

Neighbourhood Planning: A Guide to Process & Responsibilities

Introduction

The Localism Act, which received royal assent on 15 November 2011, will introduce legislation to give new planning powers to organisations other than traditional planning authorities once the relevant provisions come into force. In certain circumstances, parish councils, community organisations and other representative organisations will be able to propose “orders” which grant planning permission for some types of development; and/or propose neighbourhood-level planning policy documents in “Neighbourhood Development Plans”. With the necessary level of support, these plans can be adopted by local planning authorities, alongside their own plans, as part of the statutory development plan for decision-making purposes.

Because these various orders and plans could have significant consequences for development in local areas, they, like traditional local authority plans, must be made in accordance with a formal statutory process, which can be a significant resource commitment.

This Guide attempts to summarise the main points of the legislation in a simple way, to help organisations thinking of embarking on some form of neighbourhood planning to understand who can do what and when. It begins by identifying and, where necessary defining, some of the key components associated with neighbourhood planning and then sets out the process for preparing the different orders and plans with which organisations can get involved.

| Explanation of Key Terms | | |
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| The Planning Unit | Neighbourhood Areas | <p>An area that a Local Planning Authority (LPA) - so here, TWBC - has designated as such within its own area, following an application by a parish council, neighbourhood forum or, in specific circumstances, a community group.</p> <p>A parish council can apply for the whole, or any part, of its area to be designated a neighbourhood area.</p> <p>A neighbourhood forum can apply for an area to be designated, only if it is <u>not</u> covered by a parish council.</p> <p>A community organisation (which can also be a neighbourhood forum) can apply for an area to be designated, <u>whether or not</u> it is covered by a parish council if the application is specifically connected with a proposal for a community right to build order on a specific site.</p> <p>LPAs can designate a neighbourhood area as a “business area” if it is wholly or predominantly business in nature.</p> <p>A neighbourhood area can cross LPA boundaries, if both areas agree to designate it.</p> <p>Neighbourhood areas cannot overlap.</p> |
| | Specific Sites | <p>Community organisations can propose that the LPA makes community right to build orders (see below), but only in relation to a specific site in a neighbourhood area.</p> |

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| Key Participants | Parish Councils | There are 16 parish or town councils in the TWBC area, covering all of the rural area and much of the urban area, with the exception of Royal Tunbridge Wells itself. |
| | Neighbourhood Forums | <p>An organisation or body can be designated as a neighbourhood forum by the LPA if it meets the following conditions:</p> <ul style="list-style-type: none"> - It is established to promote or improve the social, economic and environmental well-being of the whole or part of the neighbourhood area (whether or not it is also established to promote trades, professions or businesses) - It has a minimum of 21 members (and its membership is open to people) who live or work in the neighbourhood area and/or are elected members of a county or district council whose area falls within the neighbourhood area - It has a written constitution <p>A neighbourhood forum designation ceases after five years.</p> <p>There can be only one forum for each neighbourhood area.</p> |
| | Community Organisations | <p>A body corporate established to further the social, economic and environmental well-being of individuals living, or wanting to live, in a particular area.</p> <p>More than half the members of the organisation must live in the relevant neighbourhood area.</p> <p>A community organisation can also be a neighbourhood forum if it meets the conditions stated above.</p> |
| | Local Planning Authority (LPA) | For this area, Tunbridge Wells Borough Council. |
| Key “Deliverables” (Results) | Neighbourhood Development Orders (NDOs) | A NDO grants planning permission, with or without conditions or limitations, for a particular type or class of development. A NDO can apply across all, or part, of a neighbourhood area, or on a specific site within a neighbourhood area. |
| | Community Right to Build Orders (CRBOs) | A CRBO is a type of NDO which can be proposed by a community organisation. It grants planning permission for development on a specific site only, within a neighbourhood area. |
| | Neighbourhood Development Plans (NDPs) | A NDP is a plan which sets out policies (however expressed) for development and use of land across the whole, or part, of a particular neighbourhood area. After due process, they must be adopted by the LPA as part of the statutory development plan for the area. |

The following fact-sheets summarise how these different components fit together for each of the key deliverables of neighbourhood planning – NDOs; CRBOs; and NDPs.

Key Deliverables: NDOs & CRBOs

Neighbourhood Development Orders (NDOs)

What is a NDO?

A NDO grants planning permission for a specified type or class of development, with or without conditions. This means that there would be no need to apply to the LPA for planning permission for the type of development permitted by the order. In this respect, making a NDO is similar to granting additional 'permitted development rights'.

A NDO cannot be made for certain types of "excluded development" - mainly large-scale infrastructure developments such as for minerals & waste; power stations; roads and railways.

A NDO can apply across all, or part, of a neighbourhood area, or on a specific site within a neighbourhood area.

Who is involved in making one?

A **local planning authority** (LPA) needs to make a NDO after due process, but a **parish council** or a **neighbourhood forum** is entitled to propose to the LPA that a NDO should be made.

- A parish council can propose a NDO for a neighbourhood area within the area of the parish council
- A neighbourhood forum (or community organisation which is also a neighbourhood forum) can propose a NDO for a neighbourhood area if it is not within the area of a parish council

The LPA must give "*such advice or assistance as, in all the circumstances, they consider appropriate*" to facilitate the making of NDOs. There is no requirement for the giving of financial assistance by the LPA.

How is one made?

A NDO is made according to the following main stages:

1. A parish council or neighbourhood forum prepares a draft NDO. It is likely that regulations will require publicity and consultation to form part of the preparation process.
2. The draft NDO is submitted to the LPA along with a summary of the proposals and the reasons for them.
3. The LPA must consider whether the proposal complies with any relevant standards and regulations, and with other relevant provisions of the Act – such as if any conditions attached are appropriate; and that it does not propose to permit 'excluded development'.
4. If the LPA is satisfied that the proposal meets these initial tests, the LPA must submit it for independent examination; appoint an examiner; and arrange holding the examination.
5. The examiner must consider a number of matters, including whether the proposal meets certain basic conditions related to:
 - National policies and advice issued by the Secretary of State
 - Listed buildings and features of architectural or historic interest
 - Conservation Areas
 - The contribution to sustainable development
 - General conformity with strategic policies in the development plan
 - EU obligations

6. The examiner must make a report, recommending either that the NDO is submitted for referendum; or that it should be modified and submitted for referendum; or that it should be refused.
7. The LPA must consider the examiner's recommendations and decide how to respond. Note that the LPA does not appear to be bound by the examiner's recommendations.
8. If the LPA considers that the NDO meets the basic conditions set out above, or that it could be modified to do so, a referendum must be held. If not, the NDO must be refused.
9. If a referendum is held, and more than half those voting vote in favour, the LPA must make the NDO.

Community Right to Build Orders (CRBOs)

What is a CRBO and how does it differ from a Neighbourhood Development Order (NDO)?

A CRBO is a particular type of NDO. It differs from a NDO in the following main ways:

- It is proposed by a community organisation rather than a neighbourhood forum. The conditions of membership for a community organisation are different (in reality less stringent) than they are for a neighbourhood forum.
- It grants planning permission only on a specific site, whereas a NDO can apply to a wider general area.
- The site can be within the area of a parish council, whereas a NDO proposed by a neighbourhood forum can only apply outside a parish council area.

Who is involved in making one?

A **local planning authority** (LPA) needs to make a CRBO after due process, but a **community organisation** is entitled to propose to the LPA that one should be made.

How is one made?

The same main stages apply to the making of a CRBO as apply to the making of a NDO, with the following exceptions to the examination process:

- If the examiner's report recommends the refusal of the CRBO, the LPA must refuse it.
- If the examiner's report recommends that the CRBO is submitted for referendum (with or without modifications), a referendum must be held.
- The LPA may only make modifications in order to secure compliance with EU obligations or the Human Rights Act; or to correct errors.

Key Deliverables: NDPs

Neighbourhood Development Plans (NDPs)

What is a NDP?

A NDP is a plan which sets out policies, however expressed, for development and use of land in the whole or part of a neighbourhood area. It cannot include provision about “excluded development” – mainly large-scale infrastructure developments such as for minerals & waste; power stations; roads and railways and, when it is examined, it will need to be found to meet certain basic conditions, including those related to national policy and general conformity with development plan policy. As such, government guidance states that “communities cannot use neighbourhood planning to block the building of new homes and businesses”.

After due process, and if it passes all the relevant tests, the LPA must adopt the NDP as part of the statutory development plan for the area. This means that it would have the same legal status as a Borough Council document, such as the Local Plan or Core Strategy, for example. If there is a conflict between any development plan policies, it must be resolved “*in favour of the policy which is contained in the last document to become part of the development plan*”.

It must state the period for which it applies and it must only relate to one neighbourhood area.

Who is involved in making one?

A **local planning authority** (LPA) needs to make a NDP after due process, but a **neighbourhood forum** is entitled to propose to the LPA that one should be made. A **community organisation** cannot propose a neighbourhood plan unless it also qualifies as a neighbourhood forum, because its power to act for neighbourhood areas is connected to proposing CRBOs for specific sites.

How is one made?

Note that the same main stages apply to the making of a NDP and a NDO, summarised below:

1. A parish council or neighbourhood forum prepares, publicises and consults on a draft NDP.
2. The draft NDP is submitted to the LPA.
3. The LPA considers whether it complies with relevant standards and regulations, and with other relevant legislation.
4. If the LPA is satisfied that the proposal meets these initial tests, the LPA must submit it for independent examination; appoint an examiner; and arrange holding the examination.
5. The examiner considers whether the proposal meets certain basic conditions related to:
 - National policies and advice issued by the Secretary of State
 - Listed buildings and features of architectural or historic interest
 - Conservation Areas
 - The contribution to sustainable development
 - General conformity with strategic policies in the development plan
 - EU obligations
6. The examiner makes a report, recommending either that the NDP is submitted for referendum; or that it should be modified and submitted for referendum; or that it should be refused.
7. The LPA considers the examiner’s recommendations and decides how to respond.
8. If the LPA considers that the NDP meets the basic conditions set out above, or that it could be modified to do so, a referendum must be held. If not, the NDP must be refused.
9. If a referendum is held, and more than half those voting vote in favour, the LPA must make the NDP. It then forms part of the development plan for that area.

Summary of Parish Council Powers

On the basis of the legislation summarised above, parish councils can perform the following main functions in relation to neighbourhood planning:

- Apply to the LPA for the whole or part(s) of the parish council area to be designated a **neighbourhood area**
- Draft a **neighbourhood development order** to grant planning permission for a specified type of development for the whole, or part, of a neighbourhood area, or for a site within a neighbourhood area, and propose to the LPA that it should be made
- Draft a **neighbourhood development plan** to set out planning policies for the whole, or part, of a neighbourhood area, and propose to the LPA that it should be made

The following points are also useful to consider:

- A **neighbourhood forum** can only apply for a neighbourhood area to be designated, and then act for that area (by proposing a NDO or NDP), if it is not covered by a parish council
- A **community organisation** can propose a CRBO in a parish council area, but only in relation to a specific site

Parish Councils may also wish to note the following additional point in the legislation, which is not covered above:

- Where a NDO includes a condition that requires planning permission to be obtained in certain circumstances, regulations *may* provide for parish councils to be the determining authority where they do not own the land

End.

The advice provided in this guide is informal at this stage and is subject to change in the light of future legislation, guidance and experience. It is not binding on the Officers and Members of Tunbridge Wells Borough Council.