

S106 guidance for applicants

Validation Criteria

Planning obligations - draft head(s) of terms

Planning obligations (or Section 106 agreements) are private agreements negotiated between local planning authorities and persons with an interest in a piece of land (or developers) under S106 of the Town and Country Planning Act 1990. They are normally used to enhance the quality of development and enable proposals to go ahead which might otherwise be refused. Such agreements should preferably be prepared in draft by the applicant and submitted with the planning application using the draft agreement templates which the Council has drawn up, available on our website at: www.leeds.gov.uk/planningforms

As a minimum, relevant applications must identify the heads of terms of the agreement. Section 106 agreements may be required for the following:

- Affordable housing provision/contribution
- Education/buildings contribution
- Employment and training initiatives
- Green space provision
- Highway works provision/contribution
- Public art provision
- Public realm provision/contribution
- Riverside walkway/ access provision
- Public transport contribution
- Travel plans
- Other issues that require provision/contributions according to circumstance

Procedural information for applications requiring planning obligations

Undertaking to pay Council's legal fees

When heads of terms are submitted with an application identifying the issues which will need to be covered by the s106 agreement it is preferable if details of the applicant's solicitor are provided in order to speed up the process during the course of the application. Alternatively Leeds City Council (LCC) solicitor will contact the applicant/ agent.

The applicant will be required to sign an undertaking to cover the Council's legal fees in drafting and entering into the legal agreement before any work can commence on the drafting of the legal agreement.

If the applicant has provided the first draft of the legal agreement an undertaking to pay the Council's fees will still be required before the legal agreement can progress. The undertaking will be tailored to the individual matters which need to be covered by the agreement. Where there are matters which are unique to the application or require significant legal input this may incur higher fees. The undertaking may need to be revised through the course of the application if costs increase.

Unilateral agreements

If the matters required to be dealt with by way of a planning obligation are proposed to be dealt with through a unilateral undertaking provided by the applicant/developer, the fee incurred for the Council's legal services related to the registering and checking of a unilateral undertaking will again need to be agreed on the basis of the level of work involved. Where there is a standard single matter dealt with by the unilateral undertaking the fee could be a minimum of £500 but confirmation will be required based on the nature of the agreement.

Where there is a single planning obligation relating to a development, a unilateral undertaking may be the more appropriate route, for example for the travel plan evaluation monitoring fee related to a development. A unilateral undertaking template can be found on the Council's website.

Proof of title

The applicant will be required to provide proof of title of the ownership of the application site. If the applicant is not the owner of the site, or there are other parties holding an interest in the land, then the landowners or the parties holding such an interest, as the case may be, will also need to be party to the legal agreement. If the site is subject to a mortgage then the mortgagee will also need to enter into the legal agreement.

Management fee

A management fee of £750 per obligation (save for Travel Plan and greenspace obligations – see below) within the legal agreement is required and this is the Owner's maximum total contribution towards the costs incurred or to be incurred by the Council in monitoring, keeping of appropriate data and mechanisms up to date and related staff cost. This management fee was introduced in 2004 by Planning Services. Its purpose is to contribute towards the comprehensive management of planning contributions and to ensure that public benefits secured through the planning system are delivered. In addition it contributes towards arrangements for the effective monitoring, accounting and reporting procedures so that developers and communities are able to obtain information and advice on the progress of planning contributions.

There is a management fee of £1,000 per obligation involving the payment of a commuted sum for greenspace as additional resources are involved in administering the greenspace programme within the planning service to ensure that commuted sums are expended on appropriate schemes in local areas in consultation with Ward Members.

No management fees are payable in respect of Travel Plan obligations as there is a separate monitoring fee associated with the Travel Plans.

Timescales for completion of planning obligations

For a S106 agreement which the Council enters into with the applicant, heads of terms are required at validation stage and upon the applicant's completion of an undertaking to pay the Council's fees whether or not the matter proceeds to completion, a draft s106 agreement will be prepared. This should be carried out as

early on in the process as possible in order for all parties to agree the terms of the agreement.

If the applicant is preparing a unilateral undertaking then a draft should be submitted as soon as possible in the application process in order to avoid delays.

Applicants must be aware that matters which are required to be dealt with by way of a planning obligation are necessary and relevant to the development proposed and planning permission would not be granted without the agreement/undertaking. A signed and completed legal agreement either by way of a s106 agreement or where relevant a unilateral undertaking should be provided no later than 10 working days prior to the 8 or 13 week target date for the decision. This is in order to allow due time to check the agreement and for the Council to sign and/or register the planning obligation. An application may be refused if a legal agreement is not in place to cover the relevant matters within this timescale.