

Habitats Regulations Monitoring and Mitigation Payments

Habitats Regulations monitoring and mitigation payments can be made when you submit the planning application or by entering into a Unilateral Undertaking. Failure to provide either payment or a draft Unilateral Undertaking at submission stage will result in your application being held as invalid.

Payment or a draft Unilateral Undertaking will not be required at 'Outline' planning application stage. Only 'Full' or 'Reserved Matters' planning applications will require the payment or a draft Unilateral Undertaking at submission stage.

How much will it cost?

The size of the standard Habitat Monitoring and Mitigation Payment is:

- £50 per house (index linked). See requirement for mitigation below.
- For tourist accommodation the contribution will be calculated on a case by case basis by the Council, depending on the type, location and seasonality of the accommodation.
- A fee of £50 per submitted Unilateral Undertaking will be charged to cover legal and administration costs.
- There is no administration fee for a payment in advance unless your planning application is refused and the payment refunded in which case the sum of £25 will be retained to cover expenses.
- It will be the responsibility of the applicant to request a refund if your planning application is refused.
- Fees will only be refunded after the appeal period has lapsed or the appeal is dismissed and the period for any subsequent High Court challenge has lapsed.
- The standard Habitat Monitoring and Mitigation Payment is in addition to the standard Public Open Space provision required for development and any specific on-site monitoring and/or mitigation measures or off-site provision of alternative natural greenspace

When will the Habitat Monitoring and Mitigation Payment be required?

The requirement for a payment will apply to:

- Housing and tourist accommodation applications;
- The whole Borough area;
- All sizes of application from 1 unit upwards.

The need for a payment will apply to all forms of housing/tourist accommodation including:

- Hotels, guest houses, lodges, static caravans & touring pitches;
- Affordable housing;
- Student accommodation;
- Residential caravans/mobile homes/park homes;
- Housing for 'mobile' elderly people;
- BUT NOT care homes for elderly or infirm people with significantly reduced mobility.

Also for clarification:

- Both allocated and windfall sites will contribute;
- Where units already exist on the site, the net additional units will contribute;
- Applications to split one unit into two will contribute for the additional unit;
- Applications to increase the operating period of tourist accommodation will contribute for the additional period;
- Applications to convert from holiday to residential use will be assessed on a case by case basis;
- BUT extensions to existing houses will NOT be asked to contribute.

Unilateral Undertaking - what do I need to submit?

If you choose not to make the Habitat Monitoring and Mitigation Payment when you submit your planning application, you'll also need to provide the following documents:

- One original, completed and signed Unilateral Undertaking to pay the total Habitat Monitoring and Mitigation Payment before commencement of work on the site which will need to include a suitable site location plan signed by the landowner and the developer;
- Recent (i.e. within the last 3 months) proof of title to the land, which can normally be purchased from the Land Registry by telephone (01752 636000) or online at Land Registry Online Title Register Search. Please note there are two parts to the proof of title; a Title Register and a Title Plan, both of which must be submitted.

If you have any further questions, please contact us before submitting your application. Please also read the general guidance notes below before completing the Unilateral Undertaking.

General Guidance for Unilateral Undertakings

Please read these notes carefully before completing the Unilateral Undertaking.

A planning obligation is a legally binding obligation or commitment in relation to the development of land which is secured under Section 106 of the Town and Country Planning Act 1990, as amended. They are used in order to make an overall development 'package' acceptable where otherwise the application would have to be refused. An obligation is usually made by entering into an agreement which is regularly referred to as a Planning Agreement or a Section 106 Agreement. However it is possible for owners of land to submit Unilateral Undertakings to the Council, which contain binding covenants given by the owner to the Council, which the Council can enforce.

Planning obligations can restrict the use or development of land; require a developer or landowner to undertake certain works, or to contribute financially towards the provision of measures to mitigate the negative impacts of their development.

Where a planning obligation is required, a planning agreement drafted by the Council's legal services team and entered into by the Council and the landowner and developer will usually be appropriate. However there will be occasions where the use of Unilateral

Undertakings can assist in ensuring that planning permissions are granted speedily. This benefits both the applicant and the Council.

The Council considers that it will normally be appropriate for a Unilateral Undertaking to be used only if all the following conditions are met:

- The person entering into the Undertaking is the owner of the land (not merely a purchaser with a conditional contract); and
- The size of the proposal is small, i.e. 4 or less units, OR for larger proposals of 5 or more units, where there are no leases or tenancies (If the land is subject to a mortgage/legal charge, mortgage and mortgagee details must be included and the mortgagee must be a party to the Undertaking - see template); and
- The obligation(s) consists solely of the payment of financial contributions to be paid on commencement of development.

The template Habitat Monitoring and Mitigation Payment Unilateral Undertaking includes an obligation to pay the Council's costs in assessing the adequacy of the Undertaking (which will include checking the title to the land) and registering the Undertaking as a local land charge. The current fee is £50. If planning permission is not granted, then the Undertaking will not be registered as a local land charge.

If any of the above conditions are not met, the Council will normally consider the matter unsuitable for a Unilateral Undertaking and will expect the Applicant to enter into a conventional negotiated Section 106 Agreement, which will be drafted by the Council's Legal Services under their normal terms of business.

If the Applicant considers that the above conditions are met and the Officer dealing with the application has confirmed that a Unilateral Undertaking would be appropriate, then the Applicant should complete a draft Unilateral Undertaking (using the template provided) and submit this to the Planning Department with the related planning application, together with a plan of the application land and proof of title to the land.

Upon receipt of the draft Undertaking, the Council will assess it and confirm whether it is acceptable or whether amendments are required. They will also check the proof of title submitted. If any amendments are required, the draft will be returned to the applicant.

When required, a Unilateral Undertaking is an essential part of the planning application. Planning permission will *NOT* be granted until the accompanying Unilateral Undertaking has been formally completed and appropriately submitted to the Council.

A Unilateral Undertaking is a legally binding document with potentially significant financial consequences. If you are in any doubt about the meaning and effect of the undertaking you should seek independent legal advice.

The Council is committed to offering pre-application advice. Where it is intended to submit a Unilateral Undertaking, you are advised to include this element in your pre-application discussions, so that the details and level of contribution can be agreed as soon as possible, preferably prior to the submission of a planning application.