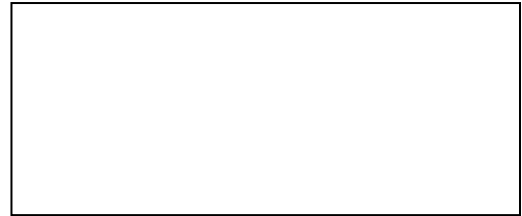


Calderdale MBC

Wards Affected Illingworth and Mixenden

Cabinet 28th March 2022



Site disposal for land known as Mixenden Road, Mixenden for the delivery of new affordable homes forming part of the Calderdale and Together Housing Investment Partnership (CTHIP).

Report of the Director, Regeneration and Strategy

1. Purpose of Report

- 1.1 The purpose of this report is to consider the disposal of the two areas of Council-owned land at Mixenden Road, Mixenden shown edged red on the plan at Appendix 1 (“the Red Land”) and shown coloured blue on the plan at Appendix 1 (“the Blue Land”). To stimulate the development of new affordable homes in Calderdale. References in this report to “the Council Land” are to the combined Red Land and Blue Land sites.
- 1.2 The Council Land sits next to a Together Housing-owned site and the Council Land and Together Housing site two combined will support a development of 29 homes, with 16 on the Council Land. It is intended that the two sites will be developed at the same time.

2. Need for a decision

- 2.1 Cabinet approval is required for the disposal of the Council Land to Together Housing Group for the provision of housing delivered through the Calderdale and Together Housing Investment Partnership (CTHIP) and where a wider view of best value is being proposed, in line with the agreed CTHIP process. Cabinet is asked to approve the disposal of the Council Land after consideration of the objections received to the open space notices.

3. Recommendations

It is recommended:

- 3.1 That Cabinet, if satisfied that it is appropriate to do so having considered objections to the Public Open Space Notice as set out in Part 9 of this report, approves the disposal of the Council Land less at less than best value to Together Housing Group and where a wider view of best value is being proposed, for the development of new affordable housing under CTHIP.
- 3.2 Cabinet approves the delegation of authority to the Director, Regeneration and Strategy, to negotiate the land disposal outlined in section 5, in consultation with the Head of Legal and Democratic Services.

4. Background

Mixenden Road, Mixenden – New affordable housing (Site Plan appendix 1)

- 4.1 Calderdale Council has a responsibility to enable the delivery of affordable housing to meet identified housing needs within the Borough.
- 4.2 The latest national Housing Delivery Test results were released in January 2022 which saw Calderdale remain in the 'presumption in favor' of sustainable development category. It did see a small improvement of 5% on last year's results but shows that Calderdale still has some way in reaching a point of sustainable housing growth that supports the needs of the Borough. This combined site comprising the Council Land and the adjoining land owned by Together Housing Group coming forward for new housing will contribute to a positive increase in the next Housing Delivery Test results.
- 4.3 Calderdale's Vision for 2024 is to be a distinctive place of enterprise and talent, kindness and resilience. The Calderdale and Together Housing Investment Partnership (CTHIP) helps to achieve this by improving existing and developing new homes that enable residents to live healthy lives, reducing carbon emissions through energy efficiency measures and contributing to the attractiveness of surrounding environments. CTHIP supports work around the Council's priorities (Reducing Inequalities, Developing Sustainable Towns, Responding to the Climate Emergency) through the development of new homes at this location. The new homes will be built to sustainable standard, this will result in cost effective homes to run and keep warm, ensuring those on low incomes are able to live affordably. The combined site is situated in close proximity to the Mixenden Hub site and will complement this initiative.
- 4.4 The Inclusive Recovery Plan for Calderdale, which was approved by Cabinet in March 2021, outlines the actions the Council and its partners will need to take to address the key challenges and opportunities facing Calderdale going forward and building back fairer. As part of this, one of the focuses is Sustainable Towns and Housing and new homes for affordable housing in a key contributor to this.
- 4.5 It also supports the Strategic Plan for North Halifax which was presented to Cabinet in January 2022. This report identified that all of Calderdale's communities had been impacted by the Covid-19 pandemic, but the impact has not been equal. The Council recognises that people's health, wealth, and wellbeing in North Halifax has been particularly negatively impacted by the pandemic. Developing new and affordable homes in North Halifax is part of the Council's response to working together to deliver transformational change and better outcomes for local people.
- 4.6 In March 2018 the Council and Together Housing Group entered into a contractual partnership known as the Calderdale and Together Housing Investment Partnership (CTHIP) to deliver up to 650 new homes over the next 5 years by utilising suitable land holdings from both partners.
- 4.7 The Council Land is within Council ownership and has been identified as a suitable site for housing delivery within CTHIP due to its sustainable location and topography. The adjoining Together Housing owned site was formerly the site of low-rise flats that have since been demolished.

- 4.8 The Council Land is approximately 0.427 hectares and is situated 3.1 miles from the amenities of Halifax town centre which can be accessed via the bus route which has a stop located on Mixenden Road.
- 4.9 Ash Green Community Primary School site is located 0.2 and 0.3 miles away. North Halifax Grammar School is approximately 2 miles away and Trinity Academy Halifax is approximately 2.1 miles away from the Council land.
- 4.10 Mixenden urban park is approximately 0.1 miles away from the Council Land and Clough Lane recreation ground is approximately 0.5 miles away.
- 4.11 The Council Land has been designated as a new housing site in the draft Local Plan (LP0242) and is currently designated as Greenfield.
- 4.12 Together Housing Group has carried out a desktop study to ascertain that the Council Land could potentially deliver 16 new homes for affordable rent. This figure is subject to the outcome of intrusive land surveys and feasibility studies.
- 4.13 Together Housing Group submitted its planning application for 29 new homes across the two sites (21/01327/FUL) in October 2021. Subject to the Cabinet approval, Together Housing Group is likely to start on site in June 2022 with a practical completion in July 2023.
- 4.14 The CTHIP agreement states that £5,000 per unit capital receipt will be received for Council owned sites; based on 16 homes the capital receipt for the Council Land would be £80,000. An independent valuation has been received providing an estimated capital receipt of circa £136,000 for the Council Land if sold on the open market. Based on this valuation there would be an undervalue in selling the Council Land to Together Housing Group compared to what could be potentially achieved by selling the Council Land on the open market; however, by developing the Council Land through the CTHIP it would be ensured that affordable housing would be delivered. It should also be noted that the abnormalities on the Council Land, such as the presence of a freshwater spring, have not been taken into account for the open market valuation of £136,000.
- 4.15 In recent years the Council has benefitted somewhat from New Homes Bonus. At the moment New Homes Bonus and Affordable Homes Premium are being reviewed by Government and therefore any future grant income cannot be guaranteed.
- 4.16 The formal 21-day Ward Member consultation was carried out in November 2019 for the Council Land and no Ward Member objections were received.
- 4.17 Green Spaces and Street Scene has confirmed that the Council Land is deemed to be amenity greenspace which is Open Space within the meaning of the Town and Country Planning Act 1990, Open Space notices advertising the Council's intention to dispose of the Council Land were published in the local paper on 27th January 2022 and 3rd February 2022 with the deadline for objections being 18th February 2022.
- 4.18 Following the necessary approvals it is proposed that the Council Land is disposed of to Together Housing Group for the delivery of affordable housing.

5. Options considered

5.1 The options for the Council Land are laid out below;

Option 1 – Do Nothing

The Council has a responsibility to identify and provide sites for new housing as part of CTHIP. CTHIP aims to deliver up to 650 new affordable homes across the Borough by 2024. The Council Land would provide land for the delivery of 16 new homes towards the target, and support the Council's obligations to CTHIP. Officers would continue to look for additional sites that may be suitable for housing delivery within the CTHIP but, it will continue to be a challenge to identify suitable sites. Based on the current sites in the delivery programme the Council is required to find a site/s to accommodate at least a further 81 homes (or 97 if Cabinet approval for the disposal of the Council Land is refused) in order to meet its obligations to CTHIP.

Option 2 – Dispose of the Council Land on the Open Market

The Council could obtain planning permission for residential use and then dispose of the Council Land on the open market. An independent valuation has been received and the Council could achieve a capital receipt of circa £136,000 if the Council Land was sold on the open market. It is likely that the Council Land would be developed for private housing for sale and not for social housing; however, the timing of any housing delivery and hence potential New Homes Bonus income would be less certain than under Option 3. It would also miss the opportunity of combining the Council Land with the Together Housing owned site and treating the two sites as one development which would benefit from a single construction contract and would be developed all at once. Should the Council Land be sold other than to Together Housing Group and the two sites be developed separately local residents would be impacted by two separate phases of construction. A private developer would build to the current building standards however the CTHIP has a strong focus on net zero and will be examining how this house can be net zero by 2038 as part of the project delivery and the ones staying in Together Housing's ownership will be kept to a high standard and in line with decarbonization.

Option 3 - Support the Proposal (**recommended option**)

Supporting the proposal to dispose of the Council Land to Together Housing Group will enable the delivery of new affordable homes to be brought forward within the CTHIP. Delivering the scheme will assist the Council in generating New Homes Bonus and Affordable New Homes Premium income per annum for a period of four years and a land receipt of £80,000 to the Council. The Council Land will be brought forward with the Together Housing owned site under one contract resulting in the delivery of a total of 29 new homes.

6. Financial implications

Mixenden Road, Mixenden

- 6.1 Approval is sought in the report to dispose of the Council Land to the Together Housing Group to stimulate new and affordable homes in the Borough. The proposal would support the Council's commitment to both affordable housing and sustainable growth.

- 6.2 The independent valuation received by the Council has valued the land at £136,000. In accordance with the Council's current agreement with Together Housing, disposal of the land to Together Housing Group would result in a capital receipt of £5,000 for each of the 16 plots on the site and a capital receipt in £80,000. In foregoing the additional capital receipt, the Council would effectively be promoting affordable housing at an estimated subsidy of £3,500 per unit.
- 6.3 The Overall Capital Monitor 2021/22 to 2023/24 reported to Cabinet on 14th February 2022 detailed the capital receipt of £2.117million required to contribute towards the Council's Capital Programme during the next 3 years. The capital receipt from the sale of the land would contribute towards the target for the period.
- 6.4 Based on the England 2021/22 Council Tax Average Band A, it is anticipated that completion of the scheme would generate additional Council tax income in the region of £20,000 per annum.
- 6.5 Although the development would contribute towards the Council's targets in relation to affordable housing, the extent to which it may impact on future New Homes Bonus and Affordable New Homes Premium funding is uncertain.

7. Legal Implications

The Registered Title of the Red Line Land

- 7.1 The Council is the registered proprietor of the freehold of the Red Land which is registered at the Land Registry under Title Number WYK814768 with the Title Absolute.

Unregistered Title of the Blue Land

- 7.2 The Blue Land is not registered at the Land Registry, but the Council is satisfied that the Blue Land was acquired by a statutory predecessor as part of a much larger area of land by a conveyance dated 30th May 1951. Whilst it is not known why the Blue Land was not subsequently registered at the Land Registry during the voluntary registration programme undertaken by the Council it is possible that this was because the Blue Land is a footpath that forms part of the highway maintainable at the public expense.
- 7.3 The Council is unable to confirm whether the freehold of the Blue Land is still owned by the Council as the large area of acquired in 1951 has subsequently been subject to the multiple sales of part. The Council is therefore proposing to transfer to Together Housing Group any interest that it might have in the Blue Land without providing any warranty of guarantee that it does retain any interest. Together Housing Group already owns land adjoining both sides of the Blue Land and it is therefore possible that it may be able to successfully apply to the Land Registry to be registered owner of the Blue Land based on the presumption of *ad medium filum viae*. The transfer by the Council of any interest it may still retain in the Blue Land should hopefully increase the chances of Together Housing being successful in any application to the registered as the owner when taken together with the presumption.

Acquisition & legal Holding Powers

- 7.4 The Council Land was acquired by the Council under Part 5 of the Housing Act 1936 for the provision of new housing. The Housing Act 1936 has been repealed by the Housing Act 1985. The Council Land is therefore now vested and held by the Council under the 1985 Act for the provision of housing accommodation.

Rights & Interests affecting the Land

- 7.5 According to the registered title the Red Land is subject to any matters that may have been imposed on it before 3rd March 2006 that are still subsisting and capable of being enforced. The registered title for the Red Land also refers to any matters that may affect the Red Land as a result of two indentures from 1840 the terms of which are unknown. The matters referred to in the registers of the title for the Red Land would equally apply to the Blue Land as it was acquired by the same conveyance as the Red Land in 1951.
- 7.6 The Red Land is also subject to rights of access and quasi-rights and easements together with a right relating to a sewer or drain (although the person who has the benefit of the sewer or drain can be required, at its own expense, to relocate the apparatus to facilitate the development on the Red Land).
- 7.7 The Blue Land currently forms part of the highway maintainable at the public expense and should it be required by Together Housing Group for use other than as highway it would need to be 'stopped-up' to remove its highway status. Stopping-up would require the consent of the local highway authority and also would need to be approved by either the Secretary of State for Transport under The Town and Country Planning Act 1990 (where the stopping-up was required to enable development to be carried out in accordance with a planning permission) or the magistrates court under the Highways Act 1980 (on the ground that it was no longer required for public use).
- 7.8 There are no express user covenants affecting the Council Land that prohibit the proposed use of the Council Land for residential development.
- 7.9 Together Housing has been provided with copies of the Council's title documents is aware of the preceding points and is satisfied that the Council Land can be used for its intended purpose of residential development.

Legal Powers of Disposal

- 7.10 As the Council Land is held under the provisions of the Housing Act 1985, any disposal must accord with that legislation.
- 7.11 Section 32 of the Housing Act 1985 states that the land acquired by a Council for the provision of housing accommodation cannot be sold without Secretary of State consent being obtained prior to the sale.
- 7.12 In 2013, the Ministry for Housing, Communities and Local Government issues a 'General Housing Consent' which permits local authorities to see land that was originally acquired under the former Housing Acts, providing that the land is 'vacant' (meaning without dwelling houses) (paragraph 3.2 of the General Housing Consent). The Council Land is 'vacant' within the meaning of the General Housing Consent.

- 7.13 It is considered that the 2013 General Housing Consent applied to the proposed disposal the Council Land.
- 7.14 The guidance notes to the General Housing Consent state that ‘Paragraph 3.2 permits local authorities to disposal of vacant land and assets that are not dwellings (e.g., garages, drying areas etc.), at any prime determined by the local authority’.

Legal Procedure to Dispose of the Land

- 7.15 Green Spaces and Street Scene has confirmed that the Council Land is deemed to be open space. Open space is defined in Section 336 (1) of the Town and Country Planning Act 1990 as ‘any land laid out as a public garden, or used for the purposes of the public recreation, or land which is a disused burial ground’.
- 7.16 Section 123(A) of The Town and Country Planning Act 1990 provide4s that a Council may not dispose of any land constituting or forming part of an ‘open space’ unless it advertises its intention to do so for two consecutive weeks in a newspaper circulating in the local area. Any objections can be considered by Cabinet in its decision making.
- 7.17 The Open Space Disposal Notices advertising the proposed sale of the Council Land were advertised by the Council in the Halifax Courier on 27th January 2022 and 3rd February 2022 respectively with the deadline for objections being 18th February 2022. The Council received 1 objection. Copies of the objections are available upon request – please see 12.1 for the officer’s contact details to obtain the objections – and the key points of the objections are summarised at 9.5 of this report. When considering the gravity of any such objection, Cabinet must consider all relevant factors, including but not limited to the public need within the immediate locality for the existing use of the land as open space balanced against the need for new housing provision in the area. The minutes of Cabinet’s resolution must accurately record how the objections have been considered and the weight attached to the same in the balance of the decision-making process.

8. Human Resources and Organisation Development Implications

- 8.1 There are no HR implications for staff.

9. Consultation

- 9.1 A 21-day Ward member consultation was undertaken for the site in November 2019, no objections were received.
- 9.2 Public Open Space notices were published in the local press 27th January 2022 and 3rd February 2022 with a deadline for objections 18th February 2022.
- 9.3 Together Housing Group circulated a leaflet to residents in the area. The leaflet included a site layout showing what Together Housing Group are hoping to achieve on site as well as information on who the chosen contractor is and types of homes planning to be built. Residents had an opportunity to respond before the planning application was submitted.

- 9.4 The ward-member consultation was based on the Local Plan calculation for 16 new homes on the site.
- 9.5 1 objection was received. Please see Appendix 3 for the objection and the Council's response.
- 9.6 The comments and objections received in response to the consultation are available upon request, please see 12.1 for the officer's contact details to obtain this information.
- 9.7 The broader picture on housing need in the area shows that there are 362 individual applicants on Keychoice that have registered their interest in properties in Mixenden area. Providing these new homes will go some way towards meeting this need.

10. Environmental, Health and Economic implications

- 10.1 The disposal of the Council Land would drive forward the Council's pledge to help make more high-quality homes available for local families which will be energy efficient leading to lower fuel bills for households.
- 10.2 The development proposals for the Council Land will be in line with current Planning Policy and Building Regulation standards.
- 10.3 A number of job and training opportunities would be created in the construction sector through the delivery of new homes on this site.
- 10.4 The delivery of new affordable housing fits strongly with the Council's priorities by Growing the Economy, Reducing Inequalities and Building a Sustainable Future.
- 10.5 The CTHIP Partnership are aware of the Council's goals to be carbon neutral by 2038 with significant progress by 2030. As this project develops, we will continually seek opportunities for further improving build standards to reduce carbon emissions based on the latest market information and any grants or incentives which this type of project may be able to attract.

Calderdale Vision 2024

- 10.5 The development of good quality, affordable housing across the Borough is fundamental in contributing to Calderdale's Vision 2024. Housing amongst other factors contributes to attracting, supporting, and retaining businesses within Calderdale positively impacting *growth and investment* - one of the 6 key objectives in achieving the vision.

11. Equality and Diversity

- 11.1 A full equality impact assessment (EIA) has been carried out for the whole Calderdale and Together Housing Investment Partnership (CTHIP). We will work with Together Housing to address any disparity identified and, through our influencing and partnership role, further community cohesion. The EIA is monitored and reviewed by CTHIP Board and relevant leads for Regeneration and Strategy.

12. Summary and recommendations

- 12.1 That Cabinet approves the disposal of the Council Land to Together Housing Group for the development of new affordable housing under CTHIP.

For further information on this report contact:

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The documents used in the preparation of this report are:

- Updated Review of Objectively Assessed Housing Needs in Calderdale Strategic Housing Market Assessment (2018)
- Housing Strategy Cabinet Report (2021)
- Calderdale Council Inclusive Recovery Plan (2021)

The documents are available for inspection at:

Princess Buildings, Princess Street, Halifax, HX1 1TS

Appendix 1 - Plan of land at Mixenden Road, Mixenden (0.427 hectares)



Appendix 2 – Location Plan of the combined site Mixenden Road, Woodbrook Road



Appendix 3 – Objection to the Public Open Space Notice

From: Paul Heptinstall

Sent: 21 February 2022 16:22

To:

Subject: Land at Mixenden Road

Sir,

I refer to your email below of the 10th February, and can confirm that the Council's responses are in red.

I can also confirm that the Council will be treating your e-mail of 10th February 2022 as a formal objection to the proposed disposal of open space land.

The last plan of sites to be published showed the area owned, by the council, to be a smaller area with no access from anywhere else but Mixenden Stones. Surrounded by the rest of the area outlined on the map. Area confirmed by the three ward councillors in 2018, after checks had been made. **Whilst plans of the disposal area may have been shared with residents in 2018 those plans have subsequently been superseded following discussions with Together Housing Association Limited ("the Developer") who will be undertaking the proposed development. The latest disposal plan is therefore the one that shows the disposal land edged red and coloured blue ("the Disposal Land").**

1. Reports of flytipping were to be directed to the land owner, together housing. The only piece in that area, not within the area currently in question was the area to the southwest of the two paths, shown in blue on the map supplied. This being the only area around those flats owned by the council. All utilities feed in from the Mixenden Road end in the area bounded by that path which is why it remains in council hands. **With respect to the presence of utilities that may be located within the Disposal Land (including the part shown coloured blue) the Developer will need to liaise with all utility companies when carrying out the proposed development.**
3. The path, marked in blue, which starts at Mixenden Road and finishing at the far end of what were the flats. At this point it joined with a second PROW going up to Mixenden Stones. Described in the together housing report on the site as "a rough dirt track". **The part of the Disposal Land that is shown coloured blue on the disposal plan is highway maintainable at the public expense. There is a private track but this is not recorded as a public right of way (PROW) nor is the Council aware of any claimed public rights of way over the private track.**
5. The PROW across the front has been acknowledged by this council, although they've failed to take any action with regards the blocking of it. And it has been impossible to report the dumping on the PROW by together housing. **If the path referred to here is the part of the Disposal Land that is shown coloured blue on the Disposal Plan then as mentioned above it is highway maintainable at the public expense.**

7. I don't believe you, nor the council, have the authority to extinguish either PROW, much less sell one. The Council is permitted to sell land that it owns that includes highway (including a PROW) but disposal will not affect the highway status which will remain until it is formally extinguished. The Council does not have authority to extinguish highway status nor would the grant of planning permission in itself extinguish highway status. Highway status can only be extinguished with the authorisation of the Magistrates or the Secretary of State depending upon which method of extinguishment was used.

If the proposed sale does go ahead can you supply the sale details. There are a number of people interested in keeping the area as it is. Myself being one of them.

Given that there have been buildings on the site, possibly the Chartists Assembly rooms and Mixenden Mechanics Institute Library, will a precondition of sale be that a proper archaeological dig before any construction work can be started be included? There is no proposal to make the undertaking of an archaeological survey a pre-condition of any disposal. The planning history of the site would be considered by the local planning authority when considering the planning application for development.

I understand that you have already submitted comments to the Council's Planning Department regarding the planning application for the proposed development but I can also confirm that it is still possible to make representations up until the decision is made – material planning considerations would be taken into account.

Thank you

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