

<b>9 February 2023</b>	<b>ITEM 9</b>
<b>Planning Committee</b>	
<b>London Gateway Logistics Park Local Development Order</b>	
<b>Wards and communities affected:</b> Corringham and Fobbing Stanford-le-Hope West Stanford East and Corringham Town The Homesteads	
<b>Report of:</b> Matthew Gallagher, Major Applications Manager	
<b>Accountable Assistant Director:</b> Leigh Nicholson, Assistant Director Planning, Transportation and Public Protection.	
<b>Accountable Director:</b> Mark Bradbury, Interim Director of Place	

## **Executive Summary**

This report provides an update to Planning Committee on the planning consenting regime for the delivery of the strategic development at London Gateway, to ensure that the economic growth, jobs and investment at the park continue to be delivered in an efficient and sustainable manner.

The report explains that development on the logistics park site has been subject to the provisions of a Local Development Order (LDO) since 2013. As this Order is time-limited, the report explains that the preparation and making (adoption) of a new Order (referred to as 'LDO2') is ideally required before the existing Order expires in November 2023. This report provides an update on progress with LDO2 since the matter was first reported to the Committee in July 2021 and seeks that authority is delegated to Officers to progress the new Order over the coming months.

### **1. Recommendations**

- 1.1 To note this report and the progress made on LDO2**
- 1.2 To delegate authority to the Assistant Director of Planning, Transport & Public Protection and Major Applications Manager to continue progressing draft LDO2, including the stages of Environmental Impact Assessment (EIA) screening and scoping and Habitats Regulations Assessment (HRA) screening and also including delegated authority to**

**undertake statutory consultation and publicity as soon as the draft Order and supporting documentation is complete.**

## **2. Background**

- 2.1 A planning application for the redevelopment of the former Shell Haven oil refinery site was submitted to the Council in January 2002 (application reference 02/00084/OUT). The application was subsequently “called-in” by the Secretary of State in June 2002 and a public inquiry was held during 2003. This inquiry also considered an application for a Transport and Works Act Order for works to various railways adjoining the site and a proposed Harbour Empowerment Order, for a new port adjacent to the River Thames. Outline planning permission was granted by the Secretary of State on 30th May 2007.
- 2.2 The London Gateway Logistics and Commercial Centre Order 2007, issued pursuant to the Transport and Works Act, came into force on 28th September 2007. The London Gateway Port Harbour Empowerment Order 2008 (HEO) came into force on 16th May 2008 and the dredging operations necessary to create the new port commenced in March 2010. The first berth at London Gateway Port came into operational use in November 2013. Currently three berths are in use at the Port, with a fourth berth currently under construction and due for completion in 2024.
- 2.3 The development consented by the outline planning permission from May 2007 comprised the construction of a road and rail linked logistics and commercial centre, comprising up to approximately 938,600sq.m of employment-generating floorspace. The planning permission was subject to a s106 legal agreement and a large number of planning conditions. Following the grant of outline planning permission, the former Thurrock Thames Gateway Development Corporation (TTGDC) determined a number of applications from the owners of the site DP World London Gateway (DPWLG) for the discharge of planning conditions, variation or non-compliance with planning conditions (under s73 of the Town and Country Planning Act 1990) and a reserved matters application. Commencement of the development approved under the 2007 permission was undertaken by DPWLG in the form of the construction of a section of internal estate road.
- 2.4 However, between 2008 and 2010 it became clear to DPWLG, the former TTGDC and the Council that development pursuant to the outline planning permission would be complex. This conclusion was reached principally because the legal effect of the s73 planning consents was to create a number of new, stand-alone planning consents, in addition to the original outline planning permission (ref. 02/00084/OUT). This had the potential to create uncertainty with regard to what had been permitted on the site and which consent had been implemented. The original planning permission was also subject to a large number of planning conditions (96 in total). This factor, alongside the multiple consents, resulted in a complex layers of conditions

which could have led to confusion concerning the status and monitoring of conditions.

- 2.5 In light of these complexities in the planning consents process, in 2011 DPWLG liaised with both the former TTGDC and the Council to assess the options for achieving greater certainty in the planning process, whilst still maintaining the nature of the consented development and its associated safeguards. After consideration of the various options available, it was concluded that a Local Development Order (LDO) was the best method of delivering the development consented by the outline planning permission.

### **3. Nature and Status of LDOs**

- 3.1 The provisions covering LDO's are contained within the Town and Country Planning Act 1990 as amended. Primary legislative provisions relating to LDO's were introduced by the Planning and Compulsory Purchase Act 2004, which commenced in 2006. These powers were amended by commencement of Sections 188 and 189 of the Planning Act 2008 in June 2009.
- 3.2 A LDO grants planning permission for the type of development specified in the Order, and by doing so, removes the need for a planning application to be made by a developer / landowner. The power to make an LDO rests with the local planning authority (LPA). LDO's are flexible in that they can apply to a specific site, or to a wider geographical area and can grant planning permission for a specified type or types of development. Conditions may be attached to a LDO or a LDO may grant planning permission unconditionally. The adoption of an LDO can offer benefits to developers in exempting specified developments from the need to apply for a specific planning permission. Thereby, developers will save the time and cost of submitting a planning application. LDO's can also provide certainty to developers and investors by defining what development is acceptable on a site and thereby the development which can be undertaken without the need for express planning permission.
- 3.3 An LDO does not remove the need to comply with any environmental legislation. Therefore, the LPA is responsible for ensuring that any requirements under the Environmental Impact Assessment (EIA) Regulations or Habitats Regulations are met.
- 3.4 As noted above, legislation enables a LDO to be granted unconditionally, or subject to conditions as a means of ensuring that a development will be acceptable in planning terms. Potential conditions on a LDO could, for example, limit the types and scale of development permitted, require development to comply with design criteria (such as a design code or masterplan) and could require actions to be undertaken prior to, or during development (such as highway improvements). Any conditions attached to a LDO have to pass the same tests as conditions attached to a normal grant of planning permission i.e. necessary, relevant to planning and the development, enforceable, precision and reasonable in all other respects.

- 3.5 Provisions allow for the monitoring and enforcement of LDOs and it is possible to use a planning condition to require a developer to notify the LPA when development under an LDO is undertaken. A LDO does not influence existing permissions or permitted development rights within the area covered by the Order.
- 3.6 A s106 obligation cannot be required under a LDO, as the LDO constitutes a grant of planning permission. However, this does not prevent a s106 obligation being offered by the developer and negotiated with the LPA.
- 3.7 Where any proposed development within the site of the LDO falls outside the scope of the Order, or the accompanying conditions, a planning application would need to be submitted for consideration and determination in the normal manner. LDOs are normally time limited.
- 3.8 A simplified summary of the key stages in the LDO process is presented below.

**LDO Preparation**

(i) LPA prepares a draft LDO and statement of reasons, with accompanying documentation Environmental Impact Assessment (EIA) etc.)



**Consultation / Publicity**

(ii) LPA consult persons whose interests would be affected by the LDO and those persons they would have been required to consult on an application for planning permission for development proposed by the LDO

(iii) LPA sends copies of the draft LDO and Statement of Reasons to consultees. Draft LDO and Statement of Reasons made available for inspection, on-line and advertised

(iv) LPA displays site notices and serves site notices on owners / tenants of the site

(v) consultation period lasting at least 28 days



**Consideration of representations**

(vi) Taking into account any representations, LPA considers whether modifications to the draft LDO are necessary and whether re-consultation is required



**LDO Adoption**

(vii) LDO must be adopted by resolution of the LPA for it to take effect

(viii) LDO and accompanying documentation sent to the Secretary of State

## **4. The Existing LDO**

- 4.1 As noted at paragraph 2.5 above, both the Council and the former TTGDC resolved to progress an LDO for the commercial and logistics park site at the end of 2011 / early 2012. This decision was taken following resolutions of the Full Council and Planning Committee of the former TTGDC. Unlike a conventional planning application where some details can be submitted after the grant of permission via planning conditions or the submission of applications for the approval of reserved matters, the full details, justification and evidence for the development to be permitted by an LDO must be provided 'upfront'. Work on the preparation of documentation for the current LDO commenced in 2012. In June 2013 the draft LDO was completed and Full Council resolved to proceed with formal consultation and publicity.
- 4.2 Following a 6-week consultation period, followed by a limited re-consultation (to address changes to the Travel Plan and LDO drafting), Full Council resolved to make the LDO in November 2013. The matter was referred to the Secretary of State, who did not intervene, and the LDO was made on 7th November 2013.
- 4.3 In summary, the LDO grants permission for:
- 829,700sq.m of commercial floorspace within Use Classes B1(b), B1(c), B2 and B8,
  - changes of use between the Use Classes listed above;
  - associated infrastructure; and
  - site preparation works.
- 4.4 The LDO is subject to a number of planning conditions which apply both to the four components of development described above and generally across the LDO site. Development permitted by the LDO is also subject to adherence with 'compliance' documents, comprising a Design Code, Code of Construction Practice and an Ecological Mitigation and Management Plan. A s106 agreement accompanied the LDO which principally addresses reducing the impacts of the development on transport networks. The existing LDO is time-limited and will expire in November 2023.
- 4.5 One of the general planning conditions applying to the LDO site requires that, prior to commencement of development, details and plans of development are submitted to the LPA using a prior notification form (LDOPND). Since the making of the LDO in November 2013 a number of LDOPND submissions have been made for elements of infrastructure and buildings on development plots. At the time of writing 13no. buildings have been subject to the LDOPND process totalling c.285,000sq.m of commercial floorspace, comprising primarily Class B8 warehouse development with ancillary office floorspace. This floorspace is either built and occupied / vacant, under construction or awaiting commencement. A further c.11,000 sq.m. of warehouse floorspace on Plot 4040 was confirmed as being permitted by the LDO last year, although it was subsequently determined that a separate, stand-alone permission

would be required for this Plot. A planning application has now been submitted for Plot 4040. Existing occupiers on the LDO site include Currys, UPS, Lidl and DHL.

## **5 The need for a new LDO (LDO2)**

- 5.1 As noted at paragraph 4.4 above, the existing LDO will expire in November 2023. The LDO has been successful in simplifying the planning consenting regime for development at the logistics park and offers clear commercial benefits to DPWLG as potential occupiers can proceed with development on-site in a relatively short space of time. Members of the Committee may be aware of the emerging proposals for the 'Thames Freeport' which includes the London Gateway site. It is considered that the benefits of a simplified planning regime conferred by an LDO have synergies with Freeport status. Therefore, both Officers and DPW see the benefits of preparing and making a new Order, ideally before the existing LDO expires.

## **6 LDO2 Update**

- 6.1 Members may recall that in July 2021 the Committee considered and noted a report setting out the intention to progress LDO2. The preparation of LDO2 will include a significant amount of 'upfront' documentation, requiring the appointment of consultants and advisors to draft, amongst other things, the Environmental Statement required by the Environmental Impact Assessment Regulations, a report to enable screening pursuant to the Habitats Regulations and legal documents. Officers have now negotiated and completed a Planning Performance Agreement (PPA) with DPWLG. The PPA is fundamentally a project management tool, but includes provisions ensuring that the Council's costs associated with the appointment of consultants are covered by DPWLG – as it is DPWLG as landowner and developer who shares in the benefits conferred by the Order. The PPA also secures funds to ensure that there is sufficient Officer resource to progress and complete LDO2.
- 6.2 Environmental consultants have now been engaged to prepare the Environmental Statement and a number of time-critical baseline surveys were completed in the latter part of last year. A firm of planning consultants, who were involved with the original LDO, have been instructed to assist Officers with preparation of the Order itself, Statement of Reasons etc. Finally, an external legal advisor has also been procured to ensure that the steps taken by the local planning authority in the making of LDO2 are legally robust.
- 6.3 A draft of the new Order (i.e. the development to be permitted with accompanying restrictions and conditions) has been prepared. In broad terms the draft LDO2 is similar to the existing LDO in that Schedule 1 permits new industrial and warehousing development, changes of use, associated infrastructure and site preparation works. However, unlike the existing Order, the draft seeks to reflect the updated Use Classes Order and introduce a greater range of ancillary floorspace in addition to ancillary offices. The draft

includes provision for limited food and drink, gym, creche and shop floorspace to serve the needs of employees on the site. A wider range of ancillary uses, though subject to limitations on floorspace, is considered reasonable in planning terms given the size of the development and number of employees on-site.

- 6.4 The total amount of floorspace to be permitted by draft LDO2 is c.738,000 sq.m which is a reduction from the c.829,000 sq.m permitted by the existing Order. This reduced figure is largely due to the market demand for a larger number of smaller plots and buildings, whereas the current Order envisaged larger buildings of up to 150,000 sq.m floorspace. The draft also proposes a smaller proportion of Class B2 general industrial floorspace compared with the existing Order, again reflecting strong market demand for Class B8 warehouse use.
- 6.5 Although progress is being made with drafting the Order and supporting reports, it will be a challenge to complete the complete the documentation and comply with the legislative requirements for public consultation etc. in order to adopt LDO2 before November. Therefore, in order to streamline and twin-track procedures as far as reasonably possible, whilst still ensuring that the required legal steps are taken, Officers consider it useful to seek delegated authority for authorisation to consult on the new Order as soon as the supporting document has been prepared. The Vice-Chair of the Committee was briefed in December 2022 and it is emphasised that the decision to adopt LDO2 (or not) will be for Members to take (via Full Council). Nevertheless, it is essential for Officers to continue progressing the draft Order as expeditiously as possible and to this end delegated authority is sought to proceed with, amongst of things, EIA screening and scoping, HRA screening and statutory public consultation, before the matter is referred back to Members for the decision on whether to adopt LDO2.

## **7 Conclusion**

- 7.1 Development on the site of the London Gateway logistics park has been undertaken pursuant to an LDO since November 2013. To date, over 30% of the total of 829,700sq.m floorspace consented by the LDO has been either constructed or is under / awaiting construction. According to the most recent annual monitoring report produced by DPW for the LDO site, nine of the operational buildings employ c.1,300 people (employment figures for the remaining buildings are currently unknown). Officers consider that the existing LDO has been successful in simplifying planning procedures for the site and thereby delivering new commercial floorspace and employment in a timely fashion.
- 7.2 The drafting of LDO2 and its supporting documentation is underway and every attempt will be made to complete the new Order and undertake public consultation such that LDO2 can take effect before the current Order expires. To assist Officers in completing this challenging task, delegated authority is

sought to continue progressing LDO2 up to and including the statutory public consultation.

## **8. Consultation (including overview and scrutiny, if applicable)**

N/A

## **9. Impact on corporate policies, priorities, performance and community impact**

9.1 The London Gateway site, comprising both London Gateway port and London Gateway logistics park, is one of the Council's regeneration and growth hubs. Indeed due to the scale of the site, the port and logistics park have a wider sub-regional importance. The ongoing development of the logistics park site, via the new LDO, will make a significant contribution to the delivery of the Council's growth and regeneration ambitions.

## **10. Implications**

### **10.1 Financial**

Implications verified by: **Laura Last**  
**Senior Management Accountant**

A Planning Performance Agreement (PPA) has been agreed which will meet the Council's costs in respect of the development and adoption of Local Development Order 2 (LDO 2). There are no expected additional costs for the Council.

### **10.2 Legal**

Implications verified by: **Mark Bowen**  
**Interim Project Lead - Legal**

Given the nature of this report and the recommendation there are not considered to be any legal implications directly arising from it. The following is by way of background information on the relevant legal context. Sections 40 and 41 of the Planning and Compulsory Purchase Act 2004 inserted sections 61A and D into the Town and Country Planning Act 1990. It is at the discretion of the local planning authority as to whether to make an LDO and a local planning authority can choose to restrict the scope of an LDO. Schedule 4A of the Town and Country Planning Act 1990 and articles 38 and 41 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 will be relevant to the progression of LDO2.

The procedures for the preparation, consultation / publicity and making on an LDO are set out in primary and secondary legislation. The provisions of both the Environmental Impact Assessment and Habitats Regulations will apply to LDO2.

The existing LDO is accompanied by a s106 legal agreement and it is likely that a new s106 will be negotiated in parallel with LDO2.



The proposed delegations will enable the timely undertaking of the EIA screening and scoping HRA screening and subsequent consultation

### **10.3 Diversity and Equality**

Implications verified by: **Natalie Smith**  
**Strategic Lead Community Development and Equalities**

The Environmental Statement supporting LDO2 will include an assessment of the socio-economic effects of the development. Prior to any Council decision to make LDO2, a formal consultation and engagement process, described above, will be undertaken.

### **10.4 Other implications** (where significant – i.e. Staff, Health, Sustainability, Crime and Disorder, or Impact on Looked After Children)

- None

### **11 Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- All background planning documents including the existing LDO and other supporting documentation can be viewed online:

[www.thurrock.gov.uk/growth](http://www.thurrock.gov.uk/growth).

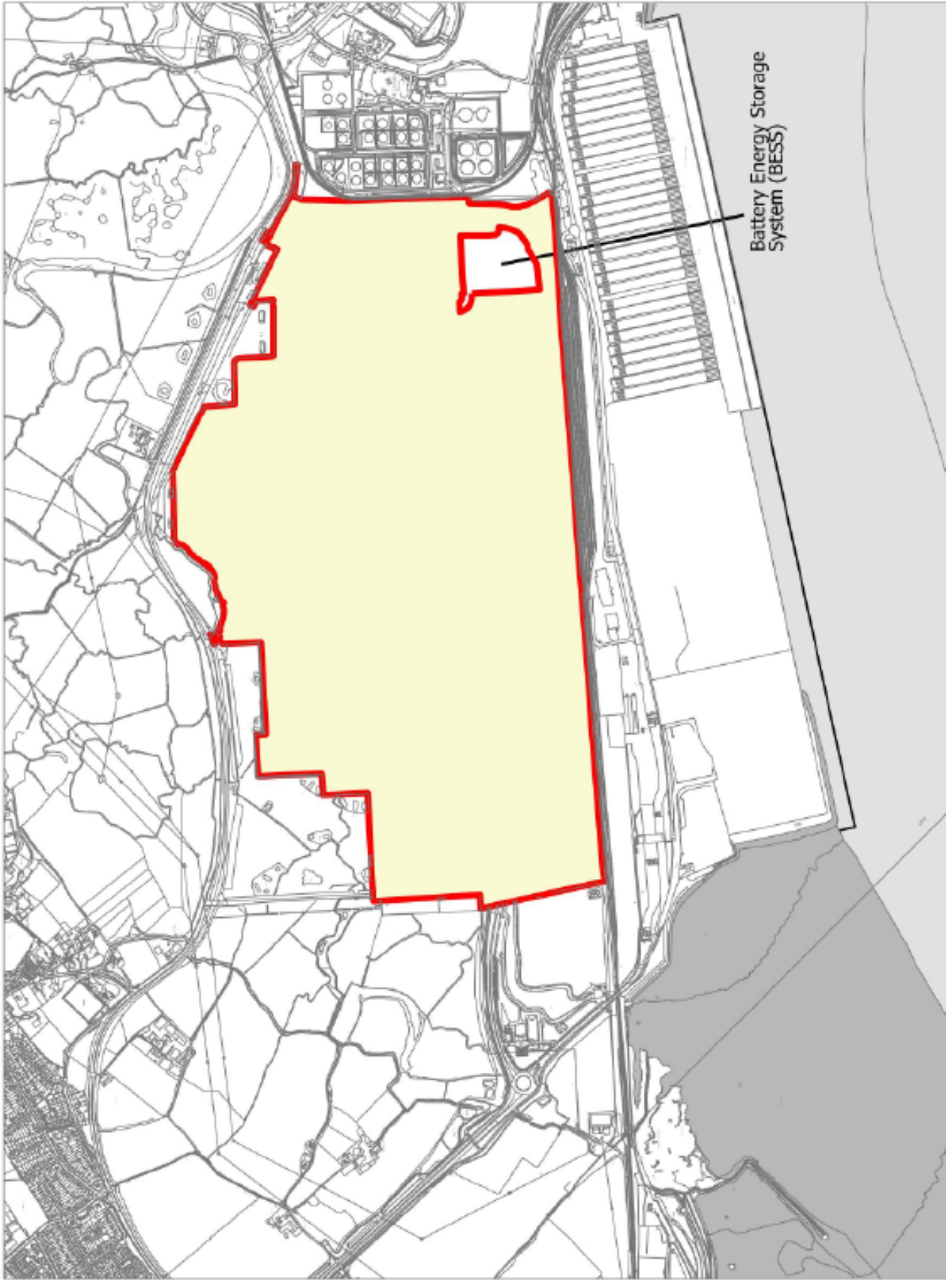
### **12 Appendices to the report**

- None

#### **Report Author:**

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Major Applications Manager



Battery Energy Storage System (BESS)

