



Guidance Notes on Planning Agreements

Types of Agreements

There are two types of Planning Agreements: a negotiated bilateral often referred to as a section 106 agreement, where all the parties including the Council agree and sign, and a Unilateral Undertaking, where only the landowner and applicant sign. Both are Planning Obligations.

The two most common Unilateral Undertakings at Surrey Heath are those that contribute a sum of money towards:

- The provision of Suitable Alternative Natural Green Space, to mitigate the impact of new residential development on the Thames Basin Heath Special Protection Area (known as a “SANGS Contribution”). Further information can be found at: <http://www.surreyheath.gov.uk/planning/planningpolicyandconservation/ThamesBasinSPA.htm>
- The provision of Local Infrastructure, to mitigate the impact of new development in accordance with the Council’s adopted Developer Contributions SPD.

In cases that involve the payment of contributions or a simple restriction, the Council would normally expect the completion of a Unilateral Undertaking. In all other cases, the Council would normally expect a negotiated sc 106 agreement. In all cases the Council will produce the draft documentation for the parties to complete.

The Council’s Process

To provide a fast track system for processing standard planning obligations, the Council will require the completion of a standard unilateral undertaking template for any SANGS and Infrastructure Contributions. Being a standard document the Council will not accept any amendments to the template.

Which type of Unilateral Undertaking

An example of the Council’s Standard Unilateral Undertakings can be viewed on the Council’s Web site.

The standard Unilateral process will require the payment of the Contributions due under the Undertaking up front on submission of the Deed. This avoids the need for Applicant to prove title to the land and ensure any Mortgagee’s sign the Deeds. However, sometimes Applicants wish to pay later for various reasons, for example they are not sure if they wish to implement the scheme. In such cases the later date for payment will

be on commencement of development. In such cases Applicants will need to advise the Council on submission of their Application that they do not wish to pay the Contributions up front. This early notice will avoid any delays in sending out the correct documentation to them.

Should planning permission be refused where such Contributions have been paid on the submission of an Undertaking, then any Contributions and the Monitoring Fee will be reimbursed to the paying party and the Unilateral returned. All Undertakings are conditional on the grant of planning permission. However, there will be no refund of the Legal Fees that would have been paid.

Should the Applicant wish to appeal any refusal of planning permission where an Undertaking has been submitted and payments made the Council will advise on the options available.

In all non standard matters, the Council will produce a bilateral 106 agreement.

Should Applicants submit their own Unilateral Undertakings, the Council may be unable to accept the document if there is something wrong with it. This may either delay the issue of Planning Permission or result in a refusal. If you would like the Council to check that the Undertaking is acceptable, this can be done although a charge will be payable based upon the level of work involved. The comparison table below sets out the various options available and should assist Applicants in deciding which procedure to follow:

Comparison Table for standard Unilateral Undertakings and Negotiated sc 106 Agreements

| Requirements | Unilateral Undertaking Payment on Submission | Unilateral Undertaking Payment on Commencement of Development | Negotiated Sc 106 Agreement |
|---|---|---|---|
| Who produces Documentation? | Council | Council | Council |
| Type of Planning Obligations | Payment of Contributions | Payment of Contributions | Complex and bilateral obligations |
| Land Registry Title Information to be supplied | No | Yes | Yes |
| Mortgagee to sign the Deed | No | Yes | Yes |
| When are the Contributions payable? | On submission of Unilateral | On Commencement of Development | On or before Commencement of Development |
| Indexation and Interest provisions | No | Yes | Yes |
| Are there any other fees? | Yes – Monitoring and Legal Fees | Yes - Monitoring and Legal Fees | Yes – Monitoring and Legal Fees |
| When are Monitoring Fees payable? | On submission of Unilateral | On submission of Unilateral | On completion of Deed |
| What is the charging structure for Monitoring Fees? | Sangs £400 Infrastructure £5% of due amount | Sangs £400 Infrastructure £5% of due amount | Sangs £400 Infrastructure £5% of due amount |
| When are Legal Fees payable? | On submission of Unilateral | On submission of Unilateral | On completion of Deed |
| Legal Fees | £600 Additional charges may apply and will be charged on an hourly basis | £600 Additional charges may apply and will be charged on an hourly basis | £600 Additional charges may apply and will be charged on an hourly basis |
| Legal Fee for combined Planning Infrastructure Contribution and SPA Unilateral Agreements | £600 Additional charges may apply and will be charged on an hourly basis | | |

