

## **APPENDIX TWO**

### **APPENDIX - UPDATE TO REPORT ENTITLED REVISED DEPOSIT UNITARY DEVELOPMENT PLAN – RESPONSES TO OBJECTIONS REPRESENTATIONS TO THE PROPOSED MODIFICATIONS (OCTOBER 2004)**

#### **BACKGROUND**

- 1.0 The consideration of this report was deferred on the 20<sup>th</sup> April and 15<sup>th</sup> June Cabinet meetings respectively in order to allow the Council to give careful consideration to representations received regarding a site that has been allocated as a strategic housing site in the modifications stage of the Unitary Development Plan (UDP) review. This note provides an updated position on that site.
- 2.0 The site in question is the Gibbons Refractory at Coopers Bank. The Council did not designate the site as a housing allocation in the revised deposit version of the plan. The Council received objections to the revised deposit version of the plan seeking the site to be identified as a housing allocation. This issue was heard at the Public Local Inquiry into the Plan and the Council defended its position at the Inquiry. The independent Government inspector appointed to hear the representations in the Plan ruled against the Council in his report and recommended that the site was identified as a housing allocation.
- 3.0 The Council published the proposed modifications to the Unitary Development Plan, which were approved by the Council on the 18<sup>th</sup> October 2004 identifying the site as a Strategic Housing allocation. On publication the Council received representations from the Company currently occupying the site who consider that the site should not be a strategic housing site but should remain in employment use.

#### **CONSIDERATION OF REPRESENTATIONS RECEIVED ON BEHALF OF THE COMPANY**

- 4.0 Following deferment of the consideration of the report, Officers met with representatives of the Company and their legal advisers to give careful and full consideration of all the issues. The company are requesting that the Council should not adopt the plan as detailed in the proposed modifications but that the Council should publish further modifications to reflect the deletion of the site.
- 5.0 The Council has sought legal opinion from the Council's barrister as to the consequences of taking the course of action suggested by the company. It is the Council's barristers considered opinion that if the Council takes this course of action and publishes further proposed modifications; it is highly likely that representations will be received from the landowner and other interested parties which will necessitate holding a further Public Inquiry to allow an independent and fair assessment of the arguments

represented. He considers that this will be a high risk strategy jeopardising the Council having a statutory development plan in place.

- 6.0 Failure of the Council to hold a Public Inquiry, should further objections be received as a result of the company's request, is likely to result in a legal challenge against the Council under section 278 of the Planning and Compulsory Purchase Act 2004. This challenge would focus upon the fairness of the Council's course of action in denying an objector an independent hearing.
- 7.0 The Planning and Compulsory Purchase Act 2004 requires the UDP to be adopted by July 2006 as it has not been subject to a strategic environmental assessment. Given the timescales that are involved in this particular case, it is not considered feasible for the Council to publish proposed modifications, as suggested by the Company, and then have a Public Inquiry, receive the further recommendations of that Inspector and then be able to adopt the plan before July 2006. Consequently, any further inquiry will inevitably mean that the prospect of the Council having an adopted UDP in the required timescales would be lost.

#### **CONSEQUENCES OF DUDLEY METROPOLITAN BOROUGH COUNCIL NOT HAVING A CURRENT ADOPTED UDP**

- 8.0 Failure to meet the July 2006 timetable will result in the Council having to make all planning judgements on national planning policy and regional planning policy and on the basis of the original Unitary Development Plan which was adopted in 1993. The 1993 UDP is a plan that is time expired and was based on policies that were extant in the late 1980s and early 1990s. The 1993 plan is therefore considerably out of date and provides little by way of firm policy guidance for the future development of the Borough. This would result in immense uncertainty surrounding the planning process within Dudley Borough and would lead to investment and development opportunities being lost to surrounding Boroughs which have a robust planning framework in place in the form of a current adopted Unitary Development Plan.
- 9.0 The Council's barrister concluded that a balance must be struck, in this particular case between the interests of the owner, the leaseholder and the wider interest in having an up to date Statutory Development Plan for the Borough. His advice further concluded that the "non-availability of a Statutory Development Plan for the Borough should be avoided at all costs on the part of the Council".
- 10.0 The Council is mindful of the needs of the company and therefore have suggested that the Council would not view favourably a planning application for residential development until the commencement of the second phase of housing development set out in the Unitary Development Plan (beginning March 2007). This can be done by invoking the housing phasing policy (Policy H2 as modified) in the Revised Deposit Plan. This gives the Company the time and opportunity to negotiate with the landowners regarding their occupancy of the site.