



PLANNING INFORMATION MONITORING SYSTEMS

DATA PROTOCOL AGREEMENT

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PLANNING INFORMATION MONITORING SYSTEMS

DATA PROTOCOL AGREEMENT

Introduction

This Data Protocol Agreement is between the following authorities:

Derbyshire County Council
Derby City Council
Amber Valley Borough Council
Bolsover District Council
Chesterfield Borough Council
Derbyshire Dales District Council
Erewash Borough Council
High Peak Borough Council
North East Derbyshire District Council
South Derbyshire District Council
Peak District National Park Authority

The long-established Agreement, which was last updated several years ago, relates to the Residential, Industrial, Retail, and Leisure Land Availability monitoring procedures undertaken jointly by Derbyshire County Council, Derby City Council, the eight District / Borough Councils, and the Peak District National Park Authority in Derbyshire. It has been updated to reflect, inter alia:

- the introduction of the cdpsmart land use monitoring system in 2009, which has replaced the previous separate residential and industrial land availability monitoring systems in Derbyshire;
- the concept of the 'seamless digital chain' whereby information flows electronically from local planning authority development management systems into cdpsmart, without the need to re-enter data (dual keying);
- on-going work with other authorities outside Derbyshire aimed at delivering wider consistency of data collection and dissemination;
- the inclusion of the Peak District National Park Authority in joint monitoring arrangements in Derbyshire;
- the 'Duty to Co-operate' in relation to planning for sustainable development' under the Localism Act 2011.
- the requirements for monitoring set out in the National Planning Policy Framework (NPPF) (March 2012) and National Planning Practice Guidance (NPPG); and new monitoring arrangements set out in the Housing and Planning Act 2016;
- Local authority 5 year housing land supply requirements set out in the NPPF (paragraph 47);

- enhancements to cdpsmart to enable the monitoring of Section 106 Agreements relating to planning permissions, and minerals and waste planning permissions; and
- The release of cdpsmart Version 6 on 20 March 2016, which incorporates a number of new features, including new fields to record Strategic Housing Land Availability Assessment (SHLAA) reference numbers and a SHLAA spatial layer; new reporting fields for the 2015/16 financial year; and a new polygon editor tool.

This updated Agreement has been produced by the Planning and Information Monitoring Group (PIMoG) and covers support and maintenance charges, termination conditions, systems, (data specifications), definitions, data capture, data storage and ownership, outputs and timetable of the monitoring process for cdpsmart.

Changes to any of these items will need to be agreed by PIMoG.

National Planning Policy on the Duty to Cooperate and the Requirements for Monitoring

Paragraph 17 of the NPPF sets out 12 core planning principles, which should underpin both plan-making and decision taking. This includes a requirement that:

- Development plans should be kept up-to-date and be based on joint working and cooperation to address larger than local issues; and
- Every effort should be made to objectively identify and then meet the housing, business and other development needs of an area and respond positively to wider opportunities for growth

Paragraph 158 of the NPPF requires that each local planning authority should ensure that their Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Paragraphs 159 and 160 emphasise that local planning authorities should have a clear understanding of the housing and business needs in their area. For housing, local planning authorities are advised to address the need for all types of housing, including affordable housing and the needs of different groups in the community and cater for housing demand and the scale of housing supply necessary to meet this demand. For business, local planning authorities are advised to use their evidence base to assess the existing and future supply of land available for economic development and its sufficiency and suitability to meet identified needs.

Paragraph: 037 (Reference ID: 2a-037-20140306) of the NPPG advises local planning authorities to put in place their own monitoring arrangements in relation to relevant local indicators which could include:

- housing and employment land and premises (current stock) database;
- housing and employment permissions granted, by type;
- housing and employment permissions developed by type, matched to allocated sites;
- housing and employment permissions for development of sites where change of use is involved.

Chapter 1 of the Housing and Planning Act, introduced a new requirement for local planning authorities to promote starter homes as a form of affordable housing. The Act includes a detailed definition of what constitutes a starter home and a requirement for local authorities to monitor starter homes and prepare reports containing information on the carrying out of its functions in relation to starter homes (see further details below).

cdpsmart: Support and Maintenance Charges

The purchase of Derbyshire cdpsmart and payment of the initial twelve month support and maintenance charge¹ was the subject of an agreement between CDPSoft Ltd and the (former) East Midlands Regional Assembly (EMRA) which was approved by Derbyshire County Council on behalf of the other authorities in the County. Arrangements covering payment of the on-going support and maintenance charge are set out below:

It is agreed by all parties that the annual charge will initially be paid by the County Council, which will subsequently invoice the other Derbyshire authorities for equal one-eleventh shares.

Should any partner terminate this agreement (see paragraph), in succeeding years the remaining Derbyshire authorities that are party to it will be invoiced for equal shares of the annual charge.

It is part of CDPSoft's support and maintenance commitment that any changes to the system necessitated by additional monitoring requirements specified by Central Government will be implemented as part of the ongoing support and maintenance charge.

Access to Derbyshire cdpsmart is via the following link - <http://smartdsh.cdpssoft.com/smartdsh/Logon.do> and the entry of a username and password. Existing users of the system have been issued with usernames and passwords – requests for the registration of new users (and changes to existing users) and notification of the removal of existing users (for example, where users have left the local authority) should be addressed to:

¹ The initial twelve month support and maintenance charge was subsequently extended by negotiation until 31 December 2009 with Derbyshire authorities becoming liable for its payment with effect from 1 January 2010

David Dale (e-mail: davidm.dale@derbyshire.gov.uk or telephone: 01629 539810

Richard Sandbach (e.mail: Richard.sandbach@derbyshire.gov.uk, or telephone 01629 539807

Termination of this Agreement

Any Partner may terminate this Agreement as regards to their involvement (having made their yearly financial contribution for the financial year in which notice of termination is given, which is not refundable) upon service of six months' notice of termination in writing to the County Council.

Systems

The cdpsmart web-based monitoring system, which replaced the County's separate Microsoft 'Access'-based residential and industrial land systems in 2009, was developed by CDPSOFT Ltd of Richmond upon Thames, Surrey, and funded by the former EMRA.

Derbyshire cdpsmart, together with a similar application in parts of Nottinghamshire, form links in a 'seamless digital chain' (SDC), whereby data flow electronically from local authority development management systems to populate cdpSmart. Data are used at County, City, District, Borough, Housing Market Area, and Local Enterprise Partnership levels to benefit all.

Derbyshire County Council plays an important co-ordinating and quality assurance role in the whole process.

The Seamless Digital Chain Monitoring Process

Planning applications will continue to be registered and validated by the relevant authorities in their development management systems. File transfers (CSV, XML) from these systems have been established to populate as many fields as possible from relevant applications in cdpsmart, without the need for data re-entry.

A guide has been produced to identify those fields (coloured blue, and marked with an asterisk (*) in cdpSmart) that are considered to be 'key' and that need to be completed (either electronically, as a result of the file transfer from a development management system, or manually) in order to satisfy (agreed) monitoring and report requirements (see below).

User Manuals / Advice Notes

CDPSOFT and Derbyshire County Council have produced a number of user manuals / advice notes to help Derbyshire partners use the cdpsmart monitoring system more effectively, which includes:

- Cdpwisdom User Guide (cdpsoft 9 April 2014)
- Helpful Notes to Accompany cdp User Guide (DCC 19 June 2015)

- 'How to' Guide: Your First Custom Report (cdpsoft 01 December 2008;
- Guide to Basic Report Writing in cdpsmart (DCC March 2016);
- cdpsmart Version 6: New Features Release Notes (cdpsoft 20 March 2016)

Definitions

In order to ensure consistency of data collection, guidance on the definition of all constituent fields in the cdpsmart monitoring process is to be found in the notes accessible via the circular blue icons containing a question mark, throughout cdpsmart. Further guidance on important definitions for housing and employment land monitoring are contained in the annex to this report. Any unanswered queries should be addressed to members of the County Council's Policy and Monitoring Section (David Dale or Richard Sandbach – see contact details above).

Data Capture

The City, District and Borough Councils and Peak District National Park Authority will be responsible for all data capture including digital boundaries via their development management systems, and for populating fields in cdpsmart, either electronically by way of the file transfer process, or manual entry.

To assess development progress against planning permissions and Section 106 Agreements, site surveys will continue to be carried out at least on an annual basis (April based) either by individual City and District Councils and the Peak District National Park Authority or, occasionally and in special circumstances, with the assistance of the County Council. The site survey process is contained in Annex D.

It is therefore extremely important to ensure that, when an application is registered and validated, the information is recorded accurately and completely, especially the 'key' fields. Failure to do so will mean that errors and omissions occur, particularly in the reporting outputs, which will also be replicated at County level in cdpsmart.

Data Storage

As part of its ongoing support and maintenance contract, cdpsoft Ltd stores Derbyshire cdpsmart data at a secure ISO270001 data hosting facility in Bournemouth. This facility is owned by CDPSoft's hosting partner DataCenta.

Data Ownership

The data shall be in the joint ownership of the County Council, City and District Councils and the Peak District National Park Authority.

Outputs

Output from the Planning Information Monitoring Systems will be included in authorities' Monitoring Reports and published on their websites in a timely fashion.

Timetable

All planning applications, decisions and details of Section 106 Agreements should be entered in cdpsmart as soon as possible after receipt / committee cycles. The timetable for land availability production is centred on the Financial Year. The site survey relates to April, although in practice it is not possible to survey all sites in that period. The aim, therefore, should be to complete all site surveys by the end of May. Site progress data should be entered by the end of June, and data verified and input into cdpsmart no later than the end of July.

Whilst there is no longer a statutory requirement to produce an annual monitoring report for the Secretary of State, Section 113 of the Localism Act still requires local planning authorities to prepare reports consisting of:

- the implementation of the Local Development Scheme; and
- the extent to which the policies set out in the local development documents are being achieved.

All these times are aimed at achieving a more rapid production of monitoring information than is currently the case. However, it is recognised that in any of the authorities other work priorities may intervene and as a result some slippage of this ideal timetable may occur on some occasions. It is to be hoped that this can be minimised but if delays are likely to occur, it would be helpful if District / Borough Council monitoring officers reported this matter to the appropriate PIMOG meeting.

ANNEX A – DATA SPECIFICATION

See separate documents listed in User Manuals / Advice Notes in document above.

ANNEX B – DEFINITIONS

Definition of a Dwelling (2011 Census)

A dwelling is a unit of accommodation which may comprise one or more household spaces (a household space is the accommodation used or available for use by an individual household).

A household's accommodation (household space) is defined as self-contained if all the rooms, including the kitchen, bathroom and toilet, are behind a door that only that household can use. Accommodation is not self-contained if any rooms, for example a kitchen, bathroom or toilet, are shared with another household, or access to any rooms require crossing a hall, landing or any other space that is used by another household. Therefore, a dwelling can consist of one self-contained household space or two or more non-self-contained household spaces at the same address.

1 Residential Land Availability

Definition of What Constitutes a Housing Site

All housing proposals (including those forming part of mixed-use developments) which create a separate dwelling unit or units OR which result in the loss of a dwelling unit or units.

Include: -

1. Conversion from another use **to housing** use.
2. Conversion of dwellings to a lesser or greater number of dwellings.
3. Conversion **from housing** use to another use.
4. Sheltered elderly accommodation involving individual dwelling units.
5. Flats or other residential accommodation within other land uses e.g. managers flat within a leisure complex etc.
6. Single dwellings for farm workers or other rural workers (except temporary planning permissions).
7. A replacement dwelling, where a new dwelling replaces an older one.
8. Permanent mobile homes of various types including houseboats.
9. Granny flats that have separate access from the main dwelling and are not conditioned by planning permission. They could therefore form a separate self-contained dwelling unit.
10. The loss/demolition of bedsits or a house in multiple occupation which should be recorded as the loss of one dwelling unit.

Important Changes in the National Planning Practice Guidance

The NPPG has incorporated a number of important revisions to provide clarification to local authorities on what they are able to count towards their housing land supply.

On 6 March 2014, revisions were made to clarify that ‘all student accommodation, whether it consists of communal halls of residence or self-contained dwellings, and whether or not it is on campus, can be included towards the housing requirement, based on the amount of accommodation it releases in the housing market. Notwithstanding, local authorities should take steps to avoid double-counting’.

On 20 March 2015, revisions were made to clarify that ‘local planning authorities should count housing provided for older people, including residential institutions in Use Class C2, against their housing requirement. The approach taken, which may include site allocations, should be clearly set out in the Local Plan’.

Do not include: -

1. Granny flats that have access from the main dwelling but are conditioned by planning permission to prevent them forming a separate self-contained dwelling unit.
2. Bedsits and houses in multiple occupation unless they create separate self-contained dwelling units.

Important Changes to the Town and Country Planning (General Permitted Development) (England Order) 2015

On 15 April 2015, a number of important changes were made to the Town and Country Planning (General Permitted Development) (England Order) 2015, which provide permitted development rights for the change of use of various uses of land and buildings in the Town and Country Planning (Use Classes) Order 1987 (as amended) to residential use (Class C3). These particularly include:

Class A1 (shops) or Class A2 (financial and professional services) to Class C3 (dwelling houses);

Change of use of a building and any land within its curtilage from a use as an amusement arcade or centre or a casino, to a use falling within Class C3 (dwelling houses);

Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) to a use falling within Class C3 (dwelling houses);

Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B8 (storage or distribution centre) to a use falling within Class C3 (dwelling houses):

Change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwelling houses).

Although planning permission is not required for any of the above changes of use of land and buildings to Class C3 residential use, all of these types of changes of use are subject to a condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the **prior approval** of the authority will be required as to a range of impacts including

- transport and highways impacts of the development,
- contamination risks in relation to the building,
- flooding risks in relation to the building,
- the design or external appearance of the building,
- impacts of air quality on the intended occupiers of the development, and
- noise impacts of the development.

Full details of the changes to the Town and Country Planning (General Permitted Development) (England Order) 2015 can be viewed at the following link:

<http://www.legislation.gov.uk/ukxi/2015/596/made>

All of the above changes of use to Class C3 residential use will contribute to a local authority's housing land supply and it is important that these types of changes of use and the numbers of dwellings they create are monitored effectively. There is a new facility in cdpsmart for recording 'Prior Approval' notifications on the '**Permissions**' – '**General**' tab (Application Type).

2 Industrial Land Availability

Definition of What Constitutes an Industrial Site

Include: -

All proposals for **B1(a), B1(b), B1(c), B2 or B8 use** which involve the development of **new land** (including change from another use) as at 31 March of the current year. In the case of remaining plots on an industrial estate, the minimum of 0.1 hectare does not apply - see exclusion (b) below - providing that the land in question is capable of independent development. Sites with only an outline permission or which are allocated in a local plan should not have commenced development and therefore do not need to be included in the survey, although they will of course, remain as undeveloped available land.

Redevelopment of existing employment sites / premises, which provide for a net increase in **floorspace**.

Do Not Include:-

- (a) Permissions for extensions, modifications or any further development **within existing sites** as defined by a planning permission, which have already been counted and therefore do not involve the development of any additional **new land**.
- (b) Sites of less than 0.1 hectare (unless they are the residue of an originally larger site).

Redevelopment Land

Paragraph 012: Reference ID: 3-012-20140306 of the NPPG, sets out details of the types of land that should be included in economic land availability assessments. This includes vacant and derelict land and buildings and large scale redevelopment and redesign of existing residential or economic areas, which can be counted towards a local authority's employment land supply.

Affordable housing (NPPF Annex 2: Glossary)

Affordable housing: Social rented, affordable rented and intermediate housing, provided to eligible households whose needs are not met by the market. Eligibility is determined with regard to local incomes and local house prices. Affordable housing should include provisions to remain at an affordable price for future eligible households or for the subsidy to be recycled for alternative affordable housing provision.

Social rented housing is owned by local authorities and private registered providers (as defined in section 80 of the Housing and Regeneration Act 2008), for which guideline target rents are determined through the national rent regime. It may also be owned by other persons and provided under equivalent rental arrangements to the above, as agreed with the local authority or with the Homes and Communities Agency.

Affordable rented housing is let by local authorities or private registered providers of social housing to households who are eligible for social rented housing.

Affordable Rent is subject to rent controls that require a rent of no more than 80% of the local market rent (including service charges, where applicable).

Intermediate housing is homes for sale and rent provided at a cost above social rent, but below market levels subject to the criteria in the Affordable Housing definition above. These can include shared equity (shared ownership and equity loans), other low cost homes for sale and intermediate rent, but not affordable rented housing.

Homes that do not meet the above definition of affordable housing, such as “low cost market” housing, may not be considered as affordable housing for planning purposes.

Starter Homes

In December 2015, DCLG published a consultation on proposed changes to the NPPF, which included a proposal to amend the definition of affordable housing to include starter homes. The consultation closed on 22 February 2016.

In March 2016, DCLG published its Technical Consultation on Starter Homes Regulations. The consultation invited views on the details for the regulations for starter homes to support the starter homes clauses contained in the Housing and Planning Act. The Act includes provisions for:

- a statutory definition of a starter home;
- a general duty on local planning authorities to promote the supply of starter homes when carrying out their planning functions;
- the ability to set a starter homes requirement, meaning that local planning authorities may only grant planning permission for residential development if the starter homes requirement is met;
- reporting arrangements to ensure local communities, and especially first time buyers, are aware of what action local planning authorities are taking to support the delivery of starter homes. It is a requirement that local authorities should prepare a **monitoring report** on starter homes, which should be published alongside the Authority monitoring report; and
- powers for the Secretary of State to intervene if local planning authorities fail to carry out their functions related to starter homes.

Clause 2 of Chapter 1 of the Act defines a starter home as a building or part of a building that:

- (a) is a new dwelling:
- (b) is available for purchase by qualifying first-time buyers only:
- (c) is to be sold at a discount of at least 20% of the market value:
- (d) is to be sold for less than the price cap:

‘New dwelling’ means a building or part of a building that—

- (a) has been constructed for use as a single dwelling and has not previously been occupied: or
- (b) has been adapted for use as a single dwelling and has not been occupied since its adaptation.

“Qualifying first-time buyer” means an individual who—

- (a) is a first-time buyer: or
- (b) is at least 23 years old but has not yet reached the age of 40.

The “price cap” is £450,000 in Greater London and £250,000 outside Greater London.

It is clear from the above that the Government intends to ensure that the provision of starter homes forms an important part of local authority monitoring arrangements, which will need to be facilitated in cdpsmart.

Previously Developed Land (Brownfield Land)

The NPPF defines ‘brownfield’ or ‘previously developed’ land as the following:

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time.

ANNEX C - DURATION OF PLANNING PERMISSIONS

The NPPG sets out the legislative requirements on the duration of planning permissions incorporated in the Town and Country Planning Act 1990.

Under Section 91 of the Town and Country Planning Act 1990, if the local planning authority grants planning permission it is subject to a condition that specifies the time limit within which the development must begin. The relevant time limit for beginning the development is not later than the expiration of:

- **three years beginning with the date on which the permission is granted, or;**
- **such other period (whether longer or shorter) as the local planning authority may impose.**

The local planning authority may wish to consider whether a variation in the time period could assist in the delivery of development. For example, a shorter time period may be appropriate where it would encourage the commencement of development and non-commencement has previously had negative impacts. A longer time period may be justified for very complex projects where there is evidence that three years is not long enough to allow all the necessary preparations to be completed before development can start.

Under Section 92 Town and Country Planning Act 1990, outline planning permission should be made subject to conditions imposing two types of time-limit, one within which applications must be made for the approval of reserved matters and a second within which the development itself must be started. If the local planning authority considers it appropriate on planning grounds they may use longer or shorter periods, but must clearly give their justification for doing so.

Where planning permission is granted and the decision notice does not include a condition stating the time limit within which development must begin, it is deemed to be granted subject to the condition that the development to which it relates must be begun not later than the expiration of:

- **in the case of applications for planning permission:** three years from the date on which permission was granted
- **in the case of outline planning permission:** three years from the date on which permission was granted to submit all reserved matters, and development to begin within two years of the date on which the final reserved matters are approved.

ANNEX D – ANNUAL SITE SURVEYS

Residential Survey Process

There is a template report within cdpsmart called '**Residential Survey**', which will produce a schedule of sites with extant planning permission, which are yet to be started or are not fully complete.

The survey of residential sites should **compare the position for each site with the previous year** and the following noted for the current survey date: -

1. Whether the site is "Brownfield" (previously developed land or buildings) or "Greenfield".
2. **The total number of dwellings to be built and the number of "Brownfield" dwellings** on the site; this may vary from year to year as amendments to original planning permissions are granted.
3. **The total number of dwellings and number of "Brownfield" dwellings completed** (i.e. reached at least second fix stage of construction which means internal timber finishes, skirtings, doors and architraves are complete) and virtually ready for occupation. **The number of dwellings completed cannot be less than recorded in the previous year unless demolition has subsequently taken place.**
4. **The total number of dwellings and number of "Brownfield" dwellings under construction** (i.e. between foundation trenches

having been excavated and up to second fix stage of construction). Section 56 of the Town & Country Planning Act 1990 provides that development shall be taken to be begun on the earliest date on which any 'material operation' comprised in the development begins to be carried out. 'Material operation' is defined in s. 56 (4) to mean:

- (a) any work of construction in the course of the erection of a building;
- (aa) any work of demolition of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);
- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any change in the use of any land which constitutes material development. Material development is further defined.

In a case where a developer dug a trench and then back-filled it, the High Court held that the company's action in digging the trench was an operation under what is now s. 56 (4) of the 1990 Act and ruled that the permission had not expired.

5. **The total number of dwellings and number of "Brownfield" dwellings upon which construction has not commenced** (i.e. no foundation trench or part foundation trench etc. has been excavated).
6. **The sum of both total dwellings and "Brownfield" dwellings in 3, 4 and 5 should be equal to 2. "Brownfield" dwellings cannot be greater than the total number of dwellings.**
7. **The total number of dwelling losses, whether they are demolitions, including those incurred via re-building, or losses through conversion to other uses.**
8. In the case of large sites the information is best obtained from the site foreman/manager or the sales representative in the show house. This will generally save time.
9. Where large sites have been dis-aggregated into smaller development sites by individual builders, the information needs to be recorded for those smaller development sites. They can then be aggregated to the large site.

Industrial Survey Process

The survey of industrial sites should compare the position for each site with the previous year and any new industrial development noted. The following information should be noted for the current survey date:

1. Whether the site is “Brownfield” (previously developed land or buildings) or “Greenfield”.
2. Under construction but uncompleted should be recorded as such and not taken as developed on the premise that such land is no longer available. In the case of buildings, this is taken as foundation stage and in the case of open storage, a fence, surfacing or actual storage, e.g. of trailers, taking place.
3. A site will not be recorded as fully complete until development of the building(s) has been **fully implemented in accordance with a planning permission**. In the case of a permission that has been partly but not fully implemented, it will now be necessary to show the unimplemented part separately as under construction or available as appropriate.
4. Areas recorded should be **gross** (square metres or hectares depending on type of proposed use) and will therefore include infrastructure provision and landscaping - such areas will thus appear as under construction or completed as development proceeds, with the total area always aggregating to the site size as stated on the relevant planning permission. (In the case of local plan areas that will not, of course, be surveyed, the available area will be as stated in the text rather than as indicated on the plan, until such time as it is superseded by a revised statutory document or subsequent planning permission).

Section 106 Planning Obligations

When updating information on planning permissions and site surveys, any accompanying Section 106 planning obligations should also be recorded using the Section106 tab within cdpsmart. Information on the type of infrastructure to be delivered (the element), the amount of funding secured for each element, and the trigger point for payments should be recorded.