

# Neighbourhood Planning

Neighbourhood Development Orders

(including Community Right to Build Orders)

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## Introduction

Neighbourhood planning has been with us for a few years now and there are numerous neighbourhood plans underway around England. There is less awareness of Neighbourhood Development Orders (NDOs) and Community Right to Build Orders (CRtBOs). But these merit careful consideration as the following guide sets out.

This toolkit has been prepared to guide organisations on the use of NDOs and CRtBOs. It sets out the reasons why such orders should be considered, their possible uses, the process involved and good practice. The Guide has been prepared for Locality by Urban Vision Enterprise CIC, a social enterprise specialising in planning and regeneration.

## What Are NDOs and CRtBOs?

### Neighbourhood Development Orders (NDOs)

Neighbourhood Development Orders (NDOs) grant planning permission for specific development in a particular area. This could include things like specified changes of use, certain kinds of alteration or the reinstatement of historical features. An NDO could be used to grant outline planning permission for specified uses on allocated sites, such as housing, commercial uses or recreational uses.

So far there has been limited use of NDOs. However they have real potential, especially when carried out in parallel to the preparation of a neighbourhood plan.

For example, if a neighbourhood plan allocated sites for employment uses, an NDO could be used to grant permission for those uses and to provide a greater level of certainty to developers over the infrastructure and other requirements associated with developing the sites.

## Community Right to Build Orders (CRtBOs)

A Community Right to Build Order (CRtBO) is one kind of NDO which can grant planning permission for small-scale community-led developments. These could include things like housing, community centres, business and enterprise hubs or community energy schemes.

The disposal of assets granted under a CRtBO must be used for the benefit of the community. Thus, in addition to granting planning permission, a CRtBO ensures that any proceeds can only be used for the benefit of the wider community.

In addition, a CRtBO can remove enfranchisement rights. This means that those renting property can be prevented from purchasing it, ensuring that it continues to be available for rental.

## Reasons to Use NDOs and CRtBOs

### Benefits of using NDOs and CRtBOs

There are various potential benefits of using NDOs. Whilst a neighbourhood plan can include policies on things like change of use, an NDO can actually allow the development to go ahead, without the need to submit a planning application. This can save both time and the planning fee. In addition, it can provide certainty to developers from the earliest stage of the process on things like conditions and infrastructure requirements.

There is a similar benefit with using a CRtBO, together with other benefits, such as ensuring any proceeds from the development are used for community benefit and having the potential to ensure that properties remain available for rent (removing enfranchisement rights). If the community works closely with a developer and agree as scheme that the community is happy with, and the developer believes is deliverable, then a CRtBO gives more certainty for both the developer and the community that it will happen.

Some examples of potential uses of NDOs are suggested below:

### **Transitional urban areas**

Many cities and towns include areas where industrial and/or commercial restructuring is taking place. Where traditional industries have declined, or commercial buildings are no longer fit for corporate needs, this can create areas where there are high levels of vacancy and low property prices and rentals. Such areas often also have heritage value and can become a focus for small and medium businesses, creative industries, social enterprises and other economic uses that rely on cheap and flexible floorspace. Such areas can also attract independent bars, micro-breweries and venues. This can lead to radical physical and economic transformations over time. An NDO could support the transitional nature of such areas by allowing a range of specified changes of use, such as commercial uses, manufacturing and food and drink outlets.

### **Town centre regeneration**

Increasingly, non-retail uses are important in making town centres vibrant and competitive, especially cultural and recreational uses. These can help to make towns attractive to visitors, which helps to make retail operations more viable. An NDO could be used to allow changes of use of retail premises and/or upper floors to things like cafés and restaurants. It could also allow residential uses on upper floors. An NDO could form part of a wider regeneration strategy, together with other initiatives like public realm improvements and marketing.

### **Supporting site allocations**

Where a Neighbourhood Plan makes site allocations for different kinds of development, an NDO could be used to grant outline consent for specified uses. For example, for employment sites, an NDO could set out the uses allowed, together with any limitations. An NDO could also be used for granting outline consent for housing sites around a town centre, helping to meet housing need and also increasing the catchment population, making the centre more viable. Such permissions could be subject to development or design guidelines, to ensure sustainability and good integration with the surrounding area, including strong pedestrian links.

## Historic areas

NDOs have real potential in historic areas, such as conservation areas, where they may be used allow the reinstatement of original features, reversal of damaging alterations or installation of well-designed shopfronts. Such improvements can help to create a better quality environment, which is important in attracting investment and economic activity. Certain changes of use could also be allowed, recognising the key role of some historic areas in helping places to regenerate. An NDO could accompany wider initiatives to improve and regenerate historic areas, such as historic building grant schemes.

## Limitations

NDOs may not be used to grant listed building consent (i.e. permission to alter, extend or demolish a listed building) or to grant planning permission for minerals extraction, waste or nationally significant infrastructure projects. In addition, any development that automatically requires an Environmental Impact Assessment (EIA) may not be subject of an NDO. The local planning authority should be able to advise on these.

## Some examples

[Cockermouth](#) is a historic town in Cumbria, which had suffered from floods. In 2014 an NDO came into force in Cockermouth allowing various kinds of development, including change of use of some ground floor units to restaurants, cafes and bars, some upper floors to residential flats and replacement of shopfronts (in accordance with design guidelines). This addresses town centre economic development, provision of new residential accommodation and enhancement of the historic environment.

In [Ferring](#), a CRtBO has been prepared which allows the replacement of a village hall with a development of 10 apartments. In [Congresbury](#), a CRtBO is proposed for a new village hall and community centre, including a multi-use hall, community café and car park.

A CRtBO for [Atmos](#), Totnes is for redevelopment of parts of the former Dairy Crest site, comprising specialist homes for the elderly and a sustainable business park. This helps to fulfil specialist housing needs and also to deliver economic development.

Two CRtBOs proposed for Slaugham failed at the independent examination stage. This was for various reasons, including inadequate consideration of flood risk and environmental impacts. The examiner was not convinced that the basic conditions had been met in relation to having regard to national policy, achieving sustainable development and not breaching EU obligations. This highlights the importance of making sure that CRtBO proposals are properly supported by evidence and that it is made clear how each basic condition has been addressed.

## Who Can Prepare an NDO or CRtBO?

An NDO may be prepared by a qualifying body, which means parish or town councils or neighbourhood forums.

CRtBOs may be prepared by parish or town councils or neighbourhood forums or community organisations made up of individuals who live or work in the particular area for which the organisation is established.

In the case of community organisations, all individuals who live or work in the particular area are entitled to become voting members. Individuals who live in the particular area must hold a majority of the voting rights and be the majority of the board of directors. The constitution of a community organisation must state that the organisation will carry out its activities for the benefit of the community in the particular area, including in the way it manages its assets and uses its profits.

More information on how to develop constitutions for neighbourhood forums is outlined in another Locality toolkit: [Establishing a neighbourhood forum: Creating the right constitution for your community.](#)

Examples of community organisations that could potentially prepare CRtBOs include community development trusts, community land trusts or residents groups.

The constitutions of such groups would have to be checked and amended, if necessary, to meet the requirements to be a CRtB community organisation. Often there will be no incompatibility with such requirements. However, a separate community organisation could be established if there were difficulties in adapting an existing community body.

## Preparing an NDO

“Local planning authorities should take a positive and collaborative approach to enable development to be brought forward under a Community Right to Build Order, including working with communities to identify and resolve key issues before applications are submitted.”

[National Planning Policy Framework](#)

The [National Planning Policy Framework](#) says that communities preparing neighbourhood plans should “identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with their neighbourhood plan to proceed”.

Government guidance on preparing NDOs and CRtBOs is contained in National Planning Practice Guidance.

Rather like neighbourhood plans, NDOs and CRtBOs must be subjected to an independent examination, and then be approved by the community in a referendum, before they can come into force.

Before an order can be prepared, a neighbourhood area must have been designated. Parish/town councils or neighbourhood forums may submit neighbourhood areas for designation. Community organisations have the ability to submit neighbourhood areas for designation, if they are capable of becoming a neighbourhood forum.

Before embarking on the preparation of an order, it is important to engage with the local community, including residents, business and other stakeholders. This should aim to identify whether there is a need for an NDO and/or CRtBO and the kinds of development that it should permit. If community engagement is already being carried out for a neighbourhood plan, then the need for an NDO may become apparent as part of that process.

For NDOs, the types of development to be permitted would need to be identified. Also, any constraints or conditions on development permitted by the order would need to be drafted. For example, changes to shop fronts could be permitted, but only in accordance with a set of design specifications. Applying conditions or limitations to an NDO can be a way of enabling beneficial

development, but making sure that harmful and unsustainable development may not take place. These conditions may require that an 'approvals application' be made to the local planning authority in order to gain approval of certain details.

For CRtBOs, a detailed development scheme would need to be prepared. Any infrastructure or other requirements for the development would need to be specified in the order.

The local planning authority must screen the development proposal to determine whether it needs an Environmental Impact Assessment (EIA). If an EIA is required, an environmental statement must be prepared in relation to that development.

## Formal Consultation

Once the qualifying body has prepared an NDO or CRtBO proposal, it should subject it to a six-week period of consultation (Regulation 14). This will include consulting national bodies, which are set out in Schedule 1 of the [Neighbourhood Planning \(General\) Regulations 2012](#).

NDOs are fairly technical documents. As an aid to consultation, it would be useful to prepare a summary leaflet describing in plain English the kinds of development that it would enable.

For CRtBOs, it will be necessary to make full details, including plans, available. Some people find plans difficult to read, so it is often useful to prepare artists impressions or perspective views of the development. Another possibility is to prepare a model, though these can be expensive.

It is important that plans show the development in relation to its context (such as neighbouring buildings).

Following the consultation period, representations must be considered and any amendments thought to be necessary must be made to the NDO or CRtBO.

## Submitting the NDO and CRtBO

### What needs to be submitted?

The submission of an order proposal must include:

- A map identifying the land to which the order proposal relates
- A definition of the development to which the order proposal relates, including any supporting documentation and plans

- A consultation statement saying who was consulted, how they were consulted, what were the main issues and concerns arising from the consultation, and how the order addresses those issues and concerns
- An archaeology statement, if required
- A statement explaining how the proposed order meets the basic conditions
- In the case of a CRtBO, details of any enfranchisement rights which it is proposed will not be exercisable.

The basic conditions statement provides an opportunity to explain how each of the basic conditions has been considered, referencing relevant evidence.

## **The local authority's role**

The NDO or CRtBO proposal must be submitted to the local planning authority, which will then check that proper procedures and consultation has been carried out in the preparation of the order. The local planning authority will then publicise the order to bring it to the attention of people in the area, and consult certain national bodies.

A local planning authority may decline to consider a CRtBO if it considers the development specified in the order is likely to have significant effects on the environment by virtue of its nature, size or location. For this reason, it is desirable for an emerging order to be screened for EIA at an early stage.

Once the local planning authority has confirmed that the order proposal has followed the required process and includes the necessary documents, it will arrange for it be assessed by an independent examiner. If successful at the examination stage, the local authority will arrange for a referendum to take place.

## Independent Examination and Referendum

### The basic conditions

The independent examination will consider whether the NDO or CRtBO meets the basic conditions. These are the same basic conditions that apply to neighbourhood plans, but with some additional ones too.

The basic conditions for NDOs and CRtBOs to meet are as follows:

- general conformity with strategic local policy
- regard to national policy and guidance
- contributing to achievement of sustainable development
- compatibility with EU Obligations
- have regard to listed buildings
- have regard to conservation areas.

In addition, all orders must comply with Human Rights requirements.

### Listed Buildings and Conservation Areas

NDOs and CRtBOs have additional basic conditions compared to a Neighbourhood Plan, relating to listed buildings and conservation areas.

For listed buildings, this will include consideration of the impact of development permitted by NDOs or of the development proposal forming the CRtBO on the setting of listed buildings. For conservation areas, it will be necessary to consider the impact of development on the character or appearance of the area.

The legal definition of listed buildings is ‘buildings of special architectural or historic interest’. Most buildings that are listed are listed as Grade II, but buildings of particular significance may be listed Grade II\* or Grade I.

Conservation Areas are designated by local authorities and are defined as ‘areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance’.

Some conservation areas will have an Article 4 Direction. Article 4 Directions remove certain permitted development rights. This is done in the interests of preventing harmful changes. When considering an NDO, it is essential to check whether there is an Article 4 Direction in place and to make sure that there is no incompatibility with the content of the proposed NDO. Discussion with the local planning authority at an early stage is recommended. It should be noted that Article 4 Directions might also be in place for other parts of an area, not just conservation areas.

## The Independent Examiner

The local planning authority will appoint an appropriately qualified and experienced person to act as independent examiner. The independent examiner will consider whether the Order meets the basic conditions and will issue a report.

## Referendum

For NDOs, the independent examiner’s report is not binding. It is for the Local Planning Authority to decide whether the Order meets the basic conditions, though clear reasons would need to be given if departing from the independent examiner’s recommendations. For CRtBOs, the independent examiner’s report is binding.

If the NDO or CRtBO meets the basic conditions, then the local planning authority must hold a local referendum on whether the order should be made. If there is a majority vote in favour of the order, then the local planning authority will bring it into force.

If an EIA was required, the local planning authority must confirm that, having had regard to all material considerations including the nature, size or location of the development, it is appropriate that the neighbourhood development order is made.

## Good Practice

### Considering Impacts

Care is required when considering the preparation of NDOs to make sure there are no unintended consequences. For example, changes of use from certain uses to residential accommodation may help to accommodate housing growth, but could also introduce incompatible uses into commercial or industrial areas, or lead to a loss of capacity for economic development, which could harm the long-term growth potential of an area. So careful analysis is required of the possible outcomes of permitting certain kinds of physical development or changes of use.

In addition, developers, business and investors like certainty. This must be considered when introducing new kinds of permitted development into a neighbourhood area. It is especially important to consider impacts on neighbouring properties, uses, streets and spaces. Such impacts could include noise, vibration, quality of environment and safety. All of these issues can affect an area's economic development potential and quality of life for residents.

The aim should be to make beneficial development easier, not to create uncertainty or to undermine investor confidence.

For these reasons, it is essential to undertake a thorough analysis of the likely and possible impacts of allowing different kinds of development. This should include engagement with the wider community, including residents, businesses and any other stakeholders that could be affected. A failure to consider impacts properly could lead to the failure of an order at the Independent examination stage.

## Early Community Engagement

Whilst NDO and CRtBO proposals have to be subjected to formal consultation, it is really important to engage with communities and stakeholders from the beginning of the process. This helps to ensure that the community is aware of emerging proposals, well before the formal consultation stage.

Importantly, early engagement means that the knowledge and views of a wider range of people inform the content of the NDO or CRtBO. This means that people can influence the fundamentals of NDOs or CRtBO, rather than being limited to tweaking matters of detail.

For CRtBOs, the outcomes of early engagement can inform the development brief. This can help to avoid the cost and time delays involved in having to amend schemes once detailed design works have been done.

## Liaison with the Local Planning Authority

As with Neighbourhood Plans, close liaison with the local planning authority is important. It is advisable to meet with the local planning authority at a very early stage. Matters for discussion could include:

- clarification of what is strategic local policy
- discussion of the proposed NDO or CRtBO against the context of national and strategic local policy
- evidence and data that they may have available
- screening for EIA
- Possible timetable for preparing the order and bringing it into force.

## Controlling the Site (CRtBOs)

Whilst a CRtBO will grant planning permission, it may only be implemented if the site is controlled by those that want to undertake the development or their development partners.

The process for preparing a CRtBO and bringing it into force is complex and has resource implications. Therefore, it is important to ensure that the land has been acquired or will be made available.

## Selecting a professional team to prepare development schemes

Where an order proposes to grant permission for actual development, it is important to select a professional team with the necessary skills to draw up plans to the necessary standard. A good design team can help to achieve the best value for money from a given budget. Selecting the wrong design team can be a very expensive mistake in the longer term. Quality of design often makes the difference between the success and failure of a project, functionally, financially, socially, economically and in terms of environmental impacts. The level of expertise needed by the professional team will depend on the nature, extent and scope of the Order.

The first step in selecting and appointing a professional team is to prepare a brief. This should include:

- the purpose, aims and ethos of the community organisation leading the project
- the purpose and aims of the development
- details of all the functions that need to be accommodated
- required outcomes, including any special needs or standards that the development needs to meet
- the budget available
- other relevant information
- the required skills and experience of the professional team.

A clear brief helps with the selection process and provides a clear guide to the professional team. Given that a CRtBO can't be amended easily, once it is made, it is really important to get the brief right so that the scheme prepared fully meets the community's requirements. [Commissioning Consultants](#), another Locality toolkit, provides guidance on commissioning consultants and includes a template for writing a consultant brief and a template for scoring and selecting a consultant.

## Urban design and context

Design is an issue, for most or all of the Basic Conditions, potentially. Good design is a key principle in the [National Planning Policy Framework](#). Local policy almost certainly will include design policies. Achieving sustainable development includes a range of design considerations (for example pedestrian convenience).

The additional basic conditions for NDOs and CRtBOs require that the impact on listed buildings (and their setting and character) and conservation areas are considered. When working in historic environments, it is essential to use professional design teams with the necessary experience and specialisms. However, historic environments should not be considered as a barrier to change or to creative new development. In reality, historic places can be a positive catalyst for physical and economic transformations.

A common mistake is to assume that development in historic areas requires stylistic copying, but this can actually harm the integrity of the area. The character of many areas is a result of change over time, so change is fundamental to good conservation. Well-designed modern developments can enhance historic areas. Responding to historic contexts is about undertaking a thorough analysis of the area and ensuring that development proposed by an NDO would enhance and not harm the character of the area. For CRtBO development proposals, it is about preparing creative, site-specific design solutions that complement their context.

It is important to ensure that new development is well integrated with the wider area, including things like linkages with surrounding roads and paths, providing active frontages to highways and spaces, and complementing other uses and activities.

There are some useful tools for considering design. The Design Council has produced [Building for Life 12](#), which is focused on housing, but actually provides useful checklists for considering design for other kinds of development too.

## Area and site analysis

When considering NDOs, it will be necessary to undertake an analysis of the area and, for CRtBOs, the site. The following list is far from exhaustive, but gives an idea of kinds of things that may need to be considered before commencing on the preparation of an order:

- Socio-economic data
- The range and nature of uses in the area
- Transport infrastructure, including roads, public transport, paths, and flows (pedestrian and traffic)
- Community infrastructure
- Townscape characteristics, including the enclosure and definition to streets and spaces, character, and features that make the area distinctive and legible
- Topography and physical characteristics
- Historic buildings, places and features (and their setting).
- Landscape, trees and ecology
- The wider strategic context of the area.

## Undertaking Development

Development that is permitted under an NDO can take place without having to apply for planning permission. However, if the order is subject to conditions or limitations, then an 'approvals application' may have to be made to the local planning authority to confirm that each development proposal satisfies the relevant conditions or limitations.

Proposed development that does not fit the description, plans, conditions and limitations of an NDO or CRtBO would need to be amended to fit, or would need to be submitted using the conventional planning application process.

## Notes and references

- The basic conditions are set out in [Section 61E](#) of the Town and Country Planning Act 1990 (as amended by the Localism Act 2011) and in [Schedule 2\(1\) and Schedule 3\(2\) of the Neighbourhood Planning \(General\) Regulations 2012](#).
- National policy is set out primarily in the [National Planning Policy Framework 2012](#).
- The main planning guidance document is [the National Planning Practice Guidance 2013](#) (with subsequent amendments).
- [Building for Life 12](#) may be downloaded from the Design Council's website: [designcouncil.org.uk](http://designcouncil.org.uk).

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