

# STREAMLINED PLANNING FOR FREEPORTS - BUT CAN LOCAL PLANNING AUTHORITIES DELIVER IT?

A key limb of the Government's Freeport model is a streamlined planning process. But it will depend on whether the relevant local planning authorities (**LPA**) have the resources, both financially and in terms of numbers of staff, to keep pace with the development of the Freeport business plans and intended implementation of the Freeports going into 2022.

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These are the planning measures that should help make Freeports a success in driving regeneration and growth.

## PERMITTED DEVELOPMENT RIGHTS EXPANDED

As of 21 April 2021, there have been changes made by the Town and Country Planning (General Permitted Development etc) (England) (Amendment) Order 2021.

**Class 8 Part B** has been amended to allow ports, and for the first time their agents, to erect buildings "in connection" with the operation of the port, for example to support logistics or facilities for arriving passengers.

**"Agent of development"** is not a defined term in the Planning Acts or in the GDPO and it can be interpreted fairly widely in accordance with general principles of agency. It should include the statutory undertaker for the port, plus their lessees and agents – effectively anyone carrying out development under the control and on behalf of the port authority on port land.

Use of the expanded PD right still requires a connection to the port, and the development has to be on operational land. The expanded PD rights will therefore in practice only be available to the physical ports rather than the wider Freeport zones (which can comprise up to a circle diameter of 45km).

PD rights do not apply where a development would require an Environmental Impact Assessment (EIA), or where it is likely to have a significant effect on a designated site (SAC, SPA, SSSI etc).

The [Bidding Prospectus](#) and [consultation](#) both pointed to the potential for further PD rights for Freeports beyond those now in force, but without specifying any details. More changes may come forward as the successful bidders advance their proposals over the coming months.

### The right of permitted development now:

- specifically allows for development in connection with the provision of services and facilities at the port, including the erection or alteration of an operational building;
- widens the scope of who can undertake development to include a port's "agent of development"; and
- ensures that there is parity with airports by introducing a requirement to consult the local planning authority (LPA). As for airports, there is an exemption for any development below 4m and under 200 cubic metres capacity, or where it is urgently required for the running of the port.



## LOCAL DEVELOPMENT ORDERS

So, how to streamline the planning process for the Freeport zone more generally?

The Freeports consultation and Bidding Prospectus both stressed the importance of zonal planning in bringing forward streamlined planning processes for Freeports, pointing bidders towards the use of Local Development Orders (**LDOs**). An LDO effectively grants block planning permission for a specified mix of uses and development types over the area it has been applied for.

Preparing for an LDO requires assessments and surveys to demonstrate the impacts of the proposed Freeport and to prove that there is a need for the LDO, in the form which is sought. This means, like with a planning application, there is a front-loading of work in the preparatory stage before the LDO goes out for consultation.

The Freeports Bidding Prospectus required bidders to provide evidence on how their bid could be supported by an LDO. The Government committed to provide assistance to bidders in implementing their LDOs. No information is publically available at present on the form that Government assistance is to take, beyond financial.

LDOs cannot be used for developments that fall within Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. This includes large thermal power stations, integrated chemical installations, trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes and some carbon dioxide transport and storage infrastructure.

LDOs also cannot be used where, after Appropriate Assessment under the EU Habitats Directive, the proposal is shown to adversely affect the integrity of a European site / Marine site. They also cannot straddle LPA boundaries, which will be a consideration to take into account where Freeports comprise multiple LPAs such as the Humber Freeport.

They can, however be used for developments that fall within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, which includes industries above a certain size, provided an EIA is carried out.

In practice, the continuing need to go through the EIA process where applicable may slow down the desired streamlining of the planning process.

There is no size limit on an LDO – a Freeport LDO could potentially cover the whole Freeport site. Equally, it could be limited to certain areas within a Freeport, if technically preferable to avoid areas of greater potential environmental impact.

### **Comments on LDO process (see table below for details of full process)**

LDOs can only be taken forward by a LPA. But an LPA can partner up with private organisations / seek to cover costs with private funds, and we anticipate that this will be the approach with Freeports, particularly in view of LPAs facing wider budget challenges.

LDOs can be resource intensive and require skilled planners and environmental assessment specialists and a lot of upfront work to determine the ambit of the LDO and how it should be structured. This is likely to remain a real challenge for already stretched teams. It poses one of the greatest challenges to how quickly Freeports will be able to demonstrate significant results for regeneration within the Freeport zones.

Most LDOs will be accompanied by conditions requiring further approval of certain details before individual developments come forward. These need to be carefully drafted to ensure the LDO is as flexible as possible, while still protecting against inappropriate development.

The consultation requirements are similar to a planning application, and any EIA would need to be consulted upon too. Once the LDA receives representations on the LDO, it must take these into account before they may adopt the LDO, but there is no provision for a public inquiry or for a call-in. The decision-making remains with the LPA on what, if anything, to amend and whether to adopt the LDO.

Once adopted, by resolution of the LPA, the LDO can then be revised or revoked at any time, with notice given to all those originally consulted.



**Likely use / benefits / drawbacks**

If LDOs for Freeports are to be part-financed by the Government to promote their use, there is far more chance of them being deployed successfully. Bidders can partner with the LPA to share skills and resources and make use of the available funding to speed the process up.

There will always be a tension between looking to allow a broad and flexible range of development within a LDO area against the need to protect against inappropriate or over-development. If the LDO is drawn too widely, it could result in development which may not benefit the area or sit with the ethos of the Freeport. Likewise, if drawn too narrowly, it may discourage the level of investment needed or effectively prohibit uses which may otherwise have come forward.

The early signs are encouraging that the successful bidders have formed strong partnerships between the public and private sector stakeholders, and that a busy 2021 will see the roll out of the Freeports from early 2022. There is a real opportunity for the intended planning measures, combined with the customs benefits and tax incentives, to make Freeports a success for their regions. It remains to be seen whether the LPAs will be given the financial resources and manpower to ensure they can play their part in achieving this success.

**LDOs can streamline the planning process for Freeports by:**

- reducing application costs for individual developments (LDOs may set their own bespoke fees);
- front-loading the bulk of technical surveys and assessments (decreasing cost and complexity further down the line); and
- simplifying the approval process for individual developments (less onerous forms, fewer assessments etc) metres capacity, or where it is urgently required for the running of the port.

**LDO PROCESS**

**1. Preparation**

- Prepare a draft of the order including: specific details and conditions regarding any planning permission to be granted/use class to be developed; the Council’s intentions for the area; the geographical scope of the LDO; procedural information.
- Make any necessary assessment as to the likely significant effects on a European site or a European offshore marine site.
- Obtain a screening opinion where an LDO seeks to grant permission for a development which falls within the thresholds specified in Schedule 2 of the EIA Regulations 2017. If required, produce an Environmental Statement.
- Produce a Statement of Reasons as to why the order is being sought.

**2. Consultation**

- LPA must consult with the bodies prescribed in DMPO 2015 Article 38(3) whose interests may be affected by the order if made (statutory consultees).
- The LPA must also consult with 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 LDO.
- In undertaking the consultation, the LPA must: send a copy of the draft order and Statement of Reasons to the consultees; specify a consultation period of not less than 28 days; and take account of all representations received during the consultation period.
- The draft LDO and Statement of Reasons must be placed on the planning register.
- During the consultation period the draft LDO, Statement of Reasons, and Environmental Statement (if applicable) must be available for inspection at the LPA’s principal office and any other place within their area as they consider appropriate.



## LDO PROCESS

<b>3. Publicity</b>	<ul style="list-style-type: none"><li>• Publish copies of the draft LDO, the Environmental Statement (if applicable), the Statement of Reasons, a statement of the availability to inspect those documents, and the date by which representations on the LDO must be received, on the LPA's website and in as many newspapers as will ensure that the press coverage extends to the whole of the area to which the LDO relates.</li><li>• Display notice of the proposal in at least one place on or near to the relevant site for a period of no less than 28 days.</li><li>• Serve notice of the proposal on every person whom the LPA knows to be the owner or tenant of any part of the site.</li></ul>
<b>4. Consideration of Representations</b>	<ul style="list-style-type: none"><li>• Following publication, the LPA must, in considering what modifications should be made to the LDO, take into account any representations made.</li><li>• No public inquiry or call-in, the consideration sits entirely with the LPA.</li></ul>
<b>5. Adoption</b>	<ul style="list-style-type: none"><li>• An LDO must be adopted by resolution of the LPA to have effect.</li><li>• Send a copy of the LDO, the Statement of Reasons, and any Environmental Statement to the Secretary of State no later than 28 day after the adoption of the order.</li><li>• Place a copy of the LDO and Statement of Reasons on the planning register within 14 days of the adoption of the order.</li></ul>

## CONTACT US

### PETER MASON

Partner, Real Estate  
+44 (0)7590 003164  
peter.mason@addleshawgoddard.com

### FIONA GORDON

Managing Associate, Planning and Infrastructure  
+44 (0)7825 857675  
fiona.gordon@addleshawgoddard.com



[addleshawgoddard.com](http://addleshawgoddard.com)

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