

Report to Cabinet

Subject: Options to expend Section 106 affordable housing contributions

Date: 19 February 2026

Author: Assistant Director – Housing and Resettlement

Wards Affected:

All Wards

Purpose

To consider options available to the Council to best utilise Section 106 commuted sum monies with the aim of delivering urgently needed, good quality affordable housing in the Borough

Key Decision

This a key decision.

Recommendation(s)

THAT Cabinet:

- 1) Approves that the Council works in partnership with relevant Registered Providers of social housing to either build or acquire affordable units within the Borough.

1	Background
1.1	The National Planning Policy Framework (NPPF) outlines the governments planning policies for England including provision of Affordable Housing. At a local level, Policy LPD 36 of the Councils Local Planning Document (2018) sets out the quantum of Affordable Housing required in a relevant area within the Borough. The Councils Affordable Housing Supplementary Planning Document (December 2009) provides detailed guidance on how affordable housing should be delivered. There is a requirement for

	developers to provide a variety of housing types, sizes and tenures, to provide a choice of market affordable needs and meet local demand.
1.2	Section 106 (S106) affordable housing requirements are legal obligations in planning agreements where developers provide affordable homes (social rent, affordable rent, shared ownership) or pay a fee (Commuted Sum) to offset development impacts ensuring homes are for local, lower-income people and remain affordable long-term. These site-specific agreements mandate the number, type, and delivery of affordable units.
1.3	Affordable housing commuted sums are financial payments from developers instead of building affordable homes on-site, used to fund affordable housing or related infrastructure elsewhere, often when on-site provision is unviable or inappropriate due to site constraints, location, or existing housing mix. These sums are calculated based on the cost of providing units, site viability, local needs, and policy, agreed via a Section 106 agreement to ensure funds are used for affordable housing provision in the community. Where any Affordable Housing Contribution is not spent in accordance with the obligations of those Section 106 Agreements, there is a risk that the financial contribution would need to be repaid.
1.4	A financial contribution (Commuted Sum) of broadly equivalent value can be justified where the agreed approach contributes to the objective of creating mixed and balanced communities. The Councils approach should be sufficiently flexible to take account of changing market conditions over time.
1.5	The Council has explored various options that are available to deliver additional, good quality affordable housing in the Borough by using S106 commuted sum monies. An option appraisal for S106 affordable homes scheme involves evaluating various delivery models and funding options to determine the most effective and financially viable approach for meeting local housing needs.
1.6	The demand for social housing continues to grow. To help address the need, 2 options have been identified to utilise the commuted sum contributions with option 1 considered to be the preferred option: -

Option1. Work with a Registered Provider of Social Housing

The funds can be transferred to a Council approved registered housing provider to build or acquire affordable units. There are currently over 20 Registered Providers (RP's) operating within the Borough, each specialised in delivering and managing affordable housing schemes. Working with a RP will guarantee the effective spending of the funding whilst ensuring value for money and strategic alignment.

The Council can nominate a “preferred partner” to work with, but it usually involves a strategic decision through a formal selection method (like a tender or application process).

The successful provider must have the capacity, experience, a good track record and the ability to provide suitable affordable housing quickly, that meet all the required standards.

When a council partners with a RP using commuted sums, the registered landlord is liable for meeting the regulatory standards, not the council. The transfer of funds discharges the council from this obligation and any associated risk which then lie with the adopting party (the RP) to maintain the asset according to all relevant standards, including those set by the Regulator of Social Housing. The RP assumes the role of a professional, regulated landlord, taking full responsibility for the ongoing compliance and maintenance of the property.

While the RP takes on the liability, the council maintains an oversight role, ensuring the RP delivers the agreed required levels of affordable housing.

The Council would not own the accommodation and would need to negotiate nomination rights for the initial and any subsequent allocations.

Option 2. Council owned properties

The Council purchases properties to create an Affordable Housing portfolio. Local authorities have general powers under various housing acts (such as the Housing Act 1985) to acquire land and properties for housing purposes to meet local needs. This can include purchasing existing homes on the open market, buying back former council homes, or developing new properties.

Affordable housing options can include both rental and/or homeownership options. For homeownership, there are options like shared ownership, rent to buy and discounted market sales and the

	<p>options of purchasing properties with the aim of providing social housing.</p> <p>This option would require an application to be submitted to the Regulator of Social Housing for the Council to be registered as a provider of social housing. Under section 114A of the Housing and Regeneration Act 2008, local authorities who have taken the decision to provide social housing are subject to compulsory registration. The Council would also be required to demonstrate to the Regulator of Social Housing (RSH) that robust governance, financial viability, and a clear plan to provide social housing (like affordable or social rent homes) that meets regulatory standards (e.g. Decent Homes, Tenant Satisfaction Measures) could be delivered within a reasonable timeframe (often under 12 months).</p> <p>If the Council pursued this option, it would need to enter into a contractual agreement with another Nottingham Local Authority who would manage the properties and ensure regulatory standards are achieved as set out in the Housing Act 1985 and Social Housing (Regulation) Act 2023.</p> <p>Where another council manages the physical housing stock, the "host" council still needs internal directors (or equivalent senior officers/teams) for strategic oversight, policy, legal compliance, allocation decisions, and accountability to its residents, as housing management involves statutory duties beyond just repairs, such as allocations, tenancy issues and strategic planning.</p> <p>The Council would retain legal responsibility for the housing stock and tenants, including adherence to allocation policies, tenancy laws, and standards like Awaab's Law. In essence, it's a delegation of management, not a transfer of ownership or ultimate accountability, requiring continued internal governance and strategic leadership.</p> <p>Associated risks: -</p> <ul style="list-style-type: none"> • The Council would be required to demonstrate that it meets the Rent Standard and the Consumer Standards. These are complex to manage and to evidence, and while support could be given by the managed provider, accountability is with the Council, and any In-Depth Assessment (IDA inspection) would require council involvement which would include an evidence submission and onsite visit from the IDA team.
--	--

	<ul style="list-style-type: none"> • There are also requirements to complete regular regulatory returns, and while any external provider could deliver the data to the Council to evidence the required information, the Council would need to assure itself of accuracy, completeness and submission. This would create an additional management overhead. • The benefits to the Council of this option (such as 100% nomination rights) can still be achieved through option 1. • Currently the Council does not have the capacity to manage affordable housing stock and would therefore need to enter into a contractual agreement with another Nottinghamshire authority to undertake these duties. • The option for the Council to purchase properties and seek registration as a provider of social housing is not recommended. The Council has been unable to identify a suitable Nottinghamshire Local Authority that would be able to undertake the management and legal responsibilities needed and therefore is not in a position to purchase properties or register as a provider of social housing. The longer the commuted sum is not applied for its specified purpose e.g. affordable housing acquisition within 10 years of receipt, the higher the risk that any unspent sum, plus accrued interest, must be repaid to the original developer. Under option 1, the Council can begin the process to identify and nominate an approved registered provider which will reduce further delays in utilising the commuted sums and ensure the delivery of affordable housing.
2	Proposal
2.1	The Council seeks to work in partnership with approved and experienced Registered Provider of social housing to either build or acquire affordable units within the Borough. The Council would need to nominate a “preferred partner” to work with, through a formal selection method (like a tender or application process).
2.2	The Council will require 100% nomination rights.
3	Alternative Options
3.1	The option to “do nothing” is not recommended. There is no legal requirement for the Council to be a provider of affordable housing however any Affordable Housing Contribution that is not spent in accordance with the obligations of those Section 106 Agreements,

	could need repaying to the developer which is a financial risk to the Council.
4	Financial Implications
4.1	The preferred option (Option 1) to work with relevant Registered Providers of social housing, would not result in any additional management costs to the Council or ongoing maintenance of the units.
4.2	The alternative option (Option 2) to create our own stock of Affordable Housing units is not considerable financially viable as the Council does not have the capacity or expertise to manage and maintain the units ensuring they meet the regulators standards. Additionally, the total cost of this option is not currently known.
4.3	The Council has, as of the 31 st of March 2025, a total of £1,940,706 S106 affordable housing contributions which are time limited. Of which, there are contributions totalling £560,567 which need to be committed by January 2027.
5	Legal Implications
5.1	Section 106 of the 1990 Town & Country Planning Act (as amended) allows Local Planning Authorities to require developers to enter into Legal Agreements to provide measures to mitigate the impact of their development. These Agreements are known as Section 106 Agreements. The planning obligations contained within them either require the developer to deliver on-site mitigation or to make a financial contribution to enable the Council to provide appropriate mitigating measures. Local planning authorities are required to use the funding in accordance with the terms of the individual Section 106 agreement and if not spent by the date specified in the agreement must be returned to the developer.
6	Equalities Implications
6.1	An Equality Impact Assessment can be found at Appendix 1 of this report.

7	Carbon Reduction/Environmental Sustainability Implications
7.1	An effective carbon impact assessment for the Council buying houses requires a Whole Life Cycle Assessment. All properties are subject to a condition survey which will address key categories of emissions and how to address them on an individual property basis.
8	Appendices
8.1	Appendix 1 - Equality Impact Assessment
9	Background Papers
9.1	None
10	Reasons for Recommendations
10.1	The time bar criterion for the repayment of an unspent S106 commuted sum is typically 10 years from the date the payment was received by the Local Planning Authority. This means that if the commuted sum is not applied for its specified purpose e.g. affordable housing acquisition within 10 years of receipt, the unspent sum, plus accrued interest, must be repaid to the original developer.
10.2	Working in partnership with relevant Registered Providers of social housing will secure the delivery of additional affordable housing in the Borough and help address the current housing need.
10.3	The Council has a legal duty to house homeless people and those in the most urgent housing need.

Statutory Officer approval
Approved by:
Date:
On behalf of the Chief Financial Officer
Approved by:
Date:
On behalf of the Monitoring Officer