

<b>4 November 2013</b>		<b>ITEM: 4</b>
<b>Council</b>		
<b>Proposed London Gateway Logistics Park Local Development Order: Consideration of Habitat Regulations Screening Assessment</b>		
<b>Report of:</b> Councillor Andy Smith, Portfolio Holder for Regeneration, Highways and Transportation		
<b>Wards and communities affected:</b> Corringham and Fobbing, Stanford East and Corringham Town, The Homesteads and Stanford le Hope West	<b>Key Decision:</b> Non key	
<b>Accountable Head of Service:</b> Andy Millard, Head of Planning & Growth		
<b>Accountable Director:</b> David Bull, Director of Planning and Transportation		
<b>This report is</b> Public		
<b>Purpose of Report:</b> To provide updated guidance on the considerations, required under the Habitats Regulations, as to whether the development comprised in the proposed London Gateway Logistics Park Local Development Order (LDO) would have a significant effect on Nature Conservation Sites of European Importance. To recommend that the Council formally determine that the proposed development would not be likely to have significant effect on a European site, either alone or in combination with other plans or projects.		

## EXECUTIVE SUMMARY

At a meeting of the Full Council held on 21<sup>st</sup> December 2011 it was resolved that the Council agree in principle that a Local Development Order (LDO), to permit development of the proposed Logistics Park at London Gateway, be made. Regulation 78 of the Conservation of Habitats and Species Regulations 2010 provides that a LDO may not grant planning permission for a development which is *“likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects).”* A screening document has been prepared which concludes that the proposed development will not be likely to have a significant effect on a European site. As the “appropriate authority” the Council has consulted the statutory national nature conservation bodies and replies have been received. It is recommended that, on the basis of the Habitat Regulations Information to Inform Screening Assessment report and the

consultation replies, the Council formally determine that the development proposed by the LDO will not have a likely significant effect on a European Protected Site.

## 1. RECOMMENDATIONS:

### 1.1 That Council:

- (i) **Note the content of the “London Gateway Commercial and Logistics Park Local Development Order Habitat Regulations Information to Inform Screening Assessment Report” and the consultation responses received;**
- (ii) **Formally determine, on the basis of the information available, that the development proposed by the LDO will not have a likely significant effect on a European site either alone or in combination with other plans or projects.**

## 2. INTRODUCTION AND BACKGROUND:

- 2.1 In May 2007 the relevant Secretaries of State approved a Harbour Empowerment Order (HEO) for the construction of a new container port at the former Shell Haven site (now known as London Gateway) and an Outline Planning Consent (OPC) for the related logistics park. Since then the construction of the port has progressed apace. Quayside cranes have been delivered, the container handling equipment is in place and the first berth will become operational before the end of the calendar year. In addition, construction has commenced on the new access road that will serve the port and the logistics park via the Sorrells roundabout on The Manorway (A1014) and works to the Stanford Interchange (A13 / A1014) are nearing completion. These works are being carried out in advance of the development thresholds within the HEO and OPC that would have otherwise triggered them.
- 2.2 In terms of the Logistics Park, certain reserved matters relating to park infrastructure have been approved and there have been several applications to vary and discharge some of the conditions of the OPC. However, as reported to the Full Council in December 2011, the OPC is subject to 96 conditions some of which have been amended by the approval of variations. This makes the implementation of the individual components of the development complex and unwieldy which is why the LDO approach is being mooted. The content of the proposed LDO and the related procedures regarding its adoption are the subject of the following report on this agenda.
- 2.3 On 19 June 2013 the Council considered a report on the Draft Habitat Regulations Information to Inform Screening Assessment Report and consultation replies which had been received in May 2013 from the Environment Agency and Natural England. At that meeting, the Council noted the content of the Draft Habitat Regulations Information to Inform Screening Assessment Report, noted further consultation may be required and finally noted that a further report would be made to Council. Subsequently, the Draft Habitat Regulations Information to Inform Screening Assessment Report was

updated following the receipt of comments. The updated Screening Assessment Report has been subject to further consultation and forms the basis of this current report.

### **3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:**

- 3.1 The powers to make a LDO are contained in the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004. However, Regulation 78 of the Conservation of Habitats and Species Regulations 2010 (Habitat Regulations), in effect, prohibits the approval of development by means of a LDO if it is likely to have a significant effect upon a European site, either alone or in combination with other plans or projects. If the proposed development is likely to have a significant effect, then the Council cannot make an LDO.
- 3.2 The Habitat Regulations (which are a UK transposition of European Union Directives relating to the conservation of natural habitats, flora and fauna and specifically wild birds) apply to certain designated sites including Special Protection Areas (SPA) and Ramsar sites.
- 3.3 The site of the proposed LDO is indicated on a plan which is appended to this report. Whilst the site itself is not within a European site, the Thames Estuary and Marshes SPA and Ramsar site is located 50 metres to the south west of the LDO Site boundary and the Benfleet and Southend Marshes SPA and Ramsar site is some 6.5 km to the north east. Because of their proximity to the LDO site, an assessment of potential impacts on the nature conservation interest of these areas had to be made.
- 3.4 The assessment of potential impacts needs to be based upon both the construction and operation of the project in combination with other plans or projects. A summary of the description of the development that would be permitted by the proposed LDO is as follows:
- (a) the erection, extension, demolition or alteration of industrial buildings or warehouses within Use Classes B1(b) (research and development), B1(c) (light industry), B2 (general industry), B8 (storage and distribution) and associated ancillary uses;
  - (b) the change of use of a building within Class B8 to Classes B1(b), B1(c) or B2. The change of use of a building within Classes B1(b) or B1(c) to Classes B2 or B8. The change of use of a building within Class B2 to Classes B1(b), B1(c) or B8;
  - (c) associated infrastructure including internal roads, landscaping, drainage, vehicle refuelling facilities and utilities infrastructure;
  - (d) site preparation works comprising remediation and land raising.
- 3.5 The location of the LDO site is substantially the same as for the OPC. However, the area of the site has altered in that the site of the Gateway Energy Centre (subsequently approved after the OPC) has been excluded and a new area at the south-west corner has been included to incorporate a drainage lagoon for the development within the LDO Site. The proposed

floorspace approved by the OPC has been reduced from 938,600 m<sup>2</sup> to 829,700 m<sup>2</sup>. When the original application was submitted to the Council in 2002 it was accompanied by an Information for Appropriate Assessment report which included information on ecology and other potential impacts on the nature conservation interests. This information is now out of date and considerable mitigation and compensatory works, as a consequence of the HEO and OPC in relation to the Port and the Logistics Park, have been completed. Further surveys have been undertaken and information gathered and updated to assess the likely impacts of a logistics park that might be permitted by a LDO.

3.6 This updated information was incorporated into a Habitat Regulations Information to Inform Screening Assessment Report prepared by specialist consultants working for London Gateway Park Development Limited. Copies of this report have been placed in the Members area and can be viewed on the Council's website. The Habitat Regulations Information to Inform Screening Assessment Report considers the characteristics of the European sites and the potential impacts arising from various aspects of the construction and operation of the proposed development are quantified and assessed.

3.7 The Habitat Regulations Information to Inform Screening Assessment Report also considers possible in-combination effects with other projects that are taking place or have been approved, including the construction of the London Gateway Port itself and other infrastructure projects (i.e. the access road and Gateway Energy Centre). The screening report concludes as follows:

*“Neither European Site is located within the development footprint of the LDO. Therefore, there would be no LSEs (likely significant effects) caused by direct habitat loss. Few potential mechanisms of indirect impacts exist that could affect qualifying features located within the ZOI (zone of influence) of the LDO. These are limited to potential impacts to waterfowl and wading bird populations utilising part of the grazing marshes to the west of the LDO boundary from disturbance. Following the implementation of design mitigation measures and management controls set out in the LDO’s Design Code, CoCP (Code of Construction Practice) and EMMP (Ecological Mitigation and Management Plan) to include provision of on-site high tide roost locations, visual screening, controls on noise and artificial lighting, there would not be any likely significant impacts to European Designated Sites as a result of the development proposed to be authorised by the LDO.”*

3.8 The report and its findings have been scrutinised and validated by specialist independent ecological consultants advising the Council. In addition, the Council has consulted the national statutory nature conservation bodies (Natural England and the Environment Agency) and their responses are set out below:

**Environment Agency:**

*“We do not consider that the development permitted by the LDO will have a significant impact on designated sites. We concur with the comments of Natural England.”*

**Natural England:*****“Overall Conclusion on draft HRA***

***Natural England advises your authority that the proposal, if undertaken in strict accordance with the details submitted, is not likely to have a significant effect on the interest features for which Thames Estuary & Marshes SPA / Ramsar site and Benfleet & Southend Marshes SPA / Ramsar site have been classified. The rationale in reaching this conclusion is set out below.***

***Previous Involvement***

*Natural England has been engaged with the emerging Local Development Order, notably providing an EIA scoping response (dated 15th February 2013), and providing comments on iterations of the Habitats Regulations Assessment report (dated 7th February 2013, and 16th May 2013). We have also provided comments on a further iteration by email dated 23rd July 2013. We refer the planning authority to these comments for the context to additional comments set out below.*

***Local Development Order***

*We understand that the LDO seeks to simplify planning requirements at this site for its ten year duration. We are also mindful of the significant planning history to development of the logistics park, and therefore the context of existing permissions (as amended). We are pleased to see therefore that the requirements of the former outline planning consent have been transferred, in their entirety, to the LDO. We note in particular at schedule 2 – General Conditions – that condition 7 requires that “all development permitted under this Order shall be carried out in accordance with and subject to the requirements of the Ecological Mitigation and Management Plan (EMMP).”*

*Notwithstanding this, the LDO introduces a form of permitted development, and therefore allows a scale of development (or the potential for such a scale) beyond the extant outline planning consent. Therefore the LDO must (and has) consider(ed) whether the impacts arising present additional concerns with respect to the natural environment. In view of the flexibility afforded to development at this location, Natural England’s view has been to establish agreed environmental parameters within which development under the terms of the LDO must operate in order to provide the necessary safeguards to the natural environment for the life of the Order.*

*We have restricted our comments to our statutory interests, and therefore concentrate on internationally and nationally protected designated sites. We*

have produced standing advice for protected species, which can be found on our website. Although the LDO is accompanied by an EIA (for which we would normally provide more detailed comments), we do not consider that the impacts arising to protected species are sufficiently complex to warrant bespoke comments. The reason for this is that they have already been cleared from the site, which is now effectively sterile, and has been maintained as such through habitat manipulation and barrier fencing as appropriate.

### **Internationally Protected Sites**

The LDO is accompanied by a Habitats Regulations Assessment (HRA) report, which assesses possible likely significant effects to European protected Special Protection Areas (SPAs), Special Areas of Conservation (SACs), and internationally protected Ramsar sites. Possible impacts to these sites are also considered as part of the EIA. The Thames Estuary and Marshes SPA and Ramsar site lies closest to the LDO boundary, and the major interest features are wintering birds.

We note that wintering birds have not been assigned with an “international” level of value (with reference to table 11.2). For instance, tables 11.9 and 11.10 assign wintering birds with a “local” value, and does not describe their links with the adjacent SPA / Ramsar site in the “legal and policy status” column. In our view, it is appropriate to consider the SPA / Ramsar site interest features as the valued ecological receptors (VER), rather than just “wintering birds” (which gives the impression that these are no more than a feature of the wider environment). The magnitude of impact will take into account the distribution of birds in relation to the zone of influence (ZOI), to determine the significance of the impact. We agree with the conclusions of the EIA, and nevertheless the HRA has taken proper account of the wintering bird interest of the SPA.

Designated sites are also dealt with from paragraph 11.142. In this case, the EIA has considered the significance of effects after mitigation measures have been applied (mitigation has been considered as part of the baseline), and therefore effects are not considered to be significant. Whilst it is helpful to consider impact and mitigation separately for clarity, we agree with the conclusions reached.

**Natural England advises your authority that the proposal, if undertaken in strict accordance with the details submitted, is not likely to have a significant effect on the interest features for which Thames Estuary & Marshes SPA / Ramsar site and Benfleet & Southend Marshes SPA / Ramsar site have been classified.**

In reaching this view, we have been mindful of various stated parameters within which the LDO will operate, for a range of impact pathways. These parameters are set out variously within the LDO and associated documents, including the Design Code, Code of Construction Practise, Drainage Strategy, and Lighting Strategy. **It is essential** therefore, in order to ensure that these

*stated parameters are adhered to, that they are **robustly monitored**, throughout the construction and operation phases of the LDO. The aforementioned documents set out some monitoring details, and it is our understanding that other reporting mechanisms will be routed via the Environmental Advisory Group (EAG), whose function will be secured by the LDO (currently set out as draft condition 8 of schedule 2 – general conditions). All monitoring of environmental parameters must be secured via suitably worded conditions to the LDO.*

### **Nationally Protected Sites**

*Vange and Fobbing Marshes SSSI is located in the vicinity of the LDO boundary, and is discussed at paragraph 11.147. We are satisfied that appropriate controls exist in relation to water quality impact pathways to the SSSI, via the consenting regimes of the Environment Agency. Natural England has been particularly mindful of the air quality impact pathway to this (and other) SSSIs, in relation to cumulative impacts including development of the associated Gateway Energy Centre, which benefits from separate permissions. As part of that consent, mitigation measures were agreed to benefit the SSSI. Air quality modelling results set out in chapter 13, report that such impacts are not predicted to be significant to SSSI sites in the vicinity.*

*Natural England is therefore satisfied that the proposed development, being carried out in strict accordance with the details of the application as submitted, will not damage or destroy the interest features for which the site has been notified. We therefore advise your authority that this SSSI does not represent a constraint in determining this application. Should the details of this application change, Natural England draws your attention to Section 28(1) of the Wildlife and Countryside Act 1981 (as amended), requiring your authority to re-consult Natural England.*

### **Other advice**

*We would expect the Local Planning Authority (LPA) to assess and consider the other possible impacts resulting from this proposal on the following when determining this application:*

- *local sites (biodiversity and geodiversity)*
- *local landscape character*
- *local or national biodiversity priority habitats and species.*

*Natural England does not hold locally specific information relating to the above. These remain material considerations in the determination of this local development order and we recommend that you seek further information from the appropriate bodies (which may include the local records centre, your local wildlife trust or other recording society and a local landscape characterisation document) in order to ensure you have sufficient information to fully understand the impact of the proposal before it determines the application. A more comprehensive list of local groups can be found at [Wildlife and Countryside link](#).*

*If the LPA is aware of, or representations from other parties highlight the possible presence of a protected or priority species on the site, the authority should request survey information from the applicant before determining the application. The Government has provided advice on priority and protected species and their consideration in the planning system.*

*Natural England Standing Advice for Protected Species is available on our website to help local planning authorities better understand the impact of development on protected or priority species should they be identified as an issue at particular developments. This also sets out when, following receipt of survey information, the authority should undertake further consultation with Natural England.*

### **Biodiversity enhancements**

*This application may provide opportunities to incorporate features into the design which are beneficial to wildlife, such as the incorporation of roosting opportunities for bats or the installation of bird nest boxes. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the NPPF. Additionally, we would draw your attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that ‘Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity’. Section 40(3) of the same Act also states that ‘conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat.’”*

**Others:** As a non-statutory consultee the RSPB has reviewed the Habitat Regulations Information to Inform Screening Assessment Report and commented as follows:

*“We agree that the report has identified the relevant European Sites and qualifying features. As already mentioned in the previous section (responding to the draft LDO) we remain concerned that any future development carried out under the Local Development Order must be within agreed environmental parameters (e.g. noise, lighting etc) and that this is rigorously monitored.”*

No representations on the Habitat Regulations Information to Inform Screening Assessment Report were received in response to the site notices or the advertisement in the local newspaper.

- 3.9 Where the making of a LDO is being contemplated the “appropriate authority”, which in this case is the Council, must first consider whether or not the development or project the subject of the LDO is likely to have a significant effect on a designated European site of nature conservation interest. The conclusion of the Screening Assessment Report is that the development proposed by the LDO will not have a significant effect on the European sites.



The consultation responses received from the Environment Agency and Natural England concur with this conclusion and provide the Council with the confidence to make a definitive determination under the Habitats Regulations. Therefore, it is concluded that the development promoted by the LDO will not have a likely significant effect on a European site (either alone or in combination with other plans or projects) and, in these circumstances, there are no impediments to the consideration of making of the LDO.

**4. REASONS FOR RECOMMENDATION:**

- 4.1 The Council is the appropriate authority under the terms of the “Habitats Regulations” and if it is contemplating making a LDO it must first consider whether the development it would permit would have a likely significant effect on a European site of nature conservation interest. The Habitat Regulations Information to Inform Screening Assessment report has been prepared in collaboration with the Council’s own specialist ecological advisors and has been subject to external scrutiny by the statutory nature conservation bodies. Its conclusions have been found to be sound. In these circumstances Officers recommend that, on the basis of the information available, the Council formally determines that the proposed development permitted by the LDO will not have a likely significant effect on a European site.

**5. CONSULTATION (including Overview and Scrutiny, if applicable)**

- 5.1 The Council has consulted with the statutory nature conservation bodies, namely Natural England and the Environment Agency, and their responses are reported above. In addition, the Habitat Regulations Information to Inform Screening Assessment report formed an element of the suite of documents which formed part of the draft LDO consultation. This consultation exercise comprised a local newspaper advertisement and the posting of site notices. Copies of the draft LDO documentation were made available at the Council offices, Corringham and Stanford-le-Hope libraries and on the Council’s website.

**6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT**

- 6.1 The logistics park forms a key element of the overall London Gateway project which is recognised as one of the Key Areas of Regeneration and Growth in the Borough, capable of delivering in the region of 12,000 jobs.

## 7. IMPLICATIONS

### 7.1 Financial

Implications verified by: **Michael Jones**  
 Telephone and email: **01375 651772**  
**mxjones@thurrock.gov.uk**

There is a commitment from DP World to cover the Council's costs in respect of the making of the LDO. If the LDO is made the costs associated with the prior notification procedure will be covered by fee income.

### 7.2 Legal

Implications verified by: **Alison Stuart – Principal Solicitor**  
 Telephone and email: **01375 652040**  
**alison.stuart@bdtlegal.org.uk**

The Habitats Regulations Information to Inform Screening Assessment Report has been subject to scrutiny by the Council's legal advisors. Legal advice has also been sought and followed in respect of the processes involved in determining that the development proposed by the LDO would not be likely to have a significant effect on a European site.

### 7.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**  
 Telephone and email: **01375 652472**  
**sdealyn@thurrock.gov.uk**

There are no direct diversity implications noted in this report.

### 7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

N/A

## **BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):**

- London Gateway Logistics Park Local Development Order: Habitat Regulations Information to Inform Screening Assessment Report (available in the Members Room and on-line: [www.thurrock.gov.uk/local-development-order/london-gateway-logistics-park](http://www.thurrock.gov.uk/local-development-order/london-gateway-logistics-park))
- Letter from Environment Agency.
- Letter from Natural England.

**APPENDICES TO THIS REPORT:**

1. Plan showing European sites within 10km of the LDO site boundary

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**Appendix 1: Plan showing European sites within 10km of the LDO site boundary**

