

## HEREFORDSHIRE UNITARY DEVELOPMENT PLAN: OUTCOME OF LEGAL CHALLENGE

**Report By: Assistant Chief Executive – Legal and Democratic**

### **Wards Affected**

Countywide – but with focus on Hollington and St. Martins and Hinton

### **Purpose**

1. To inform Members of the outcome of the High Court challenge to the Full Council resolution of 28<sup>th</sup> July 2006 allocating land for housing at Bullinghope.

### **Financial Implications**

2. None outside current budgets.

### **Background**

3. The Unitary Development Plan was adopted with amendments by Council in July 2006 and is a “Saved plan” for three years, i.e. until March 2010. It is part of the Council’s Development Plan, along with the Regional Spatial Strategy (RSS). It will, in due course, be replaced by the emerging Local Development Framework. The modification identifying the Bullinghope site for housing was approved by Council on 28<sup>th</sup> July 2006. Following adoption by Council a group of objectors formed a company, the Dinedor Hill Action Association, to challenge, by way of Judicial Review, the allocation of a site for 300 new houses at Bullinghope. Bloor Homes were also a party to the proceedings and separately represented as an “interested party”.
4. The case was heard in the High Court of Justice on 26<sup>th</sup> and 27<sup>th</sup> June 2008 and Mr Justice Collins handed down his judgement on 24<sup>th</sup> July 2008 which was to the effect that the allocation at Bullinghope should be deleted from the Unitary Development Plan. Following receipt of the judgment from Mr Justice Collins the Council have decided to accept that decision and not to seek leave to appeal.
5. There were certain other consequential deletions from the text of the Unitary Development Plan but the plan, with those deletions, remains a fully operative part of the Development Plan.
6. Mr Justice Collins did not order any change to the Settlement Boundary for Hereford because that boundary is the subject of a separate policy. That leaves the proposed site of the 300 houses within the Settlement Boundary but not allocated for development. Mr Justice Collins did not consider this to be a problem as the removal of the site from the list of allocations would be a material consideration in the determination of any planning application on the site.
7. The Council has been served, as an interested party, with Notice of Leave to Appeal by Bloor Homes which was received on the 15<sup>th</sup> August 2008.

The grounds for leave to appeal are as follows:-

- (1) The construction given to “maxima” in the RSS is wrong (paragraph 7 of the judgment).
- (2) The proper test is whether the Council provided reasons to answer the particular objection to the modification, not some wider and expansive set of reasons in respect of each aspect of the Inspector’s report, contrary to the conclusion reached by the judge at paragraph 20 of his judgment.
- (3) Given the nature of the objection to the modification, the Claimant cannot be substantially prejudiced – such prejudice only arises if the reasons given rejecting the objection to the modifications fails to deal with the substance of that objection (see Ground 2 above).
- (4) Paragraphs 26, 27 and 28 of the judgement deal with the question of the materiality of the removal of Bullinghope from H2 and the reason for it. At paragraph 28 it is said that the removal and reason for it are a material consideration. This is incorrect because the plan has been adopted, as amended by the judgment. By analogy with the judgment, the Inspector’s report is then no longer a material consideration, because it is the development plan which prevails, not the report. The judgment is silent on the merits of Bullinghope, as it should be, so there is nothing material in the judgment.

The Council has not sought leave to appeal but if leave is granted an appeal hearing will be ordered at which the Council will be an interested party. The Council will be required to assist the court if such a situation arises with all evidence previously submitted. The appeal, if successful or not, may have implications as a result for the Council to consider at the conclusion of the legal proceedings.

**Consequences for the Development Plan in accordance with the judgment if the appeal is not successful.**

8. The Unitary Development Plan remains in effect until March 2010, with the possibility that some policies can be “Saved” for a further period depending on the need for them in the light of the emerging Local Development Framework. In respect of any planning applications to develop the land at Bullinghope the judgment makes it clear that the site can no longer be regarded as allocated for new residential development. Planning permission for residential development is now probably unlikely during the plan period of the Unitary Development Plan, i.e. up to 2011 but that will depend on a consideration of any relevant material considerations including the results of the annual monitoring reports and the outcome of the revision of the RSS. Beyond that the potential for residential development, or any other development of the site, will need to be considered alongside all other land as part of the emerging Local Development Framework. It is not appropriate at this stage to give any indication of the future options for this site.
9. The Unitary Development Plan itself could be completely republished with the relevant parts of the text amended. However, given that there are only four references in the text which need amending, it is suggested that a simple

**COUNCIL****4TH SEPTEMBER 2008**

amendment sheet be published and appended to copies of the document as issued following adoption in March 2007. The cost of re-publishing the whole document and all the maps is considered to be excessive given the limited lifetime of the document as a whole and the limited changes now required. Copies of the addendum sheet can be sent to all interested parties on the database of names and organisations developed for the UDP.

10. The changes that need to be made to the text of the Unitary Development Plan are set out in the table below:
11. The Proposals Map (Inset Map HER1 – Hereford City) also needs amending by removing the relevant colouring on the Bullinghope site and the reference to policy H2 (g).
12. The changes will also be posted on the part of the Council's website devoted to the Unitary Development Plan.

<b>CHANGES TO THE TEXT OF THE UNITARY DEVELOPMENT PLAN 2007</b>		
<b>Page</b>	<b>Topic</b>	<b>Change</b>
52	Policy S.3	Reduce total allocation of dwellings in Hereford from 3,781 to 3,481
53	Table 5.2	Reduce relevant sub-totals and final total number of allocated dwellings by 300
55	Paragraph 5.4.13	Delete whole paragraph and sub-heading relating to the allocation at Bullinghope
60	Policy H.2	Remove reference to site at Bullinghope and reduce total allocation figure by 300

**RECOMMENDATION that:**

- (i) **Council note the outcome of the High Court decision which is the subject of appeal;**
- (ii) **Council to receive a further report from Assistant Chief Executive – Legal and Democratic following the completion of legal proceedings; and**
- (iii) **Council notes the proposed amendments to the Unitary Development Plan at this stage**

**BACKGROUND PAPERS**

- Appendix 1 – Minutes of Council meeting – 28<sup>th</sup> July 2006 (which include the named vote record)
- Appendix 2 – Judgment in the High Court.
- Agenda Item 4 – Notice of Motion
- Appendix 3 Cabinet report to council – 13 July 2006