

Section 106 Unilateral Undertakings

General Notes

1. **Please read these notes carefully prior to completing the Unilateral Undertaking.**
2. A planning obligation is a legally binding agreement secured under Section 106 of the Town and Country Planning Act 1990 as amended. These agreements are regularly referred to as Planning Agreements or Section 106 Agreements.
3. They require a developer/landowner to undertake certain works, or to contribute financially towards the provision of measures to mitigate the negative impacts of their development.
4. Where planning obligations are required, a planning agreement, drafted by the Council's legal services team and entered into by the Council and the developer/landowner will usually be appropriate. However there will be occasions where the use of **Unilateral Undertakings** can assist in ensuring that planning permissions are granted speedily, which benefits both the applicant and the Council.

A **Unilateral Undertaking** is a simplified version of a Planning Agreement and is only entered into by the landowner. It will only be appropriate in certain circumstances.

Where a Unilateral Agreement is Appropriate

5. The Council considers that it will normally be appropriate for a Unilateral Undertaking to be used **only if all the following conditions are met:-**
 - a. The person entering into the Undertaking is the owner of the land (not merely a purchaser with a conditional contract) and there are no leases or tenancies. If the land is subject to a mortgage/legal charge, mortgage and mortgagee details should be included (see template).
 - b. The Planning Obligation will consist solely of the payment of financial contributions, of one or more of the types described in the template, to be paid on commencement of development or the date hereof (i.e. the date the agreement is signed).
 - c. The Undertaking includes an obligation to pay the Council's costs in assessing the adequacy of the Undertaking (which will include checking the title to the land) and registering the Undertaking as a local land charge. The current basis of charges is £194 per hour. This charge is, however, subject to review and actual costs will be assessed by reference to the rates operating on the date of completion of the agreement. In addition to the above charge the Council will also charge a monitoring fee of 4% of the total financial obligations contained in the Undertaking.
6. If any of the above conditions are not met, the Council will normally consider the matter unsuitable for a Unilateral Undertaking and will expect the Applicant to enter

into a conventional negotiated Section 106 Agreement, which will be drafted by the Council's Legal Services under their normal terms of business.

7. If the Applicant considers that the above conditions are met and the Development Control Officer dealing with the application has confirmed that a Unilateral Undertaking would be appropriate, then the Applicant should complete a draft Unilateral Undertaking (using the template) and submit this to the Development Control Officer as soon as possible together with a plan of the application land and proof of title to the land.
8. Upon receipt of the draft Undertaking, the Council's Legal Services Department will assess it and confirm whether it is acceptable or whether amendments are required. They will also check the proof of title submitted. If any amendments are required, the draft will be returned to the applicant.

Template for Unilateral Undertaking

9. Where the Unilateral Undertaking contains square brackets and/or footnotes, further guidance is given in the note below for completion of each appropriate part. **The footnotes and instructions in square brackets must NOT form part of the completed Unilateral Undertaking** - please delete these once you have complied with the appropriate guidance.
10. A Unilateral Undertaking is a legally binding document with significant financial consequences. If you are in any doubt about the meaning and effect of the undertaking you should seek independent legal advice.

The Council is committed to delivering a development control service that meets or exceeds national targets. However, a Unilateral Undertaking must be completed and signed before the application can be decided. Applicants are therefore strongly advised to allow sufficient time for their draft undertaking to be assessed and (if need be) amended - it is recommended that the draft is submitted at least one month before the 8 week deadline is reached.