDOs must be placed on the register within 14 days of the date they are adopted.

Particulars of subsequent revisions and revocations must also be recorded.

### **Prepare Annual Monitoring Report**

2.20 LPAs will be required (Schedule 4A, para 5) to prepare an Annual Report on the extent to which any adopted LDO is achieving its purpose. This will form part of the annual monitoring report required to be published under section 76 of the 2004 Act. It is not intended to prescribe the form and content of the report, but it should consider how successful the LDO has been in securing improvements to development management in the context of the Statement of Reasons. In particular, the report could address benefits arising to stakeholders, the effects of development on the environment, and matters relating to developer performance under the LDO.

### **Enforcement Arrangements**

2.21 Failure to comply with a condition attached to an LDO will be enforceable by the LPA in the normal way. LPAs will need to ensure that the specification of development permitted through the LDO and the associated limitations and conditions are sufficient to provide authorities and developers with clarity as to what is required, so as to enable effective and fair monitoring and enforcement to take place.

### **Revision and revocation**

2.22 LDOs may be revoked or revised at any time by the LPA on its own initiative. The Welsh Government also has reserve powers to direct an LPA to revoke an LDO or prepare a revision of it (section 61A(6), 61B(8) and Schedule 4A para 2 of the 1990 Act).

Where an LPA revokes an LDO the authority **must** :-

- Publish on their website a statement that the LDO has been revoked
- Give notice of the revocation by local advertisement. This is a requirement to publish the notice in as many newspapers as necessary to secure that the press coverage (taken as a whole) extends to the whole of the area to which the LDO relates, and
- Give written notice of the revocation to every person whom the authority consulted before the making of the order.

### **Compensation where local development order is withdrawn**

2.23 Section 189 of the Planning Act 2008 amends Sections 107 and 108 of Town and Country Planning Act 1990, which provide for compensation where a development order or local development order is withdrawn. In summary, the effect of the reform in the present context is that where planning permission granted by a local development order is withdrawn, there will be no entitlement to compensation where notice of the

withdrawal is published not less than 12 months or more than the prescribed period (24 months) before the withdrawal takes effect.

- 2.24 If development is started before the notice is published, compensation will be available unless the order in question contains provision permitting the completion of development. The reform may therefore offer LPAs reassurance, through providing additional flexibility when considering the revision or withdrawal of LDO permissions, although the Welsh Government considers that an LPA would only rarely need to do this where the merits and effect of an LDO have been properly considered during its preparation.



**Limited Exceptions**

- a) An LDO may not grant planning permission for development which is likely to have a significant effect on a European Site or a European offshore marine site (either alone or in combination with other plans and projects) unless the development is connected with or necessary to the management of the site.
- b) The precise number and nature of developments permitted by an LDO will not normally be known in advance of making it, and it may thus be difficult to assess the environmental impact of an LDO in compliance with the Environmental Impact Assessment Directive<sup>2</sup>. A precautionary approach will be adopted and exclude from the scope of LDOs any development which is Schedule 1 development or Schedule 2 development as defined by the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (S.I. 199/293 as amended)
- c) In order to ensure the continuing protection of the built heritage of Wales, development which would affect a listed building is also excluded from the scope of LDOs.



## ANNEX 2

**DESIGN QUALITY IN LOCAL DEVELOPMENT ORDERS** – a Design Commission for Wales document to be read in conjunction with this Circular.



### Design Quality in Local Development Orders

This document is intended as an aid to understanding the expectations of the Design Commission for Wales in relation to the use of Design Codes with Local Development Orders (LDOs) in Wales. It will inform LPAs, developers and other stakeholders regarding the role of the Design Commission for Wales and the proper consideration of good design quality, for development facilitated through LDOs and with the use of Design Codes.

It is intended as a helpful supplement to Welsh Government planning policy guidance *Using a Local Development Order*, on the nature, use and application of Local Development Orders (LDOs).

Annex 1 and 2 refer to relevant parts of the Welsh Government guidance on LDOs, their purpose and use, and to terminology associated with LDOs.

#### 1. What is a Local Development Order?

A Local Development Order (LDO) is an order made by a local planning authority, extending permitted development rights, for certain forms of development, with regard to a relevant Local Development Document (LDD).

#### 2. Consultation with the Design Commission for Wales

The Welsh Government guidance on LDOs encourages LPAs to consult beyond a specified list, with any bodies, statutory or otherwise, able to make useful input to the LDO.

The independent, expert comment of the Design Commission for Wales represents a material consideration in the planning process. Consultation with the Design Commission for Wales is appropriate in normal circumstances where good or best practice is to be demonstrated. It is also appropriate where an LDO is intended to embrace important matters of good design for significant sites or areas.

Consulting with the Design Commission for Wales helps to create the maximum potential for good quality in development.

Consulting the Commission early, in relation to the use of Design Codes in the making of an LDO can help to ensure that:

- The essential masterplanning processes and documentation on which such coding must be based, are present

- The principles of good, sustainable, inclusive design are properly considered, expressed and adhered to
- The content and scope of design codes and/or guides are appropriate
- The quality and status of such documents are appropriate to the LDD
- The processes for the application and implementation of codes is clear and robust

The Design Commission for Wales considers that LDDs should meet specific aims such as regeneration objectives, delivering infrastructure and to bring forward areas or sites of particular scale and significance. Their use should always secure the delivery of coherent, high quality development, through good design.

The Commission also recognises the risks that LDDs might pose as a means of narrowing the public, democratic and regulatory functions of the planning system. For this reason a clear and sound case for the use of an LDD should be set out and properly consulted upon. The Commission therefore emphasises the benefits of preparing an LDD as a delivery mechanism for specific aims, clearly articulated in an adopted LDP and subject to robust masterplanning practices and documentation.

### **3. The Commission's expectations for Design Codes with LDDs**

The Welsh Government considers the use of Design Codes as important to the making of LDDs in Wales in order to provide additional design certainty aligned with sustainable development objectives. The Commission therefore expects to see Design Codes, properly attached to sufficiently detailed masterplans and linked to the adopted LDP, where available, within the conditions framework for LDDs. The Commission should therefore be consulted at the earliest possible opportunity.

### **4. What is a Design Code?**

A Design Code can be described as a set of illustrated design requirements which direct and may advise, on the physical development of a site or area. The graphic or written components of a design code are detailed and precise, and will build upon a design vision such as a masterplan or other design and development framework for an area. (Source: Annex B, PPS3, DCLG, 2006)

Design Codes are developed to allow the successful implementation of masterplans, providing a mechanism for the control of layouts, public realm quality, building form and typology and if required, elements of architectural treatment.

Properly devised and applied, Design Codes can be effective mechanisms for delivery and development management within LDDs. They can assist coherent and well connected development, wider sustainability objectives and the achievement of high quality urban design and architecture.

Design Codes can help streamline detailed planning permissions.

Design Codes are:

- A distinct form of detailed design guidance establishing with precision the two and three dimensional design elements of a development or area.
- Precise regarding the physical components, dimensions and qualities of a place.
- Delivery tools, and as such must be based upon a specific design vision/masterplan for a site or an area.
- An aid to achieving a more certain, streamlined and coordinated development process.

Design Codes can attract benefits in addition to good design quality such as certainty of process, coordination of stakeholder objectives and enhanced economic value. However to be successful in realising those benefits, the use of codes must be supported by other important factors:

- Stakeholders must have access to the right design skills
- Masterplanning processes and documentation must be in place
- Developers must be committed to delivering good design quality
- Planning and highways authorities must be committed to good urban design practice and place-making
- It is vital to establish consensus among stakeholders regarding the vision for the site or area and the strategy for implementation

All Design Codes should carry the relevant status as part of the suite of Local Development Documents (LDDs), as set out in the Welsh Government guidance.

## **5. What should be included?**

A Design Code should provide clear advice on the application of agreed design principles and on how quality standards should be met and/or used to achieve shared objectives and aspirations.

Stakeholders in the LDD making process, as with the more familiar planning process, should agree on design quality aspirations and standards, at the same time as spatial options are identified.

A Design Code should comprise detailed advice on the application of the agreed design principles across a range of spatial scales, and set down design and environmental standards to which developers must adhere.

The rationale for the use of an LDD will require the evaluation of its outcomes. The success of projects delivered through LDDs will be heavily dependent on the quality of the buildings, spaces and places that are developed. The Design Code must therefore be rooted in sound masterplanning and in the principles that stakeholders agree.

Design Codes can incorporate four levels of design advice: layout; block size enclosure; details of public realm and landscape; three dimensional form and building dimensions. If required they may also include architectural treatment. Useful examples can be found in codes developed for Newhall and other projects, where they are used to coordinate different developers and maintain design quality.

Design Codes should be developed in a professional, collaborative environment wherein there is a commitment to the delivery of a shared vision and objectives. The services of urban design, planning and architecture professionals will be required, alongside engagement with the stakeholder group, which will include developer, landowner, LPA, community and others. The process also requires clear leadership arrangements and adequate resources.

The Commission will seek code documents and processes which demonstrate that:

- The code has been developed with clearly defined and agreed processes for preparing and operating the code, and establishing leadership arrangements.
- Key inputs have been coordinated into the design coding process so as to draw together the skills, financial resources, and the roles and relationships that will create and implement the design code.
- The Code has been developed after careful appraisal of the local site and context, including a review of the existing policy and guidance framework, and is based upon well conceived and suitably detailed masterplan.
- Codes should be sufficiently flexible and effectively monitored and reviewed at regular intervals, to allow for changing contexts ranging from standards and materials to the economic and environmental.
- The Code has been properly devised, designed and tested; that it is well structured and written so as to properly express the intent of design code, and is robust in terms of viability, capacity to deliver quality and ease of use.

## 6. Using the Design Review Service and the LDO making process

In addition to consulting the Commission on the LDO and Design Code requirements, the Design Commission for Wales' Design Review service can also be utilised early to assist consultation processes and the development of masterplans and codes. The review process can facilitate engagement with community groups and other representatives involved in or affected by development proposals. The review process provides an opportunity for the expression of concerns and exchange of views, and for engagement with the local authority and development representatives and stakeholders. Consultation through Design Review can bring all or most of the parties together at the crucial early stages and can bridge the professional and lay viewpoints in a structured, constructive environment.

### Further Information:

Design Commission for Wales Design Review Service

<http://dcfw.org/design/>

Newhall Design Codes

<http://www.studioreal.co.uk/projects/newhall-design-codes.php>

Upton Design Codes

[http://www.northampton.gov.uk/downloads/Upton\\_Design\\_Code.pdf](http://www.northampton.gov.uk/downloads/Upton_Design_Code.pdf)

Preparing Design Codes: A Practice Manual, DCLG, 2006

<http://www.communities.gov.uk/publications/regeneration/preparingdesigncodes>

TCPA Best Practice in Urban Extensions and New Settlements Report

<http://www.tcpa.org.uk/data/files/nsue.pdf>

LDO Examples:

Carnon Downs Local Development Order, Cornwall Council

<http://www.cornwall.gov.uk/default.aspx?page=27844>

Planning Advisory Service LDO Pilot projects:

<http://www.pas.gov.uk/pas/core/page.do?pagelid=114302#contents-2>

## Annex 1: Relevant references to Welsh Government Guidance on LDOs

### Welsh Government Guidance on Making an LDO

The Welsh Government guidance explains that LPAs are encouraged to make an LDO at the same time as the development plan document to which it relates. This has the potential benefits of reduction in costs of preparation and of the earliest possible opportunity for consultation on how the LPA intends to use an LDO to implement policies in the development plan. There is no requirement for an LDO to be made at the same time and an authority may introduce an LDO at any time.

Whilst an LDO can be prepared at any time, it cannot be adopted until the development plan document (or documents) to which it relates have been adopted by the LPA or approved by Welsh Ministers.

The guidance explains that although an LDO can be made without conditions, it will often be necessary to impose conditions in the LDO to ensure that it can deliver the objectives for which it is made. An LDO will grant permission, subject to any conditions and limitations specified in the Order (Section 61C of the 1990 Act).

The Welsh Government guidance also says that: *'...conditions and limitations should set out clearly what development is and is not allowed, how it should be carried out and how it accords with supplementary planning guidance or a similar document/s. Integrated in the LDO framework will be conditions which can define requirements for compliance by reference to other documents, such as that contained within supplementary planning documents and design codes. For example, such a condition should be used to attach a set of design 'rules' for development permitted by LDO.'*

The guidance notes that: *'...A **specified design code** would be attached to an LDO by a condition, whereby the LDO grants permission for the development specified by the LDO, subject to a condition that the development complies with the specified code. When seeking to impose conditions in an LDO the LPA should consider their suitability in the same way as they would for an ordinary planning permission. Any non-compliance or breach of development control would be subject to normal enforcement powers.'*

In the guidance it is noted that: *'...any document referred to in the condition will need to meet the normal tests for conditions. The **Specific Design Code** and/or **Design Guide** attached to the LDO should be sufficiently detailed as to allow clear interpretation of what is allowed under the LDO....The specificity of guidance and conditions will depend on the circumstances of the LDO and the type of development involved. The LDO will specify the particular design code which will apply in each case.'*

The guidance is clear that: *'...in addition, to ensure that there is certainty as to the ongoing effect of the condition, the document must already exist and the reference to it in the condition **should not allow** the document to be substituted by a new version. That would have the unacceptable effect of allowing revisions to the LDO without complying with the normal statutory publicity and consultation requirements.'*

## **Annex 2: Terminology**

The following terms also occur in planning terminology, related to the use of LDDs:

Local Development Documents (LDDs) include Local Development Plan Documents and Supplementary Planning Documents and any other documents deemed necessary by the local planning authority. LDDs collectively deliver the spatial planning strategy for the local planning authority's area.

The Local Development Scheme (LDS) is the local authority's scheduled plan for the preparation of Local Development Documents.

The (Development Management Procedure) (Wales) Order (DMPWO) is a set of regulations made by the Welsh Government which grants planning permission for specified limited minor forms of development.

**Local Development Orders – Statutory Instruments**