

What is a Planning Obligation?

Section 106 of the Town and Country Planning Act 1990 is the statutory provision governing planning obligations. According to Section 106 any person interested in land in the area of a local planning authority may, by agreement or otherwise, (this allows for planning obligations to be entered into unilaterally—see below) enter into an obligation (referred to in the section... as “a planning obligation”)...

- restricting the development or use of land in any specified way;
- requiring specified operations or activities to be carried out in, on, under or over the land;
- requiring the land to be used in any specified way; or
- requiring a sum or sums to be paid to the authority on a specified dates or dates or periodically

Planning obligations can be either contained in Section 106 agreements entered into between the Council and those having a property interest in the site (and possibly other parties, including developers), or can be provided by developers/landowners unilaterally (Unilateral Undertakings).

The legal test governing the use of planning obligations means that an obligation may only constitute a reason for granting planning permission for development if the obligation is:

- (i) necessary to make the development acceptable in planning terms;
- (ii) directly related to the development; and
- (iii) fairly and reasonably related in scale and kind to the development

In addition, according to Government policy (in Circular 05/05) any planning obligation must be:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development; and
- (v) reasonable in all other respects

When a planning obligation is needed, it is normally entered into prior to granting planning permission for the development to take place.

When might a planning obligation be needed?

Here are some examples of applications where an obligation may be required:

- to secure an element of affordable housing in a development where there is a residential element;
- to secure contributions towards a new bus service where there is inadequate access to public transport provision;
- to secure additional or expanded school facilities, for example, a new school classroom;
- to provide a contribution towards green space for residential development.

We have policies that set out standard charges and formulae which are used to identify the appropriate level of planning obligation. For example:

- Affordable housing—this will generally be required on developments of 15 dwellings or more.
- Green space—required on all residential developments of 10 or more dwellings. The ratio of 0.2 ha per 50 dwellings is the minimum standard.

What happens when?

Pre-application

- We encourage pre-application discussions with developers for larger and more sensitive schemes before the formal application is made. This provides an opportunity at the earliest stage to identify schemes that may require planning obligations and for the local community and Ward Members to be involved
- Officers and the developers identify the proposed Heads of Terms for the main matters to be dealt with by the agreement

Application stage

- Developers are requested to submit the draft Heads of Terms as part of the planning application submission so it is clear at the outset what types of obligations are proposed
- The local community and Ward Members have the opportunity to comment on the content of the proposed obligation while the application is being considered
- Planning Officer reports will include a summary of the proposed obligations.

Preparing the Section 106 agreement

- Council's lawyers prepare the legal agreement in conjunction with the developer
- Planning permission is only issued when the Section 106 agreement is signed and sealed by all the relevant parties

Getting Involved

The Local Community and Parish and Town Councils

We encourage developers to consult local communities before the application is made so:

- the community can give its views and help shape the proposed scheme
- planning obligations can (as far as possible) reflect the community's views. However, a Section 106 agreement cannot amount to a “wish list” of community benefits and any obligations must adhere to the legal and policy rules relating to planning obligations mentioned above.

The process of negotiating planning obligations should be conducted as openly, fairly and as reasonably as possible. To ensure transparency of the process, the public should be able to see the agreed Heads of Terms at the start of the process, followed by any significant changes to draft agreements.

How are S106 implemented?

Contributions in planning obligations can either be a financial contribution or in kind (e.g. land or works).

Each Section 106 Agreement is different and will typically cover:

- the precise nature of the obligations (e.g. the level of contributions)
- at what point they should be provided,
- where any contributions are to be spent

Some contributions can be pooled together from different development proposals within an area where it would result in the need for additional infrastructure, services or facilities (provided

again that this accords with the legal and policy tests for planning obligations).

Turning to greenspace contributions, ward members are sent a schedule of contributions which highlights any restrictions on the funds, then

- the eligibility of their potential project is assessed
- a Corporate Group of Council Officers brings forward any possible projects
- where appropriate, Ward Member and community consultation takes place

Where can I see the final Section 106 agreements/unilateral undertakings?

- On the Planning Register
- On Public Access on the Council's website
- On the Land Charges Register

Section 278 agreements

A Section 278 Agreement is a mechanism by which a highway authority can take payment from a third party for the execution of highway works where that party will derive special benefit from such works. If the works are to be totally funded by the developer then the normal means of achieving this is through a s.278 Agreement Highways Act 1980. However, if the developer is contributing a fixed amount towards highway works, for example a contribution to a larger scheme than necessary for the development itself, then a Section 106 agreement is an appropriate method.

Examples of works could be the construction of new access or junction improvement or safety related works such as traffic calming or improved facilities for pedestrians and cyclists.

Further reading

[Circular 05/05 Planning Obligations](#)
[Planning Obligations: Practice guidance](#)
[Leeds City Council Local Development Scheme Supplementary Planning Guidance](#)

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