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| Decision maker: | Director for Economy and Place |
| Decision date: | Thursday, 10 October 2019 |
| Title of report: | Revised Hereford (Rotherwas) Enterprise Zone Local Development Order 2019 |
| Report by: | Team leader strategic planning |

Classification

Open

Decision type

Non-key

Wards affected

Dinedor Hill;

Purpose and summary

To approve and adopt the revised Hereford (Rotherwas) Enterprise Zone Local Development Order 2019 (Appendix 2), to include additional areas of land to the south and east of the Enterprise Zone and roll forward its operation for a further period. The LDO process has been fundamental to the success of the Hereford Enterprise Zone by providing certainty for investors and is the only incentive now available to investors. Bringing forward a revised LDO indicates the Council's continuing support for providing employment land within Enterprise Zone. The process has also enabled the Rotherwas Drainage and Flood Management Strategy to be revisited in the light of Environment Agency advice regarding updated climate change guidance for flood risk reduction. The benefits of the LDO will outweigh the loss of any fee income and the process has helped to enable an increased rate of industrial development at the enterprise zone. Since it has been in operation over £48m has been invested in those projects with Council receipts from sales totalling almost £3m and developments built or underway generating £21 m of business rates.

Recommendation(s)

That:

- (a) Hereford (Rotherwas) Enterprise Zone Local Development Order 2019 be approved and adopted.**

Alternative options

1. The alternative would be not to adopt the Local Development Order, in which case businesses will be required to apply for planning permission, involving increased costs and greater time delays. This would unnecessarily limit the flexibility and extent to which economic development might take place within the Enterprise Zone

Key considerations

2. Government promotes the use of local development orders within Enterprise Zones as one of a number of mechanisms within them to promote economic growth. A Local Development Order (LDO) for Hereford Enterprise Zone has been used to promote the development of employment land through attracting businesses since 2013. The Enterprise Zone has the support of Marches Local Enterprise Partnership. The LDO was last reviewed in 2014 and a further review is now required to be undertaken to roll the operation of the LDO forward for a further period.
3. A number of tasks have been undertaken to enable the review of the LDO to include an expanded area. In preparation for the review of the LDO document, an associated environmental report has been produced and further work undertaken in relation to drainage and contamination matters and the production of a bespoke sustainability scheme.
4. The LDO (2014) identified an area to the south of the current industrial estate to be an area for future expansion of the Enterprise Zone. The review of the LDO seeks to incorporate this within its boundary. In addition, an area within the east of the industrial estate was assessed for inclusion. It was hoped that a notable extension might be possible in this direction, but some of the land was found to be at significant risk of flooding such that it should not be included. However, a reasonable area that would enable the estate to be rounded off and encourage an improved environment is proposed for inclusion with some parts being subject to greater restrictions in order to protect residential amenity of nearby dwellings.
5. Areas of potential archaeological sensitivity within the LDO (2014) have since been found to have less interest than previously thought and released for development. However, some additional archaeological sensitive areas have been identified, including the corridor formed by the 'Rotherwas Ribbon'.
6. Consultation upon a draft revised LDO was undertaken during January and February 2019. Appendix 1 comprises a schedule setting out the representations received and responses. A number of these are highlighted in this report. The revised LDO is attached in Appendix 2.
7. Representations were received from a number of residents at the eastern end of the estate opposite a small triangular area now proposed for inclusion within the LDO. In addition, Herefordshire Council's Environmental Health Section also submitted representations. Currently this area is not designated for any use although previously, in Herefordshire Unitary Development Plan, it was shown within the settlement boundary and to be protected open space. Its purpose in that regard is uncertain but it did provide a buffer between the dwellings and the reclamation business to the north. Having previously been shown as protected space, Herefordshire Local Plan Core Strategy policy OS3 is considered relevant. In relation to this, the site is in private ownership and does not have public access. The immediate area is industrial land, and no specific need for informal areas of open space for use by employees or visitors has been identified. No requirement

for specific open space has been required elsewhere on the industrial estate either through the LDO or through planning applications

8. As a site on the edge of Hereford, it would be under pressure for change. Some development provided it did not have a significant adverse effect on residential amenity, would be acceptable and might even improve the buffer between the dwellings to the south and the reclamation use. Alternative uses have been assessed and the most appropriate is considered to be use as employment land but restricted to B1 (Offices [other than those that fall within A2], research and development of products and processes, light industry appropriate in a residential area). This should be enhanced through the use of a number of planning restrictions in order to protect the amenity of the dwellings on the south side of Holme Lacy Road. A new condition (no 16) is proposed specifically with the above in mind.
9. Representations have been received from the developers of the southern urban expansion at Lower Bullingham, which includes the suggested employment area covered by the LDO on the basis that they might seek an alternative arrangement that would release the 5 hectares required by Herefordshire Local Plan Core Strategy. The area shown in the extension is larger than the minimum requirement but is that within which it is expected the 5 hectares would be found.
10. The LDO is not a planning policy document but a grant of planning permission subject to conditions. It would not prejudice an alternative arrangement that may receive planning permission for other uses within one or more parts of it. Should the developer look for an alternative arrangement that provided employment land outside of the southern extension area then a review of the LDO would be considered. A review is proposed within 5 years in any event
11. The purpose for bringing this area forward within the revised LDO at this time is to indicate the Council's support for a suitable amount of employment land within part of the area indicated and to be built to a standard reflecting that elsewhere within the Enterprise Zone and consistent with the Skylon Park Design Guide. In this regard it is also important that the Council ensures the Enterprise Zone's interests are represented within any negotiations upon the form and layout of this area within the comprehensive development proposal. Currently the access is not suitable to serve this extension and other forms of development that will be formed off of the recently constructed Rotherwas Access Road. Neither is the employment area laid out with an appropriate service road and other services. The LDO does not cover these infrastructure required in laying out of the area to provide plots. Currently it is anticipated this will be undertaken in association with the adjacent proposed housing development. Discussions are being undertaken upon the comprehensive development with the Planning Office and there is the possibility that permission will be granted for development to proceed within the proposed time scale covered by the revised LDO.
12. Herefordshire Council and Highways England have agreed a level of development that might take place within the LDO area based on caps for morning and afternoon peaks of vehicle generation. This is encompassed within a Memorandum of Understanding and a variation to this agreed in 2014. Developments that have taken place are such that the spare capacity is currently limited although some is available. Work is underway to determine whether a case can be made to increase the caps for discussion with Highways England, and if possible agree a further variation. Should this be possible, it would not be necessary to review the LDO just to accommodate any increased level of

traffic generation as the LDO provides for variations to the vehicle caps that might arise from time to time.

13. The Environment Agency advised that floor levels set out in the Rotherwas Drainage and Flood Management Strategy needed to be revisited in the light of updated climate change guidance for flood risk reduction. In addition, development in the extension to the east, which is partially within Flood Zone 3, would potentially increase flood risk to third parties. Consequently, it sought advice about additional compensatory storage to offset the expansion. It recognised that the Flood Strategy has been revised in order to develop further measures that may be necessary, but the Agency wished to discuss how the new plots are to be designed to be similarly safe without increasing flood risk to third parties or adversely affecting the flood regime in the area.
14. A meeting was held with representatives of the Environment Agency in which the Enterprise Zone's flooding and drainage consultants explained the assessment work undertaken and the approach to be taken in revising the Drainage and Flood Management Strategy. This is informing an update to the Drainage and Flood Management Strategy 2009. The work is nearly complete and the Environment Agency will be consulted upon this. It may include further site specific details and possibly highlight the need for more detailed site specific flood risk assessment for some of the land added to the original LDO area, but at the moment it is uncertain which will be required as part of the strategy that a planning condition requires compliance with. The work undertaken indicates there should be no increased flooding from development that would extend into separate third-party ownerships. Measures and arrangements to ensure drainage issues can be dealt with appropriately were explained. It is considered that the existing conditions within the LDO cover the requirements sufficiently. In addition, condition 9 requires the Flood Evacuation Plan to be submitted to Herefordshire Council and for it to be considered by its Emergency Planning Officer.
15. In relation to the extension to the south the Environment Agency recognises that modelling work is being undertaken for both the employment and housing land site and advises that any potential interaction that may provide flood risk benefits should be considered. The area to the south covered by the LDO is not located within the area subject to flooding. It is expected that the revisions to the Drainage and Flood Management Strategy contain a general reference to this effect and the existing conditions within the LDO will again be sufficient to cover the matter. The outcomes of the discussions were forwarded to the Environment Agency's representatives and no adverse comments have been received.
16. NMiTE requested that an amendment be made to enable Use Class D1 to be allowed within the LDO. This is to support the new university by allowing employment and teaching spaces to be co-located. Such an approach would open up the Enterprise Zone a range of non-residential institutions such as clinics, crèches, day nurseries, art galleries, places of worship, church halls, and training centres which may not be compatible with the employment uses on the estate and act as a deterrent to future growth. However, further representations were received that identified a specific location within the Enterprise Zone where the teaching operation would take place – in the area of the north magazine. In addition, it was suggested that the use be restricted to a particular sub category within the use class, being class D1(c) – 'provision of education'. Both are considered acceptable although the suggested area should not include that required to accommodate measures forming part of the drainage and flood management strategy. Consequent changes to those proposed by NMiTE's agent have also been proposed.

17. Natural England felt it was unclear that, having increased the area covered by the LDO, development arising from it still fell within the phosphate headroom. In addition, it said that the Council should be minded about the *People Over Wind and Sweetman vs Coillte Teoranta Court of Justice of the European Union* (CJEU) ruling (see paragraph 19 below)
18. In relation to the first matter, the original Habitats Regulation Assessment (paras 3.8 and 3.9) explained that although the area covered by the LDO is proposed to be extended, the anticipated level of waste water generated to be dealt with by Hereford Waste water Treatment Works (WwTWs) is expected to be less than that originally envisaged in the 2014 LDO which was assessed as likely to have no significant effect. The reason for this is that in 2014 a higher density of development was expected, and this has not proved to be the case.
19. An Addendum to the Environmental Report (see Appendix 4) has been prepared to cover the main changes that were to the consultation draft LDO (2019). These changes are not considered to amend the previous conclusion that the LDO is expected to have no significant effect on the River Wye SAC. The Addendum report also addressed the CJEU case referred to in para 17 together with another more recent case referred to as 'The Dutch Nitrate' case. The conclusion drawn in relation to the first judgment is that the LDO as currently drafted does not conflict with the above ruling. In relation to the second ruling, this comprised a number of elements. The conclusion drawn is that the phosphate targets set within the River Wye Nutrient Management Plan are legitimate and the phosphate stripping process at the WwTWs operated by Dwr Cymru/Welsh Water can maintain its current acceptable level of phosphate discharge below the required level. The Upper Wye catchment within which the WwTWs sits is not failing to meet its target phosphate level. Counsel's advice on the effects of the rulings has been sought and will be considered in association with this report.
20. These are set out in Appendix 1. They include representations of support as well as suggestions that are useful. A number seek changes that it is felt should not be made for the reasons set out in that Appendix.
21. Since the preparation of the LDO 2014, Herefordshire Council has reviewed its standard planning conditions, a number of which are presented in the LDO. The following conditions have been revised in the light of these changes – Conditions 9 and 15. In addition planning officers have advised that it is useful to add a condition to cover minor amendments to the LDO. This has been added as condition 17.
22. A copy of the LDO, the Statement of Reasons and the Environmental Statement will need to be sent to the Secretary of State no later than 28 days after the local planning authority has adopted the order.

Community impact

23. The LDO is one mechanism supporting the purposes of Hereford (Rotherwas) Enterprise Zone. The Enterprise Zone is one of Marches Local Enterprise Partnership's priorities and will contribute to the general health and wellbeing of the people of Herefordshire and the Welsh Marches. The LDO will do this through making the location and City more attractive to potential businesses providing high quality employment while maintaining necessary safeguards to the local environment.

Equality duty

24. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Herefordshire Council are not aware of any negative or disproportionate impact to those who share a relevant protected characteristic and the support for the enterprise zone is seen by the council as proactively supporting the council in discharging its equality duty in particular by advancing equality of opportunity between persons who share a protected characteristic by providing high quality employment opportunities

Resource implications

25. The cost of reviewing the LDO has been covered by the Hereford Enterprise Zone's revenue budget. The LDO process has been fundamental to the success of the Hereford Enterprise Zone it provides certainty for prospective investors through a free, simplified and speedy planning process and is the only incentive now available to investors. It is not possible to be precise regarding how much planning fee income will be lost through the review of the LDO. Under the previous LDO 28 proposals have been considered. Given the constraints on the site it is unlikely that this number of applications could have been submitted and processed within the same period of time by going through the normal planning processes
26. In terms of internal resource the LDO has resulted in significant savings in the time of senior planning officers and because the LDO provides for executive decision making, it negates the need for consideration by, and preparation of Committee reports.
27. The benefits of the LDO clearly outweigh the loss of any fee income and the simplified and speedy process has helped to enable an unprecedented rate of industrial development at the HEZ. Over the period of operation of the LDO 40,000 sqm of new or refurbished premises have been created or are under construction. Over £48m has been invested in those projects, including £32m from the private sector. Council receipts from sales to date total almost £3m and the developments built or underway will generate £21 m of business rates. However, the approval of the revised LDO does not result in a requirement for future capital expenditure.

Legal implications

28. Part 3 Section 3.1.1 line 18 of the Herefordshire Council Constitution dated 19 May 2017 and revised at Council on 25 May 2018 allows functions relating to town and country planning as listed in Schedule 1 Section A to be delegated to officers. Details of the powers that can be delegated to officers are contained in Part 3 Section Appendix titled Planning Functions. The making of a local development order does not fall within any of

these functions listed in Schedule 1 Section A of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000/2853 (“the Regulations”)

29. A local development order is not a planning application made pursuant to s.70 of the Town and Country Planning Act 1990 (“the 1990 Act”) nor are they ‘development plan documents’ under Part II of the 1990 Act. The power to adopt an LDO is not mentioned in the Regulations as a Council function or Local Choice function.
30. As a result this is an executive function which is non key and delegated to officers. In accordance with the chief executives scheme of delegation row 53 development management is delegated to the acting director for economy and place.
31. The procedure and authority to make an LDO is under the Planning and Compulsory Purchase Act 2004 (as amended), the Town and Country Planning Act 1990 s61A- 61D and Article 38 The Town and Country Planning (Development Management Procedure) (England) Order 2015/595. Consultations have been undertaken in accordance with the regulations. Regulations stipulate that approval from the Secretary of State (CLG) need no longer be obtained prior to adoption and he simply needs to be advised in writing after adoption takes place. This is not a compulsory requirement on the Council as the Local Planning Authority.
32. As confirmed in paragraph 10 above, the LDO is not a planning policy document but a grant of planning permission subject to conditions, which allows a developer to gain approval to construct new build as long as it sits within the confines of those conditions. It would not prejudice any other application required for existing buildings on the LDO area which require the benefit of listed building consent or planning permission for other uses within one or more parts of the LDO area.
33. There are no other legal considerations.

Risk management

34. Adoption of the revised LDO does not present any major risks. It provides minor changes to the mechanism contributing to the purposes of Hereford (Rotherwas) Enterprise Zone.

| Risk / opportunity | Mitigation |
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| Potential adverse environmental consequences of implementing a local development order enabling new development to take place without the requirement for obtaining planning permission. | Provisions included in the LDO will still ensure appropriate levels of management and control of new development are applied and managed at a service level via the Development Management team. |

Consultees

35. The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the requirements for consultation upon any draft local development order. The required range of organisations stipulated and local residents who might be affected by the order were consulted utilising the Council’s consultation database. Site notices were erected and a press advert placed. Copies of all documentation were placed at the Council’s Offices at Blueschool House, Hereford Library, Hereford Archive and Record

Centre, and Plough Lane Offices. These were also placed upon Herefordshire Council's website. Internal consultation was also undertaken.

36. Twenty-nine representations were received during the consultation, Comments are set out in full in Appendix 1 together with a response. Consideration of key representations with an explanation of the changes made to the draft LDO are set out in the key considerations section of this report.
37. In addition the ward member Cllr Summers has commented regarding the proposed LDO that he would like new build development in the Enterprise Zone to be carbon neutral, and would like greater consideration to be taken on the issue of security and has requested details of land ownerships.
38. In respect of sustainable buildings, the LDO requires buildings to meet minimum standard indicated within Hereford Enterprise Zone Sustainability Scheme or a minimum of a BREEAM rating of 'Very Good'. This is considered an appropriate standard to apply at this time to seek a higher standard will disadvantage the ability to attract business unnecessarily and go beyond what the planning system can legitimately seek. Outside of the LDO process the enterprise zone team have developed a tailored package of design advice called the 'Sustainability Assessment for the Hereford Enterprise Zone', specific to the zone for new occupiers.
39. The issue of security is not an issue covered by the LDO but is addressed in the Skylon Park design guide and the enterprise zone team have worked with the local Police Crime Prevention Design Advisor to establish a system for ensuring new buildings are safe and secure. The advice concentrates on thinking about security of the buildings early in the design process to avoid potential problems.
40. In respect of the boundary of the LDO to help facilitate economic development to help generate high quality employment opportunities, the boundary of the LDO is therefore drawn to include areas which are available and have capacity for new development without reference to land ownership.

Appendices

Appendix 1 - Schedules of Representations in response to Draft LDO, February 2019.

Appendix 2 - Hereford (Rotherwas) Enterprise Zone Local Development Order (2019).

Appendix 3 - Hereford Enterprise Zone Local Development Order 2019, Environmental Report, January 2019.

Appendix 4 - Addendum to the Environmental Report

Background papers

None