



Report of the Director of Development

Executive Board

Date: 14 June 2006

Subject: LEEDS UDP REVIEW – REPRESENTATIONS TO THE MODIFICATIONS AND NEXT STEPS

Electoral wards affected:

ALL

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

Eligible for call In

Not eligible for call in

(details contained in the report)

Executive Summary

1. The report provides an overview of the responses to the Proposed Modifications to the UDP Review which followed consideration of the Inspector's recommendations. The report also outlines the steps that now need to be taken to adopt the Plan. The Executive Board agreed the Council's response to the Inspector's recommendations at its meeting on 17 February 2006 and the Proposed Modifications to the Plan which followed were placed on deposit for public comment between 27 February and 10 April 2006.
2. The representations that resulted from deposit of the Modifications are fairly modest in number, 131 in total, of which 20 were representations in support of the Plan. The key issues raised relate to a small number of key sites (East Leeds Extension, East of Otley and Micklefield Strategic Housing sites) and policies relating to housing strategy, the phasing of land release, student housing and affordable housing. The key issues are listed in para 3.3 of the report and the precise numbers of representations which relate to each Proposed Modification is given in Appendix 1.
3. A report on the representations received, and the issues arising from these, were reported to the Development Plan Panel on 31 May 2006. The representations have been given careful consideration and it has been concluded that no new issues have been raised and that they do not give rise to a need for a second public inquiry or the need to publish further modifications.
4. It is therefore recommended that the UDP Review process is brought to a conclusion and that the Council now proceeds to formally adopt the Plan.

1.0 PURPOSE OF REPORT

- 1.1 The purpose of this report is to provide an overview of the response to the Proposed Modifications and to consider what further action is required to progress the UDP Review to adoption.

2.0 BACKGROUND

- 2.1 The report of the Inspector who held the Public Inquiry into the UDP Review was received on 23 November 2005. The Development Plan Panel agreed its response to the Inspector's recommendations, including the proposed modifications, at meetings which were held on 6 December 2005, 3 January 2006, 24 January 2006, 7 February 2006 and 17 February 2006. The Panel's recommendations were subsequently approved by the Executive Board on 17 February 2006 and the Modifications were placed on deposit on 27 February 2006. The deposit period expired at midday on 10 April. There was only one late submission, which has been classified as a 'not duly made' representation.
- 2.2 The Modifications were placed on deposit in the Council's offices, all local libraries and One Stop Centres. Complimentary copies were sent to MP's, Parish and Town Council's and Statutory Consultees, such as the Environment Agency. The report was also placed on the Council's web site and it was made possible for people to submit their comments on-line. All Members received a copy of the Modifications Report and letters were sent to everyone who had submitted representations at earlier stages on plan preparation to inform them about the publication of the report and where they could inspect it.

3.0 RESPONSE TO THE MODIFICATIONS

- 3.1 A total of 131 'duly made' representations were received to the modifications, which relate to 36 Modifications. Of these, 20 are representations of support. An additional 2 representations expressed support for the Modifications, but only in part. These have therefore been treated as objections. **Appendix 1** lists the total number of representations received (objections and supports) under each modification and **Appendix 2** lists representations which are 'not duly made.' **Appendix 3** sets out, in a detailed schedule, the Council's 'Statement of Decisions and Reasons' on the representations received. Further Appendices (4, 5 & 6) provide extracts from earlier reports to Development Plan Panel and Executive Board, which summarise the Council's earlier response to the Inspector's recommendations in relation to Protected Areas of Search, Housing matters and the East Leeds Extension. **These additional Appendices (4, 5 & 6) are available for inspection upon request from the clerk named on the front sheet of the agenda.**
- 3.2 There have only been 3 representations classified as 'not duly made.' Of these, one was because the representation was received outside of the deposit period. The other two cases did not relate to a Proposed Modification. One of these related to a proposed telecom mast and the other did not specify the subject matter at all (i.e. a Proposed Modification). A telephone call was made to the objector to elicit this information but a response was not submitted. Only duly made objections confer a right to be considered at a public inquiry, should one prove to be necessary. Notwithstanding this, all representations, duly made or not, are included in this report.
- 3.3 The representations cover sites throughout the district and a range of policy matters. The modifications which attracted significant numbers of representations, or raised key issues, are as follows:

Sites

- 19/006 - East of Otley Strategic Housing Site
- 16/009 - Micklefield Strategic Housing Site
- 15/015 - East Leeds Extension

- 17/007 - Whitehall Road, Drighlington

Policies

- 5/001 – Policy N34 (Protected Areas of Search)
- 7/001 – Housing (Introduction)
- 7/002 – Phased Release of Land for Housing
- 7/004 – Housing Strategy
- 7/006 – Affordable Housing targets
- 7/008 – Student Housing
- 8/001 – Policy E7 (Protection of Employment Land)

- 3.4 The numbers of representations received disguise the fact that a significant number of objections relate to a handful of key sites, for example East of Otley and Micklefield Strategic Housing Sites which attracted 12 and 28 representations respectively. This is due to the fact that objectors, through their advisors, have put forward their case under several of the Proposed Modifications (e.g. Proposed Modifications 7/001 to 7/006).
- 3.5 A total of 23 representations related to 10 PAS sites where objectors have argued for them to be placed in the Green Belt, as originally proposed in the UDP Review. The Council has accepted the Inspector's recommendation to leave these sites designated as Protected Areas of Search (PAS) under Policy N34. The sites are Canada Rd., Rawdon; West of Pool; Breary Lane, Bramhope; Haw Lane, Yeadon; East of Scholes; Wood Lane, Scholes; Park Lane, Allerton Bywater; Moseley Bottom, Cookridge; Leeds Road, Collingham and Hill Foot Farm, Pudsey. Although these were 'duly made' representations, they did not raise any new issues and the points made were fully debated at the Inquiry and considered by the Inspector in his report. In addition the same matters were properly considered by the Council in consideration of the Inspector's Report and in reporting this at Development Plan Panel and the Executive Board. Appendix 4 is an extract from the report on PAS which went to these Council committees.
- 3.6 The Government Office for Yorkshire & The Humber wrote to the City Council on 12 April to confirm that no representations had been submitted on the Proposed Modifications on behalf of the Secretary of State. The Government Office had been previously advised by letter (27 February 2006) about the Proposed Modifications and the Council's decision not to accept 7 of the Inspector's recommendations.
- 3.7 In their letter, the Government Office also drew the Council's attention to the European Habitats Directive (92/43/EEC) which applies to 'Special Areas of Conservation.' This requires local Council's to carry out an Appropriate Assessment under article 6(3) and (4) of the Directive in the event of such sites being affected by development proposals. There is only one Special Area of Conservation in Leeds. This is located on Hawksworth Moor in the north-western edge of the District. This area forms a relatively small part of the South Pennine Moors SSSI, which is also a designated Special Area of Conservation. There are no proposals in the UDP Review which affect this site.

4.0 CONSIDERATION OF REPRESENTATIONS

- 4.1 Members will recall that the UDP Review has been prepared under the 'old Development Plan Regulations' (hereafter referred to as the 'old regulations') and not the 'new ' regulations which were introduced by the Planning & Compulsory Purchase Act 2004. These 'old regulations' are the Town & Country Planning (Development Plan) (England) Regulations 1999.
- 4.2 In determining the response to the representations, in line with the 'old regulations,' Members should bear in mind the limited scope of the debate envisaged at this stage. In particular, it is worth recalling that the purpose of the deposit of the modifications was to allow public comment on:

- the proposed changes to the plan
- the Council's decision not to promote a change recommended by the Inspector

Furthermore, the Council's approach has been to secure the early adoption of the Plan.

4.2 Consequently, it is not appropriate to go back to first principles. Consideration of the representations therefore needs to focus on the nature and detail of the changes promoted through the modifications. Representations which:

- seek to repeat earlier objections
- concentrate on the principle of a policy/proposal rather than the detailed changes
- raise only issues considered at the Inquiry and dealt with in the Inspector's report

are therefore most unlikely to give rise to a need for any further changes.

4.3 In reviewing the representations in those cases where the Council has rejected a change recommended by the Inspector, Members will need to consider in particular whether the representations raise new arguments not covered in the Council's reasons for originally rejecting the Inspector's recommendation. Where new matters are raised Members will need to determine whether these are, on balance, sufficient to warrant the reversal of its original decision or give rise to the need for some other change.

4.4 Duly made Objections: The principal task for Members is to determine the Council's response to the "duly made" objections. Detailed consideration of the objections is set out in the attached schedule. This summarises the issues raised and is followed by comments and conclusions. The number of duly-made objections is limited to a few key issues, which are:

- Dissatisfaction with the Council's decision to accept the Inspector's recommendation to retain sites under Policy N34 (Protected Areas of Search) from local residents and Parish Council's, matched by representations in support of the Council's decision from landowners.
- The precise wording of the revised Policy E7, designed to protect employment land.
- The rationale for some Greenfield sites to be included in Phase 2 (as recommended by the Inspector) and for others to be left in Phase 3.
- The interpretation of the Inspector's conclusions and recommendation in relation to the 'trigger point' for the release of housing in Phase 3 of the Plan, particularly in relation to the East Leeds Extension, East of Otley and Micklefield Strategic Housing Sites.
- The consistency of the UDP Review with PPG3 and the Regional Spatial Strategy, in relation to the sequential release of housing land (greenfield/brownfield).
- The Council's rejection of the Inspector's recommendation to list alternative locations for student housing.
- The wording of the Proposed Modification in relation to the East Leeds Extension (ELE), including the Council's rejection of the Inspector's recommendation to reassess ELE prior to adopting the Plan (to include phasing proposals).

4.5 All the above key issues are addressed in the attached schedule under the relevant Modification.

4.6 In many cases, the objections are simply statements of opposition to the modifications raising similar issues to those made at the earlier stage of plan preparation and which were considered at the Inquiry. These clearly fall outside of the scope of this latest modifications stage.

4.7 The 'old regulations' (Reg. 28 (1)) make clear that the Council is only under a duty to prepare a statement of decisions and reasons in relation to objections made in accordance with the Regulations. To do otherwise would also be to disadvantage those who remain dissatisfied with other aspects of the Plan but who understood that there was no opportunity for further representation.

4.8 Not duly made objections: While a formal response may not be necessary to the 'not duly made' representations, these have still been considered by officers and an explanation of the reasons why they have been categorised in this way has been given.

5.0 THE NEXT STEPS

5.1 The 'old regulations' determine that the Council must:

- Decide whether a public inquiry is necessary to consider the representations
- Prepare a statement setting out its decisions and reasons on all objections
- Consider the need for further modifications
- Subject to the above, place on deposit the list of modifications and make the statement of decisions and reasons available for inspection.

5.2 The process for dealing with any further modifications is a repeat of that at earlier stages. Any further modifications will need to be placed on deposit for 6 weeks to allow for representations, which will then need to be considered by the Council. The process is a loop which is only broken when the Council decides that no further changes are necessary, at which point it can proceed to adopt the Plan.

5.3 It is recommended to Members that, given the nature of the representations that have been received, that point has been reached and that it is now possible to proceed to adopt the Plan.

5.4 If this recommendation is accepted, it will be necessary to publish a notice of intent to adopt the Plan and at the same time, make available for inspection the statement of decisions and reasons relating to the objections to the Modifications. This notice will state the date at which the Plan will be adopted. This will be 28 days from the date on which the notice is first published.

5.5 Subject to Members agreeing the recommendations in this report, it is anticipated that the notice of intention to adopt could be published following this meeting which would enable full Council to adopt the Plan at its meeting on 19 July 2006

5.6 Once this stage is reached it is then necessary for the Council to publish a notice of adoption. It is at this point that the public has the opportunity to challenge the validity of the Plan through an application to the High Court. There is a period of 6 weeks from the publication of the notice of adoption for such applications to be made. An applicant to the Court can seek to have the whole Review quashed but it is more likely that this might apply to individual policies or site specific proposals. In these latter circumstances the status of the remainder of the Plan is unaffected.

5.7 Following adoption it will be necessary to integrate all the modifications with the original Deposit Plan to produce a final version of the UDP Review Written Statement and Proposals Map. Work on this is already well advanced in anticipation of the Council's approval.

6.0 THE NEED FOR A PUBLIC INQUIRY

6.1 The decision on whether to hold a public inquiry to consider objections to the modifications rests with the Council. The Council must act reasonably in all the circumstances in coming to a decision and is potentially liable to challenge in the High Court if it fails to do so. Planning Policy Guidance 12 (Annex B, para22) suggests that local authorities have to consider whether new issues have been raised and whether these issues would justify the holding of a public inquiry. Also, in the guidance published by the Government "Local Plans & Unitary Development Plans – A Guide to Procedures," it is suggested that authorities should hold an inquiry where objections raise matters which were not an issue at an earlier stage. This may arise for example, where the Council promotes an entirely new proposal (i.e. not published in the First or Revised Deposits) so that objectors will not previously have had the opportunity to comment. In responding to the Inspector's recommendations, Members will recall that special care has been taken to avoid this situation occurring.

6.2 The key issue seems to be not whether the proposal is new but whether the objections give rise to new issues. Similarly, where any new issues concern matters that are more appropriately dealt with by other means, for instance through an Action Area Plan as part of the Local Development Framework or through the planning application process, then an inquiry could be deemed unnecessary. This would also apply where the Council's modification is a matter of fact so that no purpose would be served by an inquiry. It is considered that it would be reasonable to decide against holding an inquiry where the circumstances described above apply.

7.0 Implications for council policy and governance

7.1 The implications for council policy are summarised above and also set out in the comments presented as part of the schedule included as Appendix 3. As noted above, once adopted the Unitary Development Plan Review will form the Development Plan for Leeds until such time as it is gradually replaced by the emerging Local Development Framework.

7.2 The UDP Review complements and is consistent with Vision for Leeds and the Corporate Plan, including addressing the Council's 'Narrowing the Gap' agenda through the Plan's proposals for regeneration in defined Action Areas.

8.0 Legal and resource implications

Legal implications

8.1 Although the Council is under no obligation to hold a further inquiry into objections to modifications proposed by it, it might nevertheless exercise its discretion in doing so. Consideration that would generally be material to that decision would include:-

- 1) whether or not the issue raised had been previously subject to independent scrutiny by an inspector so as to provide independent evaluation of the opposing contentions;
- 2) the current advice contained in PPG12
- 3) the practical implications of a second inquiry and, in particular, whether it would be of material benefit to the decision making process;
- 4) delay and the desirability of securing an up to date adopted plan
- 5) fairness to an objector and to other parties although this need not go beyond the normal administrative obligation;
- 6) the new Development Framework provisions.

8.2 There are statutory grounds for quashing a plan and these will include:

- 1) the adequacy of the reasons given by the Council for rejecting the an inspector's recommendation
- 2) whether the Council gave proper consideration to the inspector's report, particularly in the light of the Council's special position as both proposer and decision maker
- 3) whether the Council should have held a further public inquiry into its proposed modifications.

8.3 In reaching their decision members should take into account, and give due weight to, the above consideration.

Resource implications

8.4 The UDP Review is a statutory plan and represents the City's policy framework for the use and development of land. It is a key document for both local communities and the development industry. Significant resources have been invested in bringing the plan through its various stages, including extensive public consultation and a public inquiry. Additional resources will be needed to merge the UDP Review with the original adopted (2001) Plan and to publish this following the plan's adoption. There are also

resource implications for the City Council in relation to advancing policies and proposals contained in the Plan, particularly those relating to the named Action Areas to support the corporate regeneration agenda, which are to be progressed in detail through the emerging Local Development Framework.

9.0 CONCLUSION

9.1 Given the nature of the representations received, it is considered that no new issues have in fact been raised and that:

- A second inquiry is not needed
- No further modifications are necessary

9.2 In these circumstances it is recommended that the UDP Review process is brought to a conclusion and that the Council now proceeds towards formal adoption of the Plan.

10.0 RECOMMENDATIONS

10.1 Executive Board is recommended to:

1. Agree the contents of this report;
2. Agree that no further modifications to the Plan are appropriate;
3. Conclude, having carefully considered all the representations received, that they do not give rise to a need for a further public inquiry;
4. Agree that the attached schedule (Appendix 3) is published as the Council's statement and reasons in response to the representations received;
5. Agree that the Notice of Intention to Adopt the UDP Review is published and that, following the expiry of the notice period, the Plan is submitted to Full Council with a recommendation that it is formally adopted.