



PLANNING ADVICE NOTE TO DEVELOPERS:

PLANNING OBLIGATIONS AND SECTION 106 AGREEMENTS

Updated January 2024

Introduction

Purpose of this Advice Note

1. This advice note to developers presents the Council's approach to securing planning obligations from new development in its administrative area.
2. Clarity in relation to the type and level of planning obligations required by the Council offers certainty to developers, allowing them to take on board any financial costs at an early stage when formulating proposals for new development. Such certainty also allows the Council to plan for the delivery of infrastructure funded by s106 contributions.
3. Planning obligations are often referred to as Section 106 agreements. Section 106 agreements are legally binding agreements entered into between a local planning authority and a property owner as part of the planning process in order to mitigate the impacts of new development and to make development acceptable which would otherwise be unacceptable in planning terms. (in line with Council and Central Government planning policy). They are a key mechanism in the planning system.
4. Planning permission can be granted subject to planning conditions and/or planning obligations enabling proposals to go ahead which might otherwise be refused.
5. This advice note has been produced in order to:-
 - Set out circumstances in which a s106 agreement may be required.
 - Set out the procedure that the Council follows in relation to planning obligations and s106 agreements, and the procedure the applicant will be expected to follow.
 - Speed up the processing of applications where a planning obligation / s106 agreement is required.

What is a Planning Obligation?

6. Section 106 of the Town and Country Planning Act 1990 provides that a person with an interest in the land on which a development is proposed may enter into a legally binding agreement, commonly known as a section 106 agreement or a planning obligation. Normally, therefore, all persons with an interest in the land affected by the planning obligation, including freeholder(s), leaseholder(s), holders of any estate contract(s) and any mortgagees, must be party to the planning obligation.

7. Planning obligations may constitute a bilateral legal agreement between the owner (and/or other persons as cited above) and the Council and be signed by all parties or, in certain circumstances be provided by interested persons as a unilateral undertaking without the Council being a contractual party to the document.
8. The nature and range of planning obligations can vary. The most common form of obligation include:
 - Restricting the development or use of land in any specific way
 - Requiring specified operations or activities to be carried out on the land
 - Requiring the land to be used in a specific way
 - Requiring a sum or sums to be paid to the Council on a specified date for an agreed purpose to be applied within a set timescale.
9. Planning obligations cannot be used to prevent the sale of land or require the sale/purchase of additional land; they can only be used to regulate the use of land or uses within a building or be used to restrict these until certain events happen.
10. Planning obligations secured by way of a s106 agreement or unilateral undertaking run with the land. This means that successive owners are bound by its terms and the obligations are enforceable against both the original party (or parties) and their successors in title. The land charge will remain active until all of the planning obligations have been satisfied or the planning permission for which the section 106 agreement or unilateral undertaking relates to has expired.

The Purpose of a Planning Obligation

11. Planning obligations are used when it is considered that a development will have a negative impact on the local area that cannot be mitigated by means of planning conditions alone and the intent is that the planning obligations aim to offset the extra pressure created by a development or mitigate against a negative impact which would then allow permission to be granted.
12. The National Planning Policy Framework (“the NPPF”) paragraph 55 sets out that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
13. Planning obligations may only constitute a reason for granting planning permission if they meet the tests that they are necessary to make the development acceptable in planning terms (NPPF paragraph 57). They must be:

- necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.
14. These tests are set out as statutory tests in regulation 122 of the Community Infrastructure Levy Regulations 2010.
 15. Planning obligations are usually drafted so that they come into effect at a time when planning permission is granted and provide that, unless the developer implements the permission (by carrying out a material operation as defined in section 56(4) of the Town and Country Planning Act 1990), they are under no obligation to comply with the relevant obligations.

The Development Management Process

Preliminary or Pre- application Stage

16. Applicants are encouraged to enter into pre-application discussions with the Council before an application is submitted particularly for more significant or complex developments. This allows many issues to be discussed and resolved and will also identify at an early stage if a planning obligation would be required thus avoiding unnecessary delays.
17. Further information on pre-application advice is available on the Council's webpage: <https://www.york.gov.uk/PlanningAdvicePreApp>.
18. It is recommended that an early review of the policy requirements set out in the new Local Plan is undertaken. Policy DM1 'Developer Contributions' lists the types of contributions which may be sought. Additionally, where development is likely to incur delivery of Affordable Housing, engagement with the Housing Strategy and Development Team is recommended. Further information is provided on our website via: <https://www.york.gov.uk/AffordableHousingPlanningRequirements>.
19. Where pre-application advice is not sought or insufficient detail has been received, applicants will be informed as soon as possible after submission of a planning application if a planning obligation is required. This will occur before the application is determined, in order to allow applicants to express their willingness or otherwise to enter into a s106 agreement.
20. In any case, where possible, Officers will aim to identify the likely need for any planning obligation(s) as early in the planning process as possible.
21. Where applicants are aware of the need for planning obligation(s), a covering letter should be submitted with the application confirming a willingness to enter a s106 agreement and giving details of their legal representative.

22. The applicant should, at the outset of the process, establish what are the relevant legal interests in the land, and who holds those legal interests.
23. Ideally, draft Heads of Terms will be agreed and confirmed in the letter accompanying the application).

Application Stage

24. If not already carried out at the above stage, as soon as possible after an application is received, the case officer will assess whether a planning obligation is needed and will tell the applicant in writing at the earliest opportunity. This will state the reasons for the obligation(s), the sum (s) involved (in the case of financial contributions), and will request confirmation of the applicant's willingness to enter into a s106 Agreement.

Decision Stage

25. Details of the Heads of Terms will be reported to the Committee or the officer deciding the application.

26. The application may be dealt with in one of the following ways:-

- i. The application may be **approved** and the decision notice issued **subject to condition(s)** requiring infrastructure provision; or
- ii. The application may be **approved subject to the signing of a S106 agreement** *before* the decision notice is issued.

Post - Decision Stage

27. In cases dealt with as in (ii) above, our Legal Services Section will be informed of the resolution and instructed to finalise the s106 agreement.
28. If a planning obligation is required, planning permission will not be granted until the Council receives to its satisfaction a planning obligation that has been signed or sealed as a deed by all relevant parties and dated. It is therefore important that the s106 agreement is completed as expeditiously as possible.

Further information

29. More information and advice for developers is available on the Council's website at www.york.gov.uk/planning.

