

Report of the Transportation, Design and Planning Director to the meeting of the Executive to be held on 30 November 2004

AK

Subject: Modifications to the replacement Unitary Development Plan

Summary statement:

The Council needs to publish its Modifications to the replacement Unitary Development Plan. The Modifications arise from consideration of the recommendations of the Inspector into objections to the replacement plan. The approach to arriving at the Council's Modifications is explained. The Council's Statement of Decisions and List of Modifications are provided as appendix 2 and 3 which can be inspected during normal office hours in Room 112, City Hall, Bradford

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1. Summary

- 1.1 The recommendations of the Inspector's report into objections to the replacement Unitary Development Plan (UDP) have been assessed. Modifications to the replacement Plan are proposed. This report explains the approach taken in proposing the modifications. Approval to the publication of the Modifications is sought. The Council's Statement of Decisions and List of Modifications are provided as Appendices 2 and 3. Once the statutory period has elapsed, and representations received in response are assessed, it will be determined a whether there is a need to hold a further public inquiry. Should this not be necessary then the Council can proceed towards formal adoption of the Plan as modified.

2. Background

- 2.1 Work to replace the adopted UDP, the district's land use strategy, has been progressing through the statutory stages. This work reached an important stage, with the publication of the Inspector's report into objections to the replacement UDP (rUDP) on 7th July 2004.

This report contains recommendations on modifications to the rUDP in light of the Inspector's consideration of the objections made to the consultation drafts of the Plan publicised in June 2001 and July 2002. Responses to each of the Inspector's recommendations, the Statement of Decisions, and the resulting list of Modifications to the rUDP have been drawn up. (Appendices 2 and 3). These are available for public inspection with this report at Room 112, City Hall, Bradford and the Council's Planning Offices at Jacobs Well (Bradford), Keighley, Shipley and Ilkley Town Halls.

These modifications are subject to public comment for a statutory period of six weeks.

The final stage of the process is for the Executive to consider any representations made and, provided there are not unresolved issues which require a further public inquiry, recommend the adoption of the rUDP as modified to a meeting of full Council.

- 2.2 The Inspector has heard evidence from interested parties making objections to the Council's policies and proposals. His recommendations carry very great weight as they have been made in full knowledge of the evidence presented. However, there are a limited number of matters on which the Inspector has made specific recommendations which it is proposed the Council should deal with in other ways. These are not insignificant matters. The Council has to give its reasons for not accepting a recommendation of the Inspector and for proposing modifications. Further, there are some instances where it is recommended to members that the Council accepts the Inspector's recommendation but not for the reasons he gives, either because the reasons are not accepted on their merits, or because legal advice has been given to the effect that part of the Inspector's reasoning is flawed and could not be relied upon. In those case, if members accept the

recommendation, the Council needs to set out that it accepts the Inspector's conclusion, not does not agree with his reasoning.

2.3 The Council has made key proposals for:

- A hierarchy of urban areas to locate new development
- Providing new homes on 'Brownfield' land and in urban areas as well as the reallocation of currently allocated employment sites for mixed use areas and housing
- 2 phases of housing supply up to 2009 and 2014
- A green belt that will last until 2020
- Meeting some Keighley area requirements at Silsden.

2.4 The Inspector has recommended:

- That the hierarchy of urban areas should place greater emphasis upon Bradford and Keighley (and downgrade the role of Silsden)
- That the Plan should allocate sites for two more years to 2016
- Green belt should last until 2026 and that the Council should review the green belt now to meet longer term development. He has recommended that some sites should be removed from the green belt and allocated or safeguarded for development
- Not to locate development at Silsden but release land at Menston
- Show where more development can take place in urban areas by doing an "urban capacity" study now.

2.5 Apart from protracting the plan making timescale, the Inspector, whilst having a clear view about the Council's proposals and on the merit of those put forward by others, has been unable to provide the Council with an indisputable, cohesive and comprehensive set of recommendations. There are concerns with some of the Inspector's recommendations. Planning case law is important. A recent judgement on the circumstances by which land can be added to the green belt has not been applied consistently by the Inspector. Elsewhere the Inspector has not followed national Planning Policy Guidance correctly. Additionally, in recommending that the plan should last until 2016, the Inspector has admitted that it has not proved possible to recommend an alternative set of housing proposals to the Council that would achieve this.

2.6 It is possible for a substantial part of the Inspector's recommendations to be accepted and the plan modified to incorporate them. Significantly, it has been necessary to work out an alternative approach to respond to the contested recommendations. It is not sufficient to simply maintain a disagreement with the Inspector's assessment of the particular planning issues without explaining why the Council disagrees with the recommendation and deals with the substantial points raised by the Inspector. In some cases, the Council should show that there are substantial changes in circumstances that address them. The misapplication of the relevant legal tests is of great importance because if the Council were to modify the plan on a faulty basis this could result in High Court challenge. However, there are

additional factors. The most important is the publication in early 2005 of the draft Regional Spatial Strategy (RSS).

- 2.7 The draft RSS will propose the role of the district as part of the wider sub-region along with the other West Yorkshire authorities, the northern part of South Yorkshire (Barnsley district) and parts of Craven, Harrogate and Selby districts in North Yorkshire, together with York. At the least, the draft RSS will be expected to set a new housing target for the district as well as review the 'brownfield' target. It may do more than this: for example, it may such as define the role of the Bradford and Leeds urban area, describe Airedale in terms of sub-regional regeneration, and define the role of the green belt, including any exceptional circumstances requiring its review.
- 2.8 The Council, the Airedale Partnership and Yorkshire Forward have commissioned a Master plan for Airedale. This will be published in early 2005. Current indications are that land allocation, transport, environment, town centres and key projects will all impact upon the proper planning of the area. This is likely to require the preparation of a new plan. (This has already proved to be required for the city centre arising from the master plan.)
- 2.9 Accordingly, it is not considered safe or wise to embark upon the whole panoply of the Inspector's recommendations at this moment because the policy background against which such work would have to be undertaken is being reviewed. The approach in the proposed Modifications is to:
- Accept as many recommendations as possible
 - Accept the deletion of allocations but 'safeguard them' where the Inspector has not applied correctly the relevant legal test on adding land to the green belt green belt and where the sites meet the policy tests for safeguarded land;
 - Extend the life of the green belt to 2021
 - Use the new Local Development Framework as the basis for defining the further update of the Plan
- 2.10 The Local Development Framework introduced by the Planning and Compensation Act 2004 replaces current Development Plan arrangements. In very brief terms it changes from having a single plan, in the district's case the UDP, to a suite of documents. These need to be kept up to date but do offer scope for dealing with issues as they arise. The mechanism for describing the Local Development Framework work programme is the Local Development Scheme (LDS). The first LDS will require to be submitted to Government by end March 2005.
- 2.11 It is the LDS that will enable the Council to show its commitment to addressing the Inspector's recommendations regarding settlement hierarchy, housing supply, urban capacity and green belt in the context of draft Regional Spatial Strategy and the Airedale Master plan. This is thought to be the best way of ensuring that the Council has an up to date development plan. If the Inspector's recommendations about the plan period and the life of the green belt were to be acted upon now, the Council would have to undertake substantial new work before the UDP could be adopted. Further, the chances are high that such new work would require a

modifications inquiry to be held. The full reasons are set out in the relevant part of the Statement of Decisions (Appendix 2).

- 2.12 A provisional Local Development Scheme is attached at Appendix 1. This will be discussed further with Government Office.

3. **Other considerations**

- 3.1 The particular implications of the Inspector's recommendations have not been set out in this report. Appendices 2 and 3 are set out on a constituency basis.
- 3.2 The arrangements for publicity of the Modifications requires a statutory six week period. At this stage of plan preparation the requirement is to format the plan in line with the Inspector's recommendations. This is not an opportunity to introduce new proposals. Accordingly, the content of the publicity has to avoid raising false expectations whilst clearly needing to explain why the Council is accepting much but not all of the Inspector's recommendations.
- 3.3 Previous objectors and those who have made representations which are still outstanding will be advised of publication of the Modifications.
- 3.4 Comments have been received from the public and interested parties following publication of the Inspector's report. These will need to be resubmitted during the statutory time period of publication of the Modifications to be duly made representations.

4. **Options**

- 4.1 The Council is not obliged to accept the Inspector's recommendations but it must have cogent reasons not to accept them. In not accepting a recommendation there is a risk of either a legal challenge, or another public inquiry, to resolve the issue. Accordingly, it is important that the Council does not introduce new proposals.
- 4.2 An approach has been devised that enables the Council to move expeditiously to adoption of the plan. A delay such as recommended by the Inspector would lead to an extension of the timetable so as to be affected by new European strategic environmental assessment requirements.
- 4.3 The status of the Development Plan is taking a higher profile in Best Value performance indicators and thereby the Council's CPA rating. An up to date plan is most important and to date the Council has performed relatively well on this.
- 4.4 It should be emphasised that if the Council was to choose not to adopt the plan or adopt it in such a way as to make it vulnerable to a High Court challenge the implications would be profound. In effect, the 1998 UDP would be the Development Plan. The development sites which the Inspector has recommended should not be allocated would remain. Furthermore, the revisions to the plan which have not been objected to and which have gained weight as plan preparation has progressed could be lost. However, the evidence that the Inspector has supported sites not allocated in the 1998 plan might carry weight on appeal should the Council refuse planning permission for their development. If the High Court found against

the Council, part or all of the Plan could be quashed, similarly reverting to the 1998 UDP. This would lead to a planning vacuum which interested parties could seek to exploit as well as bringing the integrity of the plan making process into question.

- 4.5 The First Secretary of State has the power to intervene should he consider that the Council has not proceeded correctly.

5. **Financial and resource appraisal**

Finance

- 5.1 The costs of plan preparation are borne within the Department's revenue budgets.

Staffing

- 5.2 Whilst there remains sufficient Planning staff resource to complete the adoption of the rUDP, the Local Development Framework imposes significant additional tasks on Planning Authorities. The implication of this is that staff will need to be allocated to major, strategic and recurring tasks (including monitoring and reporting on the delivery of the Plan) as high priority. This means that other work, including responding to community generated planning initiatives such as Village Design Statements and preparation of supplementary planning documents, will need to be given low priority.

6. **Legal appraisal**

- 6.1 There are a limited number of legal precedents where planning authorities have proposed to reject the Inspector's recommendations. In considering its response to the Inspector's recommendation's the Council has been guided by Counsel in the preparation of the Statement of Decisions and proposed Modifications (Appendices 2 and 3).

7. **Other implications**

Equal Rights

- 7.1 Planning policy regarding accessibility and mobility for all, including people with disabilities, is included in the replacement plan. Consultation processes to date have attempted to engage wide communities of interest.

Sustainability Implications

- 7.2 A sustainability assessment of policies and proposals has been carried out as part of the plan preparation process.

Community Safety Implications

- 7.3 Planning policy relating to design and crime prevention is included in the replacement plan.

Human Rights Act

- 7.4. Specific policies in the proposed replacement plan may affect the rights of individuals to beneficial use of their property; however this must be balanced against the States right to restrict such rights in the overall public interest.

Trade Union

- 7.5 There are no Trade Union implications

8. Not for publication documents

- 8.1 There are no restrictions on the publication of this item

9. Recommendations

- 9.1 That details set out in Appendices 2 and 3 to this report be confirmed as the Council's proposed Modifications to the replacement Unitary Development Plan and published for public comment,
- 9.2 That, in the event that a further public inquiry is not necessary, a final version of the replacement Unitary Development Plan be submitted for the Executive's agreement, having regard to public comment, and recommendation to the Council for adoption, as soon as is practicably possible,
- 9.3 That the content of the Provisional Local Development Scheme be agreed and that a final scheme be submitted to the Executive for approval before the end of March 2005,
- 9.4 That authority be delegated to the Transportation Design and Planning Director to carry out any minor amendments necessary to complete the proposed Modifications prior to the statutory publication period.

10. Appendices

- 10.1 Appendix 1: The Provisional Local Development Scheme for the Bradford District Local Development Framework
- 10.2 Appendix 2 - Statement of Decisions
- 10.3 Appendix 3 - List of Modifications

11. Background documents

- 11.3 The Inspector's report

- 11.4 Planning Policy Statement 12: Local Development Frameworks (ODPM 2004)