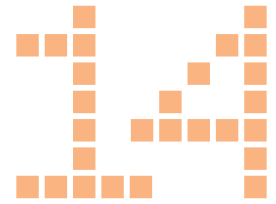


DEVELOPMENT CONTROL

Planning Obligations



This is Sheet 14 of The Planning Pack. This pack has been written by Planning Aid, with assistance from Urban Forum. The Planning Pack is endorsed by the Royal Town Planning Institute

Introduction

This information sheet provides a brief introduction 'planning obligations'. It is Sheet 14 of a series of 17 that forms an information pack to help you understand and get involved in the planning system.

This sheet will tell you what planning obligations are, what they can do, and how you can get involved. The information relates to the system at present and does not cover the proposed changes to planning obligations. Contact your local planning authority, or Planning Aid service, if you are eligible, to find out about the changes.

What are planning obligations?

Planning obligations, also known as Section 106 agreements, are legal agreements between a developer and the planning authority and any others that have an interest in the land. Legal agreements can also be made by the developer only, known as a Unilateral Agreement.

The purpose of the agreement is to ensure that any new development does not put a strain on existing services and

facilities such as roads, open space or other community facilities and/or services. They are used when planning conditions (see Sheet 8), are not appropriate or able to deliver the particular requirement. Planning obligations can require the developer to do something or can restrict what can happen on the land following the granting of planning permission. They are intended to make development acceptable which would otherwise be unacceptable in planning terms. The obligation should make the proposed development accord with local, regional and national planning policies (Sheets 1- 5 for more information on Planning Policy).

What can planning obligations do?

The nature and type of benefits which can be secured through a planning obligation is not fixed, but there is national guidance for what is possible and what is not. This guidance can be seen in full in Circular 05/05 Planning Obligations published by the Office of the Deputy Prime Minister (now Department for Communities and Local Government).

Planning obligations can mainly be used to:

a) **prescribe** the nature of the development. For example an obligation may be used to require a certain amount or percentage of affordable housing is provided on site;

b) **compensate** for loss of or damage as a result of development. For example if open space was lost with new development, compensation for the loss, such as requiring the replacement of open space, may be required by the obligation;

c) **mitigate** the impact of a development. For example if a development resulted in an increase in more children of school age in an area an obligation may be used to secure a new classroom at the local school.

Where a planning obligation is to be used it must meet five tests as set out in paragraph B5 of ODPM Circular 05/05. The tests are that the obligation is:

- 1) **relevant to planning;**
- 2) **necessary to make the proposed development acceptable in planning terms;**
- 3) **directly related to the proposed development;**
- 4) **fairly and reasonably related in scale and kind to the proposed development; and**
- 5) **reasonable in all other respects.**

Planning obligations cannot be used to give planning permission to an unacceptable development just because of the benefits offered by a developer which are not necessary.

Obligations cannot be used just as a way of securing a community share in the profits of a development.

When making a decision on a planning application the policies in the **Development Plan** and other Planning Policy documents (i.e **Supplementary Planning Documents**) are key considerations (see Sheet 8 and 9 for more information). These policy documents are also key in negotiating what should be included in a planning obligation ensuring that the obligation is relevant to planning. The planning policy documents should provide the framework for justifying any planning obligations which may be sought.

How are planning obligations developed?

There are two ways that a planning obligation can be developed. The most common way is through negotiations between the developer and the local planning authority, often with the involvement of legal representatives, and officers from other relevant departments within the local authority, such as education or housing.

Alternatively, it is possible for a developer to prepare their own planning obligation. This is known as a "unilateral under-



taking". These can be submitted to the local planning authority in various circumstances. For example, where there are difficulties in reaching a negotiated agreement, where the local planning authority has detailed policies relating to planning obligations such as standard charges, or where there has been pre-application consultation and the requirements for an obligation are known, the local planning authority can encourage a developer to submit a unilateral undertaking. This can only be done where the developer is the only party who is needed to deliver the obligation. Unilateral undertakings are also commonly used when a planning application is **called in** or has gone to **appeal**. In these circumstances the local planning authority will be asked for their views on the unilateral undertaking.

Remember the main consideration when negotiating the planning obligation or developing a unilateral undertaking will be whether it relates to the five tests set out above, and in particular whether it relates to planning policy especially those policies in your local planning authority's Development Plan.

How you can get involved in planning obligations

It is important that you get involved in the making of planning obligations, and in particular the planning policies which will influence planning obligations. The outcome of any obligations will affect the area you live in and you have local knowledge which will help identify your areas needs. This will be valuable in informing the requirements of a planning obligation.

The minimum level of consultation on the content of a planning obligation for a specific development will be:

>> During the consultation period – If prepared the draft planning obligation, including unilateral undertakings must be available for viewing alongside the plans and other supporting information included in the planning application. Be aware that they may not always be prepared at the time the planning application is submitted, and that the content may change following consultation and negotiations. Contact the case officer to find out if there are changes.

>> At the planning committee – If the planning application which the obligation relates to is going to planning committee for a decision, the agreed terms for the obligations should be included in the committee report, this should be available to view five days before the committee meeting.

>> After the decision – Once the decision on the planning application (including the obligation) has been made, the details of the obligation must be available for you to see.

Proposals for major development may require **pre-application consultation**. This provides an opportunity for discussion of

the potential impacts of the proposed development and a valuable opportunity for you to tell the developers about your community, its needs and what you feel should go in the obligation. Check out your local newspapers or the local authority's newsletter to keep informed of any proposed developments in your area and any pre-application consultations that might take place. Take time to get involved and help to identify, in writing, possible requirements for planning obligations at this point. The earlier you get involved the better.

To find out if a planning application and accompanying draft planning obligation has been submitted you can check the **Planning Register** at your local planning authority offices. Usually you can see a weekly list of planning applications in your area on your local authority's website, or you may be able to request that a weekly list is posted to you. Check site notices in your area, and read any neighbour notification letters you might receive. These will tell you where you can see the planning application, and who to talk to for more information.

If a planning application has been submitted in your area, look at the plans and all the supporting information, find out if there is a draft planning obligation or unilateral agreement relating to the application and read it. Remember these are draft and can change following consultation and negotiations. Obligations are legal documents so may be complicated. If this is the case ask the planning officer dealing with the application to explain the document.

Think about how the development may impact on your area, for example will there be increased traffic? Then identify how the possible impacts could be reduced - such as improvements to public transport provision. Find out if there are any policies relating to planning obligations. Such policies should enable you to see the scale of contributions which the local planning authority is likely to require for specific types of development (sometimes referred to as the "tariff"). Use these policy documents to help you with and support your comments (See Sheet 9 for more advice on commenting on a planning application). Look at previous obligations for similar developments to give you some ideas about what could be achieved. Stick to the deadlines, make comments in writing and remember the earlier you make your comments the better.

If the application is to go to planning committee for a decision, then you will be able to see a copy of the committee report and this should include the main terms of the planning obligation as well as a summary of responses to the consultation. You can get a copy of the report five days before the committee meeting. You may also have an opportunity to speak at planning committee and make your comments in person. Contact your local planning authority to find out if you can speak and how to register to speak.

Influencing planning obligations through Planning Policy

As set out earlier the main justification for the content of planning obligations is planning policy. So it is important for you to get involved early on in the preparation of planning policy documents in order to influence planning obligations in your local area.

Sheets 2- 5 look at planning policy documents and how you can get involved, in brief, you should:

- >> **Keep informed** – Look at the Local Development Scheme, find out what policy documents exist and what documents will be prepared and when the consultation will be. Your authority may be preparing or revising documents specifically on planning obligations, on specific topics such as housing, or plans for your neighbourhood.
- >> **Get involved early** – Let the local planning authority know about planning issues in your area, when policies and proposals are being developed especially at the evidence gathering and issues and options stages. Issues you might want to consider include the need for new open space, community facilities, impact on local traffic, or housing needs. Use previous policies and examples from other similar authorities to help you identify what might be appropriate. Your local planning authority, a planning consultant or your regional Planning Aid service (if you are eligible) may be able to help you make comments.
- >> Make sure you comment in writing at later stages in the policy preparation process known as preferred options and submission stages.

Disclaimer: Produced by Planning Aid with Assistance from Urban Forum, Published by the Royal Town Planning Institute (RTPI) (c) 2006. All rights reserved. Planning Aid is part of the Royal Town Planning Institute, Registered Charity in England and Wales Number 262865. Head Office: Royal Town Planning Institute. 41 Botolph Lane, London, EC3R 8DL. The Institute permits persons using this Planning Pack for the furtherance of effective public participation in the town and country planning system to make copies of the Planning Pack Sheets included, as long as they in no way commercially or financially benefit from making such copies. With this exception no part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical without prior permission in writing from the publisher. While every effort has been taken to check the accuracy of the information in this Planning Pack, the RTPI cannot be held liable for any financial loss resulting from the professional advice contained herein. Readers are advised to seek advice from their local planning authority and/or a professional planning consultant before proceeding on any matter.