

**NORTH WEST LEICESTERSHIRE
DISTRICT COUNCIL**

**Guidance on Developer
Contributions and Completing
Section 106 Agreements**

July 2010

1 Introduction

- 1.1 The principal objective of the planning system is to deliver sustainable development, through which key Governmental social, environmental and economic objectives are achieved. It may be possible to make acceptable, development proposals which might otherwise be unacceptable, through the use of 'planning obligations'. This guidance gives the general information about developer contributions required by North West Leicestershire District Council ("the Council") and Leicestershire County Council (the "County Council"), and what is required to complete a Section 106 Agreement or a Unilateral Undertaking. Standard templates and clauses are available to assist in this process on the Council's website. This will enable applicants and their advisors to see the form of obligations which the Council is generally prepared to accept.
- 1.2 This document is only concerned with those matters that are secured via a S106 Agreement. In the future the Council may use the Community Infrastructure Levy (CIL) (or any successor) as a means of securing financial contributions from new development. In the event that the Council does so, this guidance will be revised or replaced as appropriate.'
- 1.3 For more specific guidance about LCC requirements follow the link to; http://www.leics.gov.uk/index/environment/planning/community_services_planning/planning_general/developer_contributions/adopted_statement_of_requirement_for_developer_contributions_in_leicestershire.htm
- 1.4 To ensure the speedy determination of planning applications it is vital that the applicant works with us **before a planning application is submitted**, to identify what information is required to process the application. The sister documents to this publication are: "National Requirements for Application Submissions" and "Local Requirements for Application Submissions" which detail ALL necessary information required to accompany a planning application to enable its processing. Go to the following web pages to view these documents:

For national requirements;

http://www.nwleics.gov.uk/files/documents/national_requirements_for_application_submissions/National%20Requirements.pdf

and for local requirements;

http://www.nwleics.gov.uk/files/documents/local_requirements_for_application_submissions/Local%20Requirements%20Sept%202008.pdf

- 1.5 In making decisions when determining planning applications, the Council needs to take account of all material planning considerations, including the provision of infrastructure necessary to support development and the reasonable need arising as a direct result of development, for amenities and facilities. The development of land without the proper provision of facilities and infrastructure increases the burden on existing facilities and services to the detriment of those who use them. The principle that such contributions will be required is set out in the Government Circular 05/2005 'Planning Obligations' and the North West Leicestershire Local Plan Adopted on 22 August 2002 with three alterations subsequently adopted in 2004 and 2005.

A number of policies in the local plan are of relevance when considering S106 Agreements, including the following; Policies E2, F3, L21, L22, T10, T13, H8, H10, H11, H12, H13, M2 and R1

- 1.6 This guidance will be kept under review, in particular with regard to any changes the Government makes to the planning obligations regime.

2 Statutory Context

2.1 Under the Town and Country Planning Act 1990, planning obligations may be sought when planning conditions are inappropriate to ensure the impact of the development is acceptable and to enable proposals that might otherwise have been refused to go ahead in a sustainable manner.

2.2 They should also meet the following statutory restrictions being;

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the proposed development

3 What are planning obligations?

3.1 Planning obligations are obligations relating to a person's land which bind the land and whoever owns in perpetuity. They are made by deed under Section 106 of the Town and Country Planning Act 1990.

3.2 Planning obligations may be used to: -

- a) restrict the development or use of the land in a specified way
- b) require specified operations or activities to be carried out on the land
- c) require the land to be used in any specified way
- d) require a sum or sums to be paid to the authority on a specified date or dates

3.3 Planning obligations ensure that developers contribute towards the infrastructure and services that the Council believes necessary to allow developments. Contributions may be either financial or in direct works on or off site.

For example:

- affordable housing
- school places
- roads, pedestrian crossings and other transport facilities
- open spaces or equipped playgrounds or the long term maintenance of open space.
- travel plans
- PCT
- libraries and other community buildings

- civic amenity contributions

This is not a comprehensive list and applicants are **strongly advised to discuss potential applications with the Council planners and the County Council planners prior to submitting an application** - amongst other issues; this will help identify other areas that may require a planning obligation.

4 Who may enter into a planning obligation?

- 4.1 Planning Obligations are legally enforceable against the owner(s) (including their successors in title) of the land to which they relate. This means that generally only owners can enter into obligations even if a prospective purchaser/developer of the land has applied for planning permission (Prospective purchasers must be party to the obligations where they have exchanged contracts to purchase).
- 4.2 Because planning obligations relate to the land, **all parties having an interest in the land e.g. owners, lessees, option holders and mortgagees must usually sign them.** Planning obligations have significant effects on the use and therefore the value of land. Before anyone enters into a planning obligation **we strongly advise that they take independent advice.**
- 4.3 Planning Obligations will usually include the whole planning application site and if necessary any 'off site' land on which related works take place.

5 What are the different types of obligation and when are they appropriate?

- 5.1 Planning obligations are made under Section 106 of the Town and Country Planning Act 1990 (as amended). An obligation can be entered into either through negotiation between the developer and the local planning authority (in which case it is a 'Planning Agreement'), or by means of an offer of a specific undertaking from a developer (in which case it is a 'Unilateral Undertaking'). Either way, the planning obligation is a legally binding agreement to undertake works, restrict the use of the land or to meet costs in connection with a development to enable the development to proceed.
- 5.2 Planning agreements are usually required as there is often the need for a set of actions to be agreed by both parties e.g. the developer agrees to provide a financial contribution and the local planning authority or other party on agreed works or services. A unilateral undertaking is a deed entered into by the landowner, and the other parties with an interest in the land e.g. their bank (if there is a charge on the land) and the developer (if applicable). These may be quicker to complete, as the Council does not need to be party to such a deed. It is generally preferable to use unilateral undertakings rather than a Section 106 Agreement when:
 - there is a straight forward contribution required
 - there is no requirement for the Council to covenant to do something
 - no payback requirement is necessary
 - no affordable housing is required

Section 106 agreements are more appropriate in situations where:

- owners can enjoy the benefits of obligations binding on the North West Leicestershire District Council and Leicestershire County Council to spend money in particular ways
- to repay money if it remains unspent after a number of years
- affordable housing is required
- agreements are more likely to satisfy all parties

5.3 The planning officer or developer contributions officer can advise further.

5.4 Planning agreements will also contain a plan showing the land to which it relates.

6 Are there alternatives to a Legal Agreement?

6.1 A planning obligation should only be used in compliance with the tests set out in the introduction above AND where the matter cannot be dealt with through the use of a condition attached to the planning permission.

7 Draft of Agreements and Unilateral Undertakings

7.1 Agreements are usually drafted by North West Leicestershire District Council's solicitors; either by external lawyers or the in house Legal Services Team. Our lawyers will suggest drafts which are usually acceptable to the County Council and any other interested parties. However, the County Council's own lawyers will also need to check the document. The Council will also require a solicitor's undertaking that the Developer will pay the Council's reasonable legal costs, whether or not the obligation is completed before any legal work is carried out on the obligation. The County Council require legal costs are also paid on completion.

7.2 The Applicants/Developers should ask their own solicitors or agents to contact the Council to discuss the Council's requirements at an early stage.

8. Release of Obligations

The District Council will need to be satisfied that the appropriate person will be responsible for the performance of obligations at all times and in some cases it will be appropriate for the original developer to remain liable even after they have disposed of their interest in the site.

8.1 Conditionality

Once the agreement has been completed and sealed, the planning permission is then issued. Most of the obligations, however, will not come into force until the planning permission is implemented; but in the case of the following clauses (and any other negotiated during the application process) these will be operative from the moment the agreement has been sealed; payment of the Council's legal and administrative costs, payment of the monitoring fees, registration as a local land charge. The unilateral undertaking will not be enforceable until the grant of planning permission.

8.2 Education Contributions

The detailed provision of the education contributions are agreed with the County Council.

8.3 Highway Provisions

Highway provisions will commonly be dealt with either by the payment of a commuted sum to the County Council (as highway authority) to carry out works or by the developer entering into a highway agreement with the County Council.

Travel Plans – in straight forward cases will be dealt with by a condition. More detailed guidance on the circumstances where conditions or planning obligation should be used to secure Travel Plans are contained within the ODPM/DfT guidance note "Using the Planning Process to secure Travel Plans". To see this document follow the link;

<http://webarchive.nationalarchives.gov.uk/+http://www.dft.gov.uk/pgr/sustainable/travelplans/work/publications/usingtheplanningprocesstosec5787>

8.4 Affordable Housing

The Council usually seeks to secure the on-site provision of affordable housing to meet identified housing needs. However in **some circumstances** it will seek a commuted sum payment instead of on site provision. **Please contact the District Council Housing Strategy Department at the earliest opportunity** for more details on the affordable housing obligation, introductions to Registered Social Landlords (RSL's) and funding advice or follow the link below.

http://www.nwleics.gov.uk/files/documents/adopted_affordable_housing_spd/Adopted%20Affordable%20Housing%20SPD.pdf

8.5 Children's Play Facilities and Adult and Youth play areas

The Council normally seeks on-site open space and play area provision. Where this cannot be achieved on site it will seek a commuted sum towards the provision and /or enhancement/improvement of local play or leisure facilities in a location accessible to the proposed development. The Parish or Town

Councils may ultimately become responsible for the future maintenance of the play areas. For a copy of the Supplementary Planning Guidance relating to play areas follow the link below.

http://www.nwleics.gov.uk/files/documents/play_area_design_guidance_note/Play%20area%20Design%20Guidance%20Note.pdf

9 Monitoring Cost

- 9.1 The Council will monitor and enforce agreements and unilateral undertakings to ensure all parties comply with the obligations contained in them. The s106 agreements will usually remain on the land charge register but a record can be placed on the planning file when the obligations are completed.
- 9.2 Financial planning obligations are often received and are allocated for expenditure by the Council or the County Council for expenditure on an appropriate scheme, which accords with the agreement or unilateral undertaking.
- 9.3 Both Council's are confident that their monitoring process can provide a full audit trail of spending should any developer require evidence.
- 9.4 The monitoring costs are met through a surcharge at a level of £250.00 per obligation. The monitoring charge will be payable on completion of the agreement or signing the unilateral undertaking as monitoring will start from this date.

10 Financial Contributions

- 10.1 All financial contributions contained in agreement or unilateral undertaking will be index linked from the date of the agreement or unilateral undertaking to the date of payment. The index used may vary depending on the works but will be set out in the obligation.
- 10.2 Financial contributions will normally be paid either when the planning permission is implemented or at a later stage during the development e.g. prior to completion of the 50th dwelling. They will usually be secured by a restriction on the use or occupation of the site, combined with a positive obligation to pay; in exceptional cases they can be secured by a "Bond" (bank guarantee)
- 10.3 Trigger dates for the financial contributions may also be included in the agreement or unilateral undertaking. Also the agreement can contain a time period by which the contribution is to be spent by the Council, dependent on the level of contribution secured and the project which it will fund.
- 10.4 Following receipt of payment to the District Council, financial contributions will be held until the relevant project has been approved. Contributions remaining uncommitted at the end of the time period specified in the agreement may be returned in accordance with the agreement.

11 Council's priorities

- 11.1 In some cases there will be the situation when a developer cannot provide all of the developer contributions requested. In such circumstances, the Council will negotiate which requirements MUST be provided by the developer to mitigate their proposal.

12 Viability appraisals

- 12.1 In exceptional circumstances where a developer/applicant claims a scheme cannot support the required Affordable Housing provision and/or other developer contributions, they will be required to submit a development appraisal at pre-application stage and the Council will seek independent verification regarding the reasonableness of the appraisal at a cost to the developer.

13 Land Charges

- 13.1 Planning obligations are registered as local land charges and will be revealed in any search submitted on behalf of a potential purchaser.

14 Can Planning Obligations be Changed?

- 14.1 A planning obligation may be modified or discharged:
- At any time by agreement with the Council and/or the County Council and other parties to the agreement against whom the agreement is enforceable
 - On application to the District Council after five years or a later date specified in the obligation
- 14.2 Formal applications to change or discharge planning obligations can be determined by the Council or the County Council in one of three ways:
- If the obligation no longer serves a useful purpose, it may be discharged
 - If it still serves a useful purpose, it would continue in force
 - If it would still serve a useful purpose equally well subject to proposed modifications, it may continue in force so modified provided the modification does not impose an additional burden on a third party.

15 Procedures

- 15.1 This guidance note is to assist you in the planning application process and enable you to prepare a draft heads of terms in advance of the formal submission of a planning application. You should also refer to the related policies in the Local Plan and other appropriate planning documents, including any relevant supplementary planning documents.

15.2 The Council and the County Council can provide examples of draft obligations and undertakings which include wording which is acceptable to them. These can be forwarded to the applicant or their solicitors and can be used to speed up the drafting process.

15.3 To ensure 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. Please note that planning applications considered by the Planning Committee may change the requirements of any agreement or unilateral undertaking. We would strongly suggest that you follow the following basic procedures:

15.4 **Pre-application Discussion/Application Stage**

This should take place at the **earliest possible** stage in the formulation process, once you have an idea of the type of development you would like to undertake. You will be advised by the planning officer of the merits of the case and the requirement to provide a section 106 agreement or a unilateral undertaking. With this advice together with relevant policy, it will be possible to specify the nature of the obligation(s) and what is required. At this stage the planning officer may instruct the Council's lawyers to draft the agreement and circulate it to your solicitor.

15.5 **Submission of planning application**

Once it has been agreed with the planning officer and the developer contribution officer that you are in a position to submit the planning application and you are required to provide a planning obligation then it is essential the following documents are provided along with your application:

- **A draft 'Heads of Terms' or draft Agreement or unilateral undertaking**
 - This is a list of obligations required or preferably a draft section agreement or unilateral undertaking if you have had early contact with the Planning Officer or Developer Contributions Officer and your Solicitor.
- **Evidence of title to the land**
 - If title is registered at HM Land Registry, an up-to-date office copy of the registers and filed plan **must** be obtained and submitted with the application. If title is unregistered, full and complete title must be submitted ensuring that any plans within any title documents are coloured as the original.
 - Draft plans to be included in the obligation, once these are approved. The applicant must provide copies for the final deed.
- **Please note: in submitting your planning application you MUST have full regard to the above advice and that contained in the District Council's guidance relating to the validation of planning**

applications. Failure to provide all of the necessary information to enable the authority to determine your application will result in the application NOT being registered.

15.6 Receipt of the undertaking/agreement

The draft heads of terms or draft agreement along with the land title information will be forwarded to the Council's and County Council's lawyers for approval and you will be required to pay the Council's Legal fees.

In situations where a unilateral undertaking is appropriate a draft can be submitted along with the land title information at the submission stage of the planning application. The unilateral undertaking will be considered by the Council's lawyers and any amendments required discussed with you and/or your solicitor. Unless the above documentation is received within the stipulated timeframe then it could cause delays in the registration/application process or refusal of consent.

16 Payments

- 16.1 All payments due under any obligations must be paid to North West Leicestershire District Council's planning services (as the Local Planning Authority) or Leicestershire County Council, where appropriate, in order that the needs and impacts arising from new developments are addressed as soon as possible. We aim to achieve payment of financial contributions on the commencement of development. In the case of major phased developments, contributions may be paid in instalments on the commencement of each phase. The phasing of payments will be set out in the section 106 obligation agreed by the applicant and the District Council.

Please send payment(s) stating the relevant planning application number and development site address to;

Development Control Manager
Planning & Development Environment
North West Leicestershire District Council
The Council Offices
Coalville
LE67 3FJ

- Payments can be made by cheque, made payable to **North West Leicestershire District Council**. Payments will be acknowledged once the cheque has cleared.

16.2 Enforcement

Financial contributions that remain unpaid in contravention of any agreement or unilateral undertaking will be enforced as necessary through legal proceedings. Appropriate legal action will be taken in relation to other provisions that are not complied with. Given that the consequences for any landowner for non-compliance with a planning agreement are potentially serious, persons who face difficulties in complying with an agreement are encouraged to make contact with the developer contributions officer at the earliest opportunity.

For further information please contact:

<p>Christine James Principal Planning Officer (S106 Officer & Enforcement Team Leader) Development Control Planning and Development Environment Council Offices Coalville Leicestershire LE67 3FJ</p> <p>Tel: 01530 454689 christine.james@nwleicestershire.gov.uk</p>	<p>Andrew Tyrer Developer Contributions Officer Planning Group Community Services Leicestershire County Council County Hall Glenfield Leicester LE3 8RA</p> <p>Tel: 0116 305 8223 andrew.tyrer@leics.gov.uk</p>
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