

Report to: Planning Committee



Date of Meeting 22nd August 2023

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

District Heating Local Development Order

Report summary:

The report seeks a resolution for the Council to adopt a revised boundary for the Local Development Order (LDO) for District Heating (DH) Networks in East Devon's West End.

Planning Committee approved the Adoption of the LDO on 15th July 2020.

The revised boundary extends the LDO south of Exeter airport from the A30 to the A3052. A formal consultation has been undertaken in accordance with The Town & Country Planning (Development Management Procedure Order) (England) 2015. Amendments have been made to the draft revised LDO following the consultation.

The LDO sets out the permitted development and defines the restrictive terms which limit the scope of the development and the conditions which need to be met. The adopted LDO is attached in Appendix 1. The proposed revised LDO is attached in Appendix 2.

The purpose of the LDO is to grant permitted development rights for underground pipes and cables and some minor above ground works. The Statement of Reasons (with addendum) accompanies the Order and is attached in Appendix 3.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That Committee approve the adoption of the revised boundary for the District Heating Local Development Order.

Reason for recommendation:

Through the adopted LDO the Council supports the delivery of the District Heating Network in East Devon in accordance with the aims and objectives set out in East Devon Local Plan East Devon Council Plan 2020 – 2040 to achieve carbon neutrality by 2040.

The LDO reduces the regulatory processes and delays associated with the submission of planning applications and facilitates faster implementation of the District Heating networks.

The proposed revised boundary will grant planning consent for pipes to be laid from the A30 to the Hill Barton Industrial Estate.

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Communications and Democracy
- Economy
- Finance and Assets
- Strategic Planning
- Sustainable Homes and Communities
- Culture, Leisure, Sport and Culture

Equalities impact Low Impact

Climate change Medium Impact

Decentralised heating systems result in significantly lower carbon emissions than conventional heating systems, helping to achieve sustainable development and resulting in a positive impact on climate change.

Risk: Low Risk; The proposed LDO is a low risk proposal. The delivery of the Order will comply with the Town & Country Planning (Development Management Procedure Order) (England) 2015

Links to background information Planning Committee 15th July 2020 [Cabinet 6th March 2019](#)
[East Devon Local Plan 2013-2031](#) [National Planning Policy Framework](#) [The Town & Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) [The Town & Country Planning \(Environmental Impact Assessment\) Regulations 2017](#)

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

1. Introduction

- 1.1. The District Heating Local Development Order gives permitted development rights for the installation for high pressure hot water pipes and ancillary equipment as listed in the Order, subject to the limitations and conditions set out in the Order. The LDO provides certainty to developers, reduces the regulatory process and facilitates faster development.
- 1.2. The heat network is a system of heat distribution which takes heat from energy centres and supplies it to individual buildings. The district heating (DH) networks are an essential part of East Devon's plan to facilitate more sustainable forms of energy consumption. The benefits of the DH networks grow as the networks increase in size and they provide a unique opportunity for large scale distribution of energy from renewable and recovered heat sources.

- 1.3. Currently the heat networks are connected via the energy centres to mains gas. The aim is for the two energy centres to be supplied by a more sustainable heat source by using heat recovery from the waste incineration at Hill Barton Industrial Estate. The proposed revised boundary of the LDO will grant permitted development for pipes and ancillary equipment to be installed, connecting the energy centres to an Energy from Waste plant at Hill Barton.

2. Background

- 2.1. The Town and Country Planning Act 1990, Section 61, permits Local Planning Authorities (LPA's) to make Local Development Orders granting planning permission for development in their area. The Town & Country Planning (Development Management Procedure Order) (England) 2015 sets out the procedure that must be undertaken for the preparation and adoption of an LDO.
- 2.2. LPA's can make an LDO to extend permitted development rights or grant planning permission, for specific development proposals or classes of development within a particular area.
- 2.3. Under the legislation Local Planning Authorities may amend, extend or revoke LDO's.
- 2.4. Statutory undertakers for gas, electrical or water utilities currently benefit from nationally prescribed permitted development rights. This enables them to install and maintain apparatus necessary for the operation of those utilities without the requirement to obtain planning permission. The providers of district heat networks do not benefit from such permitted development rights. The District Heating LDO grants rights similar to that of statutory undertakers.
- 2.5. The district heating networks serve housing in Cranbrook, Monkerton and Pinhoe as well as commercial buildings at Skypark and Science Park. The Skypark energy centre also provides a private wire to the Lidl distribution centre.

3. Details of the order

- 3.1. In accordance with the provisions set out in The Town & Country Planning (Development Management Procedure Order) 2015 a Statement of Reasons accompanies the LDO. This is provided in Appendix 3.
- 3.2. The LDO removes the need for developers to apply for planning permission for the installation of pipes, cables and wires, heat exchange equipment and ancillary engineering works, provided the development complies with the limitations and conditions set out in the Order.
- 3.3. The development rights permitted under the Order would allow any DH provider to undertake the specified works. The Order is not directed to a specific energy supplier.
- 3.4. To ensure that the development is acceptable in planning terms the LDO defines a set of limitations to restrict the development which is permitted under the order. The order also specifies a list of conditions which must be met. Any development outside of these limitations or which does not comply with the list of conditions would not be deemed as permitted development by the order.

- 3.5. The LDO as drafted would exclude any development within the curtilage of any Listed Building or Locally Listed Structure or affecting a Scheduled Ancient Monument. It would also exclude any above ground development within 50 metres of a Listed Building or Locally Listed Structure or a Scheduled Ancient Monument.
- 3.6. Development which constitutes EIA development as defined by Regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) (EIA) Regulations 2017 is specifically excluded by the restrictive terms of the Order.
- 3.7. The restrictive terms of the order would mean that any works to trees or hedgerows would require written approval by the LPA prior to undertaking the works and that any landscaped areas affected by the development are either reinstated to their previous condition or to a specification agreed in writing by the LPA.
- 3.8. The proposed Order would grant permitted development rights similar to some of the permitted development rights enjoyed by statutory undertakers for other utilities. The Order does not give consent for rights under other legislation to install apparatus or equipment and it remains the responsibility of the developer/landowner to comply with all other legislation.
- 3.9. In the event that written approval is required from the LPA to comply with a condition the developer will need to submit all the relevant information and appropriate fee. The fee is not set by the Order. The LPA will set the appropriate fee to cover the administration and processing of the condition compliance.
- 3.10. The duration of the LDO is defined within the draft Order as 15 years from the date of adoption. The Council can revoke, amend or extend the Order at any time.

4. Expansion of the LDO boundary

- 4.1. The current adopted LDO is attached in Appendix 1. The proposed revised LDO is attached in Appendix 2.
- 4.2. East Devon District Council (EDDC) currently has two district heating networks. The development of district heating networks is part of EDDC's strategy to deliver large scale zero carbon development. The system is operated by energy substations, currently connected to the national gas main. It was always expected that the district heating systems would support decarbonisation. Initially the system was anticipated to be served by a biomass boiler, however it became evident that technology had not matured sufficiently to provide a reliable and commercially deliverable solution. A project is now being undertaken to heat the networks using heat recovery from a forthcoming Energy from Waste plant, situated in the Hill Barton Industrial estate. The connection of the district heat networks to the Energy from Waste plant will result in decarbonisation of the networks.
- 4.3. The LDO boundary is proposed to be extended across an area reaching from the Hill Barton Industrial Estate to the A30. It will enable permitted development rights for the pipes to be installed from the Energy from Waste plant to the energy substations at Skypark and Science Park, subject to the limitations and conditions set out in the order.

- 4.4. The LDO does not grant consent for the Energy from Waste plant. The plant currently under construction has been granted consent by Devon County Council, as Minerals and Waste Planning Authority. Any additional Energy from Waste plants will require planning permission and is a separate matter to be considered outside of the remit of the LDO.
- 4.5. The proposed revised boundary for the district heating LDO will support the roll out of decentralised heating systems in East Devon, assist the delivery of a key aim of East Devon Council Plan 2021 – 2023 to achieve carbon neutrality by 2040. Decentralised heating systems can provide significant carbon emission reduction compared to conventional heating systems and can therefore aid the transition to a low carbon economy.
- 4.6. The LDO accords with the Council's Vision set out in the East Devon Local Plan 2013-2031. The full list of policies which the LDO supports is detailed in the Statement of Reasons (Appendix 2). It will also help deliver on key objectives with the Council Plan including to;
- Deliver a coherent strategy towards carbon neutral development.
 - Support infrastructure and commercial projects, preparing Local Development Orders to speed up delivery of projects in the Exeter and East Devon Enterprise Zone.
- 4.7. The LDO is seen as an effective tool for simplifying and speeding up the planning process. It is a proactive approach to planning which provides certainty and clarity to developers and landowners and supports the objectives of Exeter and East Devon Enterprise Zone. This LDO supports the decarbonisation of the existing district heating networks that serve Cranbrook, Sky Park, Mosshayne and Science Park, through supporting the development of an interconnector to offtake heat from the Energy from Waste plants on the Hill Barton site. The LDO could also facilitate the expansion of the existing district heating network to serve development in the vicinity.

5. Consultation

- 5.1. The consultation on the proposed revised boundary for the District Heating LDO took place from 25th May – 5th July 2023.
- 5.2. A summary of all comments received is attached in Appendix 4, along with a response to the issues raised.
- 5.3. The Environment Agency have noted a concern regarding development close to or within the landfill site at Hill Barton. They have recommended a condition to ensure adequate risk assessment and remediation is undertaken. An appropriate condition has been added to the LDO to cover the area referred to.
- 5.4. National Highways have noted the need for compliance with New Roads and Street Works Act (NRSWA) 1991. The LDO does not override other legislation and does not enable the developer to bypass the need to enter into legal agreements with National Highways where they are the landowner. No further action required.

- 5.5. The Historic Environment Team are satisfied with the archaeological condition set out in the LDO and the proposed revised archaeological constraints map.
- 5.6. The Environment Agency raise no concerns in respect to flooding and it is considered that the installation of district heating infrastructure under the LDO will not increase flood risk to the area.
- 5.7. Support for the proposed revised boundary has been received by Cranbrook Town Council.
- 5.8. Objection to the proposed revised boundary has been received by Farringdon Parish Council and a number of residents within Farringdon parish.
- 5.9. A large number of the representations were concerned about the overall impacts currently experienced from Hill Barton Industrial Estate and concern that these impacts may be increased as a result of the proposed extension to the LDO. The LDO only relates to the installation of pipes and ancillary equipment for the district heat networks and no other development at Hill Barton Business Park.
- 5.10. Concern has been raised regarding the Energy from Waste (EfW) plant proposed at Hill Barton. The plant currently under construction has been granted consent by Devon County Council, as Minerals and Waste Planning Authority. Any additional Energy from Waste plants will require planning permission and is a separate matter to be considered outside of the remit of the LDO. The LDO does not include buildings, (such as the EfW plant). Above ground development permitted by the LDO has to be no higher than 1m above ground level and no greater than 2.5metres cubed in external volume.
- 5.11. As with most development the LDO will result in some short-term disturbance whilst pipes are installed. The majority of pipes will be installed away from residential properties and are not expected to cause significant disruption during installation. Once installed there will be no adverse impacts to nearby properties. The ground surface will be returned to its previous condition and they will not affect the future agricultural use of the land. Once completed the development permitted under the LDO will not result in an increase in noise, smell, dust or the use of roads around Farringdon, nor be detrimental to the welfare of horses grazing the land.
- 5.12. The LDO gives permitted development rights over the land, it is not relevant who the landowners are. The current boundary of the LDO covers thousands of private residences. It does not affect their rights as landowners and does not give rights to developers to undertake works without the landowner's consent. There is no justified planning reason why specific dwellings should be excluded from the LDO boundary.
- 5.13. Currently the Skypark energy Centre is heated by mains gas. The aspiration is that the supply will switch to low carbon or carbon neutral energy supply as soon as a feasible option is available. The revised boundary to the LDO will facilitate the provision of infrastructure to enable lower carbon or zero carbon opportunities to be brought forward in the future.
- 5.14. The LDO has been screened in accordance with the Habitats Regulations and development built out under it is not likely to result in a significant effect upon European protected sites. An Appropriate Assessment is therefore not required to be undertaken.

5.15. The LDO has been screened in accordance with the Town and Country Planning (Environmental Impact Regulations) 2017 and the development is not considered likely to result in significant effects. A limitation on the LDO restricts development which constitutes EIA development as defined by Regulation 2(1) of the EIA Regulations 2017.

6. Alternative options

6.1. The alternative is to not amend the boundary of the adopted LDO and require the developers to apply for planning consent for all development outside the current boundary. This approach would impact development with added costs and time delays and may affect the viability of enabling a low carbon or zero carbon heat source to be obtained for the district heat networks.

7. Conclusion

7.1. East Devon District Council aims to reduce carbon emissions as part of tackling climate change. In accordance with the Council's Vision as set out in the Local Plan the proposed amended LDO will help to facilitate the change to a low carbon economy and support the Council's desire to become zero carbon.

7.2. The LDO controls the permitted development though its limitations and conditions to ensure there is no adverse impacts from the development on the amenity of the surrounding area. The regulations allow the LDO to be revoked or amended at any time should the Council change its policies or views on decentralised heating systems.

7.3. If the revised boundary to the LDO is Adopted, the Secretary of State will be notified in accordance with The Town & Country Planning (Development Management Procedure Order) (England) 2015.

Financial implications:

There are no financial issues raised within the report.

Legal implications:

The power to make an LDO is discretionary and the LDO must be adopted for it to take effect. The power to adopt an LDO has been delegated to the planning committee following amendments to the Council's constitution at the Council meeting of the 24 June 2020. Once adopted the LDO will grant deemed planning permission for the specified development or specified classes of development within a defined area.