

Appendix A:

GUIDE TO PLANNING OBLIGATIONS AND SECTION 106 PROCEDURES

Introduction

- A.1 In dealing with planning applications, local planning authorities consider each on its own merits and reach a decision based on the relevant Development Plan, unless material considerations indicate otherwise. Applications may be refused; however in some instances, it may be possible to make unacceptable development acceptable through the use of planning conditions or, where appropriate through the creation of planning obligations.

What are Planning Obligations?

- A.2 A Planning Obligation is a legal undertaking made to the Borough Council by any persons with an interest in the land to make acceptable, development which would otherwise be unacceptable in planning terms.
- A.3 A Planning Obligation is created by deed under Section 106 of the Town and Country Planning Act 1990 (as amended) and can be used to:
- regulate or restrict the use of land,
 - require the carrying out of specified actions, and/or,
 - require payments to be made to the planning authority
- A.4 It provides a means of ensuring that developers contribute towards the infrastructure and services that Bracknell Forest Borough Council consider necessary to enable development to go ahead. Contributions may be either in-kind or payments towards provision by others.
- A.5 In determining a Planning Obligation the following points must be considered:
- Is it relevant to planning?
 - Is it necessary to make the proposed development acceptable in planning terms?
 - Is it directly related to the proposed development?
 - Is it fairly and reasonably related in scale and kind to the proposed development?
- And,
- Is it reasonable in all other respects?

Types of Obligations

- A.6 There are two types of obligations, namely a Bilateral Agreement (known commonly as a Section 106 Agreement), or a Unilateral Undertaking.

1. Bilateral Agreement

- A.7 A Bilateral Agreement (Section 106 Agreement) is an agreement between the applicant and the Borough Council, and other parties with an interest in the land. The need for this type of agreement is normally identified either during the pre-application discussion process or after the application has been submitted.

2. Unilateral Undertaking

- A.8 A Unilateral Undertaking is an obligation created by the applicant most commonly when an appeal against the decision of the local planning authority is made. The terms of a Unilateral Undertaking are for the applicant to determine and it is advisable for the views of the local planning authority to be sought before the Undertaking is completed.
- A.9 Because Unilateral Undertakings can only bind the activities of the developer, they are more relevant for the provision of in-kind contributions as opposed to financial contributions which may require a commitment by the local planning authority to spend the funds on impact mitigation within a reasonable period.

Who may enter into a Planning Obligation?

- A.10 Planning Obligations are legally enforceable against the owner(s) (including their successors in title) of the land to which the obligation relates.
- A.11 This means that generally only owners can enter into obligations even if a prospective purchaser/developer of the land has applied for the planning permission. It is possible for prospective purchasers to be party to the obligations where they have exchanged contracts to purchase or have an option.
- A.12 Because planning obligations run with the land, all owners, lessees and mortgagees must be signatories. Planning Obligations can have significant effects on the use and therefore the value of land. Before anyone enters into a Planning Obligation, the Borough Council strongly advises that they take independent legal advice or contact the planning officers for advice.

How are Planning Obligations Secured?

- A.13 Planning Obligations are secured by a formal deed whether Unilaterally or by Agreement.
- A.14 When an obligation is entered into by agreement, it will be signed and sealed by Bracknell Forest Borough Council. It will contain covenants (the Planning Obligations) covering the things the landowner agrees to do/agrees not to do, and the circumstances and timescales within which these things will occur. It will also contain a plan showing the land to which it relates.

How are Planning Obligations Enforced?

- A.15 Planning Obligations are enforceable by Bracknell Forest Borough Council in the following ways:
- In the courts by application for an injunction or recovering contributions payable.
 - 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

- A.16 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 Removed?

- A.17 A Planning Obligation may be modified or discharged:
- At any time by agreement with Bracknell Forest Borough Council
 - By formal application to Bracknell Forest Borough Council. This may only happen after five years have elapsed since the obligation was created, or a later date if specified in the obligation.
- A.18 Applications for modifying or discharging planning obligations can be determined by Bracknell Forest Borough 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 shall continue in force,
 - If it would still serve a useful planning purpose equally well subject to proposed modifications, it may continue in force as so modified provided the modification does not impose an additional burden on a third party.

Procedure for Completing a Section 106 Undertaking/Agreement

- A.19 To ensure the process is carried out effectively and efficiently, the Borough Council strongly advises that Planning Officer advice is sought during the pre-application discussion stage. This will prevent delays and ensure that sufficient detail is submitted to enable the application to be determined.

(See following chart for procedure of entering into a planning obligation.)

Unilateral Undertakings and the Appeal Process

- A.20 Unilateral Undertakings are used by appellants in connection with appeals to try to overcome certain reasons for refusal or planning objections. The Planning Inspectorate sets out deadlines for submitting supporting information. For example, if an appellant is to rely on a Unilateral Undertaking in connection with an appeal being dealt with through written representations, a completed, signed and dated copy must be submitted 10 working days before the date of the site visit. Alternatively, if the appeal is to be dealt with through the inquiry process, a final draft agreement must be submitted at least 10 working days before the date of a hearing or inquiry.
- A.21 Paragraph B49 of Circular 05/2005 makes it clear that an appellant should send a draft of any Unilateral Undertaking offered to the local planning authority for comment. This therefore needs to be done well in advance of the Inspectorate's deadlines. Up-to-date evidence of title to the land is also required, together with a Section 106 plan showing the application site.

SECTION 106 PLANNING OBLIGATION PROCEDURE

