

LONDON BOROUGH OF HAMMERSMITH & FULHAM

Report to: Cabinet

Date: 07/10/2024

Subject: Proposed Local Development Order & Local Listed Building Development Order - Solar Panels

Report of: Councillor Andrew Jones, Cabinet Member for the Economy

Report author: David Gawthorpe, Team Leader - Policy and Spatial Planning

Responsible Director: Bram Kainth – Executive Director of Place

SUMMARY

This report outlines the council's intention to bring forward a Local Development Order (LDO) for Solar Panels in the borough. The council's initiative to implement a Local Development Order (LDO) for the installation of solar panels represents a progressive step towards sustainable development and climate change mitigation. By simplifying the process and removing the need for individual planning permissions, the council aims to encourage the uptake of solar technology, thereby reducing carbon emissions and promoting renewable energy use. This approach not only benefits the environment but also supports local investment and business growth by providing clarity and reducing bureaucratic hurdles.

Solar panels, also known as photovoltaics (PV), capture the sun's energy and convert it into electricity to use in your home. Fixing solar panels to the roof of a dwelling house is currently considered 'permitted development' under planning law with no need to apply for planning permission. However, restrictions for some including properties in conservation areas and businesses still exist. As part of its commitment to tackle climate change and sustainable development in the borough, the council want to make it easier and clearer for residents and businesses alike to install solar panels on their properties by taking away the remaining red tape and confusion from the process. This can be done by way of a Local Development Order.

Additionally, the council are proposing to do the same for listed buildings where this will not harm their special architectural or historic interest. This is done through a Local Listed Building Consent Order (LLBCO). The inclusion of certain listed buildings further demonstrates our commitment to preserving architectural heritage while embracing modern energy solutions. Overall, these measures reflect a forward-thinking strategy to balance development with environmental stewardship.

Taking a co-produced approach to the design and delivery of community support and services, will help us work together with the community to bring to life our commitment to 'doing things with residents not to them'. As part of this commitment and in accordance with the relevant legislation we will be conducting public consultation on our proposals for the LDO and LLBCO.

RECOMMENDATIONS

1. To approve the making of a draft Local Development Order (LDO) and draft Local Listed Building Consent Order (LLBCO) to allow solar PV panels to be erected on properties in the borough.
 2. That approval be given for a statutory public consultation on the draft Local Development Order and draft Local Listed Building Consent Order.
 3. That delegated authority be given to the Director of Place, in consultation with the Cabinet Member for the Economy, to approve the final format of the consultation papers and, following consideration of representations, adopt the LDO (appendix 1) and LLBCO (appendix 2) post consultation, subject to there not being material changes to either Order as a result of the consultation.
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Wards Affected: All

| Our Values | Summary of how this report aligns to the H&F Values |
|---|--|
| Building shared prosperity | The proposed Orders seek to address barriers to the uptake of solar PV panels, encouraging PVs to be erected on as many properties as possible in the borough. |
| Creating a compassionate council | Supporting residents by making the planning processes simpler and easier to navigate. |
| Doing things with local residents, not to them | Giving as many residents as possible the ability to install solar panels without the need to obtain planning permission and Listed Building Consent. |
| Being ruthlessly financially efficient | See financial impacts below. |
| Taking pride in H&F | Giving local businesses and residents an opportunity to contribute towards reducing carbon emissions through renewable energy. |
| Rising to the challenge of the climate and ecological emergency | This LDO would represent a significant step forward in meeting the ambitions and objectives of tackling climate change and the reliance on fossil fuels. |

Financial Impact

Financial Impact

The operational and legal costs associated with the making and consultation of the draft Orders are not considered to be material and are expected to be funded within the approved budget of the Planning Service.

The implementation of the Orders would mean that the Council will forego the associated planning fees for the development permitted by the LDO. Whilst this is unlikely to be a material sum, it would still be a loss of potential revenue for the Council. This will be partially offset through reduced administration costs (due to a potential reduction in the number of applications received).

Completed by Kellie Gooch, Head of Finance (Environment), 8 August 2024.

Verified by Sukvinder Kalsi, Strategic Director of Finance and Corporate Services, 28 August 2024.

Legal Implications

The Town and Country Planning Act 1990 (“TCPA”), s 57 provides that planning permission is required for ‘the carrying out of any development of land’. ‘Development’, is defined in TCPA 1990, s 55(1).

TCPA 1990, s 58(1)(a) provides that planning permission may be granted by a local development order (“LDO”).

TCPA 1990, s 61A provides that an LPA (Local Planning Authority) may by a LDO grant planning permission for development specified in the LDO and/or for development of any specific class. It can relate to all the land within the borough, a specific area or a specific site.

The LDO can:

- be unconditional or conditional;
- granted for an indefinite time or subject to time limitations;
- if it is for a specific description of development can exclude areas or any particular development; and
- revoked at any time.

The LDO cannot grant permission for:

- development affecting a listed building;
- development which is within Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, SI 2017/571 (English EIA Regulations); or
- development which is within Schedule 2 of the English EIA Regulations/Welsh EIA Regulations, unless:
 - a screening opinion or direction confirms that the development is not likely to give rise to any significant environmental effects, or

- a screening opinion or direction confirms that the development is likely to give rise to any significant environmental effects, and an environmental impact assessment is carried out and taken into account in confirming the LDO.

The planning conditions attached to the LDO should not be excessive and anyone who fails to comply with a condition imposed by a planning permission granted by an LDO is subject to planning enforcement. If the Council refuses any approval which is a requirement of the LDO, the applicant has a right of appeal under s.78 of the TCPA 1990.

The procedure for production and adoption of LDOs is governed by Schedule 4A of the Town and Country Planning Act 1990 and Part 6, Regulation 34 of The Town and Country Planning (Development Management Procedure) (England) Order 2010 (DMPO 2010). Regulation 34 requires that where a local planning authority proposes to make an LDO it shall first prepare a draft of the Order and a statement of its reasons for making the Order. The Statement of Reasons must contain a description of the developments the LDO would permit, and a plan/statement identifying the land to which the Order relates. The document attached at Appendix 1 is the consultation draft that contains the Statement of Reasons.

The council is required to consult on the proposals with those persons whose interests they consider would be affected by the Order and with anybody who they would have been required to consult for an application for planning permission for the development in question. For example, they have to consult the Mayor of London, adjoining boroughs, Natural England, Historic England, Environment Agency, Secretary of State for Transport, any strategic highway company affected, a clinical commissioning group and the National Health Service Commissioning Board if they exercise functions in any part of the area and voluntary bodies some or all of whose activities benefit any part of the LPA's area, bodies which represent the interests of persons who share a protected characteristic in the LPA's area, and bodies which represent the interests of persons carrying on business in the LPA's area. The consultation must be for a period of not less than 28 days.

Following the close of the consultation period the council must take account of all representations received and consider what modifications should be made to the draft LDO before it is adopted. If the LDO is adopted with or without modifications the LDO, a copy of the adopted LDO and Statement of Reasons, including any modifications to either as a result of consultation, must be sent to the Secretary of State for Communities and Local Government within 28 days of the resolution to adopt and the LDO placed on the planning register. The Secretary of State can, at any time, make an order revoking an LDO where it thinks it is expedient to do so (giving reasons). In considering an LDO for these purposes, the Secretary of State can take account of any matter it thinks is relevant, whether or not the LPA took that matter into account, and can approve or reject the LDO (giving reasons).

Section 26D of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("LBCA 1990") provides that a Council may grant listed building consent for works (but not demolition) subject to conditions, for all listed buildings or listed buildings of any description in the area or part of the area for which they have control ("LLBCO"). The procedure for making such an order is set out Schedule 2A of the LBCA 1990 and The Planning (Local Listed Building Consent Orders) (Procedure) Regulations

2014. This provides for notice, publicity, consultation and consideration of representations before the LLBCO is adopted.

Planning permission will still be required for solar panels on listed buildings notwithstanding there is a LLDCO granting listed building consent for such work. There is no legal mechanism to waive the need for planning permission, for solar panels on listed buildings.

An LLBCO must be adopted by resolution of the Cabinet.

The Council must prepare an annual report while the LLBCO is in force to assess whether it is achieving its purpose.

Mrinalini Rajaratnam, Chief Solicitor Planning and Property, 12 August 2024

DETAILED ANALYSIS

Proposals and Analysis of Options

The main reason for doing a Local Development Order for solar panels across the borough is that it minimises risk in delivery for residents/homeowners, businesses and developers by providing certainty and reducing costs through:

- a) The Council demonstrating commitment to address climate change through preparation of the LDO as it provides a positive statement of intent and gives confidence in securing future development and investment.
- b) The provisions of an LDO give a clear steer of the Council's ambitions, which provides transparency and provides certainty.
- c) Residents/homeowners, businesses and developers would not have the burden or risk of seeking further planning permissions.
- d) Speeds up delivery by addressing challenges in one go through the public consultation.

The alternative option to doing a LDO is to maintain the status quo, which is to allow national permitted development rights to continue, with all other applications determined through a full planning application process. Currently, solar panels can be installed on the majority of buildings in the borough subject to a few restrictions, including not projecting more than 0.2 metres from the roof slope or wall surface. Where the building is in a conservation area, solar equipment cannot be installed on a wall which fronts a highway without planning permission. Listed Buildings do not benefit from permitted development rights so planning permission from the council to install solar panels is needed.

A significant consideration is whether to allow these rights for solar panels to extend beyond roof and wall installations. The preferred option is that the installation of solar equipment through the order should apply only to equipment installed on the roof of the building, and not extend to other locations within the curtilage of the property,

rear gardens for example. Such an allowance could have implications for green spaces, tree coverage, residential amenity, outlook, and a wide range of other planning and permitted development rights and other regulations.

A typical LDO would include conditions on the installation of solar equipment, and would require written notification to the council prior to the commencement of works. Examples of conditions that may be included in the Order are:

- the solar panels are to be installed on a roof structure;
- the solar panels would protrude no more than 0.2 metres beyond the plane of the roof;
- no part of the solar panels would be higher than the highest part of the roof;
- the solar PV array is sited so as to minimise its effect on the external appearance of the building;
- details of the position, size, fixing, colour and finish of the solar PV array and associated equipment shall be submitted to the council prior to the commencement of works.

The other sub option to consider for the council includes the duration of the LDO. A period of ten years is considered appropriate for the LDO, when a full review of the effects of the LDO will be undertaken. The LDO will be subject to monitoring throughout this period and will be reported through the Annual Monitoring Report. It should be noted that the Council retains the right to revise or revoke the LDO at any time should it deem it appropriate.

Locally Listed Buildings Consent Order

The LDO does not give consent for the installation of solar equipment on listed buildings. This will need to be pursued through a separate Local Listed Building Consent Order (LLBCO). This is a similar order to an LDO and would allow the Council to grant a blanket Listed Building Consent for alterations to more than one listed building, including groups of listed buildings in all or part of the borough, or buildings of a particular description. There is no legislative mechanism that the council can draw upon to remove the need for planning permission on listed buildings, but the removal of the need for Listed Building Consent is possible by way of a LLBCO. We recommend that members consider the removal of planning fees for solar panel applications on Listed buildings.

Both the LDO and LLBCO would be considered 'Schedule 2 Development' per The Town and Country Planning (Environmental Impact Assessment) Regulations 2017, meaning that a screening opinion will be required to determine whether the proposal is likely to give rise to significant environmental effects. The development would fall under Schedule 2: Part 1, 3(a) Energy Industry (for the production of electricity, steam and hot water) which refers to a threshold of 0.5 hectare. If the screening opinion determines that a significant environmental effect is likely, then an Environmental Impact Assessment will be required.

The preparation of a LLBCO would inevitably have implications for heritage properties in the borough and in this context, there are a number of different options that could be pursued. Below is a table outlining the various options and implications of those options.

Table of options, implications and risks

| Option | Implications | Risks |
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| <p>1. All Grade I, II*, and II listed buildings included in the Order.</p> | <p>This option would include some of the borough's most important heritage buildings such as Fulham Palace. This would include buildings of exceptional special interest. By removing the need for listed building consent, there is a heightened risk of inappropriate alterations to these buildings that cause damage to their special interest.</p> | <ul style="list-style-type: none"> • This option is not practical as some listed buildings, for example tombs and monuments which do not have a roof and therefore are not relevant to the provisions of the LLBCO. • Some listed buildings such as bridges and structures are of a complex or unusual form and design, where the impact of alterations upon their significance would need to be assessed through the existing Listed Building Consent process to avoid causing unnecessary harm. |
| <p>2. Only Grade II* and II buildings included in the Order.</p> | <p>This option would exclude Grade I listed buildings from the Order as they are of exceptional special interest. The installation of solar equipment on these buildings would require Listed Building Consent and would ensure that the Council have the means to ensure that their historical and/or architectural interest is preserved.</p> <p>Currently there is only one Grade I listed building in H&F – Fulham Palace.</p> | <ul style="list-style-type: none"> • Some Grade II and Grade II* listed buildings by virtue of their specific design, wider visibility or association with other heritage assets may still be at risk of inappropriate alterations. |
| <p>3. Only Grade II listed buildings are included in the Order.</p> | <p>Grade I and II* listed buildings would be excluded from the Order. This would exclude those listed buildings that are of exceptional and particularly important buildings of more than special interest. The installation of solar equipment on these buildings would require Listed Building Consent and would ensure that the Council have the means to ensure that their historical and/or architectural interest is preserved.</p> | <ul style="list-style-type: none"> • Some Grade II listed buildings by virtue of their specific design, wider visibility or association with other heritage assets may still be at risk of inappropriate alterations. |
| <p>4. Selective buildings excluded from the Order.</p> | <p>The Order would be borough-wide but would exclude those listed buildings where it is considered more appropriate to manage the installation of solar equipment through the existing listed building consent process to ensure that their special interest is preserved.</p> | <ul style="list-style-type: none"> • Some listed buildings would need to be managed through the existing listed building consent process. However, this would be proportionate given their significance and would provide clarity on those buildings which do not have a roof and are not eligible for the provisions in |

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| | | the Order. |
| 5. Do nothing. | The installation of solar equipment on all listed buildings in the borough would continue to require Listed Building Consent. | <ul style="list-style-type: none"> All listed buildings would need to be managed through the existing Listed Building Consent process, which may deter some applicants from making adaptations. |

Option 4 is considered the preferred option. This would allow the council to exclude those listed buildings from the Order where it is determined that the installation of solar panels (even as restricted by the conditions set out in the Order) would likely require assessment through the listed building consent process in order to ensure that their special interest is preserved. A full list of the buildings that could be affected under each of the options is shown in appendix 3. This includes listed structures including historic bridges, tombs/mausoleums, and other structures, (walls, statues etc.) for which installation of solar equipment may not be achievable in principle.

Churches/Ecclesiastical buildings currently in use for ecclesiastical purposes of which there are 12 in the borough (see appendix 2) would be excluded from the Order as those operated by the exempt denominations are subject to their own systems of control over works. As a result, listed building consent is not required for the installation of solar panels in any event.

At this stage, it is the intention for the LDO and LLBCO to cover the provision of standalone solar/PV panels to be installed on top of the roofs of existing buildings. It is suggested that solar tiles and slates should be excluded from the orders for two key reasons. Firstly, this is relatively new technology, which is being developed at pace. Consequently, the efficiency of these products is likely to improve over time and current products may therefore have a limited lifespan.

Secondly, the installation of these particular products are likely to result in the removal of significant areas of traditional roofscapes. These works would be more difficult to control, both in terms of ensuring the watertightness and weatherproofing of historic buildings and reversing such interventions in future. In this regard, ensuring safe storage and retention of original roofing materials for future reuse may be problematic to control. This may result in significant issues if these products require replacement or removal in future. At present the installation of solar panels is the preferred option, since these are easily reversible.

The indicative timetable for the implementation of the LDO and LLBCO is as follows:

- Cabinet considers this report and consultation on an LDO and LLBCO.
- If the report is approved at Cabinet, public consultation on the LDO and LLBCO will be carried out for a period not less than 28 days.
- Following the end of consultation, officers will consider any representations received and whether modifications should be made to the Order(s).
- The council would then refer the LDO to the Secretary of State and assuming no further intervention from the Secretary of State, after 21 days the Orders can come into effect.

Equality Implications

The Council has had due regard to its Public Sector Equality Duty contained in Section 149 of the Equality Act 2010. There are not considered to equality implications from the making and bringing into effect either or both the proposed Orders.

Risk Management Implications

The making of an Order has a set legal and procedural process with the final decision resting with the Secretary of State. It is essential for the council to follow the set processes correctly to minimise the risk of the Secretary of State intervening with the Orders. A key part of the process is a set period of consultation with relevant businesses, residents, and stakeholders. By consulting widely, the council will be able to reduce the risk of challenge by the Secretary of State.

The following could be used to minimise the risk of inappropriate development or development that is not permitted taking place:

- The use of conditions and restrictions to ensure development is appropriate
- A requirement that the council is pre-notified of any development permitted by the LDO and LLBCO
- Ongoing monitoring and review of the effectiveness of the LDO and LLBCO.

Implications completed by: David Hughes, Director of Audit, Fraud, Risk and Insurance, 30 July 2024

Climate and Ecological Emergency Implications

The initiative to implement a Local Development Order and Local Listed Building Consent Order for the installation of solar panels is a forward-thinking move by the council to promote renewable energy and sustainable development within the borough. By streamlining the process and removing the need for planning permission, the council is not only encouraging the adoption of green energy but also supporting the fight against climate change. This approach reflects a growing trend among local authorities to facilitate environmental initiatives and reflects a commitment to reducing carbon footprints.

Implications completed by Hinesh Mehta, Assistant Director for Climate Change, 2 August 2024

Local Economy and Social Value

The Cost of Doing Business crisis put into stark focus the issue of energy security for SMEs (Small and Medium Enterprises) across H&F and beyond. Global volatility caused by the Covid-19 pandemic and war in Ukraine has disrupted the supply of energy across Europe resulting in a rise in the cost of wholesale energy. This has in turn, left SMEs exposed to the soaring cost of energy and heightened the need to

transition to more reliable and sustainable sources of energy to safeguard economic growth and business viability.

With wholesale energy prices set to rise again this winter, bringing forward the proposed Orders for solar panel installation in the borough will help businesses become more self-sufficient and resilient in the face of renewed global shocks, help future-proof planned and existing developments, as well as helping meet our target to become a net zero borough by 2030.

Implications completed by: Nicki Burgess (Head of Business & Enterprise,– 30 July 2024

Section 106

There are no Section 106 implications from the production or bringing into effect the proposed Orders for solar panel installation.

Implications completed by: Matthew Paterson, Head of Spatial Planning– 6 August 2024

Consultation

The council is required to consult on the proposals with those persons whose interests they consider would be affected by the Orders and with anybody who they would have been required to consult for an application for planning permission for the development in question. The consultation must be for a period of not less than 28 days.

LIST OF APPENDICES

Appendix 1. Draft Local Development Order

Appendix 2. Draft LLBCO

Appendix 3. Listed Buildings in Hammersmith and Fulham