

## **Economy and Growth Committee**

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<b>Date of Meeting:</b>	15 <sup>th</sup> November 2022
<b>Report Title:</b>	Proposed disposal of Public Open Space land off Talke Road, Alsager
<b>Report of:</b>	Jayne Traverse - Executive Director – Place
<b>Report Reference No:</b>	EG/10/22-23
<b>Ward(s) Affected:</b>	Alsager Ward

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### **1. Purpose of Report**

- 1.1** To inform members of the outcome of the notices advertising the intended disposal of Council owned land at Talke Road, Alsager, to allow members to consider the representations received and to determine whether or not to dispose of the land.
- 1.2** The Council’s Corporate plan 2021-25 sets out our vision for a more open and greener Cheshire East. The plan sets out priorities under three broad aims including “being an open and enabling organisation” and “a thriving sustainable place“, this report links to actions connected with the council being seen as fair open transparent organisation, by being seen to be responsive by residents with the consideration of their representations to the notices, delivering housing needs to meet the needs of all residents.

### **2. Executive Summary**

- 2.1** The Council, is the freehold owner of land which has been included within the adopted Local Plan as a housing and employment Site. Outline Planning permission has been granted on the site for housing, a local developer (adjoining landowner) has approached the Council to purchase the site.
- 2.2.** The Council is authorised to dispose of any land that it owns but where land can be regarded as open space (defined under s336 (1) of the Town and Country Planning Act 19890 as “any land laid out as public garden and used for the purposes of public recreation...” the Council must advertise its intention to dispose of the land for two consecutive weeks in a newspaper

circulating in the area in which the land is situated and consider any objections which may be made to them.

- 2.3** On the 16<sup>th</sup> September 2021, the Interim Executive Director Place made an officer decision to dispose of the land off Talke Road. The land is shown edged red on the attached plan at Appendix I. The detail of the Officer Decision Record dated 16th September 2021 is set out in Appendix II. This followed the inclusion of the land in the local plan.
- 2.4** The intention to dispose the land was advertised in the local press for two consecutive weeks in accordance with Section 123 of the Local Government Act 1972 (as amended by Section 118 of the Local Planning and Land Act 1980). Following the advertisement of the notices a substantial number of representations and objections were received.
- 2.5** The decision to dispose of the land is wholly conditional upon and subject to the outcome of this statutory process. All objections received must be duly and properly considered before a decision to sell can be processed. In considering representations made following the advertisement of the intended disposal, the Council is required to take them into account in reaching their decision to dispose. This involves the exercise of a discretion and will involve balancing the benefits off the disposal of the land against the any losses suffered by the members of the public that use the open space for recreational purposes as they will have their ability to use the open space land for these purposes taken away.
- 2.6** The Council can receive representations containing personal opinions and included some factors such as objections to increased traffic movement, infrastructure, and planning matters. These are taken to be references to the proposed development rather than to the actual loss of public open space and therefore are not factors which can be considered as part of the statutory process for the disposal of public open space. The concerns of residents as to any proposals for development of land is a matter for the Council in its capacity as a local planning authority and have to be considered as part of the planning process and are not issues for this process.
- 2.7** If the decision was to proceed with the disposal, the land that would be sold enabling the release of land associated with LPS 21 (Local Plan Site 21) as set out in the Local Plan and any proposals would still be subject to the planning process and any protections that are in place regarding the land, for example, the constraints imposed in the Local Plan and the normal planning process.

### **3. Recommendations**

- 3.1.** That having considered the responses received as a result of the public notices, that approval is given to proceed with the disposal of the land.
- 3.2.** That the Committee delegates power to the Head of Estates to negotiate and agree terms for the disposal of the land, and to instruct the Director of

Governance and Compliance to negotiate and enter into the legal agreements necessary to facilitate the disposal of the land.

#### **4. Reasons for Recommendations**

- 4.1.** The land in question has been allocated in the Local Plan; site LPS 21 (Local Plan Site 21) as a site for 550 houses, with the retention of approximately 3000 square meters of office space and incorporating green infrastructure and an appropriate level of amenity open space and children's play space. The aim of the local plan is to establish a housing supply in the borough. The element of LPS 21 to the north of the Crewe – Stoke railway is under construction with 70 houses already complete. The land in question is a former Railway and associated sheds, which was cleared in the 1960s.
- 4.2.** The open space in question to the south of the railway, along with land to its east is being considered in order to deliver a more comprehensive approach towards the development of the southern part of LPS 21 and enables additional housing to be delivered in a plan-led way. The narrative for Local Plan Site 21 sets out the planning considerations for the inclusion of this land within the wider site and dealing with the whole site in a comprehensive way.
- 4.3.** The land in question has obtained outline planning permission in the past which has now lapsed.
- 4.4.** Although the land is part of the allocation LPS 21, the Council has not made a decision to dispose of the land. The decision can only be made once all objections have been duly and properly considered and as such the decision to dispose is wholly conditional upon and subject to the outcome of this statutory process.
- 4.5.** Members of the public have been given the opportunity to respond to the advertised proposal to dispose of the public open space land off Talke Road, Alsager. All responses are attached at Appendix III. All personal information and any information by which any person making an objection could be identified have been redacted. All objections and representations received are attached for consideration by the decision makers.
- 4.6.** The committee are reminded that they need to consider the representations from the public on behalf of the Council acting in its capacity as a landowner as consideration of any planning issues are an entirely separate matter.
- 4.7.** The majority of representations relate to the loss of open space. Protections have been developed as part of the Local Plan for this site and these are set

out in the Plan. Mitigations are planned to allow access to the Council's retained land, for example the adjoining allotment.

## 5. Other Options Considered

5.1. The Committee must give due consideration to the objections and representations received as a result of the statutory process and to determine if the Council is to proceed with the proposed disposal of the said land or not. As such the Committee could:

5.2.

Option	Impact	Risk
Do nothing	<p>It would be unclear if the Council wished to dispose of the asset or not. Therefore, this would lead to uncertainty for residents.</p> <p>Having not taken a decision the Council would not be seen as being a transparent organisation.</p>	<p>The land would remain as POS and the options for delivering the Local Plan policy requirements for site LPS 21 would be less flexible. Full planning permission to satisfy the Local Plan requirements, would be unlikely to be fully achieved his would generate uncertainty about a site that is contained in the local plan.</p>
Decide not to dispose of the public open space land	<p>The land would be retained by the Council and the land would not be developed on.</p>	<p>The land would remain as POS and the options for delivering the Local Plan policy requirements for site LPS 21 would be limited. If the disposal is not approved, then the benefits outlined with paragraph 4.2 of this report will not be achieved.</p>

## 6. Background

6.1. Under its continuing commitment of good Asset management planning the Council seeks to make the best use of its land and property assets.

- 6.2.** The Council owns the freehold interest in the land at Talke Road, Alsager which is a brown field site, but is currently undeveloped and overgrown although it is used by the public as a public amenity space. Topographically, the site slopes gently upwards from the west and south to a mound in the northeast corner which is around 4 metres higher than the adjoining ground.
- 6.3.** The Council's land is located to the north of Talke Road, Alsager, close to Alsager town centre and comprises of up to circa 3.69 acres of land used as informal amenity space. Historical records indicate the site was formerly crossed by railway lines and sidings (1875-1976) with related features such as an engine shed, engine turntable, tank, and coal stage. The engine shed was closed, and the site cleared during the 1960s. Anecdotal evidence suggests demolition materials were used to infill former engine pits and turn table with excess spoil stockpiled in a large mound to the sites centre. Site investigations have confirmed that the contamination (such as of Heavy Metals, Polycyclic Aromatic Hydrocarbon contamination and Asbestos) on this site is in line with what would be expected for a site with this former use.
- 6.4.** The Council's land is accessed via an adopted highway off Talke Road, which also provides access to the adjoining allotments. Access is also provided to the rear of the dwellings facing Talke Road which is included within the site. The Council will reserve rights over the disposal area (for both pedestrians and vehicles) for access to the Council's retained land, if necessary, with a defined access route in keeping with the prospective purchaser's design. This will ensure access to the Allotments and the rear of dwellings facing Talke Road will be maintained.
- 6.5.** The Local Plan sets out a range of requirements for the allocated site to achieve an acceptable form of development. The site is designated in the Cheshire East Local Plan Strategy as 'Protected Area of Open Space Recreational Facility' and also forms part of the larger Site LPS 21 Twyford and Cardway, Alsager allocated as a housing and employment site with the provision of 550 new homes (total on both sites). Given the land is designated as Protected Area of Open Space Recreation Facility then any proposals which involve the development for an alternative use of any of those areas of open space or recreational facilities identified on the proposals map or those areas for facilities which may subsequently be created, will only be permitted where all of the Policy criteria is satisfied. Following public examination, the Local Plan was adopted in 2017. Prior to its adoption the local plan underwent thirteen rounds of public consultation to allow the opportunity for comment upon the proposals and was considered by the Planning Inspectorate in examination hearings.
- 6.6.** The Council has been approached by a local housing developer seeking to acquire the Council's land (outlined in red on the attached plan) for a residential development. The developer has recently acquired the adjacent

site and have therefore approached the Council to acquire the Council's land to deliver a comprehensive and cohesive development as a special purchaser.

- 6.7.** Outline planning permission (15/2101C) was granted for this site (with land to the east of it) in July 2017, during which time the public had the opportunity to comment upon the proposals.
- 6.8.** The Council's statutory duties including its position as the Local Planning and Highways Authority are entirely separate to its duties as landowner relating to the disposal. The committee are reminded that they need to consider the representations from the public on behalf of the Council acting in its capacity as a landowner as consideration of any planning issues are an entirely separate matter.
- 6.9.** The principal of disposal of land was approved by the Cabinet on 12 July 2016 within the Land and Property Lease Disposal Framework 2016 appended to the Asset Transfer Framework.
- 6.10.** The Council is authorised to dispose of any land that it owns but where land can be regarded as open space (defined under s336 (1) of the Town and Country Planning Act 1990 as "any land laid out as public garden and used for the purposes of public recreation..." the Council must advertise its intention to dispose of the land for two consecutive weeks in a newspaper circulating in the area in which the land is situated and consider any objections which may be made to them.
- 6.11.** Public notices were placed in the local press on 6<sup>th</sup> December and 19<sup>th</sup> December 2021, with a consultation period running until 31 December 2021. This allowed all interested parties to comment on or raise any objections/representations to the proposed disposal and the Council must consider the responses in accordance with the statutory process as set out in that legislation.
- 6.12.** In addition to this statutory requirement, the Council also made the information available at Alsager Library and on the Council's web site.
- 6.13.** If representations are made to the Council in response to notices of this type, it is necessary for the Council to consider these representations and to take them into account in deciding whether to proceed with the disposal of the land. It should be stressed that the consideration in this report is whether the proposed disposal of the land should proceed, and the representations need to be considered in that context.
- 6.14.** The Council received 84 representations and a copy of the redacted letters can be found in Appendix IIII. All personal information and any information

by which any person making an objection could be identified have been redacted due to General Data Protection Regulations. These have been collated and summarised in respect grounds for objection and representations in Appendix III.

- 6.15.** The majority of responses (circa 60%) are considered to be objections relating to the loss of public open space which indicated that a disposal would restrict their enjoyment / use of the land. The main points raised in the objections to the proposed disposal of land are set out below:
1. The land contributes to social well-being.
  2. The subject land is used for recreation purposes.
  3. The subject land is used regularly for dog walking.
  4. The disposal of this land would result in a loss of wildlife habitat.
- 6.16.** The remaining representations contained personal opinions and included some factors such as objections to increased traffic movement, infrastructure, and planning matters. These are taken to be references to the proposed development rather than to the actual loss of public open space and therefore are not factors which can be considered as part of the statutory process for the disposal of public open space. The concerns of residents as to any proposals for development of land is a matter for the Council in its capacity as a local planning authority and have to be considered as part of the planning process and are not issues for this process.
- 6.17.** It is now necessary for Committee to formally consider the responses and to decide whether the proposed actions within this report should be authorised.

## **7. Consultation and Engagement**

- 7.1 As part of obtaining approval for the Officer Decision Record Local Ward Members were notified that formal approval was being sought. This is consistent and in line with the Councils Constitution and Ward Member protocol. There is no requirement to notify any other bodies.
- 7.2 This is a statutory process and follows a set procedure. Under the Local Government act 1972 (as amended by the Local Government Planning and Land Act 1980) notices were advertised in a local newspaper circulating in the area for two consecutive weeks and allowed for a period in which representations to be submitted. This process was followed and was valid.

## **8. Implications**

### **8.1 Legal**

- 8.1.1 The Council may not dispose of any land which is public open space unless it has advertised the proposed disposal in accordance with Section 123 of the Local Government Act 1972 (as amended by Section 118 of the Local Planning

and Land Act 1980) and has considered all objections and representations received in response to such advertisements.

8.1.2 In considering representations made following the advertisement of the intended disposal, the Council is required to take them into account in reaching their decision to dispose. This involves the exercise of a discretion of a duty to act reasonably in a “Wednesbury” sense. In practise this will involve balancing the benefits off the disposal of the land against the any losses suffered by the members of the public that use the open space for recreational purposes as they will have their ability to use the open space land for these purposes taken away

8.1.3 If the decision is made to dispose of the land, then:-

8.1.3.1 In accordance with section 123 of the Local Government Act 1972, the Council is under an obligation to obtain the best consideration reasonably obtainable upon the disposal of its property.

8.1.3.2 There will be a requirement to review terms of sale when they are prepared to ensure any issues regarding best value, procurement, and/or subsidy control are resolved. Terms of sale will also need to reflect any easements and rights for both the land to be disposed of and that retained by the Council. Issues may include rights to light/air, open space and restrictions on building use or development.

8.1.4 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers; however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.

8.1.5 The Council has a fiduciary duty at all times to the taxpayers and must fulfil this duty in a way that is accountable to local people.

## **8.2 Finance**

8.2.1 There are no direct financial implications in considering the responses received to a public notice dealing with the disposal of land.

8.2.2 The sale of land would generate a capital receipt for the Council and reduce a maintenance liability.

8.2.3 The sale of this land would have minimal impact on the maintenance budget. The liability for maintenance would cease and be the responsibility of the new landowner.

8.2.4 Further financial information is included within a report annexed (Appendix V) to this report as it contains exempt information pursuant to schedule 12A of the Local Government Act 1972 and therefore it is withheld from public inspection.

## **8.3 Policy**

8.3.1 If approved, the disposal would, subject to any further planning applications, enable a more comprehensive approach to be taken towards the development of the southern part of LPS 21 and enable additional housing to take place in a plan-led way. LPS21 sets out the Local Plan policy requirements to achieve a development.

8.3.2 The Council has a duty to maintain public open space and to consider objections made to its proposed disposal. Consequently, it must carefully consider all objections and the impact of loss of public open space before taking a decision as to whether that land should or should not be disposed of. The Council has followed the statutory process under Section 123 of the Local Government Act 1972 (as amended by the Local Government Planning and Land Act 1980).

#### **8.4 Equality**

8.4.1 The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the Equality Act 2010.
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

8.4.2 Following a consultation exercise, to ascertain the views of residents impacted by the potential loss of open space, there were responses around the deleterious effects on the health and wellbeing of our residents. All comments on health can be mitigated through the alternative open spaces nearby.

8.4.3 It is considered that there are no communities falling under the list of "protected characteristics" that would be significantly or unduly harmed by the proposals.

#### **8.5 Human Resources**

8.5.1 There are no direct implications for human resources in considering the responses received to a public notice dealing with the disposal.

#### **8.6 Risk Management**

8.6.1 Any such disposal would be conditional upon receipt of planning consent for a residential development. If planning permission is not granted for any reason the disposal will not proceed.

8.6.2 The Council's statutory duties including its position as the Local Planning are entirely separate to its duties as landowner relating to the disposal. The consideration of any planning application would be entirely separate from the Council acting in its capacity as a landowner.

## **8.7 Rural Communities**

8.7.1 There are no direct implications for rural communities.

## **8.8 Children and Young People/Cared for Children**

8.8.1 If approved the disposal would provide an opportunity through the planning process to increase the overall amount of public open space to benefit all residents of Alsager.

## **8.9 Public Health**

8.9.1 Green spaces have a strong positive impact on both mental and physical health and wellbeing, contribute to the maintenance of biodiversity, and to mitigating the impact of climate change. While recognising that the Council must manage often competing priorities – financial, environmental, social - in terms of public health it is likely that disposal of this site and conversion of use to housing would have a detrimental impact on the wellbeing of at least some of the regular visitors to the site in the immediate term and result in a potential loss of biodiversity in an otherwise already urbanised area. The longer-term scale of these impacts on individual, community and environmental wellbeing would depend on the exact design of plans for the site following disposal.

## **8.10 Climate Change**

8.10.1 The ownership of the land does not significantly impact the Council's carbon neutrality target for operational carbon by 2025, although disposal of the land will lead to a marginal decrease in emissions through grounds maintenance.

8.10.2 The land is not deemed suitable for carbon insetting through sequestration by the Council through either tree-planting or peat restoration, as it is allocated for housing and not peatland.

8.10.3 The disposal of the land will have an impact on our borough-wide net-zero target by 2045 through increased emissions from housing and land use changes, however these are likely to be marginal given that the site is not a significant carbon sink, and the new development is modest and has been subjected to carbon requirements through planning and building control.

8.10.4 Overall the proposal is not deemed to have a significant impact on carbon and climate change.

**Access to Information**

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Appendices:	Appendix I – Disposal Plan Appendix II – Signed ODR – redacted. Appendix III – Summary of Objections. Appendix IIII - A copy of the redacted letters. Appendix V – Financial Information = Exempt Not for Publication
Background Papers:	None