

8 November 2023		ITEM: 12
		Decision: 110677
Cabinet		
London Gateway Logistics Park Local Development Orders		
Wards and communities affected: Corringham and Fobbing, Stanford East and Corringham Town, The Homesteads and Stanford le Hope West	Key Decision: Yes	
Report of: Cllr Ben Maney, Cabinet Member for Regeneration and Highways		
Accountable Director: Mark Bradbury – Director of Place		
This report is Public		

Executive Summary

This report is concerned with the planning consenting regime for securing the delivery of strategic employment development at London Gateway logistics park. The report details how, in order to ensure that the recent economic growth, jobs and investment at the park continue to be delivered in an efficient and sustainable manner a new Local Development Order is required.

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 for a period of 10 years, the report explains the work undertaken so far in preparing a new Order (referred to as 'LDO2') This report also provides an update on progress with LDO2 since the matter was reported to the Planning Committee in July 2021 and February 2023. This report asks that the final decision on whether to adopt LDO2 is delegated to the Planning Committee.

The report also notes that DP World London Gateway (DPWLG) have recently approached Officers regarding potential development of up to 85,000 sq. m. of commercial floorspace on land within the logistics park site and the planning mechanism for securing planning consent to enable this development. The report considers this particular development plot in the context of the existing LDO, the emerging LDO2 and other planning mechanisms for delivery i.e. a limited, stand-alone Local Development Order for this Plot (LDO1.5).

1. Recommendations

- 1.1 To note this report, the progress made so far on LDO2 and the future actions and processes necessary to bring LDO2 to a position where it is ready to be adopted.**
- 1.2 To recommend to the Council meeting on 29 November 2023 that it delegates authority on the decision whether or not to adopt LDO2 to the Planning Committee.**
- 1.3 To recommend to the Council meeting on 29 November 2023 that it delegates authority on the decision whether or not to adopt 'LDO1.5' to the Planning Committee.**

2 Introduction and 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 the construction and operation of a new port adjacent to the River Thames. Outline planning permission (OPC) 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 an application for the approval of reserved matters. 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 permissions, 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 permissions, resulted in complexity surrounding the planning status of the site which could have led to confusion concerning the status and monitoring of conditions.

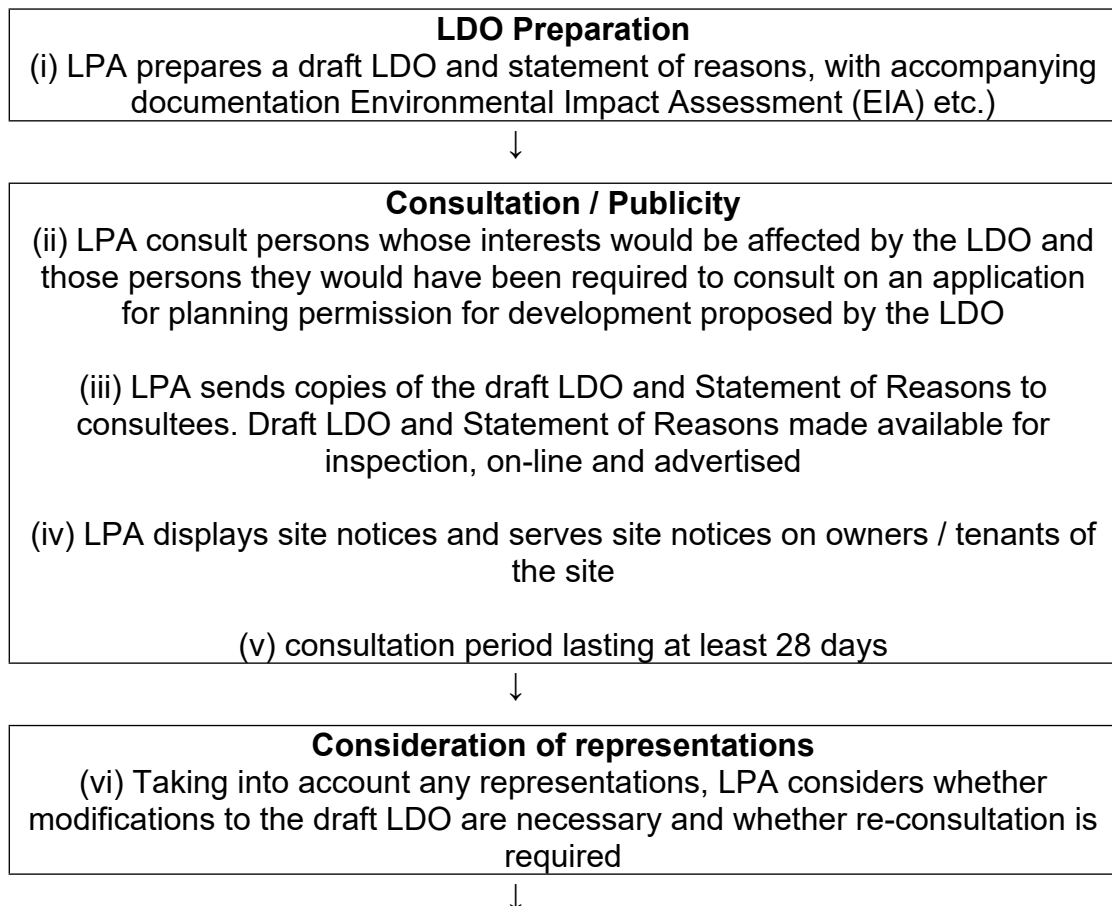
- 2.5 In light of these complexities in the planning consents process, in 2011 DPWLG liaised with both the former TTGDC and the Council to assess the options for achieving greater certainty in the planning process, whilst still maintaining the nature of the consented development and its associated safeguards. 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, 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 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 14no. buildings have been subject to the LDOPND process totalling c.294,000sq.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 and approved 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 will 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 DPWLG see the benefits of preparing and making a new Order.

6 LDO2 update

- 6.1 In July 2021 the meeting of the Planning Committee considered and noted a report setting out the intention to progress LDO2. The preparation of LDO2 involves a significant amount of 'upfront' documentation, requiring the appointment of consultants and advisors to draft, inter-alia, 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 draft LDO2 is similar to the existing LDO in that Schedule 1 of draft permits new industrial and warehousing development, changes of use, associated infrastructure and site preparation works. However, unlike the existing Order, draft LDO2 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. Draft LDO2 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 good progress is being made with drafting the Order and supporting reports, it will not be possible to complete the documentation and comply with the legislative requirements for public consultation etc. in order to adopt LDO2 before November 2023. Therefore, in order to streamline and twin-track procedures as far as reasonably possible, whilst still ensuring that the required legal steps are taken, the Planning Committee delegated authority to Officers to formally 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 of the Planning Committee to take. Nevertheless, it is essential for Officers to continue progressing the draft Order as expeditiously as possible and to this end delegated authority was granted by the Planning Committee to proceed with (inter-alia) 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 Controls and limitations on the development to be authorised by LDO2

- 7.1 Similar to both the OPC and the existing LDO, LDO2 will limit the overall built floorspace which can be developed and the amount of floorspace by Use Class. Conditions attached to LDO2 will also refer to three compliance documents which give additional detailed controls. These will be:
- **Design Code:** this document will include an indicative masterplan which demonstrates in general terms how the site may be developed. There is also a building height zoning plan with the higher buildings to the south and the lower ones adjacent to the Manorway. The code specifies design standards for buildings on plot servicing and parking, landscaping, service roads, lighting drainage etc;
 - **Code of Construction Practice:** this seeks to address and control all issues arising from the construction of the development including traffic management haul routes, site remediation and groundworks, waste materials and management of noise and dust;
 - **Ecological Mitigation and Management Plan:** Since the granting of the OPC there has been considerable ecological work done to clear and relocate protected species and manage habitats adjacent to and

within the site to the benefit of nature conservation interests. This plan will ensure the continuity of this work.

- 7.1 Separately, a s106 agreement will secure compliance with a Travel Plan (in effect, a fourth compliance document). The Travel Plan will include a range of measures to reduce the impact of the development on local communities and the strategic and local highways networks through encouraging greater use of modes of sustainable transport, minimising movements by road, particularly during peak periods and reducing local traffic impacts.

8 Environmental Impact Assessment

- 8.1 Officers have screened the proposed development as being Environmental Impact Assessment development under the terms of the Town and Country Planning (Environmental Impact Assessment) (England) Regulations 2017 (as amended). This means that the proposed scheme needs to be accompanied by an Environmental Statement which considers the potential significant impacts that may arise from the development and if necessary the measures that are proposed to mitigate these impacts. Accordingly, an Environmental Statement (ES) is being prepared. At the time of drafting this report, the scope of the ES is being finalised. However, the Scoping Report (June 2023) contains the following environmental topics for potential inclusion in the ES:

Potential significant effects:

- Socio-economics;
- Transport & access;
- Air quality;
- Noise & vibration;
- Ecology; and
- Climate change;

Potential non-significant effects:

- Archaeology;
- Ground conditions;
- Water resources;
- Landscape;
- Lighting;
- Human health;
- Major accidents & disasters; and
- Waste.

9 Potential planning obligations under s106 of the Town and Country Planning Act 1990

- 9.1 The OPC was subject to a planning obligation made under s106 in 2007 when consent was granted by the Secretary of State. This was amended in 2012 following variations to the conditions of the OPC. The s106 agreement accompanying the existing LDO restates or updates the outstanding requirements of the 2007 s106 agreement and included obligations addressing the following topic areas:

- London Gateway covenants:
 1. Highway improvements or financial contributions towards highways improvements;
 2. Travel planning and public transport measures;
 3. Provision of land for a training facility;
 4. Apprenticeships and local employment measures; and
 5. Monitoring requirements.

9.2 The s106 agreement accompanying the existing LDO was amended in 2019 following consideration by the Planning Committee in 2017.

9.3 It is likely that some of the obligations in the current s106 agreement will need to be carried forward into a new agreement. In addition, subject to the outcome of the EIA, other mitigations measures may need to be secured by obligation.

10 Proposed LDO1.5

10.1 DPWLG have recently approached Officers regarding potential development of up to 85,000 sq.m of commercial floorspace on land within the logistics park site which presently benefits from LDO1. from the extant LDO1. It is understood that commercial negotiations are ongoing involving buildings totalling up to 85,000sq.m. floorspace which would represent a significant investment, with associated economic benefits. However, detailed design for building work and other development has not progressed to a point where a 'prior notification' can be submitted to the Council under LDO1. It would not be possible to commence development before LDO1 time-expires this November.

10.2 In terms of options for securing planning consent to enable development of this floorspace, it would not be possible to build-out any approval of reserved matters pursuant to the original outline planning permission (ref. 02/00084/OUT). This is because the ES which was prepared to accompany the original application for outline planning permission (submitted in 2002) is now largely out-of-date and its conclusions could not be safely relied upon.

10.3 Another option considered by Officers and DPWLG would be a stand-alone planning application seeking full planning permission for the development. However, preparation of such an application with accompanying documentation and the subsequent determination by the Council of the application would take many months. Such a delay, with resultant uncertainty, could jeopardise the ongoing commercial discussions and so this is not a viable option.

- 10.4 Although LDO2 is being progressed now, the time delay between the ongoing commercial discussions (between DPWLG and the potential occupier(s)) and the intended adoption of LDO2, with a subsequent prior notification submission to the Council also add unacceptable uncertainty and is not a viable option.
- 10.5 As noted above, the proposals for the floorspace will not be ready in time to benefit from being part of LDO1 (which time-expires in November) but are expected to be ready before adoption of LDO2 in c.Spring /Summer 2024. The proposed floorspace in question (up to 85,000 sq.m.) would fall within that gap of time. Therefore, the most realistic option to enable a planning submission seeking confirmation that development can proceed to deliver the floorspace and resultant economic benefits is through a revision to the current LDO (LDO1.5) which would allow up to 85,000 sq.m. of B8 floorspace in advance of LDO2 coming 'on-line'. There is currently a 400,000 sq.m. restriction on the amount of floorspace that can be occupied prior to the practical completion and commissioning of the single common user siding permitted under LDO1. The need for the common user siding is being considered as part of proposals for LDO2 given the ability of the Park operators to provide a shunting facility which will enable freight from across the Park to make use of the railway connection. Consideration also needs to be given as part of LDO2 to the feasibility of providing a public transport link to the Thames Enterprise Park site if the common user siding were in place. It is therefore proposed to increase the 400,000sq.m. threshold to 415,000 sq.m in LDO1.5 as the addition of 85,000sq.m. would exceed the original threshold and would therefore limit the amount of development that could come forward.
- 10.6 In summary, LDO1.5 would allow for up to 85,000 sq.m of B8 floorspace and would enable a decision on the common user siding to be considered as part of LDO2 whilst allowing for development for which there is currently commercial interest as expediently as possible. It would have the effect of allowing a prior notification submission to the Council after LDO1 expires, but in advance of LDO2. LDO1.5 would need to be screened pursuant to the EIA Regulations, would require supporting documentation (i.e. Statement of Reasons etc.) and would be subject to statutory consultation.
- 10.7 Therefore Officers suggest that Cabinet recommend to the Full Council meeting in November that authority is delegated to a future meeting of the Planning Committee to adopt LDO1.5.

11 Impact on corporate policies, priorities, performance and community impact

- 11.1 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.

12. Implications

12.1 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 (LDO2). There are no expected additional costs for the Council.

12.2 Legal

Implications verified by: **Caroline Robins**
Locum Principal Solicitor

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 delegation will enable a timely decision on whether to adopt LDO2.

A standalone, small LDO1.5 would enable up to 85,000 sq.m of B8 floorspace to start on site after the expiry of the extant LDO and prior to the adoption of LDO2

12.3 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 decision to make LDO2, a formal consultation and engagement process, described above, will be undertaken.

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

None

- 14. 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):

None

- 15. Appendices to the Report**

None

Report Author

Matthew Gallagher
Major Applications Manager