



Report to: Cabinet Meeting - 4 November 2024

Portfolio Holders: Councillor Paul Peacock, Strategy, Performance & Finance  
 Councillor Emma Oldham, Climate and the Environment  
 Councillor Claire Penny, Sustainable Economic Development

Director Leads: Matthew Finch, Director - Communities & Environment  
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Report Summary	
<b>Type of Report</b>	Open Report (with exempt appendix), Key Decision
<b>Report Title</b>	Fernwood Open Space
<b>Purpose of Report</b>	To update Members on the various developments which form the Greater Fernwood Strategic Urban Extension (SUE) site and to recommend proposals to secure Open Space within Fernwood North (Barratt David Wilson, BDW) being transferred into public ownership via Newark & Sherwood District Council (NSDC) or Fernwood Parish Council (FPC).
<b>Recommendations</b>	<p>That Cabinet:</p> <ul style="list-style-type: none"> <li>a) continue to support the approach to securing a ‘No ManCo’ (Management Company) approach for future Open Spaces coming forward as part of Fernwood North (BDW) and Fernwood Central (Allison Homes). This approach shall be secured by S106 variations for both Phases, the details of which shall be delegated to the Director – Planning &amp; Growth in consultation with the Assistance Director Legal Services. S106 Agreements shall be subject to standard due diligence clauses covering design, implementation and handover of Open Spaces;</li> <li>b) delegate to the relevant Director and Assistant Director – Legal &amp; Democratic Services authority to seek and secure S106 legal agreements from Fernwood Parish Council and Barratt David Wilson (BDW) to enter into arrangements to secure the future public ownership, management and maintenance of Open Space on the Fernwood North (Barratt David Wilson, BDW) Phases, subject to the terms set out in Exempt Appendix A save for an additional caveat which allows Fernwood Parish Council (FPC) to take ownership, management and maintenance of Open Space</li> </ul>

	<p>at any time (including prior to any initial land transfer), subject to requisite notice (such period to be agreed) to the District Council;</p> <p>c) Should FPC elect to own and manage Open Space in accordance with recommendation b) at any time that the relevant Directors be authorised to underscore the importance of all Open Space across Fernwood (Fernwood Central – Allison Homes, Fernwood North – Persimmon, and Fernwood West (Business Park and Residential) being in a single ownership in order to ensure continuity of responsibility and consistency of service standards across the Parish; and</p> <p>d) Should FPC elect not to agree the terms detailed in recommendation b) that a further report and implications be brought to a future Cabinet (no later than January 2025).</p>
<p><b>Alternative Options Considered</b></p>	<p>The existing S106 Planning legal agreements for Fernwood North (Barratt David Wilson, BDW) and Fernwood Central (Allison Homes) are clear that there will be a Management Company for the respective development sites, with each homeowner being subject to an annual charge to pay for the management and maintenance of Open Space.</p> <p>Fragmentation of ownership, responsibility, and some areas operating under a Management Company has been problematic within Original Fernwood and the Council has previously negotiated with the developers to remove this possibility.</p> <p>To date both developers have done what was asked and are selling new homes without levying a Management Company charge. To ensure this remains the case the Open Space for each phase of the development must be transferred into public ownership without delay.</p>
<p><b>Reason for Recommendations</b></p>	<p>The recommendations align with the Community Plan objectives in relation to access to green spaces, biodiversity, the environment and climate change.</p>

**1.0 Background**

- 1.1 Members will be aware of the Greater Fernwood Sustainable Urban Extension (SUE). Broadly the Fernwood SUE can be split into 5 parts:
1. Fernwood Original – just over 1000 homes, local centre, open spaces and primary school which are largely on the original footprint of the former Balderton Hospital.
  2. Fernwood North – the site being developed by Barratt David Wilson Homes (BDW) for 1050 new homes, a school expansion and formal and informal Open Space, as defined in the S106 Agreement which accompanies the planning permission

3. Fernwood Central – the site being developed by Allison Homes (formally Larkfleet Homes) for 350 new homes and open space
4. Fernwood South – the site being developed by Persimmon Homes for 1800 new homes , a new school, a new local centre and formal and informal Open Space
5. Fernwood East – the site of the Fernwood Business Park (Tawny Owl, Suthers School, etc) and land which runs south to the A1 to accommodate further employment land expansion and an additional c300 new homes.

### Management and Maintenance of Open Space

- 1.2 Members will be aware that new major residential developments are accompanied by on site public open space(s). Such space(s) can range in size and function from informal grassed areas, play areas, new sports pitches, and new country parks. Historically the District Council has taken on the maintenance of such spaces after the development (or each phase) is completed, alongside a one-off ‘commuted sum’ payment to cover an initial ‘x’ years maintenance.
- 1.3 For some years now there has been a trend by developers to decline any agreement for the District Council to take on maintenance of open space, negating any requirement to provide a ‘commuted sum’. The replacement maintenance vehicle has been a Management Company (ManCo). Typically a ManCo will be paid for by each house on a new development paying an annual charge which covers its running costs of maintaining land to a minimum standard. Many ManCo’s are run ethically having an annual charge to household which are directly attributable to the costs of maintaining the open space in question on an ongoing basis. Some ManCo’s are perceived to operate less ethically, which has resulted in residents being dissatisfied, raising concerns with charges levied for issues such re-mortgaging (given that ManCo’s are interested parties to the freehold of land) and seeking permission for the erection of conservatories or satellite dishes.

### The Fernwood Approach

#### 1.4 Original Fernwood

- 1.4.1 Original Fernwood is largely subject to a ManCo, save for Phase 1. In simple terms residents in Phase 1 are perceived to not pay for the management and maintenance of Open Space. It is true to say that there are historical and current concerns from local residents with the current Fernwood ManCo. The Fernwood Residents Association continue to voice concerns regarding the ManCo costs and services received within Original Fernwood for example.
- 1.4.2 Original Fernwood is within the ownership of the developer, BDW, but the land is long-leased to the ManCo. There is no straightforward ability to undo the current ManCo. Fernwood Parish Council have considered accepting as a gift from BDW the freehold of land which is subject to the ManCo lease but elected not to take up this offer given the reality that this would not change anything until such time as the lease expired for the ManCo.

## 1.5 Fernwood North & Central

1.5.1 Planning permissions for Fernwood North and Central were granted planning permission at a time when the developers were continuing to promote a ManCo model, something which remains a legitimate practice but where NSDC now encourage a different approach. Since 2019 this Council has worked alongside Fernwood Parish Council with the aim of avoiding more ManCo's across Fernwood with a view that a single ownership, control, custodianship, management regime, and maintenance schedule is optimum for civic pride and place-making.

1.5.2 This is challenging given the extant legal position for both BDW and Allison Homes is to have a ManCo. That said, as detailed in Open and Exempt reports to the then Policy and Finance Committee of this Council negotiations have taken place to ensure that no ManCo should progress. BDW have been at the forefront of this agreement, as captured at the time:

“Following negotiation (and approval under an urgent item from the Leader, Deputy Leader, and Leader of the Opposition) the Council and BDW have agreed that there will not be a Management Company for this phase of the development. As an alternative BDW has agreed, under terms captured separately as an exempt item, that after each phase of development (subject to an appropriate handover mechanism to ensure the open space is fit for purpose prior to transfer) the open space associated with that development will be transferred to the Council for it to maintain. Fernwood Parish Council have been informed of this agreement, and wholly supportive and welcoming of this solution, which will mean no ManCo for the next phase of development.”

Policy & Finance Committee, November 2019

1.5.3 BDW are now selling houses and have stuck to their deal to not sell with a ManCo clause included for new homeowners. A similar agreement has been struck with Allison Homes. At the time of writing, no S106 legal agreement has been signed between NSDC and the developers to formally agree transfer of the Open Space to NSDC, notwithstanding this is agreed.

1.5.4 Separate to this decision the Council has been trying to reengage with Fernwood Parish Council following a change in leadership for both the Chair and Clerk. There is now an ongoing dialogue, as detailed below.

## 1.6 Other Land Parcels

1.6.1 It is important to note that Fernwood South was granted planning permission in 2024 and therefore Officers have negotiated and agreed with Persimmon Homes that there will be no ManCo for this phase of Fernwood. This is captured legally in the accompanying Section 106 agreement which includes for a 'tradition' commuted payment from the developer to the District Council in accordance with an agreed schedule of costs (plus indexation) for each open space or public realm type (for example arid grassland will be £ Y/per square metre). There remains a provision for Fernwood Parish Council to take on management and maintenance of the land at a later date. No other land parcel has yet gained planning consent but a 'No ManCo' principle will be adopted for these phases also.

## **2.0 Proposal/Details of Options Considered**

### **2.1 Fernwood North - BDW**

- 2.1.1 There remains an agreement and resolution of this Council to take on the ownership, management, and maintenance of Open Space which comes forward within this land (on a phased approach). This was to be subject to a separate agreement with Fernwood Parish Council as detailed in the November 2019 Exempt Report (reproduced at Exempt Appendix A). For the avoidance of doubt Officers at the District Council are clear that those terms remain acceptable.
- 2.1.2 The now Clerk and Chair of Fernwood Parish Council (FPC) have advised that there is no record of Fernwood Parish Council having agreed to such terms. FPC are not stating that such terms will be unacceptable to them, rather they wish to undertake due diligence work on what open spaces will be provided, when they will be provided, and what the costs of management and maintenance will be. They also wish to consider how and when they may be able to take ownership of the land.
- 2.1.3 As Members will be aware the process for taking on open spaces in new developments is a standard one. The amount and type of space that must be provided is defined in the S106 Agreement, as are the triggers (normally linked to the number of units build within each phase) that dictate when the space transfers to a Council (irrespective of whether this is District or Parish). Given the open space was never intended to transfer to a Council no such triggers exist in terms of transfer and checking of the Open Space to be transferred. This will be incorporated into any new S106 agreement, noting the stipulation that the developer should not absorb such costs as we are asking them to deviate from their extant legal position. That does not mean that the developer will not use best endeavours to support the provision, design, and ultimately transfer of open space.
- 2.1.4 It is recommended that Members that the District Council sets out for FPC a timetable to undertake due diligence work and come to a view as to whether now, or in the future, to take on the Open Space across Fernwood North. NSDC remain comfortable that it can and will take on the Open Space in accordance with the original terms agreed, again repeated in Exempt Appendix A and the recommendations contained within this report.
- 2.1.5 Proposed actions:
1. That NSDC re-shares with FPC the original S106 for the Fernwood North Development which sets out the types and quantum of Open Space that shall be provided as part of the development on a phased basis;
  2. That NSDC formally set out the terms in Exempt Appendix A for FPC to consider, subject to a review by NSDC, BDW and FPC of the specification and plans of all Open Space in Phase 1 of the Fernwood North site
  3. That NSDC request that FPC conclude any due diligence work required in association with 1. above in order to inform NSDC of their intentions regarding future funding and/or management and ownership of Open Space no later than 6 January 2025;

4. That NSDC progress with BDW an addendum S106 to secure the principle of transferring all Open Space that would have originally been subject to a ManCo to the District (and if agreed either up-front or in due course the Parish Council) in accordance with a phasing scheme (and standard design, implementation, and pre-and-post handover checks) as soon as practicable and subject to 3 above;

2.1.6 It is recommended that similar actions are mirrored for Fernwood Central – Allison Homes, noting this is a smaller site.

## 2.2 Alternative Options Considered

2.2.1 It remains an option for the District Council to simply execute a S106 Agreement with BDW and not involve Fernwood Parish Council at all. This seems a missed opportunity and is contrary to the originally envisaged approach detailed in Exempt Appendix A.

## 3.0 Implications

In writing this report and in putting forward recommendations, officers have considered the following implications: Data Protection; Digital & Cyber Security; Equality & Diversity; Financial; Human Resources; Human Rights; Legal; Safeguarding & Sustainability and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

### Financial Implications (FIN24-25/7403)

3.1 The agreement between NSDC and BDW (and latterly Allison Homes) to avoid a Management Company (a 'No ManCo') will require Officer time to undertake due diligence in ensuring appropriate Open Space is provided, subject to an agreement with FPC in accordance with the terms set out at Exempt Appendix A. If this is not agreed, it is noted that a further report will be brought to Cabinet at which time further legal implications will be provided.

3.2 If the land is transferred to the District Council, it will need to be valued in order for it to be added to the Council's Asset Register. The cost of this can be contained within exiting budgets.

### Legal Implications

3.3 A variation to the current S106 agreements for both Fernwood North (BDW) and Fernwood Central (Allison Homes) is required. Both variations are currently instructed and reflect the terms envisaged in Exempt Appendix A. Subject to agreement from Fernwood Parish Council (FPC) to such terms the legal agreements can be concluded as soon as possible in accordance with the recommendations contained within this report.

## **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Policy & Finance Committee: 28 November 2019, Council Management of Open Space at Fernwood (open report)
- Policy & Finance Committee: 28 November 2019, Council Management of Open Space at Fernwood (exempt report)