

PLANNING COMMITTEE – 17th March 2026

Reference Number: 25/00488/FL

Application expiry: 20.03..2026

Application Type: FULL

Proposal Description: Application to Discharge a Planning Obligation under Section 106A of the Town and Country Planning Act, relating to the financial contributions towards affordable housing contributions, off-site public open space contributions, and off-site public open space maintenance contributions

At: S And A Parsons Building Contractors Ltd, Mansfield Road, Killamarsh S21 2BW

For: Derbyshire Property Holdings Ltd

Third Party Reps: 15 objections

Parish: Killamarsh

Ward: Killamarsh East Ward

Report Author: Phil Slater

Date of Report: 09 February 2026

MAIN RECOMMENDATION: Approve the removal of s106 financial contributions



Figure 1: Site plan, with site edged in red

1.0 Reason for Report

- 1.1 Councillor Hartshorne requested this submission be determined by Planning Committee due to the need to assess whether the revised contributions would mitigate the impact of the development.

2.0 Proposal and Background

Site Description

- 2.1 The application site comprises approximately 0.82 hectares of land situated within the settlement of High Moor, between Killamarsh and Woodall, and positioned immediately north of Woodall Road. The site is broadly level and bounded by residential curtilages to the west, open land to the north and a commercial property to the east. It was previously occupied by industrial buildings, now demolished, and has since been redeveloped to provide a residential scheme of 22 dwellings granted permission under application 17/00509/FL.
- 2.2 The residential development is substantially complete with the majority of dwellings occupied. There are two of the 22 plots that have not yet been constructed, and these two plots remain vacant on the site.

Proposal

- 2.3 The applicant, Derbyshire Property Holdings Ltd (DPH), has submitted an application under Section 106A of the Town and Country Planning Act 1990 seeking to discharge the financial obligations contained within the 2019 section 106 Agreement associated with the permission for the approved 22-unit residential development. These obligations relate to affordable housing contributions, off-site open space contributions, and open space maintenance payments.
- 2.4 The s106 monies are as follows:-
- £192,000 towards Affordable Housing
 - £24,313.60 towards the enhancement and improvement of existing play facilities at High Moor Recreation Ground
 - £7,140.27 towards maintenance of the enhanced play facilities.
- 2.5 The applicant's case is that the completed development is not financially viable with the S106 obligations in place. To support this, they have provided a detailed viability assessment (Aspinall Verdi, June 2025). That assessment argues that, based on both (a) the actual build costs and sales achieved, and (b) retrospective viability at the time the original S106 was signed in 2019, the scheme generates a significant financial deficit. The report concludes that the project was never viable, and therefore the 2019 obligations "no longer serve a useful planning purpose."

Amendments

- 2.6 Following an initial report from the Council's independent viability consultant (CP Viability) Ltd) the applicant has submitted nearly 700 invoices to demonstrate that their actual build costs are far higher than those within the CP viability report .
- 2.7 Further correspondence was submitted from the developers Monitoring Surveyor stating that these costs are true and factual records of the construction expenditure incurred during his involvement.
- 2.8 The Monitoring Surveyor NJG submitted a further review of 366 invoices, representing around 26% of the total invoice files, covering over £1.33m of expenditure. They found that all sampled invoices were genuine, correctly recorded in the applicant's cost summary (subject to minor clerical issues), and attributable to the project.
- 2.9 The Aspinall Verdi Report was submitted to the Council after they were instructed by the applicant's contractor (ASGF Construction) to carry out an independent audit of the project's invoices and expenditure for the Mansfield Road, Killamarsh development. The purpose was to check whether the invoices used in the applicant's viability appraisal represent genuine project costs. This report was authorised by a RICS accredited surveyor.

3.0 Relevant Planning History (not the full site history)

- 3.1 17/00509/FL - Proposed demolition of warehousing and erection of 22 dwellings with associated amenity space, roads and parking and a pump station on land (Major Development/Departure from Development Plan)(Amended Plans)(Further Amended Plans). Conditionally approved subject to S106 Agreement.
- 3.2 19/01060/DISCON - Discharge of conditions 3, 9, 10, 11, 12, 14, 15, 16, 19, 21, 22 and 23 of previously approved 17/00509/FL for residential development. Conditions discharged
- 3.3 19/01109/AMEND - Non-material amendment to planning application 17/00509/FL to change condition 17 from a pre-commencement condition to a pre-occupancy condition. Approved.
- 3.4 20/01099/FL - Application to vary condition 2 (Permitted plans) of application 17/00509/FL (Major Development/Departure from Development Plan). Conditionally approved.
- 3.5 20/01100/AMEND - Application for non material amendment to planning approval 17/00509/FL for plot 4 to change the boundary treatment. Approved.

- 3.6 22/01176/AMEND - Non material amendment pursuant of 20/01099/FL to reduce Plot 16 footprint and new retaining wall to be installed in front of the existing built retaining wall (amended title). Approved.
- 3.7 23/00102/FL - Section 73 application to vary Condition 2 pursuant of planning approval 20/01099/FL (Major Development/Departure from Development Plan). Conditionally approved.

4.0 Consultation Responses

4.1 **Ward member** – no comments received.

4.2 **Parish Council** - The Parish Council strongly objects to the application to discharge the Section 106 obligations relating to affordable housing and open-space financial contributions for the following reasons:-

Failure to meet existing obligations – The Council states that the developer has not complied with the legally binding commitments set out in the original permission, which were intended to secure community benefits and mitigate the impact of the development

Concerns regarding incomplete and unsafe site conditions – The Parish Council reports numerous ongoing issues raised by residents, including incomplete plots, damaged or unfinished roads, kerbs and footpaths, lack of required landscaping and public open space, unresolved drainage and sewerage matters, incomplete boundary fencing and unfinished parking areas. These matters are said to be causing safety risks and detracting from residential amenity.

Breach of community commitments – note that the site was reportedly sold at a reduced cost to reflect the Section 106 requirements, including provision for community infrastructure such as children’s play space. Argue that removing the obligations now would undermine commitments originally made to the community.

Precedent and loss of trust – The Parish Council expresses concern that approving the discharge would set an unwelcome precedent, signaling to other developers that obligations can be avoided. They highlight the risk of further eroding public confidence in the planning system if commitments are not upheld.

5.0 Representations

5.1 The application was publicised by way of neighbour letters and the display of a site notice.

5.2 15 local residents have made representations raising the following comments objecting to the proposed development:

The following issues raised by residents relate directly to the Section 106 agreement, and are material to the determination of an application under Section 106A:

a. Compliance with Existing Section 106 Obligations

- The Section 106 agreement for application 17/00509/FL required financial contributions towards: Off site Public Open Space (POS) improvements; POS maintenance; Affordable Housing
- Residents state these payments were triggered upon occupation of the 10th dwelling and have not been made.
- Concerns that the developer may not have notified the Council of the 1st and 10th occupations as required.

b. Ongoing Need for the S106 Obligations

- Residents highlight that the POS contribution remains necessary, with eight children living on the estate and further children regularly visiting.
- The lack of local play provision reinforces the need for retention of the S106 open space contribution.

c. Attempts to Discharge or Avoid Obligations

- Strong community concern that the developer is seeking to discharge obligations that were part of the original planning balance, and a legally binding commitment.
- Several residents state that the 106 agreement formed part of their expectation when purchasing homes and should remain enforceable.

d. Viability Assessment Concerns

- Residents dispute elements of the viability information submitted to support the S106A request, including use of outdated or inaccurate market data; Incorrect assumptions regarding property sales and completion status; comparisons that do not reflect appropriate local developments and a belief that delays were caused by the developer's own construction issues, rather than viability pressures.

e. Procedural Matters Related to S106

- Difficulty obtaining the S106 document within the 21-day consultation timeframe.
- Questions regarding redacted names on the Certificate of Notice relating to enforceability.

f. Requests for Enforcement of the S106

- Numerous residents request that the Council refuse the S106A application, and enforce the existing S106 obligations, including recovery of financial contributions.

5.3 The following matters concern the implementation of the planning permission, compliance with planning conditions, site management, or construction standards. These are not material to this application made under Section 106A which relates solely to the legal agreement:

a. Unfinished Physical Works

- Incomplete road and footpath surfacing.
- Missing boundary treatments and unfinished fencing.
- Incomplete landscaping across the site.
- Plots 14 and 16 unbuilt.
- Unadopted roads and drainage (Section 38 / Section 104 issues).
- Incorrect finished floor levels and associated water ingress

b. Health and Safety Concerns

- Uneven pavements, raised drainage covers, and other trip hazards.
- Temporary Heras fencing in place of permanent boundaries.
- Presence of construction materials, skips, and temporary fencing.
- Vehicle damage caused by unfinished kerbs or surfacing

c. Residential Amenity and Environmental Issues

- Children unable to play safely due to hazards.
- Poor appearance of the estate, including rubble, weeds, and incomplete areas.
- Concerns about overshadowing, loss of privacy or overlooking from adjacent warehouse structures.

d. Build Quality and Property Specific Issues

- High number of snags and unresolved defects.
- Structural issues requiring repeated remedial work.
- Flooding or water ingress associated with construction levels

e. Communication and Site Management

- Lack of response from the developer or contractors.
- Poor communication through systems such as Clixifix.
- Residents reporting long delays for required works.

f. Property Values and Sales

- Difficulty selling homes and reduced marketability due to the unfinished estate.
- Financial loss reported by some residents.

g. Accuracy of Plans and Statements

- Discrepancies in site layout plans.
- Disagreement with statements that the development is “complete” in the context of physical construction.

6.0 Relevant Policy and Strategic Context

North East Derbyshire Local Plan 2014-2034 (LP)

6.1 The following policies of the LP are material to the determination of this application:

SS1 Sustainable Development

LC2: Affordable Housing

ID1: Infrastructure Delivery and Developer Contributions

ID10: Open Space, Sports and Recreation Facilities

National Planning Policy Framework (NPPF)

6.1 The overarching aims of the National Planning Policy Framework (NPPF) have been considered in the assessment of this application.

6.2 The Planning Practice Guidance (PPG) provides guidance on viability and decision taking. It sets out the standardised inputs to viability assessment and the principles for carrying out a viability assessment. Viability assessment is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. This includes looking at the key elements of gross development value, costs, land value, landowner premium, and developer return.

7.0 Planning Issues

The applicant's case

7.1 The applicant, Derbyshire Property Holdings Ltd (DPH), has submitted an application under Section 106A of the Town and Country Planning Act 1990 seeking to discharge the financial obligations contained within the 2019 Section 106 Agreement for the approved residential development at Mansfield Road, Killamarsh. These obligations relate to affordable housing contributions, off site open space contributions, and open space maintenance payments.

7.2 The applicant's case is that the completed development is not financially viable with the S106 obligations in place. To support this, they have provided a detailed viability assessment (Aspinall Verdi, June 2025). That assessment argues that, based on both (a) the actual build costs and sales achieved, and (b) retrospective viability at the time the original S106 was signed in 2019, the scheme generates a significant financial deficit. The report concludes that the project was never viable, and therefore the 2019 obligations "no longer serve a useful planning purpose".

7.3 The Aspinall Verdi's analysis states that:

- Total sales (GDV) are £6.188m, whereas total costs exceed £7.9m, resulting in a deficit of approx. -£1.73m, even before S106 contributions.

- A backdated 2019 appraisal also produces a deficit of –£1.84m, meaning the scheme would not have been viable at the time the obligations were agreed.
- The Benchmark Land Value (BLV) is assessed at £1.54m based on 2019 existing use assumptions, contributing significantly to the negative viability position.

These results underpin the applicant’s argument that no S106 contributions can be supported, and that they are therefore eligible to seek removal of the obligations more than five years after the original agreement.

- 7.4 This application is not a planning application, but a request made under Section 106A of the Town and Country Planning Act 1990 to remove the financial contributions secured in the 2019 Section 106 agreement for the Mansfield Road development. It should be considered as such and so many of the comments made are not relevant to its consideration as set out above in section 5 above. The applicant argues, on the basis of their submitted viability assessment, that the scheme is not financially viable and that the obligations no longer serve a useful planning purpose. Unlike a planning application, a Section 106A request does not reconsider the development itself; the Council must instead decide whether the obligation remains necessary and reasonable in planning terms in its own right.

Independent Assessment

- 7.5 Officers have engaged the services of a viability consultant (CP Viability Ltd) to independently review the applicant’s submission. This review was carried out to check whether the development should be released from its agreed 2019 Section 106 contributions. The applicant claimed the scheme is unviable due to high construction and finance costs and a high land value. However, after examining the evidence, the independent assessor found these figures were not fully justified and did not reflect realistic market conditions. Using verified cost assumptions and an appropriate benchmark land value, the review concluded that the development can still viably support the full S106 obligations.
- 7.6 Following the CP Viability report the applicant submitted nearly 700 invoices to demonstrate that their actual build costs are far higher than previously understood.
- 7.7 CP Viability identified several problems such as many invoices didn’t mention the site and a large number of invoices were addressed to “Fenwood Estates” with no reference to the application site which means it is impossible to confirm whether all the invoices actually relate to this development. In addition, some invoices are handwritten or poorly referenced and linking the invoices to the applicant’s costs spreadsheet is extremely difficult.
- 7.8 CP Viability recommended that the Council should seek formal confirmation from an independent monitoring surveyor (e.g., the funder’s cost monitor) that the costs are genuine and relate to this site.

7.9 The CP Viability report had reviewed sample batches of invoices rather than every one. The report:

- Accepted the applicant's updated construction costs, where evidence seemed consistent
- Accepted abnormal costs, but only at the lower evidenced figure (£427,283 rather than £488,575)
- Accepted professional fees at £228,135, which appeared reasonable
- Rejected contingency (because contingencies are only for future risk, not costs already incurred)
- Did not accept the very high finance costs, because they result from an inflated land price — and national guidance says councils must not be penalised by a developer overpaying for land

7.10 CP Viability concluded that using the corrected and evidenced build costs; the appropriate benchmark land value (£355,000 not the price the developer actually paid) and adjusted, more realistic finance assumptions the scheme shows a small financial loss even before adding any s106 contributions. This means that the *scheme cannot viably support any s106 payments.*

7.11 However, the conclusion depended entirely on an independent verification being achieved that the costs submitted by the applicant related solely to the site. CP Viability made it very clear that the *Council should only accept a zero S106 position if a bank-appointed monitoring surveyor confirms the accuracy of the costs.* Without this, the evidence was not sufficiently reliable.

Costs verification

7.12 Officers requested that the applicant provide written confirmation from the applicant's bank appointed monitoring surveyor regarding the accuracy of the costs as recommended by CP Viability.

7.13 In response Nathan Green, a Chartered Surveyor formerly employed by ASGF Construction, wrote to the Council to explain that A Shade Greener Finance Ltd funded the development and appointed ASGF Construction as the monitoring surveyor between October 2021 and July 2025. Nathan Green was personally responsible for monitoring the construction expenditure during this period, including reviewing historic costs dating back to 2019 when works first began. He confirmed that the costs he reviewed and reported on at the time are the same as those presented in the Aspinall Verdi viability report dated 10 June 2025. He further stated that, to the best of his knowledge, these costs were true and factual records of the construction expenditure incurred during his involvement.

7.14 In response to this CP Viability commented that A Shade Greener Finance Ltd has shared directors with ASGF Construction Limited and also Derbyshire Property Holdings Ltd. The funder, the construction company and the developer are therefore

all linked to one another, so this could not be considered to be an arm's length situation.

- 7.15 Mr Green expressed concern that the level of scrutiny being applied was beyond what is required for a planning viability review, suggesting it risked becoming a full financial audit, which he considered disproportionate. He noted that both Aspinall Verdi and CP Viability had adopted costs within standard benchmark ranges, and that the latest CPV appraisal already shows a loss of £22,317 before any developer profit. He highlighted that applying a typical developer profit (15–20% of GDV) would increase the viability gap to approximately £950,000–£1.26 million, questioning whether any uncertainty in the cost evidence could reasonably account for such a difference
- 7.16 He concludes by reaffirming that the developer had provided transparent and consistent cost information since 2022 in line with the Planning Practice Guidance, and asked whether a formally verified statement from his practice would satisfy the Council.
- 7.17 In response to this, Officers requested that as an alternative way forward, a RICS accredited surveyor from the chartered surveying practice Mr. Green now works for (NJG Limited) independently reviewed the costs so that officers have a confirmation from another source.
- 7.18 Further to this, NJG reviewed 366 invoices, representing around 26% of the total invoice files, covering over £1.33m of expenditure. They found that all sampled invoices were genuine, correctly recorded in the applicant's cost summary (subject to minor clerical issues), and attributable to the project. They identified some under-reporting of costs, such as missed items in batched invoices and developer-funded expenditure not carried into the contractor's summary, meaning actual costs may be slightly higher than those presented.
- 7.19 Overall, NJG conclude that the invoice evidence is robust and provides a reliable basis for the build cost figures used in both the applicant's and CPV's viability assessments.
- 7.20 Officers expressed concern that the NJG expenditure report was signed by the company director, who had had previous involvement with the development. For the purposes of establishing a clear and independent audit trail, the Council had expected the cost verification to be undertaken, or at least signed off, by a RICS-accredited surveyor with no prior connection to the scheme.
- 7.21 Officers acknowledged that the viability position was at that point largely resolved, with only the question of independent cost verification outstanding. The absence of a bank appointed monitoring surveyor remained the central issue, particularly given existing links between individuals involved in the project. The Council also recognised that the cost of appointing a forensic accountant may be disproportionate, and so Council Officers were willing to explore alternative, lower cost options.

7.22 On this basis, Officers suggested that Aspinall Verdi (AV) could be re-engaged, with a surveyor who has had *no prior involvement* in the case asked to confirm that the costs submitted are a true reflection of expenditure.

Costs audit

7.23 Further to this request, Aspinall Verdi were instructed, as such, by the applicant's contractor (ASGF Construction) to carry out an independent audit of the project's invoices and expenditure for the development. The purpose was to check whether the invoices used in the applicant's viability appraisal represented genuine project costs.

7.24 Aspinall Verdi reviewed the applicant's invoice summary and carried out a random audit of 76 invoices drawn from the full set of project documentation. Only minor inconsistencies were found, and these were largely resolved following clarification from the contractor. Six historic invoices could not be located in the summary (£2,805), but these related to earlier phases of work and would, if anything, increase total costs rather than reduce them. The report has been signed by the Managing Director of Aspinall Verdi who is a RICS accredited surveyor who has undertaken an independent audit of costs associated with the scheme.

7.25 Aspinall Verdi conclude that the invoices provided all related to the scheme, that the cost summary had been prepared to a reasonable standard, and that the build costs relied upon in the viability assessment were robust. The report was signed by a RICS accredited surveyor as requested.

Other Considerations

7.26 A number of objections have been received from residents. The material concerns relating to the Section 106A application centre on the developer's alleged non-payment of the financial contributions required under the original agreement, the continuing need for those obligations and the accuracy and reliability of the viability evidence submitted in support of the request to discharge them. Residents also raise procedural issues regarding notification and accessibility of the S106 document, and request that the Council enforce the existing legal obligations. These are considered above.

7.27 A range of other concerns have been raised regarding the unfinished state of the development, site safety, landscaping, road and drainage works, and compliance with planning conditions; however, these matters relate to the implementation of the planning permission and are not material to the determination of a Section 106A application.

8.0 Summary and Conclusion

- 8.1 Having reviewed the full range of cost information, together with the independent assessments undertaken, Officers consider that, on balance, the evidence submitted, along with the independent validation provided, demonstrates that the construction costs presented are reasonable, consistently evidenced, and broadly reflective of the development as built. Although minor discrepancies have been identified, none materially undermine the overall cost position.
- 8.2 This is consistent with the approach to viability set out in the Planning Practice Guidance (PPG). The PPG requires viability assessments to use evidence-based, standardised inputs—including verified build costs, abnormal costs, and benchmark land value—and emphasises that councils should not be penalised where a developer has overpaid for land. The independent verification process undertaken in this case reflects the PPG’s requirement for transparent and robust scrutiny. Furthermore, the PPG acknowledges that, in limited circumstances, site-specific viability assessments may justify revisiting obligations where evidenced costs differ from plan-stage assumptions. The verified cost evidence demonstrates that the scheme would operate at a loss even before any S106 contributions are applied, meaning the obligations would no longer serve a useful planning purpose.
- 8.3 On this basis, and having applied appropriate scrutiny, it is concluded that the cost evidence can be accepted, and that the scheme cannot viably support any s106 payments and that the submission’s request should be allowed.

9.0 Recommendation

- 9.1 That no section 106 monies now be paid in respect of the relevant s106 agreement.