Section 106 Planning Obligations

Good Practice Guide

Revised
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Oldham Council

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What are section 106 planning obligations?

- Under section 106 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, any person interested in land in the area of a local planning authority may, by agreement or unilaterally, enter into an obligation (commonly known as a section 106 planning obligation) -
  (a) restricting the development or use of land an any specified way;
  (b) requiring specified operations or activities to be carried out on the land;
  (c) requiring the land to be used in any specific way;
  (d) requiring a sum or sums to be paid to the authority on a specified date for an agreed purpose.

- Planning permissions can therefore be subject to conditions or planning obligations enabling proposals to go ahead which might otherwise be refused.

Changes to S106 planning obligations through the Community Infrastructure Levy Regulations (as amended)

While the Council does not currently have a CIL charging schedule (i.e. it does not currently charge CIL on development) the CIL regulations are still relevant as they impact on Section 106 planning obligations.

As part of the introduction of the Community Infrastructure Levy (CIL) the Government has introduced new statutory restrictions upon the use of planning obligations to clarify their respective purposes and to ensure that the two mechanisms can work effectively and complement each other (see 'When may planning obligations be used', below). The Final CIL Regulations came into force 6 April 2010 and have since been amended in 2011 and 2012.

What is the good practice guide for?

- Since planning obligations may involve developers making a financial contribution to the local authority, it is essential that such arrangements are operated in a way which is seen to be fair, open and reasonable in order to retain public confidence in the fundamental principle that planning permission cannot be bought or sold.

- This good practice guidance note explains the use of, and procedures for the preparation of section 106 planning obligations in Oldham.

When may Planning Obligations be used?

CIL regulation 122 places into law for the first time the Government's policy tests on the use of planning obligations. From 6 April 2010 it will be unlawful for a planning obligation to be taken into account when determining a planning application for a development, or any part of a development, that is capable of being charged CIL if the obligation does not meet all of the following tests:

(a) necessary to make the development acceptable in planning terms;
(b) directly related to the development; and
(c) fairly and reasonably related in scale and kind to the development

- A vital test of proposed planning obligations is therefore that they must be *necessary* to make a proposal acceptable in land-use planning terms. They should not be sought where the connection does not exist or is too remote.

- Acceptable development should never be refused because an applicant is unwilling or unable to offer benefits. Likewise, unacceptable development should never be permitted because unnecessary or unrelated benefits are being offered.

- Planning obligations should not duplicate conditions. If a local authority has a choice between overcoming a potential reason for refusing planning permission by entering into a planning obligation with an applicant or imposing conditions, then conditions are preferred.

What can be included in a planning obligation?

- Planning obligations may relate to any matter, provided they satisfy the government's three tests, as described above. In some cases the developer signing the obligation agrees directly to provide certain facilities or to refrain from certain activities. For example, the obligation may involve an agreement to restrict the use of certain premises, incorporate mobility or affordable housing in new residential developments, or provide crèche facilities in a shopping development.

- Alternatively, an obligation may involve payment by a developer of a sum of money to be used by a local authority to overcome a genuine potential reason for refusal of a planning application. Common examples of this type of planning obligation arise when a proposed development creates additional demand for public open space, parking spaces, transportation infrastructure or local traffic calming measures. In such cases, payment of an appropriate sum of money to the local authority can enable the authority to provide the new or replacement facilities, which are outside the developer's control.

- The Oldham Joint Core Strategy and Development Management Policies Development Plan Document (adopted November 2011) refers to a variety of circumstances in which planning obligations may be used, either in the text of certain policies or in the justification, which follows the policies. However, planning obligations may be appropriate in certain circumstances even if these particular policies are not relevant, provided that the government's three tests are satisfied.

- The Council has adopted a number of Supplementary Planning Documents (SPD's) which will cover many of the circumstances in which there may be the potential to require developers to enter into a planning obligation. These are available on the Oldham Council Website.

How will an applicant know if a planning obligation is required?

- Applicants for planning permission will be informed as soon as possible if it is likely that there is a potential reason for refusal, which could be overcome through a planning obligation. This should occur well before the application is reported to

the Council's Planning Committee, to enable the applicants to express their willingness or otherwise to enter into an agreement.

- The applicant may choose to submit a Unilateral Undertaking, which will be taken into consideration when determining the application. However if the details do not meet the Council's minimum requirements and the proposed development is unacceptable, the planning application should be refused. (If an alteration to the undertaking would overcome the reason for refusal then the Council will advise the developer).

- If a planning obligation is considered essential to render a proposed development acceptable in planning terms and an applicant is unwilling to enter into a legal agreement then the planning application should be refused stating clearly the planning objections that the agreement is needed to overcome.

- The Council will require the developer to contribute towards the legal costs of preparing the planning obligation. This will be a minimum of £500 and depending upon the complexity of the agreement, anything over this amount will be charged on a time/cost basis. Your solicitor will be advised of this cost at the time the agreement is first drafted.

What is the procedure for financial contributions?

- Planning obligations may involve the payment of a financial contribution to the Council. This is most likely to occur where a development is creating a need for, or placing an additional strain on, public parking facilities, transport infrastructure, public open space or children's play areas.

- In such cases, applicants will be made aware by the case officer of at least the approximate level of the contribution, and what the contribution may be spent on, during negotiations and well in advance of the application being considered by the Planning Committee. Preferably, the level of the contribution and details of how and where it is to be spent should be finalised before Committee, or as a minimum the heads of terms of the obligation will be agreed with the applicant.

- Once an application has been approved subject to a planning obligation being signed, the Council will send a draft legal agreement to the applicant's legal representatives. The agreement will normally entail payment of the contribution as a lump sum, after which the planning permission will be issued.

- The need for and calculation of financial contributions should be applied consistently but may, in exceptional circumstances, be subject to negotiation with the Development Control case officer dealing with your application. Where any departure from standard practice is being contemplated, this will be made explicit and fully justified.

- Where a developer proposes to submit a Unilateral Undertaking, it will be expected that any undertaking will meet the requirements outlined in this Guidance Note. Therefore, the Council may require alterations to the undertaking if this is necessary or appropriate.

- Financial contributions through planning obligations are most commonly made in relation to transportation matters or in lieu of public open space provision (POS) and occasionally affordable housing.

- **Transportation Contributions** - Contributions to overcome issues relating to transportation will be dependant on the scale and type of development proposed and the highway implications of the development, and as such there are no fixed tariffs for calculating such payments.

- **POS Contributions -** The Open Space Interim Planning Position Paper (2012) identifies factors that should be considered when assessing if an open space contribution is considered appropriate. It also details the types of open space contribution that may be considered appropriate. This may include improvements to an existing open space, provision of new open space or a financial contribution towards open space provision. The Paper also provides details on laying-out and maintenance costs of open spaces to act as guidance in negotiations and provide applicants and developers with confidence and certainty.

- **Affordable Housing Contributions -** All residential development of 15 dwellings and above, in line with national guidance, will be required to provide an appropriate level of affordable housing provision. The current target is for 7.5% of the total development sales value to go towards the delivery of affordable housing, unless it can be clearly demonstrated to the council's satisfaction that this is not viable.

How long does the Council have to spend the financial contributions?

- The Council has adopted an approach of including time limits for the expenditure of financial contributions within planning obligations. The agreed timeframe will depend on the purpose and amount of contribution received.

- It is appropriate to have contributions relating to public open space time limited to a minimum of 5 years from receipt of the S106 monies as it is reasonable for the Council to develop and/or improve an area of public open space within a 5 year time period. The maintenance contribution will still be calculated over 12 years and will not be time limited.

- However, for contributions relating to more complex issues such as transportation infrastructure and affordable housing where there is a much longer lead in time and where other factors greatly influence implementation timescales, a longer time limit than 5 years is necessary. In these circumstances, the Council will require a longer time frame i.e .a minimum of 10 years.

Who can see the details of planning obligations?

- Once signed, obligations and Unilateral Undertakings form part of the planning permission. This is a public document and anyone may see a copy of it and any correspondence connected to it by contacting or visiting the Development Control group at the address below.

- To increase transparency and maintain public confidence in the system for collecting and spending sums acquired through planning obligations, reports will be presented to the Planning Committee, summarising the number and types of planning obligations which have been connected to planning permissions up to that time and the ways in which any financial contributions have been spent.

For more information regarding this good practice guide or general enquiries regarding planning obligations, contact:

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