

SECTION 106 PLANNING OBLIGATIONS

GOOD PRACTICE GUIDE

Introduction

This guidance note is for applicants and their agents who intend to carry out development for which the Council may require a 'planning obligation' as part of the planning process. The guidance explains:

- what a planning obligation is
- the type of development that may need one
- how the obligation can be prepared without unnecessary delay

Key government guidance recommends that planning obligations are transparent, clear, certain, practical and delivered speedily.

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

Legal context

Under the Town and Country Planning Act 1990 (as amended) a local authority may grant planning permission subject to a planning obligation. This is known as a '**Section 106 Planning Obligation**' and permits the authority to allow certain developments that might otherwise be refused.

A planning obligation may: be unconditional or subject to conditions; impose a restriction or requirement for an indefinite or specified period of time; or provide for payments of money to be made of a specific amount; or by reference to a formula for an agreed purpose.

Any person with an interest in the development (including those who own land and property associated with the site) may by agreement, or acting unilaterally, enter into a planning obligation with a local authority. If there is more than one interested party, all would need to be bound by the planning obligation. Planning obligations can also be offered voluntarily by the developer, but once entered into they become a legally binding commitment.

Use of planning obligations

Guidance for the use of planning obligations is outlined in central government Circular 05/2005: (www.communities.gov.uk). The Circular states that planning obligations must meet all of the following five tests:

- ✓ relevant to planning;
- ✓ necessary to make the proposed development acceptable in planning terms;
- ✓ directly related to the proposed development or use of land;
- ✓ fairly and reasonably related in scale and kind to the development proposed;
- ✓ reasonable in all other respects.

A planning obligation may have positive or negative requirements. There are broadly two types of planning obligations: 'regulatory', which seek to restrict uses or activities; and 'beneficial', which provide financial contributions. They can be used to achieve any of the following requirements:

- restricting the development or use of land and buildings in any specified way
- requiring certain operations or activities to be carried out on land or within buildings
- requiring a sum of money to be paid to the local authority to contribute towards identified community, environmental, or highway improvements (known as a commuted sum payment).

Each planning application and any associated planning obligation need to be assessed on its own individual merits. Planning obligations may also relate to matters other than those covered by a planning permission, provided there is a direct relationship between the obligation, the permission and the government's five tests referred to above.

Stockport Unitary Development Plan Review [UDP]

The Stockport UDP Review was adopted on 31st May 2006. Certain policies in the UDP refer to various circumstances where planning obligations may be appropriate. However, the UDP cannot anticipate all future circumstances and there may be occasions when planning obligations may be appropriate, even though there are no specific policies in the UDP. In such circumstances (e.g. a change in government policy), the five tests outlined above will still apply.

The list below identifies where the Council may seek a planning obligation, based on current Stockport UDP Review policies:

- providing, or contributing towards, public open spaces and children's play areas for new residential developments (Policy L1.3)
- including affordable housing as part of a large residential development scheme (Policy HP2.1)
- providing, or contributing towards, off-site local highway improvements as part of a large residential or commercial development (Policies TD1, TD1.1, TD1.2, TD1.3, TD1.4 and TD1.5)
- contributing towards improving public transport facilities as part of a large residential or commercial development (Policies ST1.1, ST1.2, ST1.3)

Supplementary Planning Guidance & Advice

The Council has prepared Supplementary Planning Guidance (SPG) for 'Recreational Open Space Provision and Commuted Payments', 'Affordable Housing', 'Town Centre Housing' and 'Sustainable Transport'. These documents provide detailed guidance on how the UDP policies will operate in practice in relation to specific development proposals that may require a S106 Planning Obligation.

In addition, the Council has also prepared a number of S106 Planning Obligation 'Guidance Notes' to assist initial enquiries about the need for S106 Obligations. The 'Guidance Notes' include information on how planning obligations will be dealt with by the Council in respect of 'Recreational and Open Space Provision', 'Affordable Housing' and 'Contributions to Highway Schemes'.

Details and further information on the SPG and the topic 'Guidance Notes' can be found on the Council's website www.stockport.gov.uk (see related links).

Pre-application advice and 'draft' S106 Planning Obligations

The Council encourages pre-application discussions, particularly for more significant or complex developments. This service provides an opportunity to identify those schemes that

potentially may require a S106 Planning Obligation at an early stage in the application process, thus avoiding unnecessary delays.

You should initially contact the appropriate Area Planning Team for advice on whether a planning obligation will be required for the development proposed. The planning officer will then determine whether an obligation would be appropriate, taking into account the location, the scale and type of development, current UDP planning policies and relevant government planning guidance.

When a planning obligation is clearly appropriate, it is good practice for you to discuss the likely 'Heads of Terms' in principle with the Area Planning Team and submit a 'draft' planning obligation with your application.

Standard forms for ['pre-application discussion'](#) and ['model draft S106 Planning Obligation templates'](#) can be downloaded from the Council website www.stockport.gov.uk (see related links). Contact information for the appropriate [Area Planning Team](#) can also be found on the website (see related links).

Procedure

As a planning obligation will be regarded as 'a material consideration' in the decision making process, it will be necessary to submit a 'draft' S106 Planning Obligation (where appropriate) to accompany a planning application. Please note, that failure to submit a 'draft' planning obligation when required will result in the application being registered as invalid. (see related links to ['Application Validation Checklist'](#))

In some cases, the Committee determining the application may require that a specific planning obligation should be included before a planning permission can be issued. In such cases, the Committee will then defer the decision and delegate the determination of the application to officers, subject to the planning obligation being signed. You will be notified of the details of any planning obligation that the Committee has requested as soon as possible after the Committee meeting has taken place.

Once you have given your agreement to sign a planning obligation, the Council's solicitor will then be notified to prepare the legal document. Please note that the Council will require you to meet the Council's legal service cost of preparing a planning obligation.

If the Council decides that a planning obligation is essential to make a proposed development acceptable in planning terms, but you are unwilling to enter into a legal agreement, then the planning application will be refused. This will normally happen within the prescribed determination period (8 weeks or 13 weeks for major applications), with appropriate reasons being given.

Issuing the decision notice

When the Council regards a planning obligation as essential to the grant of planning permission, it will not issue the decision notice before confirming that the planning obligation has been signed and sealed by all parties. So it is important that you complete planning obligations as early in the process as possible. If there is an unnecessary delay in responding to the Council's request for completion of a planning obligation, then the Council will refuse the application for failing to meet the relevant S106 Obligation policy agreements.

The Council's Register of Planning Applications

Legislation now requires that copies of all S106 Planning Obligations will be placed on a planning application register and made available for public inspection during normal office

hours. Therefore, copies of S106 Planning Obligations (and S278 agreements under the Highways Act 1980), which the Council takes into account in connection with planning applications, become part of the Register of Planning Applications and will be made available for public inspection. Any later modifications to a planning obligation will also be included in the register.

Monitoring for compliance with planning obligations

The Council will monitor planning obligations regularly to check that they have been, or are being, complied with as agreed. This will help to provide confidence that the system is being operated fairly and even-handedly to all. The Council will invoke a charge for any work that results from the failure to comply with any Planning Obligation (or S278 Agreement).

Frequently Asked Questions

- ***Can more than one subject be included in a planning obligation?***

While most planning obligations usually only cover one subject as part of the agreement (e.g. providing affordable housing), an obligation may also contain various clauses about different benefits or agreements. If the Council considers that several issues need to be covered by a planning obligation, these will normally be dealt with in the same document. These are referred to as the 'Heads of Terms'.

- ***Will the Council take into account the effect of a planning obligation on the viability of the proposed scheme?***

The Council is aware that there may be financial consequences for developers and will take this into account, as far as it is material to the development proposed. If you consider that a particular scheme is not viable to support a planning obligation, the Council will require you to submit an independent valuation of the scheme with the application. You will be expected to meet the cost of the valuation.

- ***How are financial contributions paid?***

For planning obligations that involve a financial contribution, you will be told the amount and purpose of the contribution before the application is decided. Once an application has been recommended for approval, but is subject to a planning obligation, the Council will send a draft agreement to you and/or your legal representatives for consideration. The agreement will specify the financial contribution and how it should be paid. Planning permission will be issued when:

- ✓ the planning obligation has been signed; or
- ✓ the required financial contribution has been paid in full via a voluntary payment in lieu of an agreement being signed.

The Council will normally apply and calculate financial contributions in accordance with the relevant policy and guidance notes. Variations or a one-off calculation will be justified case by case.

- ***Can applicants submit their own planning obligation for consideration?***

Yes, you can submit an independent or 'unilateral' planning obligation to the Council. However, all interested parties (including those who own land and property associated with the development site), would need to be bound by the obligation. You can also offer planning obligations voluntarily, but once you enter into them they become a binding commitment.

- ***At what stage does a planning obligations become effective?***

The start of the development usually triggers planning obligations. However, occasionally planning obligations may be triggered before the development starts (for example, where a green travel plan needs to be put in place), or on completion, depending on the details of the case.

- ***Can a planning obligation be modified or discharged?***

Yes, an obligation may be modified or discharged (removed), but only by agreement between the Council and all interested parties against whom the planning obligation is enforceable. Application forms for modification or discharge are available from Hygarth House or via the Council's website www.stockport.gov.uk Forms can also be obtained from the Planning Portal website www.planningportal.gov.uk

- ***Who can see the details of planning obligations?***

Once signed, planning obligations become part of the approved planning application. This is a public document and anyone may inspect a copy of the legal agreement made in connection with the application. To increase transparency, the Council will also publish an annual report summarising the number and types of planning obligations that have been signed during the previous year and how it has spent the funds it has received.

- ***Can planning obligations be made under other legislation?***

The Council may secure work within the adopted highway under Section 278 of the Highways Act 1980. The Council will exercise these powers if the merits of the application justify them when assessed against the guidance in Circular 05/2005 For example, a development may require road widening or a new junction. A Section 278 agreement sets out what is required and authorises the work on land that the Council owns or controls as the highway authority.