



Name of meeting: Cabinet

Date: 23rd January 24

Title of report: Disposal of Open Space at Fenay Lane, Almondbury, Huddersfield

Purpose of report: To consider the objections received as a result of advertising the Council's intention to dispose of open space at Fenay Lane, Almondbury, Huddersfield, and to determine whether to proceed with the intended disposal of the open space.

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| Key Decision - Is it likely to result in spending or saving £500k or more, or to have a significant effect on two or more electoral wards? | No |
| Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)</u> ? | No |
| The Decision - Is it eligible for call in by Scrutiny? | Yes |
| Date signed off by <u>Strategic Director</u> & name Is it also signed off by the Service Director for Finance? Is it also signed off by the Service Director for Legal Governance and Commissioning? | David Shepherd – Strategic Director, Growth and Regeneration - 13 th December 23 Isabel Brittain – 13 th December 23 Julie Muscroft – 3 rd January 24 |
| Cabinet member <u>portfolio</u> | Cllr Graham Turner – Regeneration |

Electoral wards affected: Almondbury

Ward Councillors consulted: Cllr Alison Munro, Cllr Bernard McGuin, and Cllr Paola Davies

Public or private: Public

Has GDPR been considered? Yes - personal information has been redacted

1. Summary

The Fenay Lane, Almondbury, Huddersfield site is a Council owned site which is allocated for Housing in the Kirklees Local Plan (Local Plan Ref: HS9). The site is included within the Council's Housing Delivery Plan. It is currently being used for informal recreation. The site is shown on the plan edged in red at Appendix 1.

Section 123 (2A) of the 1972 Local Government Act requires local authorities wishing to dispose of any land consisting of or forming part of an open space to advertise their intention to do so for two consecutive weeks in a local newspaper. Any objections received have to be referred back to Cabinet for consideration pursuant to paragraph (d) of Part I of the delegations to the Strategic Director Growth and Regeneration contained in Section F of the Constitution.

S123 Notices pertaining to the disposal of the open space off Fenay Lane were published in the Huddersfield Examiner on 18th and 25th October 2023. Forty-nine objections were received by the deadline of 8th November 2023, signed by 84 people.

Cabinet are therefore asked to consider the objections received in response to the advertisement of disposal of open space off Fenay Lane, Almondbury, Huddersfield and to determine if the intended disposal of the open space should proceed.

2. Information required to take a decision

The approach to the disposal of the site was approved at Cabinet on 14th November 2023. The Fenay Lane site is intended be sold to a Registered Provider that is a Strategic Partner of Homes England. If the objections are noted and overruled the Council will conduct a competitive land sale exercise to find their preferred Strategic Partner (Council's partner) to design and build both market and affordable homes, and the focus will be on providing affordable homes significantly above the planning policy requirement of 20%. Officers have been moving the disposal process forward.

Notices advertising the intention to dispose of this open space were placed in the "Huddersfield Examiner" on 18th and 25th October 2023, with a deadline for objections to be received by no later than 8th November 2023. A copy of the Notice is attached at Appendix 2.

As referred to in 1 above, if objections are received then they must be considered by Cabinet and a decision reached as to whether to note the objections and proceed with the planned disposal or to pause the disposal and look at alternative options for dealing with the land.

2.1 Objections Received

Forty-nine separate objections to the s123 Notices were received by the deadline of 8th November 23 and these were signed by a total of 84 people. A majority of objections relate to the principle of housing development on the site and/or the impact of that housing. These matters have already been assessed and examined through the Local Plan process and the site was ultimately allocated for housing in the Local Plan. A further objection – relating to the s123 process - was received 3 days late.

Due to the fact that objections have been received it is necessary for this issue be referred to Cabinet for consideration of the objections pursuant to paragraph (d) of Part I, Section F of the Constitution and for a final decision to be made by Cabinet on whether to proceed with the intended disposal.

The objections - in categories - are summarised below, along with officer responses for consideration.

2.1.1 - Loss of Public Open Space/Space for recreation/ Public Right of Way

Objections

- The land is in the green belt and is classified as Public Open Space.
- The public have a legal right of access to common land for recreation so the site should be retained as such
- It is a beautiful, safe and very well used green area used by local residents for leisure and recreation including walking, dog walking camping, hiking, nature watching and even sledging in winter. It provides a safe play space for children.
- Valuable Green space will be lost if this sale goes ahead - there aren't many green spaces within a short walking distance from this site.
- A public footpath crosses the site and is well used and should be protected. It is the only rural footpath to Almondbury from Penistone Road.

Officer Response

The site is not within the green belt and is not allocated as Public Open Space or Common Land. The site was allocated as a Housing Site in the 2019 Local Plan. It is an open space that is currently being used by local residents for informal recreation and as such it was necessary to advertise the disposal of this open space.

Any application for housing development on the site will need to obtain Planning permission before any work can take place. The Council's partner will be required, through the planning process, to either provide on-site areas of open space or to enter into a s.106 Agreement to contribute to off-site open space in the local area. The Public Right of Way that runs through the site will also be considered at the planning stage and as appropriate conditions relating to it can be attached to any approval.

If the objections are noted and the proposed disposal is allowed to proceed then the objectors will have a further opportunity to comment on the planning application and proposed development proposals as part of that process.

2.1.2 - Ecology, Wildlife, Biodiversity & Trees

Objections

- The site is a haven for wildlife and contains many different species including frogs, toads, rabbits, stoats, newts, foxes, squirrels, bats, badgers, mice and deer plus many species of birds. Disposal of the site for housing would have a great impact on wildlife, ecosystems and biodiversity.
- There are many well established and mature trees which should be protected. Their removal would have an adverse effect on habitats and wildlife. The felling of trees in this area would be in direct opposition to the Kirklees Councils Net Zero plan and policies on Climate Emergency Action, Biodiversity Action and would increase carbon emissions.
- The Marshland at the bottom of the site is a habitat of great importance for flora and fauna and should be retained.

Officer Response

The impact of the eventual proposals on ecology, wildlife, biodiversity and trees will be considered during the planning process and all required reports and surveys relating to these matters will be submitted with the planning application by the Councils partner. Where appropriate, it is anticipated that conditions will be applied by the Local Planning Authority to any planning approval that the Councils partner will be required to meet as part of development proposals.

Through the 2021 Environment Act, every planning permission for new housing from 2024 must achieve biodiversity net gain (BNG) of 10%. Before any development begins, applicants need to measure the existing and proposed biodiversity values of their sites, set out a clear plan for achieving the proposed increase, and get that plan approved by the Local Planning Authority. Developers must show that they are avoiding and preventing any negative biodiversity impacts; taking action to decrease the extent of any unavoidable impacts; and compensating for any remaining impacts, preferably as close to the point of impact as possible. In cases where none of these work, developers can also 'offset' their biodiversity impact, by creating off-site habitats or (if not possible) purchasing biodiversity units.

The marshland area at the bottom of the site lies with flood zones 2/3 so houses are unlikely to be built there.

2.1.3 - Flooding/Drainage

Objections

- The removal of trees and vegetation would exacerbate the potential for increased water run-off/flooding
- The area regularly floods due to the lack of drainage in the area and the fact that Fenay Beck runs through it - Building more houses will exacerbate this.
- The site is extremely steep and properties on Southfield Road that back onto the site already struggle with drainage and flooding when it rains. Developing the site will increase the flooding issues for these houses.
- Further pressure will be placed on Fenay Beck from surface water run- off and drainage increasing the risk of flooding and the impact from surface water run off for residents who live along the boundaries of the site.
- The flat area of land adjacent to Penistone road is an important flood plain which protects the highway in times of high rainfall. It is permanently wet and was designated a marshland some years ago. Any buildings on that area would be liable to flooding.
- The ditch alongside Fenay Lane runs with water all the time. Ditches have been put in to protect houses and drain the land. If the ditch is removed or filled in then the water needs to go somewhere.
- The soil type does not lend to satisfactory drainage when it rains.
- The Local plan did not consider the cumulative impacts of surface water run-off into Fenay Beck.

Officer Response

The impact of the future proposals on drainage and flood risk will be considered during the planning process. The Council's partner will be required to submit a Flood Risk Assessment and Drainage Strategy as part of the planning application which will be fully reviewed and

considered by the Local Lead Flood Authority and amended as required to ensure the planned development satisfies their requirements re drainage and flood risk.

Housing sites allocated in the Local Plan were assessed for their individual and cumulative impact during the Local Plan process, and this was accepted by the Planning Inspector who approved the Housing allocation for this site.

It is likely that the Council's partner will be required to only build new homes in the part of the site that lies within flood Zone 1. Where new buildings and roads are constructed, surface water would be required to be attenuated in appropriate locations and released slowly into local piped watercourses - this removes the peak flows over shorter durations that are associated with floods. It is a prerequisite of a site flood risk assessment to demonstrate that the site will not make flooding worse.

2.1.4 – Traffic/Highways

Objections

- No viable/safe vehicular access point on the site to serve a new housing development
- Would lead to more traffic chaos and pollution
- The road system in this area cannot support extra traffic - traffic backs up on Southfield Road at peak times from the junction at the bottom of Southfield Road where it meets Penistone Road. Also, traffic heading into Huddersfield on Penistone Road often backs up to past Fenay Lane and towards Lepton.
- Roads are already congested – will be more accidents and congestion and longer traffic queues.
- All the junctions in the Fenay Bridge area are extremely busy and dangerous – the area is an accident blackspot.
- Traffic management solutions need to be put in place at key junctions incl Penistone Rd/Fenay Lane
- Fleminghouse Lane is a steep hill and narrows at the top – it is not wide enough for two cars to pass without one car stopping. Additional traffic from the development would exacerbate the problem.
- St Helen's Gate is a nightmare at school drop off/pick up time. If there are more cars there is more chance of children being at risk from a road traffic accident.
- Commuters already use side streets to cut out Penistone Road and Wakefield Road to avoid backed up traffic. This will hugely increase with new housing development.

Officer Response

The impact of the future proposals on traffic/highways matters will be considered during the planning process.

Housing sites allocated in the Local Plan were assessed for their individual and cumulative impact during the Local Plan process, and this was accepted by the Planning Inspector who approved the plan. Access to the site was deemed possible and the site was deemed to be sustainable.

The specific access designs will be set out by the Councils partner for the site – however access would be possible from both Penistone Road and Fenay Lane.

Whilst housing on the site would inevitably generate more traffic, all impacts would be assessed and mitigated through a Transport Assessment and Travel Plan when a planning application is submitted for the development. Highways colleagues have advised that while there may have been queuing on roads in this area in the past, this has decreased in recent years.

Whilst acknowledging accidents in this vicinity, the development could provide opportunities on site to improve the current traffic and accident issues around the Fenay Lane/Penistone Road junction.

2.1.5 – Air Quality

Objections

- Removal of trees and plants will have a negative impact on air quality in the area.
- Air quality along Penistone Road is recorded by the World Health Organisation as High and requiring immediate action. Adding more cars will only exacerbate this.
- Air pollution hangs along the Penistone Road, especially at rush hour. Adding more homes/cars will exacerbate this, especially as cars will be queueing for longer whilst emitting toxic fumes. This will be detrimental to health - including to children at the nearby nursery.
- Building on open spaces can lead to areas being significantly warmer resulting in health issues for residents

Officer Response

The impact of the future proposals on air quality and health will be considered during the planning process. The Councils partner will be required to prepare and submit an Air Quality Assessment with the planning application and appropriate conditions may be applied by the Local Planning Authority to an approval.

2.1.6 – Noise

Objections

- The development will result in additional noise pollution of detriment to residents.
- A full noise survey is needed
- Shift workers will struggle to sleep during the day with the constant noise from a building site.

Officer Response

The impact of the future proposals on noise will be considered during the planning process. The Councils partner will be required to prepare and submit a Noise Report with the planning application and appropriate conditions may be applied by the Local Planning Authority to an approval.

2.1.7 – Heritage/Archaeology

Objections

- A full archaeological report/assessment a Heritage impact statement is required,

- The two listed properties lie just beyond the top of the site - Finthorpe House and cottages. Any development should be sensitive to the impact on these historic buildings. A buffer should be included to minimise impact which includes natural planting to screen the historic buildings.

Officer Response

The impact of the future proposals on heritage/archaeology will be considered during the planning process. All required reports/surveys relating to the heritage of the site, and its immediate vicinity, including a Heritage Impact Assessment, will need to be submitted by the Councils partner with the planning application.

2.1.8 - Effect on Schools and Local Services

Objections

- There are currently not enough Doctors, or Dental surgeries – new houses will only increase demand and make it even harder to register or get appointments. Waiting times will also increase.
- Schools are already stretched now – Almondbury high school closed in 2019 and King James High School has had to extend to take on the extra students and is full to capacity. The planned housing will put additional pressure on a school which is already struggling to cope with the current pupil intake levels. Also there is not a local junior school as this was closed to create a special school.
- The developers should be made to support schools and services.

Officer Response

The impact of the future proposals on schools and local services will be considered during the planning process. A potential s106 contribution towards education in the area may be imposed upon and be payable by the Councils partner as a condition to any planning approval granted by the local planning authority.

2.1.9 – Impact on Adjacent Residents

Objections

- The proposal would negatively affect house prices and adjacent homes may be harder to sell
- There will be an overbearing impact on existing homes adjacent to the site – most existing homes look up at the site so new properties would tower over adjacent homes and overlook them thus affecting privacy and restricting the natural sunlight to existing homes and gardens.
- The proposed development has the potential to cause misery for many householders due to the loss of visual amenity, overlooking and noise.

Officer Response

The impact of the future proposals on adjacent residents, eg overlooking, noise, will be considered by the Local Planning Authority during the planning process.

2.1.10 – Other Brownfield Sites

Objections

- Other brownfield sites should be built on instead of this one eg. Tandem by the soccer village and areas of vacant land in Kirkheaton/Dalton. These offer virtually level conditions for development unlike this site and could be built on rather than desecrating open space. Areas like this need to be preserved and not sacrificed by the Council for short term financial gain or to meet Government housing targets.

Officer Response

All housing sites allocated in the local plan were assessed for their individual and cumulative impact during the Local Plan process. The Fenay Lane site underwent a thorough examination during the Local Plan allocation process and was consequently approved by the Inspector and allocated for Housing in the Local Plan.

2.1.11 – Loss of Ambience and Community

Objections

- With all the new and ongoing developments, HD5 and HD8 are in danger of losing their current ambience and community.
- Having a bunch of box houses on the site will ruin the feel of this lovely village
- The current green space brings balance to the amount of housing in the area

Officer Response

The design of the proposed new housing development will be considered during the planning process.

2.1.12 – Public Consultation

Objections

- The developer should undertake full community engagement on the proposals including leaflet drops, a public meeting/public drop in. Any proposal must be carefully designed in consultation with the community.
- Insufficient time has been allowed for residents to respond - only giving people 5 days to respond is nowhere near enough time
- Someone should meet with those who will be negatively impacted by the proposed development to discuss the concerns and to walk the site and witness its natural beauty.
- The Council seems to have made the minimum effort to advise the local community of this development - many households were not even aware of it.

- The Council are only paying lip service & following legal procedures by asking for objections – the decision has already likely been made & the thoughts of the local community will be totally ignored

Officer Response

The Council's partner will be responsible for the timing and type of community engagement which will be carried out through the planning process and in line with the requirements of the local planning authority. In accordance with the Government's National Planning Policy Framework and accompanying National Planning Practice Guidance, consultations will be undertaken with all relevant Council departments and local residents and an information notice will be placed close to the site advising members of the public of the intended development. All comments received will be taken into consideration by the Planning Committee before a decision is taken on the application.

2.1.13 – Local Plan

Objections

- This site is HS9 in the Local Plan and was to have extra care Housing Built – is this still the case?
- The data collected for the local plan has since been identified as over-estimated and inaccurate. There is no need to use land of such environmental and recreational value to build houses on.

Officer Response

Housing sites allocated in the Local Plan were assessed for their individual and cumulative impact during the Local Plan process, and the Fenay Lane site was ultimately allocated for housing in the Local Plan. As part of the intended market testing exercise which will be carried out, potential partners will be asked to provide feedback on the scope for the site to accommodate supported housing for older people.

2.1.14 – Overdevelopment

Objections

- The scale of any potential development (274 homes / 10 Ha) suggested by the Council appears grossly out of step with the established housing surrounding this area. This will only add to the cumulative impact of other sites already approved nearby in Fenay Bridge and with the expectation of more houses in the future. This is overdevelopment of the area.
- This area is receiving a lot of new houses in a small area which is over-development
- With houses remaining on sale for lengthier periods of time, is there the need for more housing?

Officer Response

Housing sites allocated in the local plan, including this one, were assessed for their individual and cumulative impact during the Local Plan process and the Fenay Lane site was ultimately allocated for housing in the Local Plan.

The figure of 274 dwellings was an indicative capacity stated in the Local Plan. The Council's partner will design a housing scheme to take account of the constraints of the site. Recent feasibility work funded by the West Yorkshire Combined Authority has confirmed that the site has the capacity to deliver around 160 homes.

There is a need for 1,730 new homes per year in Kirklees, of which 1,049 need to be affordable. It is anticipated that this project will provide new market and affordable housing to help meet this need.

2.1.15 – Objection received after the deadline - s.123 process.

Objection

One objection was received after the deadline which suggested that the under the Local Authorities Act 2000 there is no time limit for objections because the right to petition overrides all rules and clauses in the acts and that there is a right to use local referendum powers. It also states that no reason is needed for objections.

Officer Response

The Council's Legal team has advised that there is no such statute as the Local Authorities Act 2000. In addition, s123 of the Local Government Act 1972 does not prescribe a time limit for objections - the Council has allowed 21 days consistently for many years and this is considered a reasonable time and approach and is comparable with time limits of adjacent local authorities.

There is a Local Government Act 2000 which refers to referenda but this relates to the use of local referenda to change the governance model of a Council (e.g. potentially move to elected Mayor or Committee system). The statutory basis of the rest of the objection is unclear.

3. Implications for the Council

3.1 Working with People

The disposal of the open space will provide the opportunity for the development of much needed market and affordable housing to the district across a range of tenures, including affordable rent and shared ownership. There is a need for 1,730 new homes per year in Kirklees, of which 1,049 need to be affordable. This project will provide affordable housing that meets the needs of local people. There will be an expectation that the Council's partner will exceed the 20% Policy requirement for affordable housing.

There may also be opportunities during the construction phase for the local labour market and local suppliers.

3.2 Working with Partners

The disposal of the land at Fenay Lane for housing development provides an opportunity for Strategic Partners of Homes England to acquire land from Kirklees Council in order to support the Council in facilitating delivery of homes across the district.

Strategic Registered Provider Partners have pre-allocated financial resources, and the capacity, skills, expertise, creativity and procurement structures in place to enable them to acquire sites and build new quality market and affordable homes and places at scale and pace. They are

experienced in building and managing affordable housing, and will bring much needed resources to the Kirklees district, as part of the Council's wider programme of housing growth. They will also bring vital resources to the support the Council in housing delivery, at a time when resources are stretched and staff with expertise in the housing delivery and wider development field are difficult to secure.

3.3 Place Based Working

The Council's partner will carry out consultation in the local area in line with the requirements of the Local Planning Authority.

3.4 Climate Change and Air Quality

Energy efficient building methods, which support the delivery of low carbon housing, will be explored and incentivised through the evaluation process for selecting the Council's partner. Existing partnerships with Strategic Registered Providers have demonstrated their ability to plan for low carbon affordable housing schemes.

3.5 Improving outcomes for children

Well designed, energy efficient housing built to nationally described space standards, and with (where applicable to the site) provision of open space on site will help provide children with the best start in life.

3.6 Financial Implications for the people living or working in Kirklees

There are no financial impacts on wider residents of Kirklees arising from the process of considering the objections to the disposal of open space set out in this report.

3.7 Other (eg Integrated Impact Assessment (IIA)/Legal/Financial or Human Resources)

This report advises upon the process for disposing of open space and Cabinet's need to carefully consider the objections received before reaching a decision.

All statutory requirements have been complied with.

The implications of disposing of the Fenay Lane site via a competitive land sale exercise were set out in the previous Cabinet report of 14th November 2023 (link provided in paragraph 9 below). This includes the potential to dispose of the site at "less than best consideration" in order to bring forward energy efficient market and affordable housing, including affordable housing in excess of the planning policy requirement, to meet housing need across the district.

The Council has the statutory powers to dispose of the land and the disposal is in line with the Councils Disposal and Acquisition Policy 2017.

An Integrated Impact Assessment for the Fenay Lane site has been produced and this can be viewed here:

<https://www.kirklees.gov.uk/beta/delivering-services/integrated-impact-assessments/home/details/IIA-557036475/>

4 Consultation and Engagement

Ward members and the Portfolio Holder were advised in advance of the publication of the s123 Notices. Engagement with ward members will continue to take place if proposals for the site progress. For example, local ward members are informed when survey work takes place on sites, and at key points during the development process e.g. when planning applications are made or when there is a start on site. The Council's partner will be expected to carry out public and ward member consultation on the eventual proposals for the site in line with planning requirements.

Portfolio holders are informed of progress on the overall housing growth programme via their regular briefing sessions, and specific, strategic issues and decisions in relation to each site are taken to them for a decision in accordance with previous resolutions of Cabinet.

5 Next steps and timelines

If the objections to the s123 Notices are over-turned and the current approval to dispose is maintained, the proposed next steps in relation to Fenay Lane are as follows:

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| Soft Market Testing | Jan/Feb 2024 |
| Finalise land sale pack and supporting documents | Feb/early March 2024 |
| Land sale "Tender" period | Mid-March 2024 – early May 2024 |
| Period for clarifying interviews | Early May 2024 |
| Evaluation | May – early June 2024 |
| Appointment of Council's partner | June 2024 |

6 Officer recommendations

It is recommended that Cabinet notes the objections to the disposal that have been received and approves the disposal of this area of open space to enable the development of the site for much needed new housing to help meet housing need, in the knowledge that objectors and other residents in the locality will have a further opportunity to comment on the development proposals as part of the statutory planning process.

7 Cabinet Portfolio Holder's recommendations

Cllr Turner agrees with the recommendation above.

He would like to thank all those for taking part in the consultation.

As can be seen in the report most of the objections will be picked up and dealt with as part of any planning permission.

During the planning process there will also be the opportunity to object and comment on any submitted application.

We have a shortage of houses and sites that can be developed in a reasonable time scale, and this site will deliver much need homes, in hopefully a timely manner.

As a council owned site we will work with a partner to deliver a mixture of homes to help with our housing needs.

8 Contact officer

Debbie Bates
Housing Growth Manager
debbie.bates@kirklees.gov.uk

9 Background Papers and History of Decisions

Cabinet Report – Housing Delivery Plan. Approved 29th August 2018
<https://democracy.kirklees.gov.uk/documents/q5703/Public%20reports%20pack%2029th-Aug-2018%2016.00%20Cabinet.pdf?T=10>

Cabinet Report – Housing Delivery Plan Update. Approved 20th January 2020

<https://democracy.kirklees.gov.uk/documents/q6297/Public%20reports%20pack%2020th-Jan-2020%2010.00%20Cabinet.pdf?T=10>

Cabinet Report – Housing Delivery Plan Update. Approved 27th June 2023

<https://democracy.kirklees.gov.uk/documents/q7331/Public%20reports%20pack%2027th-Jun-2023%2014.00%20Cabinet.pdf?T=10>

Cabinet Report – Disposal of Fenay Lane, Almondbury. Approved 14th November 2023

<https://democracy.kirklees.gov.uk/documents/q7415/Public%20reports%20pack%2014th-Nov-2023%2015.00%20Cabinet.pdf?T=10>

10 Service Director responsible

Edward Highfield
Service Director: Skills & Regeneration
Edward.highfield@kirklees.gov.uk

Appendices:

Appendix 1 - Site Plan

Appendix 2 – s.123 Notice