
CENTRAL PARK ENTERPRISE ZONE – SIMPLIFIED PLANNING

**Responsible Cabinet Member - Councillor Chris McEwan,
Economy and Regeneration Portfolio**

Responsible Director – Richard Alty, Director of Place

SUMMARY REPORT

Purpose of the Report

1. To advise Members of the preparatory process followed towards the adoption of a Local Development Order and its relationship with the Enterprise Zone.
2. To seek Members approval to delegate authority to the Planning Applications Committee to ‘make’ the Central Park Enterprise Zone Local Development Order.

Summary

3. The Tees Valley Enterprise Zone was announced as part of the 2011 Budget, with its format agreed between the Government and Tees Valley Unlimited in August 2011. It includes 12 sites throughout the Tees Valley, with developers on these sites benefitting from financial incentives, simplified planning rules and high speed broadband.
4. Central Park has been identified as Darlington’s contribution towards the Tees Valley Enterprise Zone; it will offer Business Rate Relief to businesses operating within the ‘Digital Sector’ (see **Appendix 1** for the draft definition) and simplified planning rules, by way of Local Development Order, to all businesses falling within the B1 land use classification¹.
5. A Local Development Order (LDO) is a grant of planning permission for a specified type and scale of development subject to conditions where appropriate. It essentially sets out the types of development which will no longer need to be subject to a planning application. If the proposed development satisfies the requirements of the LDO, it can be assumed that it has planning consent and development can commence straight away. Any development proposal beyond the scope of this LDO will need to be considered through the normal planning application process.

¹ B1 Business - Offices (excluding those land uses in A2 financial and professional services) including research and development of products, laboratories and light industry, as set out in the Use Class Order 1987 (as amended).

6. A Local Development Order must undergo stakeholder consultation in its draft form. This consultation must be of a minimum of 28 days, and include all parties who would have been consulted through the planning application process. Cabinet considered the LDO for the purposes of consultation at their meeting on 01/11/2011. The Local Planning Authority must consider all representations received in connection with the Local Development Order and amend where considered appropriate.
7. Following the finalisation of the Local Development Order after stakeholder consultation, the Local Planning Authority must submit the Local Development Order to Secretary of State for consideration before they can formally adopt the Local Development Order. Once the LPA has submitted the LDO to the SofS for consideration, he has the power to make a Direction to the LPA for the formal submission of the LDO for approval at his discretion, should he consider it necessary. At this time he can approve or refuse the LDO; he also can at any time direct the authority to amend the LDO. Whilst it is considered unlikely that the SofS will make a direction in relation to the LDO for the Enterprise Zone, given the timescales for delivering the simplified planning rules, the Council has to consider how decisions will be made should a direction be made.
8. The Government has placed a stringent deadline on the Tees Valley for the submission and approval of the simplified planning regime. The Enterprise Zones come in to force on 1st April 2012; the simplified planning rules need to be in place on or before this date in order for the site/s to benefit from Enterprise Zone status. For this to be possible, Government have asked that all Tees Valley simplified planning rules are submitted to the Secretary of State in January 2012. As previously stated, a stakeholder consultation period is a statutory requirement prior to submission; this is scheduled for mid November to mid December. Given the deadlines involved, it is likely that some level of delegated authority is required to ensure the Council does not fall behind these deadlines. Planning Applications Committee is the appropriate body for this delegation, as the LDO, in effect, creates a planning permission.

Recommendation

9. It is recommended that Council delegate authority to Planning Applications Committee to 'make' the Central Park Enterprise Zone Local Development Order.

Reasons

10. The recommendations are supported by the following reasons :-
 - (a) Government has imposed deadlines upon the Tees Valley planning authorities for the preparation and adoption of the simplified planning rules. To achieve the agreed timetable there may be a need for some delegated authority. Full Council is the mechanism by which the use and extent of delegated authority can be determined. The LDO is a grant of planning permission and therefore Council can delegate authority to another body as it considers appropriate. The most appropriate body for authority to be delegated to is the Planning Applications Committee.
 - (b) The Council needs to adopt the Local Development Order and thus place it upon Part III of the Planning Register in order for it to come into being. This must be done in line

with the constitution; Council can delegate such authority to the Planning Application Committee.

Richard Alty
Director for Place

Background Papers

Draft Local Development Order and Statement of Reasons

Jill Thwaite : Extension 2629

S17 Crime and Disorder	The Order will have no relevance to crime and disorder.
Health and Well Being	No impact
Carbon Impact	Development as a minimum will be built to BREEAM very good, delivering at least 20% of its anticipated energy supply from renewable or low carbon energy sources.
Diversity	No impact
Wards Affected	Lingfield and Bank Top
Groups Affected	Businesses
Budget and Policy Framework	This report does not change the Council's budget or policy framework
Key Decision	No
Urgent Decision	No
One Darlington: Perfectly Placed	This Order will support the delivery of the Sustainable Community Strategy, specifically the Prosperous Darlington theme.
Efficiency	The introduction of an LDO will reduce the need for planning applications in this area.

MAIN REPORT

Background

11. In order to aid economic recovery and stimulate growth, the Government is pursuing its programme of Enterprise Zones throughout the country. The Tees Valley Enterprise Zone was announced as part of the Budget in 2011, and its format was agreed between the Government and Tees Valley Unlimited in August 2011. It includes 12 sites throughout the Tees Valley, with developers on these sites benefiting from a range of benefits, including financial incentives, simplified planning rules and high speed broadband. The financial incentives offered will take the form of either business rate discount, worth up to £275,000 over a 5 year period, or enhanced capital allowances to support the growth of existing firms and/or attract significant foreign investment.

12. All sites within the Tees Valley Enterprise Zone offer a simplified planning regime, predominantly through the use of Local Development Orders (LDOs). This means that for specific developments that will help deliver the aims of the Enterprise Zone, planning permission will effectively be granted removing the need of applying for planning permission through the usual channels.
13. The Tees Valley Enterprise Zone proposal is based upon assisting the delivery of the two ambitions set out in the Statement of Ambition:
 - (a) Driving the transition to a high value, low carbon economy; and
 - (b) Creating a more diverse and inclusive economy.
14. It is considered that the Tees Valley Enterprise Zone proposal will contribute towards the achievement of these ambitions; it has been tailored to the specific and complex challenges and opportunities within the Tees Valley.
15. The rationale behind the Tees Valley Enterprise Zone creation is to:
 - (a) Use Business Rate Relief for those sites which are aimed at fostering indigenous small and medium sized businesses which form the supply chain of the area's heavy industries such as petro-chemicals, renewable energy and advanced engineering or which are part of the area's emerging and fast growing digital sector; and
 - (b) Offer enhanced Capital Allowances to support the petro-chemical, renewable energy production and fabrication and advanced engineering sectors to modernize and expand their activities and to attract large scale inward investors, particularly Foreign Direct investment.
16. Central Park is the only Tees Valley Enterprise Zone within Darlington Borough; the 'Commercial Quarter' of this flagship mixed-use regeneration site has been identified as a Business Rate Relief site aimed at supporting and facilitating the emerging and fast-growing digital sector.
17. The Central Park Enterprise Zone is to be funded by the Tees Valley Local Enterprise Partnership (LEP), with monies paid to them by Government for development occurring on the Government funded Enterprise Zones. Out of the Tees Valley's 12 Enterprise Zone sites, 4 are to be funded by the Tees Valley LEP; it was considered that this additional funding agreement was the best means by which the benefits of the Enterprise Zone could be maximised, as well as ensuring the emerging and fast-growing digital sector could be included.

Relationship with wider Central Park Regeneration Scheme

18. Central Park is one of the Tees Valley's flagship regeneration schemes which will deliver upto 600 new homes and approximately 10Ha of employment land, in a high quality environment offering well designed, multi-functional open space and public realm. Public sector partners have already spent significant levels of public sector funding on the scheme, and are committed to delivering a regeneration development which will benefit the Town, Borough and sub-region. With this in mind, the Council has decided to extend the

simplified planning rules, beyond the digital sector focus which the financial incentives are aimed at. This means that any B1 (business) land use which satisfies the conditions of the Local Development Order will be permitted. It is important to note however, that only those falling within the Digital Sector, the draft definition for which is set out in **Appendix 1**, will qualify for the business rate relief.

19. It was considered that limiting the employment land use to solely the Digital Sector would undermine the objectives and vision for Central Park, in addition to adversely affecting the wider scheme's viability (as it would limit the business/customer base for commercial development). As it is important for the wider Central Park scheme to deliver a thriving, buoyant commercial quarter, the Council want to ensure that the Enterprise Zone complements and enhances the vision for the scheme. Whilst one option would have been to limit the Local Development Order to solely 'Digital Sector' uses, requiring all other commercial developments to go through the usual planning application process, it was considered that, given the impacts of B1 development are largely similar, there would be no adverse impact caused by extending the Local Development Order beyond solely the Digital Sector.
20. The Government, specifically the Treasury and Communities and Local Government, are committed to removing the barriers to economic growth and development. They perceive that the planning regime is one such barrier which has been stifling growth (though there is little evidence for this in the North East). For this reason they are encouraging all Local Planning Authorities who benefit from an Enterprise Zone site to be ambitious with their simplified planning regime, to look beyond the specific site and sectoral focus of the financial incentives. Given the wider regeneration objectives for Central Park and the original vision of the site, it is considered appropriate to extend the development permitted through the Local Development Order to all land use, buildings and associated development within the B1 Use Classification.
21. In addition, Central Park was envisaged as offering active frontages at the ground floor throughout the commercial area, to ensure that it was a 'living' development both at day and night; it was never intended that the commercial area would be a sterile business park. This means that other uses, which provide some activity through the day and into the night, need to be provided at key points throughout the development. This will ensure that there is an active atmosphere for those living, working or visiting the Central Park development and surrounding area. This was an important aspiration within the original Central Park masterplanning exercise. For this reason it is also proposed that the Local Development Order permits uses ancillary to the B1 use classification, where they occupy a ground floor space within a larger, multi-storey development. These ancillary uses are specifically A1 (retail), A3 (restaurants) and A4 (drinking establishments)². In order to ensure that these uses are truly ancillary, and that the reason for their inclusion is not taken advantage of, the Local Development Order includes floorspace thresholds for each unit and a cumulative maximum of 900 sqm throughout the whole Enterprise Zone area.
22. As a result of changing market conditions and the economic downturn, all Central Park partners have identified a need to refresh the masterplan, in order to create a viable scheme. This work is currently on going. Whilst the LDO will not directly refer to the masterplan (as it would be premature to do so at this point), it is considered that, subject to negotiations with all partners, the content and location of the LDO is complementary to the forthcoming

² As set out in the Use Class Order 1987 (as amended)

masterplan. The Central Park Enterprise Zone and its LDO are considered key delivery mechanisms for the comprehensive scheme as will be set out in the refreshed masterplan.

Why a Local Development Order?

23. As mentioned above, in order to gain Enterprise Zone designation, each site must offer simplified planning rules. This is because Government believes that the planning system is a barrier to economic growth and development. They intend that simplifying the planning rules (by way of Local Development Order) will remove these barriers to development and help facilitate the much needed economic growth.
24. A Local Development Order (LDO) effectively grants planning permission for a specified type and scale of development subject to conditions where appropriate. They essentially set out the types of development which will no longer need to be subject to a planning application. If the proposed development satisfies the requirements of the LDO, it can be assumed that it has planning consent and development can commence straight away. Any development proposal beyond the scope of this LDO will need to be considered through the normal planning application process.
25. As with any planning permission, conditions can be attached to a Local Development Order, which must be satisfied by the development in order for it to be considered lawfully permitted. The conditions must meet the tests as set out in the Circular³, as is the case for all conditions attached to a planning permission.
26. If development occurs under the LDO, but it is not considered it meets all the requirements of the LDO or its conditions, the Local Planning Authority can take enforcement action under the same means by which all planning enforcement is usually undertaken⁴. Whilst there is no reason to monitor the development brought forward under a Local Development Order more closely than that permitted by a planning permission (in terms of its compliance), it does require more trust from the LPA that developers have understood the Local Development Order and its limits. As LDOs are a change in the regime for Darlington Borough Council, it may be decided that the Council want to pay closer attention to the LDO permitted development at least for a short time.
27. Achieving a high quality urban design has always been an aspiration for Central Park; it is important that the granting of planning permission through the LDO contributes towards the achievement of this. To this means the LDO will require that all development achieves a BREEAM 'very good' standard as a minimum. In addition, the LDO will encourage all development to conform to the Borough wide 'Design of New Development' SPD, with key issues, such as scale, mass, form and plot usage being the subject of additional conditions attached to the LDO. For other issues, such as habitat creation and biodiversity contribution, developers will be encouraged to incorporate these into the design solution for their plot. This will help maximise their contribution to the benefits of wider Central Park scheme. It is expected that development within the Enterprise Zone, will be served by the sustainable drainage solution which serves the wider Central Park scheme.

³ Circular 11/95: The Use of Conditions in Planning Permission

⁴ Circular 10/97: Enforcing Planning Control – Legislative provisions and procedural requirements.

28. The LDO will require developers to undertake a 'Prior Notification to Development' procedure, similar to that required for agricultural buildings. This prior notification will involve some (limited) details and information to be submitted to enable the LPA to determine whether the proposal complies with the LDO. Where development is considered not in conformity with the LDO the Council will either identify any changes required to bring the proposal in line with the LDO or where this is not possible, recommend that the developer submits a planning application. This procedure has the scope to enable the LPA to consider, to a certain extent, the conformity of the proposal to the design criteria conditioned through the LDO. The LDO will encourage developers to have discussions with the LPA early in the formulation of their proposals. This Prior Notification procedure will also consider whether the proposal is deemed EIA development or likely to have an adverse impact on a Listed Building, flood risk, local highways network or protected species. If on the evidence submitted it is anticipated that there is such an adverse impact which cannot be mitigated on site/through scheme amendments, or that the proposal is deemed to be EIA development, the Local Planning Authority will confirm that the proposal does not satisfy the requirements of the LDO and as such it is not permitted under the LDO. In these instances a separate planning application will be required for it to gain planning approval.
29. In addition, there is a requirement to monitor the Local Development Order on at least an annual basis. The LDO therefore contains a monitoring framework which will monitor its success as well as identifying any unintended outcomes. This information can then be used to identify if there is a need to review, help identify whether any enforcement action is required or even revoke the Local Development Order. It is important to note however that if the Local Planning Authority decides to revoke the Local Development Order at anytime, compensation may be payable to any developer/landowner which is disadvantaged by the action. This is the case for any planning permission revoked by the Local Planning Authority. In order to minimise the risks associated with and of revoking the Local Development Order, a time limit can be placed upon the Local Development Order, after which the Order expires or can be reviewed. It is recommended that the Central Park LDO expire on 31 March 2015, the date by which all development qualifying for the financial incentives through the Enterprise Zone must be complete.
30. The LDO does not remove the requirements of other statutory regulation and consent regimes. Listed Building Consent, Conservation Area Consent and Hazardous Substances Consent for example will all need to be acquired where appropriate through the existing regimes. In addition it is important to note that the LDO does not remove other forms of statutory regulation including the Habitat Regulations, Environmental Impact Assessment and protected species legislation.

Content of the Local Development Order

31. The specific wording of the Local Development Order is presented in **Box 1** overleaf. The justification for its content is set out in this report, and will be set out in full within the Statement of Reasons which will support the Local Development Order. It is intended that this Local Development Order will relate to the commercial quarter as identified in the refreshed Central Park Masterplan.

Central Park Enterprise Zone Local Development Order

This Local Development Order applies exclusively to the land in the Central Park Enterprise Zone and hereby grants planning permission for the following land use, buildings and associated development⁵, falling into the use classification:

- B1 Business Class II and Class III (including offices, research and development, studios, laboratories, high technology and light industry).

Providing that:

- The proposed development is not considered to be Environmental Impact Assessment development as set out by the regulations⁶ or determined by the Local Planning Authority in their Screening Opinion⁷;
- The development is carried out in accordance with the conditions set out in **Section 7**;
- The development reflects the guidance set out in the Borough wide 'Design of New Development' SPD (adopted July 2011);
- There are no adverse impacts on Listed Buildings, flood risk, protected species, local highway network or resulting from the contaminated land which cannot be appropriately mitigated through on site works⁸.

The following additional uses are also permitted, where they occupy a ground floor space within a larger, multi-storey development in order to provide active frontage throughout the site:

- A1 (shops, post offices, travel, ticket agencies and sandwich shops);
- A3 (Restaurants and cafes); and
- A4 (Drinking establishments).

Providing that:

- They occupy a ground floor space within a larger, multi-storey building;
- Each unit is of no more than 100 sqm gross floor space;
- There is no more than one such use per building;
- The development is carried out in accordance with the conditions set out in **Section 7**;
- The development reflects the guidance set out in the 'Design of New Development SPD (adopted July 2011);
- They assist in the delivery of providing active frontages through out the Enterprise Zone; and
- The total cumulative floorspace of such uses does not exceed 900 sqm throughout the Enterprise Zone area.

Development permitted by this Local Development Order must commence no later than **31st March 2015**.

Box 1: Central Park Enterprise Zone Local Development Order

Local Development Order Stages and Timetable

32. To date the draft LDO has been prepared and is undergoing stakeholder consultation from 23rd November 2011. The preparation of the LDO and its accompanying statement of reasons has been undertaken by officers at Darlington Borough Council with discussions with the other Tees Valley authorities. Informal consultation, in the format of workshops has also taken place with the Environment Agency, Natural England, Highways Agency and Health and Safety Executive. It has also been informed by negotiations with the Central

⁵ Associated development includes car parking, hard standings, landscaping and storage areas. Other consequential development associated with B1 use must be agreed in writing with the LPA.

⁶ The Town and Country Planning (Environmental Impact Assessment) (England & Wales) Regulations 1999

⁷ This will be ascertained through the Screening Opinion required as part of the Prior Notification Procedure.

⁸ See Prior Notification Procedure for more information.

Park Developer Consortium and Homes and Community Agencies as key partners in the scheme.

33. As a Local Development Order is in effect a grant of planning permission, it must be placed on Part III of the Planning Register, which is a register of all planning decisions made by the Local Planning Authority. During the stakeholder consultation, the Local Development Order and its statement of reasons should be placed in Section 1 of Part III and within 14 days of adoption it must be placed within Section 2 of the planning register within Part III.
34. Before it can adopt the Local Development Order, the LPA must send a copy to the Secretary of State for consideration. The LPA must not adopt the LDO until either:
- (a) The SofS has confirmed in writing that he does not intend to make a direction under section 61B(1) of the 1990 Act; or
 - (b) A period of 21 days has elapsed from the date on which the draft was sent to the Secretary of State, and the Secretary of State has neither notified the authority that he intends to make such a direction, or that he requires more time to make his decision.
35. Where the Secretary of State gives a direction under section 61B(1) requiring that an LDO is submitted for approval, he may approve or reject it. The Secretary of State may also, at any time, direct the local planning authority to modify an LDO, if he considers it unsatisfactory. However, the LPA is not obliged to adopt the LDO – it can decide at any time not to adopt.
36. The stages of and timetable for preparing the Central Park Local Development Order are set out in **Table 1** below:

Stage	Comment	Date
Prepare Draft LDO	Including the Order, Statement of Reasons, notification procedure and guidelines/FAQ's	Cabinet deadline 30 th September 2011. Draft LDO must be finalised before 14 th October.
Gain Cabinet approval of LDO for consultation	Will set out role of LDO, its justification and limitations. Draft LDO will be annexed to main report.	1 st November 2011
Stakeholder Consultation	As a minimum all those who would be consulted under the planning application process must be consulted. Needs to comply with SCI.	All Tees Valley EZ LDOs will be consulted upon 23 rd November to 23 rd December 2011.
Full Council agree procedure for decisions on LDO	Some level of delegated authority may be required to ensure deadlines are achieved. This requires Full Council consideration.	Full Council date 24 th November 2011.

Stage	Comment	Date
Finalise LDO	Amend draft LDO where appropriate. Need to set out all representations received, LPA response and how LDO has been altered as a result if appropriate.	Considered by Planning Applications Committee early January 2012, if there are amendments.
Submit LDO to SofS for consideration	LDO must be approved by the Secretary of State before it can be adopted.	Mid January – exact deadline to be agreed with SofS ⁹ .
SofS decision	SofS will consider whether he wishes to give a Direction requiring formal submission for approval. Where a Direction is not made the SofS will notify the LPA within 21 days.	Within 21 days of submission of the Draft, SofS will notify the LPA of his decision regarding the Direction, or that he requires more time. Notification in mid February.
Adopt LDO and place on Planning Register	LDO must be placed on Planning Register for it to be considered lawful.	Before 31 st March 2012
LDO in place		1 st April 2012

Procedure for Decisions

37. A Local Development Order is a grant of planning permission for the type and scale of development set out in the LDO, thus removing the need for a planning application to be made by the developer/s. A Local Development Order is not a policy, nor does it form part of the statutory development plan.
38. As it does not constitute policy or form part of the budgetary framework, it does not require Full Council approval prior to submission to Secretary of State or its adoption. The Darlington Borough Council Constitution therefore allows for decisions relating to the Local Development Order to be delegated to another Committee, Sub-Committee or Officer. Moreover, given the tight timescales imposed upon the Council by the Government, the submission of the LDO and its adoption cannot be accommodated within the existing Full Council Meeting Schedule.
39. Given the Local Development Order is a grant of planning permission, it is considered that the most appropriate body for Council to delegate authority to is the Planning Applications Committee. The draft Local Development Order has been prepared, but may require amendments following consultation prior to submission to SofS. When considering the LDO, the SofS has the power to make a Direction to the LPA to submit the LDO for his approval where he can approve or refuse the LDO; he also has the power to direct the LPA to amend the LDO if he considers it unsatisfactory. It is also considered appropriate to include the ability to deal with any such direction to PACs. The SofS response to the LDO will be considered by PACs prior to any decision to adopt the LDO or not.

⁹ Tees Valley Unlimited are in negotiations with Communities and Local Government, regarding the submission date for all Tees Valley Enterprise Zone LDOs. They are aware of the timing of our Full Council meeting and the deadlines involved.

40. This report is therefore seeking delegated authority to PACs for the preparation, submission and adoption (ie 'making') of the Central Park Enterprise Zone Local Development Order from this point onwards.

Conclusion

41. Central Park has been identified as one of the Tees Valley's 12 Enterprise Zone sites. In order to gain Enterprise Zone status, a simplified planning regime needs to be in place on or before 1st April 2012. It is considered that a Local Development Order is the most appropriate means by which these simplified planning rules can be put in place for Central Park. The process involved in preparing a LDO and the timescales imposed on the Tees Valley authorities by Government are however extremely challenging.
42. The draft LDO within this report has been prepared by Darlington Borough Council officers, with informal advice and communications with the other Tees Valley authorities, the Environment Agency, Natural England, Health and Safety Executive and Highways Authority. The LDO preparation procedure however requires a statutory consultation exercise; on 1st November 2011 Cabinet have approved the Draft LDO for the purposes of undertaking this consultation exercise. This is scheduled for mid November to mid December 2011, alongside the consultation on the LDOs for the other Tees Valley Enterprise Zone sites.
43. In order to meet these deadlines some level of delegated authority is required. This report sets out the procedure for making decisions in line with the constitution which will enable the Council to meet the deadlines imposed upon them by Government.
44. It is therefore recommended that Council delegate authority to Planning Applications Committee to 'make' the Local Development Order.

DEFINING DIGITAL COMPANIES FOR ENTERPRISE ZONE RATE RELIEF

DRAFT DEFINITION

1. The simplest way of defining the digital companies that we need to attract into the Enterprise Zone is as follows:-

Companies that utilise digital technology to develop, design or produce a digitally delivered, product or service – this excludes the normal application of administrative software.

2. Although it should be relatively straightforward to identify the majority of companies as being included or excluded by this definition, there are a number of factors that should also be considered in determining a final judgement where uncertainty exists. These include:-

- To what extent is the digital element the focus of the business?

i.e. A company might traditionally produce newspapers, but be moving increasingly towards a more web-based operation. It is suggested that digital output should comprise at least 50% of turnover so it can be classed as the primary focus of the business.
- What elements of the company are going to be located within the Enterprise Zone?

i.e. If Amazon open a call centre to handle customer enquiries, this should not be considered a digital operation.