

FREEPORTS AND PLANNING

Aaron Nelson, Senior Associate at UK-based law firm BDB Pitmans, considers the UK Government's planning regime for the country's proposed Freeports

The UK's Freeports will benefit from a relaxed planning regime, the government has indicated. The government aims to create ten or more Freeports across the UK, which it describes as "innovative hubs which boost global trade, attract inward investment and increase prosperity in the surrounding area by generating employment opportunities."

WHAT ARE FREEPORTS?

The core concept of a free port is an area inside a country, typically around a port or airport, which is legally outside the customs territory of that country. This allows companies to bring goods into the port, store or process them, and then import them or "re-export" them outside normal tax and customs rules.

However, respondents to the government's recent free ports consultation agreed, tariff reform alone would not deliver the wider economic benefits the government seeks. So to encourage economic activity and growth, the government proposes reforming planning controls within the UK's new Freeports in order to facilitate development and so attract domestic and international investors looking to start or grow their UK operations.

Three changes to the planning regime are being considered.

WIDER PERMITTED DEVELOPMENT RIGHTS

First, ports' permitted development (PD) rights – in the Town and Country Planning (General Permitted Development) (England) Order 2015, Part 8 Class B – are to be aligned with those of airports, to allow development of "operational buildings" for purposes connected with the provision of port services and activities, without the need to obtain planning permission. Some port operators already benefit from limited PD rights, allowing them to carry out, for example, development required for the purposes of shipping, but the proposed change would allow for a wider range of development and operational activities to take place.

This relaxation will not amount to a "carte blanche" for development. Current PD rights generally only apply to the statutory port operator's land; a larger Freeport, which might incorporate factories or warehousing, might extend beyond this. PD rights are also subject to restrictions in the case of EIA development and development that is likely to have a significant effect on a European site.

The government has also indicated that the amended PD rights will be "proportionate to support the development needs of seaports while ensuring appropriate planning and environmental protections remain in place". The detail of the changes will need to be considered against the government's wider proposals to design a quicker, simpler framework for assessing environmental impacts and enhancement opportunities post-Brexit in order to speed up planning processes while delivering better environmental outcomes.

MORE LOCAL DEVELOPMENT ORDERS

Second, the government supports greater use of Local Development Orders (LDOs).

An LDO is an Order made by a Local Planning Authority

(LPA) which grants permission for certain types of development specified in the order. It could, for instance, allow a particular class of development, such as B2 General industrial (excluding incineration purposes, chemical treatment or landfill or hazardous waste) or B8 storage or distribution, without the need for a planning application.

LPA's are encouraged to use LDOs to set the planning framework for particular areas or categories of development where the impacts would be acceptable, and in particular where this would promote economic, social or environmental gains for the area. The advantages are:

- To simplify the planning process by removing the need for planning permission where appropriate and proportionate.
- To reduce the pressure on resources for both applicants and LPAs (by removing the need for planning applications).
- To provide greater certainty and make investment in a site more attractive helping to facilitate delivery of development.
- To bring forward regeneration faster and avoid delays.
- Retaining overall LPA control over the nature of development which is permitted (not the case with PD rights which, being statutory, are controlled by the national government)

However, there are drawbacks.

First, an LDO will clearly not create market demand where none otherwise exists or it may simply encourage the relocation of existing economic activity into the LDO, rather than encouraging genuinely new economic activity.

Second, an LDO can, if drawn too narrowly and backed by wider planning policy which allocates particular activities to particular "zones", stymie other sorts of (otherwise beneficial) development on that land.

Third, LPA involvement in economic activity inevitably always runs some risk of the public sector "picking winners" or unjustifiably subsidising businesses for "political" reasons.

REVIEW OF NATIONAL POLICY STATEMENT FOR PORTS

Third, the government intends to review the National Policy Statement for Ports (Ports NPS) in 2021. Any such review should, in the author's view, take into consideration the recently-published National Infrastructure Strategy and also that, as an island nation – and as recently highlighted during the pandemic and pre-Brexit – the UK's ports are a vital component of the nation's logistics and supply chain.

The bidding process for Freeport status in England is live, with a deadline of 5 February 2021 for the submission of bids. Decisions are expected to be made in the Spring of this year.

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