



## **PLANNING ADVICE NOTE TO DEVELOPERS**

### **PLANNING OBLIGATIONS AND SECTION 106 AGREEMENTS**

#### **Introduction**

##### **Purpose of this Guidance Note**

Regular applicants may be aware that increasing numbers of planning applications are resulting in the need for off-site infrastructure provision, via Legal Agreements under Section 106 of the Town and Country Planning Act 1990 between the Council and applicants. Such agreements cover financial contributions (most commonly for education provision in instances where local schools are full, for off-site public open space provision, or for highway/transport improvements), but also include on or off-site affordable housing provision and other measures.

The negotiation, formulation and completion of such agreements often results in delays in issuing planning approvals.

This Note has been produced in order to:-

- Clarify why a Section 106 Agreement (S.106) as a result of an obligation is sometimes required.
- Set out the procedure that the Council will follow in relation to obligations and Section 106 Agreements, and the procedure the applicant will be expected to follow.
- Speed up the processing of applications where an obligation / Section 106 Agreement is required.

## What is a Planning Obligation?

Planning obligations are measures which are required from a developer to allow an otherwise unacceptable application to be approved. Section 106 of the Town and Country Planning Act 1990 provides for applicants or developers to enter into a legal agreement with the Local Planning Authority to ensure that such obligations are carried out. Obligations are matters which cannot in the first instance be required by a condition of approval. The Agreement sets out the terms within which an obligation must be fulfilled by the developer, but also requires the Council to ensure that, for instance, an open space contribution is used to provide or improve open space within the vicinity of the application site and within a set timescale.

### **Preliminary or Pre- application Stage**

Whenever possible, Officers will aim to identify the likely need for a S.106 during early discussions with applicants. As a simple guide, the most common types of obligations are listed under Appendix A. The list includes relevant thresholds on housing schemes for financial contributions and affordable housing. In Affordable Housing situations early contact is recommended with Housing and Social Services (HASS) .

Where applicants are aware of the need for a S.106, a covering letter should be submitted with the application confirming a willingness to enter the same and giving details of their legal representative.

Ideally, draft Heads of Terms will be agreed and confirmed in the letter accompanying the application. Where affordable housing is required, developers should submit an Affordable Housing Action Plan with the application. Advice on the production of such a Plan is available in the Council's Affordable Housing Advice Note or from Officers (see appendix B).

### **Application Stage**

If not already carried out at the above stage, as soon as possible after an application is received, the case officer will assess whether an obligation is needed and will tell the applicant in writing at the earliest opportunity. This will state the reasons for the obligation(s), the sum (s) involved (in the case of financial contributions), will request confirmation of the applicant's willingness to enter into an Agreement and will ask for details of legal representatives.

The case officer will notify the Council's Legal Services Section of the application and the details of the applicant's legal representatives. Agreement on Draft Heads of Terms will be sought and drafting of the agreement will commence.

The objective is to have the Agreement drafted before the application is decided.

## **Decision Stage**

Details of the Heads of Terms will be reported to the Committee or the senior officer deciding the application.

The application may be dealt with in one of the following ways:-

- i) The application may be **approved** and the decision notice issued **subject to condition(s)** requiring infrastructure provision, but will add an informative that if it cannot be provided on site, then an alternative arrangement should be made, often involving a financial contribution via a S106. The amount required by such a contribution is usually specified in the informative.
- ii) The application may be **approved subject to the signing of a S106 before** the approval notice is released. Officers will request delegated authority to refuse the application if an agreement is not completed within a reasonable timeframe.

## **Post - Decision Stage**

In cases dealt with as in (i) above, the applicant /developer will be expected to comply with the terms of the condition by either by providing what is required on the site, or by entering into a S. 106 prior to development taking place.

In simpler cases, such as where a fixed financial contribution only is required, an applicant may choose to issue a *Unilateral Obligation* (still under S.106 of the Act) to the Council together with the payment following the conditional granting of planning permission.

Some developer/applicants have also simply issued a cheque having received the planning permission; again this can save a developer time and expense but does not bind the Council to using the funds for the intended purpose or within a set time scale.

However in both of these cases, the Council would write to the developer on receipt of the payment to acknowledge receipt and give a written commitment as to its use. For this to happen it is essential for the following information accompanies any such payment:-

- Application reference number
- Relevant condition number
- Council Cost Code reference **L874/8915**

In cases dealt with as in (ii) above, our Legal Services Section will be informed of the resolution and instructed to finalise the document. The aim is to send a draft copy to the applicant's Legal representative within 1 week of the Committee meeting.

Upon completion the approval will be issued.

However, if the Agreement not being completed during a reasonable timeframe, a refusal will be issued because the application is unacceptable without an agreement. The Council has a duty to deal with applications expediently.

More information and advice for developers is available on the Council's website at [www.york.gov.uk/planning](http://www.york.gov.uk/planning) .

The City boundary is divided into two planning area teams. Details are available at:-

[www.york.gov.uk/environment/Planning/Planning\\_applications/area\\_planning\\_teams/](http://www.york.gov.uk/environment/Planning/Planning_applications/area_planning_teams/)

APPENDIX A

<b>Common Types of Obligation</b>	<b>Threshold Details and/or Why Required</b>	<b>Details Needed to Formulate Heads of Terms</b>	<b>Guidance Note?</b>
<b>Education</b>	Schemes for 4 dwelling units or more (a check can be made with Education Planning on 01904 554447)	How much, how calculated, how spent, when to be spent or if not spent, when to be repayable	Y
<b>Public Space Open</b>	Any housing development (applicable where the on site standards outlined Policy L1c cannot be met)	What to provide, how calculated, where to provide, when to provide, future maintenance/use	Y
<b>Affordable Housing</b>	Housing Sites of 0.3ha/15 units in urban areas and 0.03ha/2units in rural areas.	Is application outline or full, if latter identify plot numbers and parking spaces and prices	Y
<b>Off Site highway works</b>	Where a scheme would be unacceptable without improvements or changes to a local traffic Regulation Order	Description of works/improvements, when to be carried out, by whom to be carried out, future maintenance, form of S.278. TRO – amount of contribution to making, when to be paid	
<b>Commuted payments in lieu of a shortfall in on site car and/or cycle parking</b>	Used to improve public transport links and local cycle parking provision where all provision is not met on site	Amount, when payable, how calculated, what to be spent on, when to be spent or failing which to be repayable. Thresholds within Appendix E of Local Plan	Local Plan Appendix E
<b>CCTV contributions</b>	Often required for new A3 (food and drink) proposals and used to improve and maintain CCTV coverage in the City Centre or local centre. See Policy GP3	Amount, how calculated, on what to be spent, when to be paid, when to be spent or failing which to be repayable	See Policy GP3
<b>Green Travel Plans or Transport Policy Statements</b>	Required for new or extended business premises (usually resulting in sites with 50 employees or more). Expected to demonstrate a commitment to reducing dependence of the car for work related travel.	Description, when to be implemented/maintained, by whom to be implemented/maintained.	Y
<b>Energy Efficiency measures</b>	To demonstrate the sustainability of a scheme in accordance with National and Local Planning. Polices	A statement could include description, when to be implemented/maintained, by whom to be implemented/maintained	Y

<b>Restrictions on use of adjacent land</b>	Where required to ensure an adequate level of amenity is available for future residents e.g. new housing near a working farm	Description, when to be implemented/maintained, by whom to be implemented/maintained.	
<b>Riverside walkways</b>	To comply with the Council's draft policies identifying the route of riverside walkways	Requirement to enter into agreement, the form of which is annexed to the S.106	
<b>Drainage and flooding protection measures</b>	To protect new development and to ensure new development does not result in flooding of adjacent areas.	Description, when to be provided/maintained, by whom to be provided/maintained.	Y
<b>Revocation of old/ other relevant permissions</b>	Where a new proposals would only be acceptable if a previously approved development did not take place	Describe development authorised by other permission, giving its application reference no	
<b>Environmental Improvements</b>	To improve amenity levels available and/or to mitigate against other impacts of a development	Description, when to be provided/maintained, by whom to be provided/maintained	

**Useful Council Contacts**

**Education Contributions**

**Jake Wood**

**554447**

Policy Support Officer, Learning Culture and Children's Services , Education Planning & Resources

**Affordable Housing**

**Andy Kerr**

**554153**

Planning and Policy Manager, Housing Services Division, Housing and Social Services

**Derek Gauld**

**551470**

Principal Development Officer - City Development, City Development & Transport, City Strategy

**Open Space**

**Brian Williams**

**553392**

Parks & Open Spaces Officer, Education and Leisure, Lifelong Learning & Leisure

**Highway Works and Contributions, Green Travel Plans**

East Area

**Richard Bogg**

**551335**

Area Engineer (Highways DC) - Network Management, City Development & Transport, City Strategy

West and Centre Area

**Howard Watson**

**551332**

Area Engineer (Highways DC) - Network Management, City Development & Transport, City Strategy

**Energy Efficiency Measures**

**Kristina Peat**

**551666**

Sustainability Officer, Planning & Design, City Strategy

**Drainage and Flooding Protection Measures**

**Mike Tavener**

**551473**

Project Manager (Structures & Drainage) - Engineering Consultancy, City Development & Transport, City Strategy

**Relevant Guidance and Other Information**

**(Not an exhaustive list and Subject to Change)**

- City of York Draft Local Plan Incorporating 4<sup>th</sup> set of Changes: Development Control Local Plan
- Affordable Housing Advice Note ( July 2005)
- Developer Contributions to Education Facilities ( updated) April 2007
- Open Space in New Developments – December 2007
- Guidelines for Preparation of Transport Impact Assessments and Transport Policy Statements (July 2002)
- Sustainability Interim Guidance Note (December 2007)