

A Guide for Councils: Meeting your authority's legal requirements for Neighbourhood Development Orders

Introduction

Under the Town and Country Planning Act 1990 (as amended), the Council has a statutory duty to assist communities in the preparation of neighbourhood development orders and to take orders through a process of examination and referendum. The Localism Act 2011 (Part 6 chapter 3) sets out the LPA responsibilities as:

- Designating a forum
- Designating the neighbourhood area
- Advising or assisting communities in the preparation of a neighbourhood development order
- Checking a submitted order meets the legal requirements
- Arranging for the independent examination of the order
- Determining whether the neighbourhood development order meets the basic conditions and other legal requirements
- Subject to the results of the referendum/s bringing the order into force

In addition legislation sets out who the relevant councils are with responsibility for arranging the referendum/s.

1990 Act Schedule 4B para 3 states:

“A local planning authority must give such advice or assistance to qualifying bodies as, in all the circumstances, they consider appropriate for the purpose of, or in connection with, facilitating the making of proposals for NDOs in relation to neighbourhood areas within their area” This applies to NDO's through S61E-Q of the Town and Country Planning Act 1990. There is no requirement to give financial assistance.

This guide sets out the legal responsibilities and timeframes for the Council's work on NDP's. It provides references back to the relevant acts and regulations. For further information on Neighbourhood Planning and process refer to the online Planning Practice guidance at <http://planningguidance.planningportal.gov.uk>.

Notes on this guide

Text that appears in italics is for information rather than requiring action by the Council.

*Throughout the text below unless stated otherwise the term ‘publicise’ means to place on the website and publicise through other means in order to bring it to the attention of people who live, work or carry out business in the neighbourhood area.

‘Convention rights’ has the same meaning as the Human Rights Act 1998.

Unless otherwise stated the regulation references are to the Neighbourhood Planning (General) Regulations 2012 {as amended by The Neighbourhood Planning (General) (Amendment) Regulations 2015}.

Abbreviations used in this guide

LPA Local Planning Authority

NDO Neighbourhood Development Order

PPG Planning Practice Guidance (the online tool at <http://planningguidance.planningportal.gov.uk>)

Designation of a Neighbourhood Area		
Stage	Description	Relevant legislation and regulations
Definition of a neighbourhood area	<i>An area that is designated by the LPA as a neighbourhood area when a parish council or a group capable of becoming a Neighbourhood Forum has applied</i>	1990 Act 61G (1) (2)
Information on receipt of area application for a NDO	The information that should be submitted to the LPA is: <ol style="list-style-type: none"> 1. A map identifying the area 2. Statement explaining why it is considered an appropriate 	Regulation 5 1990 Act 61G (2) b.

	<p>neighbourhood area</p> <p>3. Statement that the organisation making the application is a relevant body.</p> <p>If the application does not contain this information it should be returned.</p> <p><i>NB the LPA can decline to consider an area application if the body has already made an area application and is awaiting a decision upon it. Care needs to be taken for application made by potential Neighbourhood Forums that there is a reasonable chance that they can become a Neighbourhood Forum.</i></p>	
Determining the application criteria for a neighbourhood area	<p>The LPA should be sure that parish council applications cover part or all of the parish and that neighbourhood forum applications do not cover a parished area.</p> <p>In determining the application, the LPA must consider:</p> <ol style="list-style-type: none"> 1. how desirable it is to designate the whole of the parish area as a neighbourhood area, and 2. how desirable it is to maintain the existing boundaries of areas already designated as neighbourhood areas (as areas designated as neighbourhood areas must not overlap), as well as 3. whether they should designate the area as a business area. 	<p>1990 Act 61G (3)</p> <p>(4)</p> <p>(7) 61H (1)</p>
Publicising the application for the area NDO	<p>The LPA should, as soon as possible after receipt of the application for area designation, publicise* the application and invite representations for a period of not less than 4 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council and 6 weeks in all other cases. The information to be publicised is:</p>	<p>Regulation 6 and 6A</p>

	<ol style="list-style-type: none"> 1. a copy of the area application 2. details of how to make representations 3. details of the deadline for representations starting from the day after the application was first publicised. 	
Prescribed date for determination of an area application	<p>The LPA must determine the application within the following timescales from the date immediately after that on which the application is first publicised:</p> <ol style="list-style-type: none"> (a) 20 weeks in a case where the area to which the application relates falls within the areas of two or more local planning authorities; (b) 8 weeks where the relevant body is a parish council and the area to which the application relates is the whole of the area of the parish council; (c) 13 weeks in all other cases. 	Regulation 6A
Designation as a business area	If the LPA considers that the area is wholly or predominantly business in nature it should be designated as a business area.	1990 Act 61G & H
Modification of an existing neighbourhood area	<p>The LPA can modify the boundary of an existing neighbourhood area but if this relates to a parished area only with the parish councils' consent.</p> <p>In making a modification the LPA must consider whether they should designate the area as a business area.</p>	1990 Act 61G (6) 61H (2)
Publicising a designation of a neighbourhood area	<p>If the LPA approves the application it should publicise* its decision and:</p> <ol style="list-style-type: none"> 1. the name of the neighbourhood area 2. a map identifying the area 3. the name of the parish council or neighbourhood forum who applied for the designation. <p><i>Refusals should be based on planning reasons or the validity of the application.</i></p>	Regulation 7

Refusal of a proposal for a neighbourhood area	If the LPA refuses the application for a neighbourhood area then it must publicise on its website* : <ol style="list-style-type: none"> 1. the decision and statement of reasons for making decision (called a 'decision document') 2. the details of where and when the decision document can be inspected. 	Reg 7 1990 Act 61G (9)
Refusal of a proposal for a neighbourhood area because the area is not considered appropriate	If a valid application is made, and some or all of the specified area proposed is not designated as a neighbourhood area and the refusal is because the LPA considers that the area isn't suitable, then the LPA must ensure that some or all of the area specified in the original application forms part of one or more areas designated or to be designated as neighbourhood areas.	1990 Act 61G (5)
Designation of cross local authority boundary neighbourhood areas	The powers of designation and modification must be exercised by all the relevant authorities when the area proposed crosses local authority boundaries.	1990 Act 61I
Keeping a map of neighbourhood areas	The LPA must publish a map setting out the current neighbourhood areas designated, and indicate those which are business areas.	1990 Act 61G (8) 61H
Set up of a Neighbourhood Forum (only applies to non parished areas)		
Body proposing a NDO	A 'qualifying body' is a parish council or in a non parished area a designated neighbourhood forum <i>In the case of a parish council if the neighbourhood area covers whole or part of a parish council then only the parish council can act</i>	1990 Act 61F(1-4)

Publicity about the right to make applications for neighbourhood forum designation	<p>The LPA must make people aware of the right to make applications for a neighbourhood forum designation in a way the LPA considers appropriate.</p> <p><i>The forum application should be publicised in such a way that people are able to comment on the proposals.</i></p>	1990Act 61F (11)
Receipt of a neighbourhood forum application+	<p>The application received by the LPA should include:</p> <ol style="list-style-type: none"> 1. Name of the proposed neighbourhood forum 2. Copy of its written constitution 3. Name of the neighbourhood area to which application relates and a map which identifies the area. 4. Contact details of at least one member that can be made public 5. Statement explaining how the proposed forum meets the following conditions: 	Regulation8. 61F 1990 Act (5)
	<ol style="list-style-type: none"> b. Is established to promote or improve the social, economic and environmental well being of an area that consists of or includes the neighbourhood area for the NDO (this can also relate to businesses) b. Has 21 individual members and membership is open to the following groups : <ul style="list-style-type: none"> o people living in the area o People who work there o County council, district or London borough councillors for the area c. Has a written constitution. <p>If the application does not contain this information it should be returned.</p>	1990 Act 61F (5 - 7)
Publicising the application to become a forum	<p>The LPA should publicise* the application for the forum along with a statement that once a neighbourhood forum has been designated for the</p>	Regulation 9

	area another cannot be designated for the area until the existing expires or is withdrawn. Explain that the period for invitation of representations on the application is 6 weeks and details of how to make a representation should be published along with the deadline for receipt of representations.	
The designation criteria for a neighbourhood forum	<p>The LPA may designate the forum if they are satisfied that the organisation or body meets the conditions set (see ‘Receipt of an application to become a neighbourhood forum+’)</p> <p>In deciding on designation the LPA:</p> <ol style="list-style-type: none"> 1. must have regard to the desirability of designating the forum organisation or body: <ol style="list-style-type: none"> a. that has taken reasonable steps to secure membership that includes at least one person from each of the three membership groups identified, people drawn from different places in the area and different sections of the community in the area, and b. whose purpose reflects the character of the area. 2. must designate only one organisation or body as a neighbourhood forum for a neighbourhood area, and only if the body has applied to do so, and only where the area does not include part or all of a parish. <p><i>Authorities may like to have regard to the designation criteria prior to publicising the application and, where necessary encourage applicants to provide evidence to demonstrate that they have made steps to meet the conditions of (7)</i></p>	<p>1990 Act 61 F (6)</p> <p>(7)</p> <p>(4)</p>
Publicising the designation	When a decision has been made on designation, the LPA should	Regulation 9

of a neighbourhood forum	publicise*: 1. the name of the forum 2. a copy of the written constitution 3. the name of the area to which the designation relates 4. contact details of at least one member of the forum.	
Refusing to designate a forum	If the LPA decides to refuse to designate the forum then a statement should be produced setting out the reasons for making that decision. This is called a 'refusal statement' and details of where and when the refusal statement can be inspected should be publicised on its website.	1990 Act 61F (7) (d) Regulation 10
Receiving multiple applications for neighbourhood fora in an area	Where a Neighbourhood Forum has been designated, and that designation has not been expired or been withdrawn, then the Local Planning Authority may decline to consider additional applications for Neighbourhood Forums in relation to that Neighbourhood Area.	Regulation 11 1990 Act S61F (9)
The withdrawal of a forum designation	The LPA can withdraw a neighbourhood forum designation when requested by that neighbourhood forum. If this happens the LPA must publish a statement setting out details of the withdrawal called a 'withdrawal statement' and details of where and when the withdrawal statement can be inspected should be published on its website. The LPA can also withdraw the designation if it considers the forum is no longer meeting the conditions of approval for designation or any other criteria which the authority were required to have regard in making the designation. Reasons for this decision must be given.	Regulation 12 1990 Act 61F (9)
Forum designation expiry	The forum designation expires five years from the day on which it was made, but this doesn't affect the validity of any proposal for a NDO made before the end of the period. A change in membership doesn't trigger	1990 Act 61F (8)

	expiry of a designation unless the forum is a company.	
<p>The process of producing a Neighbourhood Development Order</p> <p>NB the parish or forum will produce the proposals but this should be supported by the Council in its role to advise and assist.</p>		
Definition of a NDO	<i>An order that grants planning permission in a particular neighbourhood for a specified development or development of any specified class of the Use Classes Order.</i>	1990 Act 61E (2)
Body proposing a NDO	<i>Should be a parish council or neighbourhood forum designated by the LPA In the case of a parish council if the neighbourhood area covers whole or part of another parish council then the proposing parish council can only act with the permission of the other parish council.</i>	1990 Act 61E (1), 61F (1) 61F (2) (3) Schedule 4B
Scope of NDO provisions	<i>A proposal can't be made if there is, at the time, another outstanding proposal by the parish council or forum in relation to the area. An NDO can apply in relation to:</i> <ol style="list-style-type: none"> <i>1. All the land in the neighbourhood area specified in the order</i> <i>2. Any part of the land</i> <i>3. A site</i> <i>4. Different provision for different cases or circumstances</i> 	1990 Act 61F (10) 1990 Act 61J
The type of permission NDO can grant	<ol style="list-style-type: none"> <i>1. Unconditional</i> <i>2. Subject to conditions or limitations specified in the order which can include:</i> <ul style="list-style-type: none"> <i>o Obtaining the approval of the LPA</i> <i>o Specifying the period within which the application may be made to the LPA for approval of any matter specified in the</i> 	1990 Act 61L (2) (5)

	<p><i>order</i></p> <ul style="list-style-type: none"> ○ <i>Specifying the period within which the development must begin.</i> 	
Permissions a NDO cannot grant	<ol style="list-style-type: none"> 1. <i>Grant of permission of excluded development (see definition below)</i> 2. <i>Grant of permission for any development in any case where planning permission is already granted</i> 3. <i>Permission on land in more than one neighbourhood area</i> 4. <i>Permission which would be contrary to the EIA Regulations see 'Screening for EIA Regulations' below</i> 5. <i>Permission which would be likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects) and is not directly connected with or necessary to the management of the site.</i> 	<p>1990 Act 61J and Schedule 1</p> <p>Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (as amended)</p> <p>Reg 78A Conservation Habitats and Species Regulations 2010 as amended by Schedule 2 of the Neighbourhood Planning (General) Regulations 2012</p>
Definition of 'excluded development'	<ol style="list-style-type: none"> a) <i>Is a 'county matter' (schedule 1 of 1990 ACT) i.e. relating to minerals</i> b) <i>Any operation or class of operation relating to waste development</i> c) <i>Development that falls within Annex 1 to Council Directive 85/337/EEC i.e. Oil refineries, power stations, radioactive waste</i> 	<p>1990 Act 61K And Schedule 1</p> <p>Schedule 1 of the Town and Country</p>

	<p><i>disposal, iron and steel smelting, asbestos operations, chemical installations, motorways, airports, ports and toxic and dangerous waste disposal.</i></p> <p><i>d) Development consisting wholly or partly of a national infrastructure project</i></p>	<p>Planning (Environmental Impact Assessment) Regulations 2011 (as amended)</p>
<p>Pre submission consultation and publicity by the parish council/neighbourhood forum of the proposed Neighbourhood Development Order</p>		
<p>Consultation by the parish council or neighbourhood forum</p>	<p><i>Before submission to the LPA the qualifying body should:</i></p> <ol style="list-style-type: none"> <i>1. publicise (but this does not have to be on a web site) in a way that is likely to bring to the attention of people who live work or carry on business in the area details of :</i> <ol style="list-style-type: none"> <i>a. the proposals,</i> <i>b. when and where they can be inspected,</i> <i>c. how to make representations, and</i> <i>d. the deadline for making representations – not less than 6 weeks from first publicised</i> <i>2. consult any consultation body listed in Note 1 below whose interests they consider may be affected by the proposals for a NDO.</i> <i>3. send a copy of the NDO to the LPA.</i> 	<p>1990 Act Schedule 4B 1 (2)</p> <p>Reg 21 and Schedule 1</p>
<p>Receipt of a draft NDO by the LPA</p>		

<p>NDO proposals</p>	<p>The proposal must include:</p> <ol style="list-style-type: none"> 1. A map identifying the land to which the proposal relates 2. A consultation statement which contains details of those consulted, how they were consulted, summarises the main issues and concerns raised and how these have been considered, and where relevant addressed in the proposed NDO 3. The proposed NDO 4. Where the parish council or neighbourhood development forum considers appropriate, following consultation with English Heritage, an archaeology statement 5. A statement explaining how the NDO meets the basic conditions in the 1990 Act see Note 2. 6. Where it is Schedule 2 development under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 an environmental statement 7. An environmental statement under the EIA Regs 2010 as amended. <p><i>refer also 'screening of NDO proposals under EIA Regulations'</i></p>	<p>Regulation 22</p> <p>1990 Act Schedule 4B 1 (2)</p> <p>The Conservation of Habitats and Species Regulations 2010 as amended by Schedule 2 of the Neighbourhood Planning (General Regulations) 2012. i.e Regs 102 and 102A</p>
<p>The LPA's assessment of the proposed NDO</p>		
<p>Reasons for a LPA declining to consider the proposal for the NDO</p>	<p>The LPA can decline to consider a proposal if it is a repeat, and notify the body of that fact and their reasons for declining. To qualify as a 'repeat' proposal:</p> <ol style="list-style-type: none"> 1. the authority has refused the same or similar proposal within the previous 2 years, or 2. a referendum relating to a proposal that is the same as or similar has 	<p>1990 Act Schedule 4B para 5, 6</p> <p>And Regulation 18</p>

	<p>been held and 50% or less than 50% of those voting voted in favour and</p> <p>3. the LPA considers no significant change in national policy and advice in SoS guidance of relevance to the proposal, or the strategic policies of the development plan for the area of the authority have occurred since the refusal or referendum.</p> <p>4. another proposal has been made for a NDO which is outstanding and the authority consider the development and site to which the proposals relate are the same or substantially the same.</p>	<p>1990 Act Schedule 4 C para 4 (5) And Regulation 26</p>
<p>Criteria that the LPA must consider when assessing a neighbourhood development order</p>	<p>The LPA must consider:</p> <ol style="list-style-type: none"> 1. whether the parish council or neighbourhood forum is authorised to act (see ‘determining the application criteria for a neighbourhood forum’), 2. whether the proposal and accompanying documents <ol style="list-style-type: none"> a. comply with the rules for submission to the LPA (see ‘receipt of a draft NDO by the LPA’), and b. meets the ‘definition of an NDO’ and c. meets the ‘scope of NDO provisions’ and the ‘type of permission an NDO can grant’ 3. whether the parish council or neighbourhood forum has undertaken the correct procedures in relation to consultation and publicity (see ‘pre submission consultation by the parish council or neighbourhood forum’) 	<p>1990 Act Schedule 4B Para 6 , section 61F, 61E(2) 61J and 61L</p>
<p>LPA decision grounds for refusal</p>	<p>The LPA must inform the qualifying body of whether it considers the proposal has complied with the legislation and if any of the matters above do not apply and where not satisfied, refuse the proposal and explain why.</p>	<p>1990 Act Schedule 4B Para 6 (4) (a) (b)</p>

<p>Notification of the LPA's decision</p>	<p>The LPA must publicise its decision in 'the decision document' and its reasons. And notify the body proposing the order as well as anyone who expressed an interest in knowing the decision.</p>	<p>1990 Act Schedule 4B Para 6 (4) (a) (b) Regulation 26</p>
<p>Publicising the NDO proposal</p>	<p>As soon as possible after receipt of the draft order the LPA must publicise*</p> <ol style="list-style-type: none"> 1. the details of the order proposal, 2. where and when it can be inspected, 3. how to make representations on the order proposal, 4. that a representation can include a request to be notified of the LPA decision in relation to the NDO, and 5. the deadline for receipt of the proposals (this must be not less than 6 weeks from the first day the proposed plan is publicised). <p>For an order proposal to which Reg 29A of the EIA regulations apply the LPA must also publicise the environmental statement as well as using a site notice for not less than 21 days and publicity in a local newspaper with appropriate circulation for the site. <i>refer also 'screening of NDO proposals under EIA Regulations'.</i></p> <p>The LPA must also notify any body in the consultation statement that the order proposal has been received.</p>	<p>Regulation 23</p>
<p>Appointment of examiner</p>	<p>The LPA must consider whether the submitted draft neighbourhood development order meets the requirements set out in the 1990 Act and notify the qualifying body as to whether or not they are satisfied (see above). Once satisfied the LPA may appoint an independent inspector with the consent of the parish council or designated neighbourhood forum</p>	<p>1990 Act Schedule 4B para 6</p>

	<p>submitting the plan. (If there is no agreement the Secretary of State can appoint).</p> <p><i>N.B The Council is responsible for paying the costs of the examination so it is in the Council's interests to ensure that the proposed plan meets the requirements.</i></p>	
<p>LPA submits order for examination</p>		
<p>LPA submits order for examination</p>	<p>After appointment of the inspector, the LPA submits the following for independent examination as soon as possible:</p> <ol style="list-style-type: none"> 1. A map identifying the land to which the proposal relates 2. The consultation statement 3. The proposed NDO 4. A statement containing a summary of the proposals and reasons why an order should be made in the proposed terms 5. Where the parish council or neighbourhood development forum considers appropriate, following consultation with English Heritage, an archaeology statement 6. A statement explaining how the NDO meets the basic conditions in the 1990 Act see Note 2. 7. An environmental statement if it applies 8. The information required to make a Habitats Regulation Assessment 9. Any other document submitted to the LPA by the qualifying body in 	<p>1990 Act Schedule 4B (7) Regulation 24</p>

	relation to the draft order 10. A copy of any representations received in response to the draft order	
Examination of NDO		
The councils role in examination	The LPA makes the arrangements they consider appropriate to holding the examination.	1990 Act para 7 Schedule 4B
The examiners role	<i>The examiner must only consider:</i> 1. <i>whether the draft NDO meets the basic conditions (see Note 2). These include the impact on European sites,</i> 2. <i>whether the draft NDO complies with the definition of an NDO and the provisions that can be made by an NDO and permissions that can be granted</i> 3. <i>whether any period for applications to be made or development to begin are appropriate</i> 4. <i>whether the area for referendum should extend beyond the neighbourhood area, and</i> 4. <i>whether the draft order is compatible with the Convention rights.</i>	1990 Act para 8 Schedule 4B, 61 E (2), 61J and 61L (2) (b) or (5) as appropriate
A suitable examiner	The Council must be satisfied that the examiner is: 1. independent of the parish council or neighbourhood forum, 2. has no interest in any land that may be affected by the draft order, and 3. has appropriate qualifications and experience.	1990 Act para 7 Schedule 4B (6) (7)

	The examiner can be the employee of another local authority or the secretary of state and undertake the work for payment.	
The form and conduct of the examination	<p><i>As a general rule examination is by written representations. However, oral representations must be heard, in public, if the examiner considers they are needed to ensure adequate examination of an issue or for a person to have a fair chance to put a case.</i></p> <p><i>If there are oral representations then the following people can speak:</i></p> <ul style="list-style-type: none"> • <i>The parish council or neighbourhood forum</i> • <i>The local planning authority</i> • <i>Where the hearing is held to give a person a fair chance to put their case, that person.</i> <p><i>The examiner decides on the conduct of the hearing including:</i></p> <ul style="list-style-type: none"> • <i>Whether the speaker may be questioned and the matters that they can be questioned upon</i> • <i>The amount of time given to a person to speak and for questioning.</i> <p><i>The examiner should undertake the questioning unless s/he considers that questioning by another person is necessary to ensure adequate examination of an issue or for a person to have a fair chance to put a case.</i></p>	<p>1990 Act para 9 Schedule 4B</p> <p>(5)</p>
The examiners report on a NDO		
The contents of the	<i>The examiner must make a report with recommendations, the reasons for</i>	1990 Act para 10

<p>examiners report</p>	<p>them and a summary of findings, only as follows:</p> <ol style="list-style-type: none"> 1. the report must recommend either: <ol style="list-style-type: none"> a. the draft order is submitted to referendum, b. modifications specified in the examiners report are made and the draft order as modified is submitted to referendum, or c. the proposal for the order is refused. 2. Modifications can only be those that the examiner thinks are needed to: <ol style="list-style-type: none"> a. make the order conform to the basic conditions (Note 2) b. make the order compatible with the Convention rights c. make the order comply with definition of an NDO and the provisions that can be made by a NDO d. alter timescales in relation to periods for receipt of applications and start dates for development e. to correct errors. 	<p>Schedule 4B</p> <p>1990 Act para 8 Schedule 4B, 61E (2) 61J and 61L</p> <p>para 10(3) (d)</p>
<p>Recommendation to go to referendum</p>	<p><i>The examiner cannot recommend the order goes to referendum if it does not meet the basic conditions or comply with the definition of an NDO or the provisions that can be made by a NDO, or the EIA Regulations. Refer also 'screening of NDO proposals under EIA Regulations'.</i></p> <p><i>If a recommendation to go to a referendum is made it must be accompanied by a recommendation as to whether the area for the referendum should go beyond the neighbourhood, and if so what the extended area should be.</i></p>	<p>1990 Act para 10 (5) and Schedule 4B 61E (2) 61J and 61L</p>
<p>Parties issued with the examiners report</p>	<p>The LPA, parish council or neighbourhood forum is sent a copy of the examiners report. The LPA is responsible for arranging the publication of</p>	<p>1990 Act para 10 (7 & 8) Schedule 4B</p>

	the report as soon as possible.	
LPA consideration of examiners recommendations on NDO		
LPA Consideration of examiners recommendations	<p>The LPA must consider each of the examiners recommendations and the reasons for them and decide what action to take in response to each. It must also come to a formal view about whether the draft order meets the basic conditions.</p> <p>If the authority are satisfied that the draft plan meets the basic conditions (Note 2), is compatible with the Convention rights, and complies with the definition of an NDO and the provisions that can be made by a NDO or can do so as modified a referendum must be held.</p>	<p>1990 Act schedule 4B para 6 para 12, 61J and 61L</p>
Action the LPA can take following consideration of the examiners recommendations	<p>Once the LPA has considered each of the examiners recommendations and determined its response It can:</p> <ol style="list-style-type: none"> 1. make modifications to correct errors, or to make the order: <ol style="list-style-type: none"> a. meet the basic conditions (note 2) b. compatible with the Convention rights c. comply with the definition of an NDO and the provisions that can be made by a NDO d. comply with suitable periods for making applications and starting development. 2. extend the area to which the referendum(s) are to take place. If the authority decides to extend the area for referendum it must publish a map for that area. 	<p>1990 Act schedule 4B para 12</p> <p>Regulation 25</p> <p>1990Act 61E (2), 61J and 61L 61L (2) (b) and (5)</p> <p>Schedule 4B 12 (9)</p> <p>Schedule 4 B 12 (10)</p>

	3. decide that they are not satisfied with the plan proposal with respect to meeting basic conditions, compatibility with Convention rights, definition and provisions of the NDO even if modified.	
Content of decision	If the LPA is satisfied then it publicises its decision (a decision statement) and moves to a referendum – see ‘decision to take the order forward’ If the LPA is not satisfied, that the plan meets the basic conditions then it must refuse the order proposal and publicise its decision.	1990 Act Schedule 4B Para 12 (4) & (11) Para 12 (10) Regulation 25
When the LPA proposes to make a decision that differs from the examiners recommendation	...and the reason for the difference is wholly or partly as a result of new evidence or a new fact or a different view taken by the LPA about a particular fact the LPA: 1. notifies all those identified on the consultation statement of the parish council or neighbourhood forum and invites representations 2. may refer the issue to an independent examination if they think it appropriate. The LPA cannot make a decision that differs from the examiners’ recommendations about the referendum area.	1990 Act schedule 4B para 13 Para 13 (4)
Publication of the examiners report and the LPAs decision on NDO		
Decision to take the order forward	As soon as possible after considering the examiners recommendations and deciding to make a NDO the LPA must publish its decisions and reasons in a ‘decision statement’. Details of where and when the decision statement can be inspected and the examiners report are published. The LPA sends a copy to the parish council or neighbourhood forum and	1990 Act schedule 4B para 12 (11 & 12) Regulation 25

	anyone who asked to be notified of the decision.	
Screening of NDO proposals under EIA Regulations		
NDO proposals falling within the scope of EIA Regulations	Where the development proposed by the NDO falls within the scope of the EIA Regulations a screening opinion has been adopted, or the SoS makes a screening direction, no referendum may be held on an NDO which would grant permission for schedule 2 (EIA Regs) development likely to have significant effects on the environment by virtue of factors such as its nature, size or location unless: <ul style="list-style-type: none"> • An environmental statement has been prepared in relation to this development, • The LPA are satisfied that having regard to all material considerations it is appropriate that the NDO is made • The LPA has first considered the environmental information and states that they have done so in their decision 	Regulation 29 of Town and Country Planning (Environmental Impact Assessment) Regulations 2011 as amended by the Neighbourhood Planning (General) Regs 2012 Regulation 33
Referendums for a NDO		
Responsibility for the residential and business referendums	<i>The relevant district, London Borough, metropolitan borough, district or county council (in relation to an area where there is no district) is responsible for making arrangements for the residential referendum (and additional business referendum if it is a Business Area) to take place for the area where the referendum area and the councils area coincide.</i>	1990 Act Schedule 4B para 14
What the Council has to do	If both a residential and business referendum are required they must be	Regulation 17 of the

	<p>held on the same day</p> <p>In the case where a business referendum is to be held not less than 56 days, and in other cases (i.e. where just a residential referendum will be held) at least 28 days (not including weekends, bank holidays, days of public thanksgiving) before the referendum the proper officer of the Council must ensure the information statement (see below) and specified documents (see below) are published on the website. These documents must also be made available during the referendum period (see below) for inspection at the main offices of the Council, and at least one other premise open to the public in the Councils control considered appropriate by the Council to achieve geographical distribution.</p> <p>Where a business referendum will be held the documents must be available during referendum period in such other manner if any as the proper officer considers necessary to bring them to the attention of persons likely to be entitled to vote in the business referendum.</p> <p>The information statement and specified documents must remain available throughout the period of the referendum in the original form published as far as is reasonably practical.</p> <p><i>The Neighbourhood Planning (Referendums) (Amendment) Regulations 2014 includes template forms for residential neighbourhood planning referendums when held alone or combined with other polls; business neighbourhood planning referendums and invitations to register to vote at business referendums.</i></p>	<p>Neighbourhood Planning (Referendums) Regulations 2012- and as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013</p> <p>Regulation 4 the Neighbourhood Planning (Referendums) Regulations 2012- and as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013 and the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014.</p>
<p>The information statement</p>	<p>The information statement prepared by the Council must include the following information:</p> <p>a. that a referendum will be held</p>	<p>Regulation 4 the Neighbourhood Planning</p>

	<ul style="list-style-type: none"> b. the date of the referendum c. the question to be asked (the question is set out in legislation – see note below) d. a map of the referendum area e. where the referendum area and neighbourhood area are not identical a map of the neighbourhood area f. a description of those entitled to vote in each referendum g. the referendum expenses limit applicable (to both referendums if there are to be a residential and business referendum) and the number of people identified as entitled to vote (in both referendums if there are two) on which the limit was calculated h. that the referendum(s) will be conducted in accordance with procedures similar to those for local government elections, and i. the address and times at which a copy of the specified documents can be inspected. <p>Schedule 1 of the Regulations sets out the referendum questions. The question for a NDO is: Do you want the type of development in the neighbourhood development order for (insert name of neighbourhood area) to have planning permission?</p>	<p>(Referendums) Regulations 2012 and as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013</p> <p>The Neighbourhood Planning (Referendums) regulations 2012 Schedule 1</p>
<p>The ‘specified documents’</p>	<p>The specified documents to be published by the Council on the website (made available for inspection) are:</p> <ul style="list-style-type: none"> a. Draft NDO b. Examiners report c. Summary of representations submitted to examiner d. For a draft NDO a statement that the Council is satisfied that the order meets the basic conditions and provisions as they apply e. A statement that sets out general information as to town and country planning (and neighbourhood planning) and the 	<p>Regulation 4 (3) of the Neighbourhood Planning (Referendums) Regulations 2012 1990 Act Para 8 Schedule 4B and 61E(2), 61J and 61L</p>

	referendum (prepared having regard to any guidance issued by SoS)	
Qualifying to vote in a residential referendum	<i>Anyone on the prescribed date can vote in a residential referendum if they:</i> a. <i>are entitled to vote in an election of any ward councillor of the relevant council whose ward is in the referendum area and whose qualifying address for the election is in the referendum area.</i> b. <i>In the case of the City of London the person can vote if they are entitled to vote in an Authority election and the persons qualifying address is in the City of London.</i>	1990 Act Schedule 4B para 14 (4- 7)
Qualifying to vote in an business referendum	<i>Anyone who is a non domestic ratepayer in the referendum area recorded on the business voting register compiled by the Council using the business rate billing information it holds.</i>	1990 Act Schedule 4B para 15 Regulation 17 of the Neighbourhood Planning (Referendums) Regulations 2012- as amended by the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013
Referendum not arranged by the Council	When a relevant Council is not the LPA the relevant Council and LPA must co-operate in the holding of referendum as follows:	Regulation 16 of the Neighbourhood Planning

	<ol style="list-style-type: none"> 1. The proper officer of the LPA must inform the proper officer of the Council as soon as they know a referendum is required, provide summary of written representations and information and copies of documents held by the LPA which the proper officer of the relevant Council requires to comply with 'what the Council has to do' namely the 'information statement' and the 'specified documents'. 2. Both must respond to each other as soon as possible in relation to requests for information relating to the holding of the referendum. 3. The proper officer of the relevant Council must as soon as possible inform the proper officer of the LPA of the results of the referendum. 	(Referendums) Regulations 2012
Following the referendums on a NDO		
Referendum results	If a referendum results in more than half those voting (i.e. 50% plus 1), voting in favour of the order the LPA must make the NDO as soon as reasonably practical unless: it considers that this would breach, or be incompatible with any EU obligation or any of the Convention Rights.	1990 Act 61E (4)
Referendum results in business areas	If, in a designated business area, two referenda are held and in one but not the other more than half of those voting have voted in favour of the plan the LPA may, but is not obliged to, make the NDP.	1990 Act 61E (5)
Publication of the decision on the NDO by the LPA	If a referendum is held and there is a vote in favour (50% plus 1) the LPA must publicise their decision and reasons for the decision – called a 'decision document', and details of where and when it can be inspected. They should send a copy to: <ul style="list-style-type: none"> • The parish council or neighbourhood forum as relevant 	1990 Act 61E (11) (12) Reg 26

	<ul style="list-style-type: none"> Any person who asked to be notified of the decision 	
Publicising the NDO	As soon as possible the LPA should publish the order, details of when and where it can be inspected and notify any person who has asked to be notified that it has been made and where and when it may be inspected.	1990 Act 61E (13) Reg 27
Revocation of a NDO	<p>The SoS may revoke a NDO or a LPA may revoke with permission of SoS. Reasons must accompany revocation. As soon as possible after revoking the NDO the LPA must publish ‘the revocation document’ which sets out a statement of the revocation and the reasons for it, details of where and when it can be inspected.</p> <p>It also informs the parish council or neighbourhood forum and any person the authority previously notified in relation to the making of the order together with any person it considers necessary to bring the revocation to the attention of who live, work or carry out business in the area. In addition the owner or tenant of any part of the land to which the order applies.</p> <p>It removes the order from its website and any other place it was available for inspection.</p>	1990 Act 61M Reg 31
Modification of a NDO	<p>LPA may modify an NDO to correct errors by replacing it with a new one that contains the modification but only with the permission of the qualifying body if it is still in place. As soon as possible after modifying the LPA publishes ‘the modification document’ which sets out the details of the modification, and details of where and when it can be inspected. It also informs the parish council or neighbourhood forum and any person the authority previously notified in relation to the making of the order.</p>	1990Act 61M (4) (5) (6) Regulation 30

Legal challenge to NDO		
Reasons for legal challenge to NDO	<p><i>A legal challenge can be made in relation to:</i></p> <p><i>1. a LPA declining to make an NDO if an applicable referendum resulted in over half of those voting (50% plus 1) in favour, as soon as reasonably practical. The LPA is not to be subject to the duty if they consider that the making of the plan would breach, or otherwise be incompatible with any EU obligation or any of the Convention rights within the meaning of the Human Rights Act 1998.</i></p> <p><i>only if proceedings are brought by a claim for Judicial Review within 6 weeks of the day on which the decision is published.</i></p> <p><i>2. The consideration of inspectors recommendations and decisions made upon them</i></p> <p><i>only if proceedings are brought by a claim for Judicial Review within 6 weeks of the day on which the decision is published.</i></p> <p><i>3. The conduct of the referendum</i></p> <p><i>Only if the proceedings are brought by a claim for judicial review and this is filed within 6 weeks beginning the day on which the results are published.</i></p>	<p>1990 Act Schedule 4B 61N (1)</p> <p>1990 Act Schedule 4B para 12 and 61N (2)</p> <p>1990 Act Schedule 4B para 14 or 15 61 N (3)</p>

Note 1
Part 6 of The Neighbourhood Planning (General) Regulations 2012
Regulation 21 and Schedule 1 requires the following consultation:

Consultation bodies for the NDO

Schedule 1

2 (a)

- Any person to whom the electronic communications code applies, or who owns or controls electronic communications apparatus situated in any part of the area of the local planning authority
- Where they exist a Primary Care Trust, licensee under the Electricity Act 1989, Licensee of the Gas Act 1986, sewerage undertaker and water undertaker
- The parish council for the area or part of the area of the NDO
- Any parish council or Neighbourhood Forum for an area adjoining the area of the NDO
- For any development, English Heritage
- For development that falls within Schedule 5 to the Town and Country Planning (Development Management Procedure) (England) Order 2010 – the person mentioned in relation to that category in the order
- For development of or in the neighbourhood of a civil aerodrome or technical site, or involving construction of building or works extending above ground for 91.4 metres or more the Civil Aviation Authority and NATS Holdings Ltd
- For development forming the site of or in the neighbourhood of a military aerodrome, technical site or explosives storage area ; or the construction of any highway or formation, laying out or alteration of access to a highway, which is planned to run within 300 meters of the perimeter of a military aerodrome the Secretary of State for Defence
- For development which, in the opinion of the Parish Council or Neighbourhood Forum, is likely to affect a registered garden or park of special historic interest the Garden History Society
- For development in the area of a London borough council to which any Protected Vista Directions issues by the Secretary of State for Communities and Local Government in July 201 apply the Mayor of London and, in relation to the protected vista of the Tower of London from outside City Hall on Queens Walk, the Historic Royal Palaces Trust

- For development described in article 26 (1) of the Town and Country Planning (Development Management Procedure) (England) Order 2010 affecting existing or proposed highways the Highways Agency

Note 2

Schedule 4B to the Town and Country Planning 1990 Act, as inserted by the Localism Act Section 116 is “process for making of Neighbourhood Development Orders “

The basic conditions to be met by a draft NDO are set out in para 8 (2) – (6) of Schedule 4B. A draft order meets the basic conditions if:

1. It has regard to national policy and guidance from SoS
2. Doesn't damage a listed building or setting or any features of architectural or historic interest it possesses – if the order grants permission for development that affects the building or its setting
3. Doesn't damage character or appearance of a conservation area – if the order grants planning permission for development in relation to buildings or other land in the area
4. Contributes to sustainable development
5. Is in general conformity with the strategic policy of the development plan for the area or any part of that area
6. Doesn't breach or is otherwise compatible with EU obligations – this includes the SEA Directive of 2001/42/EC
7. NDO may not grant planning permission for a development which is likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species regulations 2010 (d) or a European offshore marine site (as defined by the Offshore Marine Conservation (Natural Habitats & C) regulations 2007 9(e) (either alone or in combination with other plans or projects) and is not directly connected with or necessary for the management of the site.
8. Where development in the proposal is EIA development, having regard to all material considerations it is appropriate that the NDO is made (Schedule 3 of The Neighbourhood Planning (General) Regulations 2012 Reg 33).

Complies with provisions 8 (1) (b)

61E (2) – a definition of a NDO

61J – provisions for NDO

61L – permission granted by an NDO

- 8 (1) (c) – appropriateness of the periods specified
- 8 (1) (d) - whether the referendum area should extend beyond the neighbourhood area.

References

The Acts

For NDO – look at the provisions for the NDO (Schedule 9 of the Localism Act 2011 which amends the 1990 Town and Country Planning Act) by inserting Sections 61E-P. Also Schedule 12 consequential amendments to the 1990 Act and 2004 Act.

Regulations

Regulations that apply to NDO are found in the Town and Country Planning Neighbourhood Planning (General) Regulations 2012; The Neighbourhood Planning (Referendums) Regulations 2012; the Neighbourhood Planning (Referendums) (Amendment) Regulations 2014; The Neighbourhood Planning (General) (Amendment) Regulations 2015; Re: Conservation Habitats and Species Regulations 2010; The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and the Neighbourhood Planning (Referendums) (Amendment) Regulations 2013. The Town and Country Planning (Development Management Procedure) Order 2010 as amended.