Local Development Orders and EIA

Local Development Orders (LDOs) were introduced in the Planning and Compulsory Purchase Act 2004 to simplify the planning process by removing the need for planning permission, where this is considered appropriate and proportionate. Schedule 4A to the Town and Country Planning Act 1990 (as amended) additionally provides the legislative basis under which LDOs operate. The procedure for making an LDO is contained in the Town and Country Planning (Development Management Procedure) Order 2010.

An LDO can only be made to implement policy contained in a development plan document or in a local development plan. They can grant permission for the type of development specified in the LDO and in so doing, remove the need for a planning application to be made by a developer, although often approval is subject to conditions specified in the LDO being met. As they allow a permission to be granted through a more streamlined process than for a usual planning permission, potential developers are able to progress with greater speed and certainty (subject to the development complying with the terms and conditions of the LDO). It is at the discretion of a local planning authority (LPA) as to whether to make an LDO and the nature and extent of an LDO. LDOs may grant permission for development specified in the LDO, or for any class of development.

Furthermore LDOs can relate to all land in a LPA area, or only to a part of that land (including specific sites), and can be used to provide permission for certain types of development in parts of a LPA area. For example, a LPA may wish to make an LDO to assist in the regeneration of an employment area or industrial estate or guide development in areas or of sites where significant change is anticipated and to facilitate development of a particular site. This could be to assist with the provision of flagship development to be a catalyst for regeneration.

Dependent on the LDO it will often be necessary to impose conditions to ensure that it is capable of delivering the objectives for which it is made. These conditions should set out clearly what development is, and is not, allowed. Alternatively, conditions can require development to be in accord with other documents, such as a design code or construction environmental management plan.

As LDOs are treated as a grant of planning permission for the purposes of the Town and Country Planning Act 1990 and the EIA Regulations, LDOs can be very attractive, where a local planning authority, landowner, or large developer are considering flagship developments to support and kick-start economic regeneration.

In considering the potential opportunity to make an LDO, an initial screening exercise needs to be completed, as there are statutory restrictions preventing a LPA making an LDO, namely where the development authorised by the LDO:

- could affect listed buildings;
- is likely to have a significant effect on a European site and is not directly connected with or necessary to the management of the site; and
- for development of the type specified in Schedule 1 of the EIA Regulations.

With regard the last bullet, it is worth noting that LDO’s can be made for development that would be considered as Schedule 2 EIA Development, where listed buildings and European sites are not affected. However some LDOs in force specifically exclude any EIA development from being granted permission under the LDO.
The text below, highlights and discusses some of the lessons learned from assisting on the preparation of an EIA accompanying a LDO.

- To realise the advantages of an LDO requires front loading by all stakeholder parties (i.e. the LPA, statutory consultees and the landowner or developers) in the planning process, so needs buy-in from all and appreciation that normal elements of the planning process cannot be deferred they need to be done in advance of the LDO being made. Accordingly, therefore much greater effort and costs are required at any earlier stage in the planning application process. The payback being the certainty of permission being granted provided the individual developments accord with the requirements of the LDO.

- The roles and expected inputs from all parties need to be agreed early, especially with the LPA for example on who does the heavy lifting and owns the EIA. If it’s the “landowner or developer”, the LPA will need to ensure that they are satisfied that the “assessment” has been done robustly so they can adopt it as their own. Therefore information may need to presented as ‘Information to Inform Assessment’ with suggested approaches, consultees, surveys that the LPD will then confirm prior to the EIA being undertaken to the satisfaction of the LPA (like with a normal EIA Scoping process) but with the added possibility that the ES produced may be badged as the LPAs own document as they will be applying for the LDO.

- A collaborative partnership approach with the LPA, all their advisors and stakeholders is essential, with no entrenched positions, work shadowing, regular meetings and dialogue to ensure the final documents can be approved by all.

- The programme for the (EIA of the LDO if required) needs to factor in the additional collaborative steps, as well as consultation, requirements.

- Depending on the nature of the development to be authorised by the LDO, a similar parameter approach to an OPA to provide future flexibility is useful. However it is essential if the full benefits of a more certain and expedited planning process are to be realised that all parties remember that the EIA approach needs to avoid deferrals of assessments pending further design information and further assessment as required by planning conditions.

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