



## **APPENDIX 1**

### **Local Plan Proposed Modifications Summary of representations and Council response**

**Date: 19<sup>th</sup> May 2005**

#### Introduction

This document includes summaries of all the representations, (including those 'not duly made'), received during the deposit period, which ran from 26<sup>th</sup> January to 9<sup>th</sup> March 2005. The 'duly made' summaries are set out in the same order as the Proposed Modifications, which is consistent with the Inspector's report and generally consistent with the Local Plan. The Council's response is set out at the end of each representation summary. Because of the large number of standard representations received, the number of copied representations is given rather than listing out all the individual correspondents.

#### Legal representation received from GAG 5

GAG 5 (Green Belt Action Group) comprising the 5 parish councils of Linby Papplewick, Newstead, Ravenshead and Bestwood have sought legal advice and whilst this is included in the main body of the report it is important to highlight the key issues here as they raise fundamental matters which run through a number of the representations received. For example a number of standard representations argue that there were no exceptional circumstances, which would justify a review of the green belt, and the Council should reduce the land allocated for housing in line with the emerging Joint Structure Plan. These issues were addressed in the Cabinet report agreed on 21st December 2004, (adjourned from 14<sup>th</sup> December).

The conclusion of the case presented by D E Manley QC, submitted on behalf of GA5 states:

'The Local Plan will be out of date on the day it is adopted. The LPA appears to recognise but ultimately seem to have adopted a view that such a position is better than having no plan. I do not accept this and do not accept that the LPA would be vulnerable to successful S78 challenges on green belt / greenfield land in such circumstances (such a process in any event is protracted – an application lodged tomorrow and duly refused and appealed would not be heard for about 15 months

during which time the new SP/RPG figures would be in place and local plan revisions or LDF preparation would be well advanced). The reality is that the Plan to be adopted will be flawed and it cannot be said that a bad plan is better than no plan – it will be bad because it will have embarked on significant areas of green belt / greenfield release without considering whether such is genuinely necessary in an up-to-date strategic context. As a first step the matter should be brought to the attention of the Secretary of State who should be urged to direct that Gedling should not adopt the Plan.’

The above advice includes the following statement: ‘In any event the key issue now is whether exceptional circumstances now exist sufficient to justify Green Belt release’.

As a result of the above representation the Council sought legal opinion from Mr Spence QC from 2-3 Gray’s Inn Square. His replies (in bold), to the Councils questions are set out below:

1. Is the basis of the report which was put to Cabinet on 14 December 2004 open to challenge and if so, should the Council have considered any further matters or options? **No**
2. Whether the Legal representations of GAG 5 in the advice of D Manley QC have any merit? **No**
3. At paragraph XV1 of the advice reference is made to the Cabinet meeting on 14 December 2004 report, should this be included in the Statement of Decisions and Modifications? **Yes**
4. Should the Legal representations by GAG5 objectors have any merit what course of action is now open top GAG 5 i.e. judicial review? **None**

To summarise, the GAG 5 legal representation is based upon the argument that there is currently no need to review the green belt. This argument is not accepted for the reasons set out in the detail of the report considered by Cabinet on 14<sup>th</sup> and adjourned to 21<sup>st</sup> December 2004. This Cabinet report is, in the opinion of Mr Spence QC, ‘well balanced, rehearsing, as it does, all the relevant factors... which are germane to the Council’s decision as to whether to proceed under option 1 or option 2 – or indeed 3 or 4’. He goes on to state ‘I do not consider that bringing the matter to the attention of the Secretary of State would help the parties at all’. Later he states ‘Quite apart from all the other points made in the well reasoned Report for the 14<sup>th</sup> December 2004, I consider that the idea of pursuing Option 1 would be fraught with difficulty, and even dangerous. It would be likely to excite challenge, and it appears to me that the Council would be defeated upon such a challenge’. He confirms that the decision to proceed on the basis of option 2 as advised by officers was correct and unassailable.

In addition, it is significant to note a recent successful High Court challenge made by Martin Grant Homes and Taylor Woodrow against Wealden District Council on their decision to stop work on their statutory local plan review. That Council decided in May 2004, to proceed to a non-statutory local plan in order to move more quickly to the new planning system of producing a Local Development Framework (LDF), introduced by Central Government. (This option was considered as Option 3 in Gedling’s Cabinet report of 21<sup>st</sup> December). The High Court quashed the decision of Wealden to abandon its emerging draft local plan.

### Duly made representations – main points raised

As explained above a number of the representations received relate to the decision of the Council to proceed with the Local Plan based on the Adopted Structure Plan. In addition to the representations based on this key matter, most representations received relate to the safeguarded land at Ravenshead, the housing land at Top Wighay and the new housing allocation at Dark Lane Calverton. A large number of representations were made to the employment land at Top Wighay, the safeguarded land at The Spinney in Bestwood and the housing allocation at Ravenshead. Because these relate to proposals in the First Deposit Plan and repeat issues previously considered, they are addressed at the end of this report.