

Purpose of this Advice Note

The purpose of this advice note is to help you understand what “section 106 Agreements” and “Unilateral Undertakings” are. It also explains what you need to do if you are asked to enter into one, as well as the process involved.

What are section 106 Agreements and Unilateral Undertakings?

Section 106 Agreements and Unilateral Undertakings are types of planning obligation made in accordance with Section 106 of the Town and Country Planning Act 1990 (as amended).

A planning obligation is a formal legal agreement made between the applicant/developer and the Borough Council in its capacity as the local Planning Authority. If someone other than the applicant/developer has an interest in the land such as a lessee or mortgagee, that person will also be required to join in the agreement.

A planning obligation can:

- Restrict the development or use of land;
- Require specific operations or activities to be carried out in relation to the land;
- Require payment of a sum or sums of money – e.g. towards future maintenance costs;
- Require land to be used in a certain way.

Planning obligations can have significant effects on the use and value of land. We therefore strongly recommend that you take independent legal advice or contact the Borough Council’s planning team for pre-application advice if you think that your proposed development may require a planning obligation.

Why planning obligations are required ?

In dealing with planning applications, local planning authorities consider each proposal on its merits and reach a decision based upon whether the application accords with the policies in the relevant development plan, unless material considerations indicate otherwise. Where applications do not meet the provisions of the development plan or have an unacceptable impact on local services they may be refused. In some instances however, it may be possible to make development proposals acceptable through the use of **planning conditions** or, where this is not possible, **planning obligations**.

When are planning obligations required?

Planning obligations are unlikely to be required for all developments and will be sought only where they are required in accordance with policies contained within the Development Plan and the advice in Planning Circular 05/2005. There are no hard and fast rules about the size or type of development that should attract

obligations. Planning obligations usually relate to larger housing schemes that will have a direct impact upon local services or facilities in an area. However there may be instances where an obligation will be required on smaller developments, particularly if there are specific constraints that require the use of a planning obligation as the only way that a scheme can be approved.

Even where the scale of development is such that a planning obligation must be considered, the Council can only require such an obligation where all of the following tests set out in Circular 05/2005 are met:

- The planning obligation must be **Necessary** to make the development acceptable in planning terms
- It must be **Relevant** to a planning objective
- It must be **Directly Related** to the proposed development
- It must be **Fairly and Reasonably** related in scale and kind to the proposed development; and
- **Reasonable** in all other respects.

Each scheme will be assessed on its merits against the policies in the Development Plan and taking account of the five criteria in Circular 05/2005 set out above. The table set out in Appendix 1 provides details of the areas and thresholds for securing Section 106 contributions under the **current** local plan. These represent the starting point for negotiating a Section 106 Agreement and it is strongly recommended that you discuss your proposal before submitting a planning application.

How are Planning Obligations enforced?

Planning Obligations are enforceable by the Council;

- In the courts by application for an injunction or recovering contributions payable; and
- By carrying out any operations required by the Planning Obligation and recovering the cost from the person(s) against whom the obligation is enforceable.

Land Charges

Planning Obligations are registered as local land charges and will be revealed in any search submitted on behalf of a potential purchaser unless the planning obligations have been discharged in which case the land charge entry may be removed from the Land Charges Register.

Can Planning Obligations be varied or discharged?

A Planning Obligation may be modified or discharged:

- At any time by agreement with the Borough Council

- In certain circumstances on application to the Lands Tribunal.

Procedure for completing a planning obligation

To ensure that the process is carried out effectively and efficiently **we strongly advise** that you seek Planning Officer advice **during the pre-application discussion stage** to prevent delays or the refusal of the application. If you are required to provide a planning obligation then it is essential that the following documents are provided with the planning application at the time of registration:

- **An Unilateral Undertaking or Section 106 Agreement**

A draft template for a Section 106 Agreement is available on the Council's website if required. Please note that as the Undertaking or Agreement is in the form of a legal **deed** it is essential that it is **drafted and completed properly**. Your Solicitor or Planning Consultant can assist you with this

- **Evidence of Title to the Land**

If title is registered at HM Land Registry, an up-to date office copy entry of the registers and filed plan must be obtained. If title is unregistered, an epitome of title must be submitted ensuring that any plans within any title documents are coloured as the original.

You should also submit the name and contact details of your solicitor or agent acting for you in connection with the obligation.

Important – The Council will seek to determine your planning application within the statutory period set by Government (currently 13 weeks for major applications). In order to achieve this, we **must** receive a draft planning obligation at the time the application is submitted in order to both consult on its contents and ensure that the agreement can be completed and consent issued within the time period. Where we do not receive a completed undertaking, then the application will be assessed on its merits having regard to the information available to the Council at that time and **may be refused** where it is felt that a planning obligation is required in order to make the development acceptable.

Receipt of the Undertaking/Agreement

When we receive your planning obligation and your evidence of title with your planning application we will forward it to the Council's Legal Services for consideration. It would also be helpful if the completed version of the planning obligation were sent in electronic form to:

borough.planning@west-norfolk.gov.uk

You will be responsible for paying the Council's Legal fees in connection with the consideration and completion of the obligation and these must be paid before the obligation is executed by the Council. Your solicitor will be asked to provide a

legal undertaking confirming that the costs will be paid. Generally, the costs associated with the straight forward negotiation and completion of a planning obligation would not exceed £500.00 however this will not follow in every case. You will be advised of the actual costs once the legal work has been completed. Payment should be made to the Borough Council and sent to the legal officer dealing with your Agreement.

Payments

1) All payments due under any obligations must be paid to Kings Lynn and West Norfolk Borough Council as the Local Planning Authority in order that the needs and impacts arising from development are addressed as soon as possible. We would aim to achieve payment of financial contributions on the commencement of development. In the case of major phased developments, contributions may be paid in installments on the commencement of each phase. The phasing of payments will be set out in the Section 106 Obligation agreed by the applicant/developer and the Borough Council.

2) In addition it is a requirement for the applicant to pay a Monitoring Charge for the work involved in monitoring of planning obligations. The charge is currently £500 for agreements attached to minor developments and £1,000 for major developments.

Please send payment(s) to:

Planning Department
Kings Lynn and West Norfolk Borough Council
King's Court
Chapel Street
King's Lynn
PE30 1EX

Please make cheques payable to BCKLWN.

Useful Contacts

Legal Services

For Borough Council drafted agreements:

Jacqui Bullen
Legal Executive
01553-616262

jacqui.bullen@west-norfolk.gov.uk

Nikki Smith
Legal Officer
Norfolk County Council
01603 223922
nikki.smith@norfolk.gov.uk

Pre-application Enquiries – Development Services

David Parkin
Principal Planner North Team
01553-616468
david.parkin@west-norfolk.gov.uk

Hannah Wood-Handy
Principal Planner South team
01553-616794
Hannah-wood-handy@west-norfolk.gov.uk

Affordable Housing

Nikki Patton
Housing Enabling Officer
01553-616726
nikki.patton@west-norfolk.gov.uk

Norfolk County Council – Schools and Libraries

Stephen Faulkner
Planning Obligations Coordinator
01603-222752
stephen.faulkner@norfolk.gov.uk

Norfolk County Council – Transport

Matt Tracy
Highways Manager
01603-223275
matt.tracy@norfolk.gov.uk

Appendix 1

	Kings Lynn, Downham Market & Hunstanton	All Other Areas
Affordable Housing¹	15% affordable housing on: <ul style="list-style-type: none"> • Schemes of 10 dwellings or more; or • Sites of 0.33 hectare or greater 	20% affordable housing on: <ul style="list-style-type: none"> • Schemes of 5 dwellings or more; or • Sites of 0.165 hectare or greater
Public Open Space/Play Equipment²	Schemes of 50 dwellings or more to provide open space at a rate of 20sq. metres per dwelling. Schemes of 200 dwellings or more to provide open space at a rate of 40sq. metres per dwelling.	
Community Infrastructure	Schemes of 20 dwellings or more subject to an assessment by NCC in terms of their impact on schools and libraries. A contribution may also be sought for policing on appropriate schemes under the 1998 Crime and Disorder Act where improvements to existing facilities are considered essential to improving community safety.	
Physical Infrastructure	The requirement for on and off site infrastructure provision will be assessed for each planning application on its merits.	
Transport Infrastructure	This will be assessed on a case by case basis in discussion with Norfolk County Council and where appropriate with the Highway Agency according to the impact that the development will have.	
Note: These thresholds are currently being reviewed through the emerging Local Development Framework (LDF) taking account of need and following current Government Guidance. We therefore strongly recommend that you contact the planning department prior to submitting a planning application.		

¹ Note: Affordable Housing Policy. The percentage of provision of Affordable Housing and Thresholds were updated by a Cabinet Report on 16 November 2009. This policy is now Policy CS09 as published in: Borough Council of King's Lynn and West Norfolk (2009) Core Strategy – Proposed Submission Document. This document is part of the Local Development Framework.

² Note: Public Open Space/Play Equipment (Ex-Local Plan 1998 Policy). This policy originated from the Local Plan (1998). This policy was not saved as part of the Local Development Framework (LDF) process in September 2007. However, the policy remains in use as planning practice. Through consultation with Leisure & Public Space Services specifications for play equipment and layout will meet and exceed that of the National Playing Fields Association (NPFSA) guidance, *The Six Acre Standard* (2001) Edition, with amendments, as stated in the recent document: Fields In Trust (FIT)(2008) *Planning and Design for Outdoor Sport and Play*. The provision will also accord well with national policy: Department of Communities and Local Government (2006)(PPG17) *Planning Policy Guidance 17: Planning for Open Space, Sport and Recreation*.