

Report to Cabinet

16 November 2022

Subject:	Brandhall – Options, referral of decision back to Cabinet following consideration by Budget and Corporate Management Scrutiny Board.
Cabinet Member:	Councillor Hughes - Cabinet Member for Regeneration & Growth
Director:	Tony McGovern, Director Regeneration & Growth
Key Decision:	Yes
Contact Officer:	<p>Tammy Stokes tammy_stokes@sandwell.gov.uk</p> <p>Sue Moore sue_moore@sandwell.gov.uk</p>

1 Recommendations

- 1.1 That, the Cabinet considers its response in respect of the recommendations from the Budget and Corporate Scrutiny Management Board on 8 August 2022 and determine the following options:
- (a) Accept the recommendations as determined by the Scrutiny Board;
 - (b) Amend specific parts of the recommendations and approve a revised recommendation;
 - (c) Take no further action and implement the Cabinet decision as determined on 20 July 2022.



2 Reasons for Recommendations

- 2.1 In accordance with the Council's Scrutiny Procedure Rules, the Budget and Corporate Management Scrutiny Board at their meeting on the 8th August 2022, referenced the decision in relation to the Brandhall - Options back to Cabinet for reconsideration. Cabinet are required to consider amending the original decision or not, before adopting a final decision.
- 2.2 On Monday, 25 July 2022, the Council received a 'call-in' notification from Councillor Fenton, Chair of the Safer Neighbourhoods and Active Communities Scrutiny Board.
- 2.3 The Budget and Corporate Management Scrutiny Board met on 8th August 2022 and considered the 'call-in' notice as submitted by Councillor Fenton. A number of stakeholders were invited to attend including the relevant Cabinet Members and the Friends of Brandhall Greenspaces Action Group. A Response to Call-In Report was prepared for the Scrutiny Board and this is appended at Appendix A to this report.
- 2.4 Following consideration of the above report, questions from Scrutiny Members being asked of the Cabinet Member for Regeneration and Growth and technical officers, and debate the Scrutiny Board voted unanimously and resolved to recommend the following to Cabinet:

The Budget and Corporate Management Scrutiny Board recognises a number of conflicting issues in relation to the Brandhall site, however, does not believe that these are insurmountable. The Board, has however, determined that the decision of Cabinet be referred back for reconsideration. The Board concluded that the information utilised by Cabinet in reaching its decision may have been incomplete in that:

1. The Strategic Housing Land Availability Assessment (SHLAA) for the site was omitted from the report; and Cabinet may wish to satisfy itself that the correct process and methodology was followed in relation to the comparable assessment of the site;
2. There is insufficient information contained in the report to confirm that alternative site options for the delivery of a new school have been fully explored, for example Cakemore playing fields does not appear to have been considered;





3. There is insufficient explanation given with regard to how the public consultation results, particularly with regard to residents' views, have been evaluated and weighted in reaching the decision.

In addition to the findings and recommendations of the Board, Cabinet are requested to note that a report on the financial analysis for the site will be considered at a future meeting of the Budget and Corporate Management Scrutiny Board.



On 17 August 2022, the Cabinet met to consider the recommendations of the Scrutiny Board (see Minute No. 175/22). The Cabinet Member for Regeneration and Growth commented that the differences of view and opinion were not deemed insurmountable and requested that a further meeting of Cabinet be convened in order for:-

- Cabinet to be afforded the opportunity to comprehensively put forward its rationale in reaching the decision, in terms of the information available to Cabinet and clarification of any procedural aspects;
- Officers to be able to prepare a further report providing clarification on the information presented to Cabinet on 20 July 2022 as part of its decision-making process.

3 How does this deliver objectives of the Corporate Plan?

	<p>Strong resilient communities</p> <p>Objective B9 within the Corporate Plan (2021 – 2025) is: We will provide enough good school places that offer families choice and confidence that their children can experience high quality education and achieve good outcomes.</p> <p>Whilst the provision of a new school on Brandhall will not increase pupil places it will create a high quality educational facility that will support high quality education and better outcomes for children.</p>
	<p>Quality homes in thriving neighbourhoods</p> <p>Objective H1 within the Corporate Plan (2021-2025) is: We will deliver much needed new homes across the borough, especially affordable homes, on our own land</p>



	and other viable sites in order to help meet the demand for affordable housing in our communities Options 3 and 4 would deliver new housing including a minimum 25% affordable.
	A strong and inclusive economy
	A connected and accessible Sandwell

4 Context and Key Issues

4.1 Background

4.2 As set out in Section 2 above, Budget and Corporate Management Scrutiny Board has recommended that Cabinet reconsider its decision made on 20th July 2022. The Board concluded that the information utilised by Cabinet in reaching its decision may have been incomplete in that;

1. The SHLAA for the site was omitted from the report and Cabinet may wish to satisfy itself that the correct process and methodology was followed in relation to the comparable assessment of the site;
2. There is insufficient information contained in the report to confirm that alternative site options for the delivery of a new school have been fully explored, for example Cakemore playing fields does not appear to have been considered;
3. There is insufficient explanation given with regard to how the public consultation results, particularly with regard to residents' views. have been evaluated and weighted in reaching the decision.

4.3 This report considers each of the three points above in turn.



Issue 1: The SHLAA for the site was omitted from the report and Cabinet may wish to satisfy itself that the correct process and methodology was followed in relation to the comparable assessment of the site

4.4 The Strategic Housing Land Availability Assessment (SHLAA) was not included with the report of 20th July 2022 as it was not considered material to the decision before Cabinet. There are two reasons for this. These are discussed in detail below; but, in short, they are that:

- 1) The preparation of the SHLAA is one of the many processes carried out by the Council, in performing its statutory role as Local Planning Authority. The SHLAA's sole purpose is to provide evidence to support the preparation of the statutory Local Plan. It is not, in itself, part of the Local Plan, and it is not taken into account when considering applications for planning permission.
- 2) When taking the decision on 20th July 2022, the Cabinet was acting, on behalf of the Council, as land owner. It should be stressed that the decision:
 - is not an exercise of any statutory function of the Local Planning Authority;
 - does not constitute a Planning Consent;
 - does not result in the site being allocated in the statutory Local Plan.

4.5 The SHLAA is a broad overview of the sites, and broad locations within the borough, which have the *potential* to be developed for new housing. This is in order to provide a complete audit of available land, in accordance with paragraph 010 of the National Planning Policy Guidance (NPPG). The sites and broad locations are assessed to determine if they are suitable, available and achievable.

4.6 The result is a document that identifies the future supply of land for housing development including whether a 5-year supply is available or not. It is an important source of evidence to inform plan-making. The



document lists all of the sites that are considered suitable, available and achievable and along with those sites that are no longer considered suitable or available. The document lists:

- all sites that are considered suitable, available and achievable;
- all sites that are no longer suitable or available.

4.7 The SHLAA document contains a single line entry relating to the former golf course. The information included in the appendices to the July Cabinet report constitutes a significantly more detailed assessment of the site than that which underpins the inclusion of sites in the SHLAA. The current SHLAA is included in full at Appendix B.

4.8 The National Planning Policy Framework (the NPPF) states in Section 68 that *“Strategic policy-making authorities should have a clear understanding of the land available in their area through the preparation of a strategic housing land availability assessment. From this, planning policies should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability.”*

4.9 The NPPF therefore sees the role of the SHLAA as a technical document which:

- provides an indication of the future supply of land that is suitable, available and achievable for housing;
- provides an indication of the housing capacity of those sites at local authority level;
- is an exercise to determine the quantity and suitability of land potentially available for housing development;
- is not a site allocations exercise;
- has the purpose of providing a robust indication of aggregate housing capacity at local authority level.

4.10 This is set out in NPPG para 001 which states *“the assessment does not in itself determine whether a site should be allocated for development. It is the role of the assessment to provide information on the range of sites which are available to meet the local authority’s (or, where relevant, elected Mayor or combined authority) requirements, but it is for the*



development plan itself to determine which of those sites are the most suitable to meet those requirements”.

- 4.11 The SHLAA is used to inform the development of planning policies which should identify a sufficient supply and mix of sites, taking into account their availability, suitability and likely economic viability. The SHLAA itself is not adopted planning policy of the Council. Also, the presence of a site in the SHLAA neither infers that it will be allocated in the Local Plan, nor that it would receive planning permission. It is however, a key piece of evidence that supports the preparation of the Local Plan.
- 4.12 The NPPF does not set out a standard methodology to be used before sites are added to the SHLAA. However, guidance is provided via the Government’s website:

<https://www.gov.uk/guidance/housing-and-economic-land-availability-assessment#what-is-the-purpose-of-the-assessment-of-land-availability>.

- 4.13 The SHLAA is also not a process for comparing sites against each other. It is a qualitative assessment to identify all sites and broad locations, regardless of the identified housing need – this is in order to provide a complete audit of available land (NPPG para 010). There is no scoring or ranking involved. All sites are considered against the SHLAA criteria, independently of each other, in order to determine if a site is included or not. To be included in the SHLAA a site must be considered ‘Suitable’, ‘Available’ and ‘Achievable’.
- 4.14 The NPPG states that assessments of sites should be proportionate, and, where possible, build on existing information (para 004). It continues to advise that SHLAAs should:
- identify sites and broad locations with potential for development;
 - assess their development potential;
 - assess their suitability for development and likelihood of development coming forward (i.e. availability and achievability - para 001).

It stresses that when carrying out a desktop review, local authorities need to be proactive in identifying as wide a range of sites and broad locations



for development as possible. It continues that an important part of the desktop review is to identify sites and their constraints, rather than simply to rule out sites outright which are known to have constraints. When considering the types of sites that should be reviewed, para 011 lists potential sources including land in the local authority's ownership; and other public-sector land that is surplus, or likely to become surplus.

- 4.15 In Sandwell, the basis for the assessments is a checklist of factors that influence whether or not a site meets the three SHLAA criteria of being suitable, available and achievable. However, the checklist itself is not a requirement of national policy or guidance. Assessments for sites that have a capacity of less than 10 homes (para 4.11 SHLAA methodology) have not been undertaken, as they are out of scope of the methodology.
- 4.16 Furthermore, sites in existing development plans, or with planning permission, have not had an assessment as they can generally be considered suitable and available for housing. The reason for this is that the principle for residential development has already been established and approved by a Planning Inspector or the Local Planning Authority (NPPG para 018).
- 4.17 Where information is available that demonstrates a change in circumstances in those allocated sites, this will be reflected in the SHLAA. This was the case with a significant number of occupied employment sites allocated for housing in the Site Allocations & Delivery Plan (the SAD). Through evidence gathering for the Black Country Plan (BCP), letters were sent to these landowners to understand their future aspirations for their site. Where the landowner advised that they no longer wanted their site to be a housing development, and/or that they had invested in the site for other uses (i.e. employment), these sites were then considered to be no longer suitable/developable, as the landowner is no longer a 'willing landowner'. These sites, therefore, were removed from the current housing land supply, and were placed in the no longer suitable/developable table in the SHLAA (NPPF Annex 2 Glossary).
- 4.18 Should Cabinet decide that the Brandhall site should not include any form of housing development, then this would mean that there would no longer



be a 'willing landowner'; and, therefore, it would not be suitable, available and achievable for housing any longer. This would be reflected in the SHLAA by removing it from the current housing supply table and placing it in the no longer suitable/developable table, as per the above mentioned occupied employment sites.

4.19 The SHLAA is updated on an annual basis to reflect any changes, such as:

- whether construction has started on site,
- to remove sites where construction has completed or planning permission has expired,
- where it is considered that there is no reasonable prospect of an application coming forward for the use allocated in the plan.

It also advises on timelines for when development is estimated to begin and finish, and this is fed into the SHLAA trajectory.

4.20 As per the NPPG, para 004, the assessment can be based on, or build on, existing information sources. In order to understand whether the Brandhall site met the SHLAA suitability, availability and achievability criteria, existing information gathered was used to inform the 27th May 2020 report to Cabinet, as this largely covered the matters in the checklist, with any remaining issues being addressed through an informal desk-top assessment.

4.21 A summary using the checklist provides the following:

Suitability:

The Site:

- Will re-use land that is a mix of greenfield/previously developed land (pdl) with <50% pdl
- Is accessible – within 800m to a Local Centre; 2000m to a District Centre; 5000m to a Town Centre/within 2000m of a super store, 600m of a primary school and 1000m of a GP surgery/within one of the following 600m of a bus showcase route, or 800m of a railway



station, 400m of a metro stop, proposed metro stop/ located 30 minutes public transport from hospital, secondary school, areas of employment, major retail centre, leisure centre

- Location is partially covered by a SLINC* but mitigation is possible
- Access already exists
- Is unaffected by infrastructural limitations
- Is affected by ground conditions - but not to a significant extent
- Includes a small area in Flood Zone 3 – but this does not affect development potential
- Is not affected by hazardous risk or contamination pollution issue
- Is affected by road noise/unneighbourly uses/power lines to a lesser extent.

When all of the above is taken into account the site is considered “*suitable*” for housing development.

Availability:

The Site:

- Is not considered to have insurmountable constraints
- Is controlled by a public authority
- Site could be available within the next 5 years
- Only has one owner
- Is constrained by a legal matter but this is capable of resolution
- Has been subject to an internal consultation

When all of the above is taken into account the site is considered “**available**” for housing development

Achievability:

The Site:

- Uses adjacent to the site are likely to have a marked positive affect on the marketability of the site
- The economic viability of the existing use of the site makes developing of the site for housing a desirable option



- Allows no clear judgement to be made regarding the economic viability of alternative use, compared to re-use for housing
- In terms of attractiveness of site location has a marked positive effect on developing and marketing of the site for housing
- Market demand is strong, in this location, for the proposed type of housing development
- Preparation costs are judged to be average/expected
- Has Funding or investment available to address an identified constraint to development
- Has no information available on the phasing of development
- Development is unlikely to be constrained or delayed by the number of developers on site
- Will have the necessary infrastructure in place to permit development of the site

When all of the above is taken into account the development of the site for housing is considered to be “**achievable**”.

* Site of Local Importance for Nature Conservation. The entry on SHLAA was based on the SLINC status in 2020 i.e. prior to the Ecological Assessment that recommended the larger SLINC that was covered by the 20th July report to Cabinet.

4.23 The site, having been assessed as being suitable, available and achievable, the next step in the methodology is to identify the development potential of the site. This information, together with all the other sites identified as suitable, available, achievable, is then used to produce an indicative trajectory. This sets out how much housing can be provided and to what timescale i.e. within years 1-5 (as part of the 5-year supply); years 6-10; and 11 years and beyond.

4.24 During Autumn 2020, a Black Country SHLAA stakeholder workshop was held with around 50 attendees from the development industry. Attendees were invited to join a Black County SHLAA Stakeholder Panel which included house builders, consultants, WMCA, Homes England and Black Country Consortium Ltd. A meeting of the Panel took place on 24 February 2021, to discuss and provide comments on the draft 2020 SHLAA reports/tables of sites; and to feed into the final published reports. No suggested amendments were received.



- 4.25 The NPPG advises that where the conclusions of the trajectory are that the identified sites are insufficient to meet the local need, then authorities will need to revisit their assessment to ensure that the development potential of particular sites make the most efficient use of land.
- 4.26 The SHLAA must be publicly available and can be used to demonstrate whether there is a 5-year housing land supply when preparing Local plans; and in planning decision taking.
- 4.27 The presence of the former golf course at Brandhall on the list of sites in Sandwell's SHLAA merely provides an indication that, in broad strategic terms, the site is suitable for residential development. Also, when considering the known planning constraints (as at Summer 2020) it has a notional capacity of 560 units, again based on those same constraints. As stated previously, however, the SHLAA is not part of the Local Plan, nor does it have any status as a planning policy document. It follows that the site's inclusion in the SHLAA does not constitute a Local Plan allocation, nor does it have any bearing when considering the planning merits of the site when determining whether planning permission should be granted.
- 4.28 Once it had been established that the site is suitable for residential development, its inclusion in the SHLAA provides an evidential basis for the site to be considered for allocation in a future Local Plan review. It was also included in the draft Black Country Plan (BCP), that was consulted on in 2021.
- 4.29 Since Cabinet considered the Brandhall site at its meeting on 20th July 2022, the Association of Black Country Authorities has decided not to proceed with the BCP; and that the four local authorities will now prepare individual Local Plans instead.
- 4.30 It should be noted, however, that the draft and un-adopted status of the BCP, at that time, means that it would not have carried any weight in any consideration of the Brandhall site through a planning application. It was not a matter therefore, that Cabinet had to take into account when reaching its decision.



- 4.31 In fact, whatever decision Cabinet takes on how to proceed, ultimately, will have to be taken into consideration in the forthcoming preparation of Sandwell's new Local Plan. It will also be reflected in subsequent updates of the SHLAA - either by listing the site in the current housing supply (if housing development is still proposed); or by stating the site is no longer suitable/developable for housing (if housing development is not proposed).
- 4.32 At a special meeting of the Budget and Corporate Scrutiny Management Board held on 8th August 2022, a representative of the Brandhall Green Space Action Group (BGSAG) made reference to a published site assessment for a site at Water Lane, West Bromwich. The representative claimed that this assessment template, when applied to Brandhall, would include several 'red' RAG ratings - the inference being that an assessment of the Brandhall site, carried out in this form, would result in the site not being included in the SHLAA.
- 4.33 The assessment that the BGSAG representative referred to, however, is a BCP site assessment proforma. The BCP site assessment process existed to help inform the preparation of the Plan. That process was completely separate to the SHLAA, and was also independent of it. The BCP site assessment process was applied only to those sites submitted through the 'Call for Sites', which included:
- those that were not already allocated in existing Plans;
 - those not included in existing SHLAAs;
 - all of the Green Belt parcels that the Green Belt Review considered had the potential for release (noting that the Brandhall site is not part of the Green Belt).

This is in accordance with the BCP Site Selection Methodology, para 2.4:
<https://blackcountryplan.dudley.gov.uk/t2/p4/t2p4l/>

- 4.34 To put this into context, the draft BCP included 46 sites in Sandwell, of which, only 5 were taken through the site assessment process. The remainder are existing allocations or sites that have been added to the SHLAA since the current Site Allocations & Delivery Plan was adopted in 2012. Across the Black Country as a whole, 280 sites were included in the



draft BCP of which, only 73 were taken through the site assessment process. Of the 280 total, there were 35 new sites (including the Brandhall site) proposed for allocation, as a result of their inclusion in the respective Local Authority SHLAAs; and which were not subject to a BCP site assessment.

- 4.34 As the former golf course site was already included on Sandwell's SHLAA list, it was not taken through the BCP site assessment process, prior to the 2021 Draft Plan consultation. This was consistent with the approach taken by all four Black Country authorities and the BCP Site Assessment Methodology. If such an assessment had been done, however, it would have been based on much of the same information available to Cabinet when reaching its decision on 20th July 2022. It is considered that this would **not** have resulted in the site being RAG rated as 'red', thus leading to a recommendation that the site be taken forward for proposed allocation in the BCP. The more recent survey information, in particular that relating to ecology, would have required a partial review of that assessment, but it is considered that this would not have changed the result, materially.
- 4.35 In summary, the SHLAA is a technical document intended to provide no more than a broad indication of a site's potential for development. It is worth repeating that the SHLAA is not part of the process for determining planning applications; and (beyond its role as evidence to support the preparation of the Local Plan) nor is it part of any other planning decision making process. Furthermore, there is no requirement for any landowner (including the Council when acting in this capacity) to have regard to the SHLAA when coming to a decision whether or not to seek planning permission to develop the site. The Cabinet was acting in its capacity as landowner, on behalf of the Council, when coming to its decision at the meeting on 20th July 2022.
- 4.36 That decision was not a planning consent, nor did it allocate the site for housing in the Local Plan. This could only occur through the Council's formal and statutory discharge of its functions as Local Planning Authority, which is laid down in legislation, and in supporting regulations and guidance. The SHLAA is part of the process for discharging these functions, but as stated previously, the site's inclusion in the SHLAA does



not in itself infer that it would be allocated for housing, or that a planning consent would be granted.

- 4.37 Furthermore, the information provided to Cabinet on 20th July was both broader in scope, and greater in depth than that which informs the SHLAA. As such, Cabinet was recommended to consider the approach to the site based on more robust, and more recent, evidence than that which underpins the SHLAA.
- 4.38 For the reasons set out in paragraphs 4.29 to 4.31, the SHLAA is not considered to be material to the decision that Cabinet reached on 20th July 2022.
- 4.39 The SHLAA is updated annually in order to ensure that it is based on the most up-to-date information. The next annual update will reflect whatever decision Cabinet makes in relation to the future of the former Brandhall Golf Course site.
- 4.40 Any future planning application for the site that is submitted (as a result of the Cabinet's decision) will be independently considered by Planning Committee. It will be judged against the planning merits of the application, which will include the provisions of the adopted Local Plan at the time of the application. Until such time as a new Local Plan is adopted, this remains a combination of the Black Country Core Strategy (2011) and Sandwell Site Allocations & Delivery DPD (2012), neither of which include the Brandhall site as a residential allocation.
- 4.41 Issue 2: There is insufficient information contained in the report to confirm that alternative site options for the delivery of a new school have been fully explored, for example Cakemore playing fields does not appear to have been considered.**
- 4.42 Cakemore Playing Fields is located off Grafton Road, to the north of the Brandhall Site. It is approximately 5.87 hectare in area.
- 4.43 The Playing Fields are not designated in the Local Plan as Community Open Space, but the site is used for football (including changing



facilities), and other sports, and is managed by the Council's Parks service. The site is a designated as a wildlife corridor, and, in the Green Space audit, is rated as High Quality/High Value.

- 4.44 The draft Playing Pitch Strategy (yet to be adopted formally by Cabinet) identifies the playing fields as two mini (7-a-side) football pitches; two youth (9-a-side) pitches; and two mini (5-a-side) pitches. The draft strategy includes the following recommendations for the Cakemore Playing Fields site
- to protect the existing supply of pitches,
 - to enhance the site through improving quality and management,
 - to provide new facilities.
- 4.45 There are also some initial proposals, put forward by Oldbury United FC, to provide further pitches and improve the existing pitches on site. The existing youth pitches are 'overplayed' by four match equivalent sessions per week; and, at peak time, the mini-pitches are played to capacity. This demonstrates the high demand for the playing fields at Cakemore Playing Fields, which means that any loss of pitches would have to be re-provided, in accordance with Sport England requirements. Re-provision of playing pitches would create an additional budget pressure and further monies would have to be identified. There is also a deed, between the Council and the National Playing Fields Association, covering a large proportion of the site. This requires the site to be retained as playing pitches, unless the Council secures express consent for alternative uses.
- 4.46 With regards to ground conditions, historically, the site was occupied by a large marl pit, which was subsequently infilled with unknown materials. More recently, in the early twentieth century, it was the site of a large clay pit associated with the former Cakemore Brick Works and Colliery – again, it would have been infilled with unknown materials.
- 4.47 A high-pressure gas main traverses the site, north to south, following the alignment of the Motorway. The nature of this gas main is such that any planning applications which fall within its proximity (within the inner,



middle and outer consultation zones) requires consultation with the Health and Safety Executive. Also, and development within the consultation zones would be subject to objections from the HSE. This very much limits the area that would be suitable for development, particularly given a primary school would be regarded as a sensitive use by the HSE.

- 4.48 In 2000, a planning application (Ref DD/00/36881) was approved allowing the construction of passive vent trenches to the rear of properties in Grafton Road. This was due to historic landfill. A plan illustrating the area of landfill (red boundary ref LF0076) is attached at Appendix C; and shows the extent of the site impacted by landfill, as well as the location of the vent trench.
- 4.49 There is also an electricity pylon on the site that further reduces the developable area; and is also within the area impacted by landfill.
- 4.50 It is high likely, therefore, that the ground conditions and site constraints of Cakemore Playing Fields would be very challenging; and any redevelopment proposals would require extensive and expensive ground remediation measures to render it suitable for built development. This would explain why the site has not been considered for re-development previously.
- 4.51 Apart from the land on Ashes Road, and a site on Grafton Road, (both of which were deemed too small for a new school) no other site in Council ownership has been identified for the relocation of Causeway Green Primary School.
- 4.52 Issue 3: There is insufficient explanation given with regard to how the public consultation results, particularly with regard to residents' views, have been evaluated and weighted in reaching the decision**
- 4.53 Initially, public consultation on the future of the Brandhall site was held between 7th November and 19th December 2019. The Cabinet considered the consultation results at its meeting on 27th May 2020



(minute 36/20 refers), and went on to authorise the development of a masterplan for the site.

4.54 The options presented to consultees in 2019 comprised differing arrangements of residential parcels, a school and open space. The main differentiator between the options was the size of the open space provided, which ranged from 4.5 hectares in Option 1, 6 hectares in Option 2, and 8.5 hectares in Option 3. Most respondents stated that they preferred the option with the largest park and fewest houses:

- Option 1: 40 respondents (7.9%)
- Option 2: 40 respondents (7.9%)
- Option 3: 428 respondents (84.3%)

4.55 On 27th May 2020 (minute 36/20 refers), in accordance with Cabinet's delegation, work progressed to gather the information required to inform a masterplan, based around the spatial principles of Option 3.

4.56 As part of the masterplan development process, further public consultation was held in November 2021. The public consultation was advertised by letter drop, press releases, SMBC e-newsletters, and social media posts. A consultation webpage was also published, to allow consultees to access consultation material and feedback on-line, if desired. Copies of the consultation material were also deposited at Brandhall Library from 1st November; and, following a suggestion by a ward member, the information was deposited at Bleakhouse Library and Langley Library from 17th November.

4.57 In addition, a virtual consultation room went live on 8th November - this provided a 360-degree virtualisation of a traditional consultation event, providing all the material available at the in-person events. An in-person public consultation event was held on Tuesday 16th November, which included an early-afternoon session (12:00 to 15:30), and an afternoon/evening session (16:30 to 20:00). A broad range of methods of engagement were used to ensure consultees were given sufficient opportunity to comment on the proposals.

4.58 A feedback form (hard copy and electronic) was used to collate the consultation responses, and where comments were provided outside of



this process, for example directly by email or letter, they were collated and included in the Consultation Outcome Report.

4.59 In total, 487 consultation responses were received. Of these, 436 online feedback form submissions were received, 51 hard copy feedback forms at Brandhall Library, and 10 free-form consultation response were received via email or letter.

4.60 The outcomes of the public consultation were set out within the Cabinet report of 20th July 2022, at paragraphs 4.35 to 4.39, and the full Brandhall Village Consultation Outcomes Report (April 2022) was included at Appendix C.

4.61 The Consultation Outcomes Report included the responses to each question in the feedback form. Some of the key responses included in the Consultation Outcomes Report are reproduced below (this should be read in conjunction with the Consultation Outcomes Report);

- Do you share the aspirations set out within the vision for Brandhall Village (473 respondents) – 73% No, 20% Yes, 9% Not sure.
- Do you support our proposals for a new publicly accessible park? (458 respondents) – 40% Strongly Support, 14% Support, 12% Neutral, 5% Oppose, 29% Strongly Oppose.
- Do you agree with the proposals to build new homes within Brandhall Village, including a minimum of 25% affordable? (470 respondents) – 83% No, 6% Not Sure, 12% Yes.

4.62 A summary of some of the key themes which emerged from the consultation responses was provided in the Cabinet report of 20th July 2022 and are as follows:

- Some respondents were opposed to any kind of development being built on site, whether this be housing or other constructed development. This included a large number of concerns regarding climate and ecological impacts on flora and fauna through the removal of green space. In addition, there were concerns regarding the potential historical importance of the site. Some respondents called for the site to be made more accessible and preserved as a green space.
- While there were comments that opposed any development of the Site, there was support from many respondents for the inclusion of



community facilities within the proposals (including community hub / local park / community café / sports facilities).

- There was some support for the proposed Brandhall Village Vision, although some felt that this should be separate to the development and that plans for the site contradict some of the visions themes.
- Some respondents noted that while they were against the building of houses, they would support proposals to build a new school, although it was mentioned by some that this was less preferable to developing and upgrading existing schools in their original location.
- Many comments were received that opposed the building of homes on the site. Some of the key themes relating to this include wanting to preserve the green space; building houses on the site would remove their access to green space due to the lack of alternative green open space; and that it would put pressure on local services.
- While there were many comments opposing the development of housing on the site, there was some support for housing that was affordable. Other comments related to support for proposals that included sustainable development options, with the consensus being that if housing is to be built, it should be sustainable.
- Some respondents who live on the outskirts of the site had concerns that their privacy would be reduced and also that their property values would reduce through the potential visual impact and loss of views.
- Some respondents called for the site to have less development and a greater proportion of open green space.
- Some respondents preferred the option for higher density housing in a smaller area, in order to preserve more of the green space. Others indicated a preference for lower density housing.
- Many comments indicated that developing the green space could impact on mental and physical wellbeing and have the potential to increase anti-social behaviour.
- Another major theme that emerged from the data was respondents concerns for how the proposed development would impact flooding and drainage issues associated with the Site.
- Other key transport related themes included concerns regarding increased traffic, parking requirements, potential for increase in road accidents and associated traffic pollution.



4.63 In response to the consultation outcomes two steps were taken, as follows:

- 1) Given the extent of concern raised at the public consultation, officers paused the development of the masterplan and prepared an 'Options' report for Cabinet to enable Cabinet Members to consider the preferred option for the Brandhall Site, which included a 'do-nothing' option.
- 2) Additional technical work was commissioned, in order to give more confidence in the deliverability of the options; and to provide more certainty to members across some of the key themes that were raised during the consultation.

4.64 In making their decision, Cabinet had full access to all the public consultation outcomes through the Brandhall Village Consultation Outcomes Report.

4.65 Cabinet were required to weigh the views of residents and consultees (as set out in the report) against the technical considerations and the strategic needs of the Borough in order to determine the preferred option.

4.66 The strategic needs of the Borough included the following:

- the need to replace Causeway Green Primary School, given its current condition (para 4.13 to 4.22 of the 20th July 2022 Cabinet Report refers);
- the strategic housing needs of the Borough (para 4.23 to 4.29 of the 20th July 2022 Cabinet Report refers); and
- the open space needs of the Borough in relation to creating a publicly accessible park (para 4.30 to 4.34 of the 20th July 2022 Cabinet Report refers).

4.67 In this context, the 'Gunning Principles', which set out principles in relation to consultation, are relevant. They were coined by Stephen Sedley QC in a 1985 court case, relating to consultation on a school closure (R v London Borough of Brent ex parte Gunning). Sedley defined that a consultation is only legitimate when these four principles are met:

1. Proposals are still at a formative stage



A final decision has not yet been made, or predetermined, by the decision makers.

2. **There is sufficient information to give ‘intelligent consideration’**
The information provided must relate to the consultation and must be available, accessible, and easily interpretable for consultees to provide an informed response.
3. **There is adequate time for consideration and response**
There must be sufficient opportunity for consultees to participate in the consultation. There is no set timeframe for consultation,¹ despite the widely accepted twelve-week consultation period, as the length of time given for consultee to respond can vary depending on the subject and extent of impact of the consultation.
4. **‘Conscientious consideration’ must be given to the consultation responses before a decision is made**
Decision-makers should be able to provide evidence that they took consultation responses into account.

4.68 Conscientious consideration is relevant as it requires Cabinet to demonstrate that the consultation outcomes were taken in to account in informing their decision.

4.69 Given the information contained in the 20th July 2022 Cabinet Report⁵; the introductory comments made by the Cabinet Member for Regeneration and Growth at that Cabinet meeting (relevant extract in italics below); and the fact that the consultation report was summarised (and included in full as an appendix) within the report, it is considered that Cabinet had all the relevant information required to enable Cabinet Members to give ‘conscientious consideration’ to the matter, as part of the decision making process.

“As mentioned, the options have been put together following public consultation held in November 2021, which showed little public support for the proposals to develop a school and new homes on the site. There were just under 500 responses to the public consultation, and the results of each question are included in the consultation outcome report in your papers.”



The Cabinet has a very difficult decision to make today, as we need to balance a number of considerations.

The consultation report demonstrates that public support for any built development on the site is limited, and the large majority of residents responding to the public consultation are keen to see the site retained in its entirety for open space and nature conservation. It is Cabinet's role today to consider the options for the site, whilst taking in to account the outcomes of the consultation, the technical considerations, and the wider strategic objectives of the Council as set out in the Councils Corporate Plan."

- 4.70 The preferred option determined by Cabinet on 20th July 2022, Option 3, provides for just under 70% of the site to be retained as a public park; with the remainder of the site being developed for a replacement school and circa 190 new homes. Option 3 therefore enables the site to contribute to the strategic needs of the Borough, whilst also retaining and protecting a significant proportion of the site as green-space, through the creation of a new public park.

5 Alternative Options

- 5.1 In accordance with Scrutiny Procedure Rules, Cabinet must consider whether to amend its original decision before confirming a final decision.

6 Implications

Resources:	The resource implications were set out in the 20 th July 2022 Cabinet report. There are no additional resource implications resulting from the additional information within this report.
Legal and Governance:	Legal implications were set out in the 20 th July 2022 Cabinet report. There is a requirement for Cabinet to take in to account consultation responses within their decision-making process.



Risk:	<p>Risk matters were set out in the 20th July 2022 Cabinet report. There are no additional risks as a result of the information set out in this report.</p> <p>Judicial Review of any decision of Cabinet could be pursued if the grounds for Judicial Review are met.</p>
Equality:	<p>Equality implications were set out in the 20th July 2022 Cabinet report.</p> <p>There are no additional equality implications arising as part of this report.</p>
Health and Wellbeing:	<p>The health and wellbeing implications of the proposals were set out in the 20th July 2022 Cabinet report.</p> <p>There are no additional equality implications arising as part of this report.</p>
Social Value	<p>The social value considerations relating to the proposals were set out in the 20th July 2022 Cabinet report.</p> <p>There are no additional social value implications arising as part of this report.</p>

7. Appendices

Appendix A: Response to Call-In report

Appendix B: Strategic Housing Land Availability Assessment

Appendix C: Cakemore Playing Fields Area of Landfill

8. Background Papers

Cabinet report 20th July 2022

Cabinet report 27th May 2020

Budget & Corporate Scrutiny Management report 8 August 2022

Budget & Corporate Scrutiny Management Board minutes 8 August 2022

Cabinet report 17 August 2022

Cabinet minutes 17 August 2022

