

**TheReport to:** **Development Management Committee**



**Date of Meeting:** 3<sup>rd</sup> March 2020

**Public Document:** Yes

**Exemption:** None

**Review date for release** None

**Subject:** **District Heating Local Development Order**

**Purpose of report:** The report seeks support for undertaking the Local Development Order (LDO) process, and consulting on a draft order with a view to the Council adopting a LDO for District Heating (DH) Networks in East Devon's West End.

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 draft Order is attached in Appendix 1.

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 accompanies the Order and is attached in Appendix 2.

**Recommendation:** **Members approve the draft District Heating Local Development Order for public consultation.**

**Reason for recommendation:** Through the adoption of a LDO the Council can encourage the delivery of the District Heating Network in East Devon's West End in accordance with the aims and objectives set out in East Devon Local Plan 2013 - 2031 and East Devon Council Plan 2020 - 2040.

The LDO will reduce the regulatory processes and delays associated with the submission of planning applications and facilitate faster implementation of the District Heating networks.

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**Portfolio Holder:** Portfolio Holder for Strategic Development

**Financial implications:** There are no financial implications at the consultation stage.

**Legal implications:** Local Development Orders do not remove or supersede any grant of planning permission (or permission granted on appeal) or national permitted development rights which are already in place. Equally, they do not prevent a planning application being submitted to a local planning authority for development which is not specified in the Order.

The process for consultation and adoption of an Order is set out in legislation.

**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:**

[Cabinet 6<sup>th</sup> March 2019](#)

[East Devon Local Plan 2013-2031](#)

[East Devon Council Plan 2020-2024](#)

[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](#):** Outstanding Place and Environment

Outstanding Economic Growth, Productivity, and Prosperity

## Report in full

### 1. Introduction

- 1.1. The implementation of a simplified planning regime in Exeter and East Devon Enterprise Zone has been included in the Enterprise Zone work programme from the commencement of the designation in April 2017.
- 1.2. A LDO grants planning consent for specific types or classes of development as listed in the Order. The LDO can provide certainty to developers, reduce the regulatory process and facilitate faster development.
- 1.3. The heat network is a system of heat distribution which takes heat from energy centres and supplies it to individual buildings. DH networks are an essential part of East Devon's plan to facilitate more sustainable forms of energy consumption. As well as decreasing carbon emissions they reduce heating bills for both domestic and commercial customers. 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.

## **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. 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.
- 2.4. LDO's for Local Energy Networks and DH undertakings have been enacted by a number of Local Planning Authorities. Exeter City Council adopted an LDO for Local Energy Networks in 2019.
- 2.5. The principal objective of the LDO is to support the increased roll-out of decentralised energy networks in the west end of East Devon by granting certain permitted development rights for the development of district heat networks.

## **3. District Heating Network**

- 3.1. The Skypark Energy Centre currently provides hot water and heating to housing in Cranbrook and commercial buildings at Skypark as well as a private wire to the Lidl distribution centre.
- 3.2. The Monkerton Energy Centre is in the process of being commissioned and will provide hot water and heating to housing around Monkerton and Pinhoe and also commercial buildings at the Science Park.

## **4. Details of the draft order**

- 4.1. In accordance with the provisions set out in The Town & Country Planning (Development Management Procedure Order) 2015 the Local Planning must prepare a draft Order and a Statement of Reasons. These are attached to the report in Appendix 1 & 2 respectively.
- 4.2. The LDO would remove 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.

- 4.3. The geographical area covered by the Order is defined in Map 1 (Appendix 2).
- 4.4. 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.
- 4.5. 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.
- 4.6. 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.
- 4.7. 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.
- 4.8. 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.
- 4.9. 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.
- 4.10. 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 and is currently considering a fee of £96 which reflects the application fee for Prior Approval applications and should reflect the cost of processing any written approval requests.
- 4.11. 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.

## **5. Benefits of implementing an LDO**

- 5.1. The proposed LDO for DH networks will enable further roll out of decentralised heating systems in East Devon's West End. This assists the delivery of a key aim of East Devon Council Plan 2020 – 2040 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.

5.2. 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 delivery on key objectives with the new 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.

5.3. 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 the Enterprise Zone.

## **6. Alternative options**

6.1. The alternative is to not prepare and adopt a LDO for DH and require the developers to apply for planning consent for all development. This approach would impact upon the timing and costs of development within existing networks, particularly in respect to extending and enhancing connections within the networks.

## **7. Next steps**

7.1. The statutory consultation process as defined in the DMPO 2015 (Article 38) needs to be undertaken. In addition to the prescribed bodies the LPA must consult any person affected by the LDO as per a conventional planning application. The consultation period must last for no less than 28 days.

7.2. Following the consultation process any representations received will be considered and an amended draft of the Order will be drawn up. A report on the revised draft of the LDO will be presented to the Development Management Committee for Adoption of the LDO by the Council.

7.3. The development needs to be screened against the EIA regulations 2017. In the event that the development is screened "in" the relevant procedures of the regulations must be followed. The outcome of the EIA Screening will also be report to the Development Management Committee alongside the outcome from consultation.

## **8. Conclusion**

8.1. A Local Development Order for DH networks will enable simpler and faster implementation of the decentralised heating systems which are currently being delivered within East Devon's West End. The development of DH networks are encouraged as part of the mitigation measures which seek to address climate change.

8.2. 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.

- 8.3. The report seeks consent from Committee to proceed with the LDO through the carrying out of public consultation with the results of the consultation considered and presented back to the Development Management Committee prior to Adoption of the LDO.

**East Devon District Council**  
**Draft Local Development Order**  
**District Heating**

**1) Description**

This Local Development Order (LDO) grants Permitted Development rights for District Heating transmission and distribution networks for development such as the installation of pipes, cables and wires, heat exchange equipment, street furniture, and ancillary engineering works within defined areas of land in East Devon as shown on the attached Map 1, subject to the limitations and conditions set out in the LDO.

The permitted development rights granted by this LDO are in addition to permitted development rights granted nationally.

**2) Permitted development**

Development comprising the installation, alteration or replacement of District Heating transmission and distribution networks and ancillary works over, on or under land.

**3) Development not permitted**

Development is not permitted by this Order where:

- a) any above ground cabinets, buildings, structures or enclosures would be greater than 1.5 metres in height above ground level; or
- b) any above ground cabinets, buildings, structures or enclosures would be greater than 2.5 cubic metres in external volume; or
- c) any pipework installed above ground and outside any enclosure is greater than 2 metres in length; or
- d) the installation would be on a Listed Building or a Locally Listed Structure or within the curtilage thereof; or
- e) the installation would be on a site or building designated as a Scheduled Ancient Monument: or
- f) any above-ground development would be within 50 metres of the curtilage of a Listed Building, Locally Listed Structure or Scheduled Ancient Monument; or
- g) the installation would be within 8 metres of a main river as designated on the Environment Agency's Main River map; or
- h) any above-ground development would be sited within Flood zones 2 or 3; or

- i) the installation constitutes EIA development as defined by Regulation 2(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 or as subsequently defined; or
- j) the installation comprises development that is restricted by a condition of a planning consent implemented on the land; or
- k) the installation would be outside the area identified on the LDO map.

#### **4) Conditions**

The above development is permitted subject to all of the following conditions:-

- a) The installation shall be, so far as practicable, sited and designed to minimise its effect on the appearance of the area;
- b) There shall be no lopping, topping, root reduction or removal of trees or hedgerows to accommodate the installation unless previously agreed in writing by the LPA;
- c) Areas of trees or landscaping affected by the installation shall be reinstated to their condition prior to commencement of the works or to a specification agreed in writing by the LPA;
- d) Any above ground apparatus or enclosures shall be removed as soon as reasonably practicable after they are no longer required for the purpose of the network and the land restored to its condition before the development took place.
- e) Within 10 working days of completion of any works data shall be provided to the local planning authority providing the date of completion and a map showing the geographical position of the completed works.

#### **5) Expiry**

Subject to any subsequent decision by the Local Planning Authority relating to its withdrawal, modification or extension, this Order shall expire after 15 years of the date of its adoption.

#### **6) Other Statutory Requirements**

Whilst the LDO grants planning permission for certain types of development as described in this Order, it does not grant consent that may be required under other legislation. It will remain the responsibility of the developers to ensure that all other statutory requirements beyond the scope of the planning system are adhered to.

Failure to comply with relevant statutory requirements could result in any development being unlawful and may result in appropriate enforcement action being taken by the council and/or other agencies. It is the responsibility of the developer/landowner to be in accordance with all relevant legislation.

#### **7) Written Approval**



Any application for written approval pursuant to conditions (b) and (c) shall be made in writing to the local planning authority and must be accompanied by;

- i) a written description of the proposed development; and
- ii) a plan indicating the location of the site in relation to neighbouring properties; and
- iii) a plan or plans and any relevant documents showing the existing condition of site and full details of the proposed landscaping works; and
- iv) the developer's contact details; and
- v) the appropriate fee.

Where written approval is required the development must not begin before written approval is issued by the local planning authority.

The development must be carried out in accordance with the details approved.

**East Devon District Council**  
**District Heating Local Development Order**  
**Statement of Reasons**

**1. Legislation**

1.1. This document satisfies the requirements of Article 38(1) and (2) of the Town and Country Planning (Development Management Procedure) Order 2015 (DMPO).

Article 38(1) states that where a Local Planning Authority proposes to make a Local Development Order (LDO) they shall first prepare:

- a) a draft order; and
- b) a statement for their reasons for making the order.

Article 38(2) states that the 'statement of reasons' shall contain:

- a) a description of the development which the order would permit; and
- b) a plan or statement identifying the land to which the order would relate.

**2. Background**

- 2.1. The district heating network is a distribution system of insulated underground pipes carrying hot water that takes heat from an energy centre and delivers it to individual properties and non-domestic buildings to provide heating and hot water. The district heating network removes the need for individual boilers or electric heaters in each building or dwelling.
- 2.2. East Devon's West End has district heating networks which are to be served by Skypark Energy Centre and Monkerton Energy Centre.
- 2.3. The Order sets out a range of limitations to which the LDO applies and identifies the timeframe of the LDO. The development which is permitted under the Order is subject to a list of planning conditions identified in the Order.

**3. Description of Development Permitted by this Local Development Order**

3.1. The Local Development Order grants planning permission for the development of a District Heating Network (DHN) comprising of pipes, cables and wires, heat exchange equipment, street furniture, informational signage and ancillary engineering works within defined areas of land in East Devon and shown on the attached map 1, subject to the conditions set out.

**4. Justification for creating this Local Development Order**

- 4.1. The principal aim for creating the LDO is to encourage and facilitate the implementation of district heating network by providing a simplified approach to planning which reduces the regulatory processes and delays associated with the submission of planning applications.
- 4.2. The LDO will assist the delivery of a key aim of East Devon Council Plan 2020 – 2040 to achieve carbon neutrality by 2040. Addressing climate change is a key priority for the Council.

- 4.3. 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 LDO will help to facilitate the change to a low carbon economy and support the Council's desire to become zero carbon.
- 4.4. Technology permitting, it is hoped that the DHN will also provide an opportunity to explore renewable and recovered heat sources in the future.
- 4.5. Without the LDO being put in place planning permission would be required for the laying of underground pipes and cables and minor above ground works. These are considered to be uncontroversial developments. The costs of processing such applications is not fully covered by the fees and hence there would be a financial saving to the council. The applications have to be registered, advertised, processed and determined and it is considered that officer time is best directed to other objectives.

## 5. Statement of policies that the LDO would implement

- 1.1. The LDO is consistent with the aims and objectives of local and national planning policy.
- 1.2. Mitigating and adapting to climate change, including moving to a low carbon economy, forms part of one of the three core objectives of the National Planning Policy Framework (NPPF) in achieving sustainable development. At paragraph 148, the NPPF establishes that the planning system should support the transition to a low carbon future and support renewable and low carbon energy and associated infrastructure. Paragraph 151 of the NPPF goes on to encourage the identification of opportunities for developments to draw their energy supply from decentralised, renewable or low carbon energy supply systems to help increase the use and supply of renewable and low carbon energy and heat.
- 1.3. The LDO accords with and assists the implementation of East Devon District Council Local Plan 2013-2031 as follows:

### Strategy 3 - Sustainable Development

The objective of ensuring sustainable development is central to our thinking. We interpret sustainable development in East Devon to mean that the following issues and their inter-relationships are taken fully into account when considering development: .....

b) Prudent natural resource use - which includes minimising fossil fuel use therefore reducing carbon dioxide emissions. It also includes minimising resource consumption, reusing materials and recycling. Renewable energy development will be encouraged....

Strategy 11 - Integrated Transport and Infrastructure Provision at East Devon's West End  
Coordinated infrastructure provision will be required to cover Low carbon heat and power supply.

### Strategy 12 - Development at Cranbrook

The town will be built to distinctive high quality design standards incorporating the best in environmentally friendly technology. The existing district heating system will provide for the combined heat and power needs of the town (part 6).

### Strategy 13 - Development North of Blackhorse/Redhayes

The mixed use development will be low or carbon zero development with onsite and/or community power generation. The energy infrastructure will include a heat and energy network to achieve low and zero carbon development (part 4a).

### Strategy 14 - Development of an Urban Extension at Pinhoe

The proposals will be built to distinctive high quality design standards incorporating the best in environmentally friendly technology including the reduction of carbon emissions through measures such as micro-generated technology and decentralised energy systems.

### Strategy 39 – Renewable and low carbon energy projects

Renewable or low-carbon energy projects in either domestic or commercial development will in principle be supported and encouraged subject to them following current best practice guidance and the adverse impacts on features of environmental and heritage sensitivity, including any cumulative landscape and visual impacts, being satisfactorily addressed. Applicants will need to demonstrate that they have;

1. taken appropriate steps in considering the options in relation to location, scale and design, for firstly avoiding harm;
2. and then reducing and mitigating any unavoidable harm, to ensure an acceptable balance between harm and benefit.

Where schemes are in open countryside there will be a requirement to remove all equipment from the site and restore land to its former, or better, condition if the project ceases in the future.

### Strategy 40 – Decentralised energy networks

Decentralised Energy Networks will be developed and brought forward. New development (either new build or conversion) with a floor space of at least 1,000m<sup>2</sup> or comprising ten or more dwellings should, where viable, connect to any existing, or proposed, Decentralised Energy Network in the locality to bring forward low and zero carbon energy supply and distribution.

## **6. Lifetime**

6.1. This LDO takes effect on the date it is adopted by the Council.

6.2. Subject to any subsequent decision by the Local Planning Authority relating to its withdrawal, modification or extension, this Order shall expire after 15 years of the date of its adoption.

6.3. Once the LDO expires the local planning authority will have three options available;

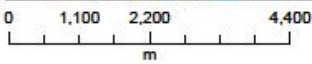
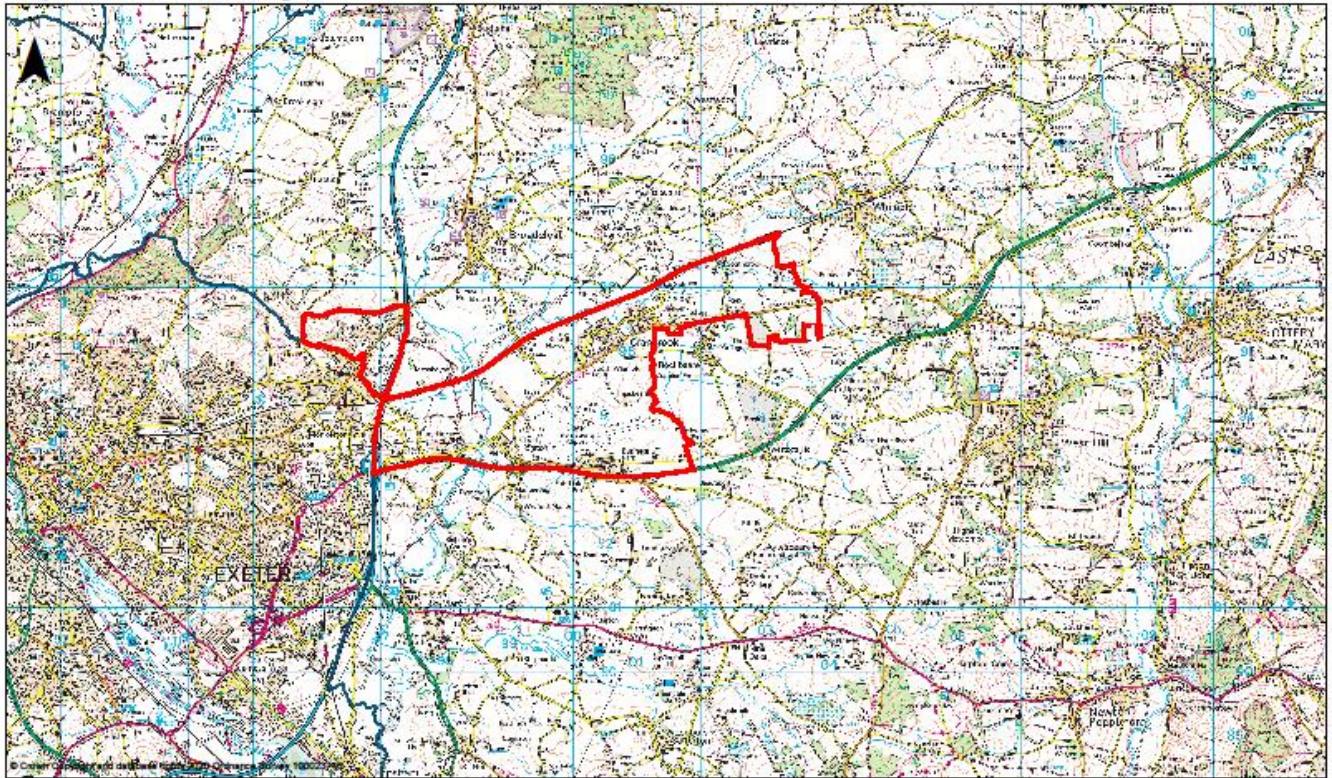
- extend the LDO under the same limitations and conditions;
- provide the LDO and modified the limitations and conditions; or
- revoke the LDO and return to the established planning system.

6.4. Any development which has commenced (as defined by Section 56 of the Town and Country Planning Act 1990) under the provision of the LDO will be allowed to be completed within a reasonable time period, in accordance with the terms and conditions of the LDO.

## **7. Monitoring**

7.1. The implementation and uptake LDO will be monitored through the data gathered under condition (e) which requires the date of commencement and the geographical position of the development to be submitted to the local planning authority.

Map 1 LDO District Heating



Map Tile: SY0194SW Full Reference: SY01449 94380

1:73,430

