

21 September 2023	ITEM: 10
Planning Committee	
London Gateway Logistics Park Local Development Order (Plot 2050)	
Wards and communities affected: Corringham and Fobbing Stanford-le-Hope West Stanford East and Corringham Town The Homesteads	
Report of: Matthew Gallagher, Major Applications Manager	
Accountable Strategic Lead: Louise Reid, Strategic Lead Development Services	
Accountable Director: Mark Bradbury, Interim Director of Place	

Executive Summary

Previous reports presented to the Planning Committee meetings in July 2021 and February 2023 referred to the planning consenting regime for securing the delivery of strategic employment development at London Gateway logistics park, to ensure that the economic growth, jobs and investment at the park continue to be delivered in an efficient and sustainable manner.

The previous reports explained that development on the logistics park site has been subject to the provisions of a Local Development Order (LDO1) since 2013. As this Order is time-limited, the reports explained that the preparation and making (adoption) of a new Order (referred to as 'LDO2') is required because the existing Order will expire in November 2023. The reports also provided updates on preparation of LDO2 and granted Officers delegated authority to progress LDO2 up to and including the stage of statutory consultation.

DP World London Gateway (DPWLG) have recently approached Officers regarding their ongoing commercial discussions with potential plot occupiers and the planning mechanism for securing planning consent to enable prompt development up to 85,000 sq.m. of floorspace. In section 6 below, the report below considers this floorspace in the context and timeframes of the existing LDO1, the emerging LDO2 and considers other planning mechanisms for delivery. The mechanism recommended is a limited LDO (referred to as LDO1.5) to enable the delivery of up to 85,000 sq.m of floorspace which is intended to be adopted after the expiry of LDO1 and before LDO 2.

1. Recommendation

- 1.1 To note this report and delegate authority to the Strategic Lead Development Services and Major Applications Manager to progress preparation of LDO1.5 in respect of up to 85,000 sq.m. of commercial floorspace, including the stages of Environmental Impact Assessment (EIA) screening and also including delegated authority to undertake statutory consultation and publicity as soon as draft LDO1.5 and supporting documentation is complete.**

2. Planning 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 (LDO1) 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 In summary, the key stages in the LDO comprise: (i) preparation of documentation; (ii) consultation; (iii) consideration of representations; and (iv) adoption.

4. The Existing LDO

- 4.1 As noted 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 LDO1 commenced in 2012. In June 2013 the draft LDO1 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 LDO1 drafting), Full Council resolved to make the LDO1 in November 2013. The matter was referred to the Secretary of State, who did not intervene, and the LDO1 was made on 7 November 2013.
- 4.3 In summary, the LDO1 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 LDO1 is subject to a number of planning conditions which apply both to the four components of development described above and generally across the LDO1 site. Development permitted by the LDO1 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 LDO1 which principally addresses reducing the impacts of the development on transport networks. LDO1 is time-limited and will expire in November 2023.
- 4.5 One of the general planning conditions applying to the LDO1 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 15no. buildings have been subject to the LDOPND process totalling c.315,000sq.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 LDO2

- 5.1 As noted above, LDO1 will expire in November 2023. LDO1 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 LDO1 have synergies with Freeport status. Therefore, both Officers and DPWLG recognise the benefits of preparing and making LDO2.
- 5.2 The reports presented to both the July 2021 and February 2023 meetings of the Committee provided updates on progress with LDO2. In summary, Officers have completed a Planning Performance Agreement (PPA) with DPWLG which 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.

- 5.3 Environmental consultants are currently finalising the ES and a firm of planning consultants, who were involved with the original LDO, have been instructed to assist Officers with management of the project and 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. A legal firm will be appointed to negotiate and complete a s106 agreement on behalf of the Council.
- 5.4 A draft of LDO2 (i.e. the development to be permitted with accompanying restrictions and conditions) has been prepared. In broad terms draft LDO2 is similar to LDO1 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.
- 5.5 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 LDO1 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 LDO1, again reflecting strong market demand for Class B8 warehouse use.
- 5.6 Although progress is being made with the preparation of LDO2, the current project timeframe suggests that LDO2 will not be adopted until Spring 2024.

6 Proposed LDO1.5

- 6.1 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. It is understood that commercial negotiations are ongoing involving buildings totalling up to 85,000 sq.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.
- 6.2 In terms of options for securing planning consent to enable development of this floorspace , it would not be possible to build-out via 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.

- 6.3 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 delivery of this development and so this is not a practicable option.
- 6.4 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 are not a viable option.
- 6.5 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. 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, (LDO 1.5) which would allow up to 85,000 sq.m. of B2/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.
- 6.6 In summary, LDO1.5 would allow for up to 85,000 sq.m of B2/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.
- 6.7 Officers are intending to present a report to Cabinet in November which asks that Cabinet recommend to a subsequent Full Council meeting (also in

November) that authority is delegated to a future meeting of the Planning Committee to adopt LDO2. Revisions to these Cabinet and Full Council reports are required to also include reference to the adoption of LDO1.5 by the Planning Committee. However, the recommendation above now asks that Planning Committee delegate authority to Officers to progress the preparation of LDO1.5 up to including the consultation stage. As per the reports to Cabinet and Full Council in November, authority on whether or not to adopt LDO1.5 would be a matter for Planning Committee.

Conclusion

- 7.1 Commercial discussions are ongoing between DPWLG and potential occupier(s) the delivery of up to 85,000 sq.m of commercial floorspace on the logistics park site. The proposals would also involve a significant investment into the logistics park site and would offer potential benefits for job creation and expenditure in the local economy.
- 7.2 With the imminent expiration of LDO1, Officers and DPWLG have reviewed options for securing the planning consent necessary for development on the plot to proceed. The most realistic option is for the Council to progress and adopt a limited Order, referred to as LDO1.5. The Planning Authority is asked to delegate authority to Officers so that LDO1.5 can be progressed up to and including statutory 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 LDO2 and the plot-specific LDO1.5, 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 already been agreed which will meet the Council's costs in respect of the progression and adoption of LDO2. Either a revision to the existing PPA or a separate PPA specific to LDO1.5 will be negotiated and completed to ensure that the Council's cost are covered. There are no expected additional costs for the Council.

10.2 Legal

Implications verified by: **Caroline Robins**
Locum Principal Planning 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 and LDO1.5.

The existing LDO1 is accompanied by a s106 legal agreement and it is likely that a new s106 will be negotiated in parallel with LDO2 and LDO1.5.

The proposed delegations will enable the timely undertaking of the EIA screening and if necessary 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. Any ES accompanying LDO1.5 may include a similar assessment. Prior to any Planning Committee decision to make LDO2 and LDO1.5, a formal consultation and engagement process, will be undertaken.

10.4 Other implications (where significant – i.e. Staff, Health Sustainability, Crime and Disorder)

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.

12 Appendices to the report

- None

Report Author:

Matthew Gallagher
Major Applications Manager

