

Section 106 Planning Obligations

Good Practice Guide

Revised
October 2007

OLDHAM 
Metropolitan Borough 

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Good Practice Guide

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 in 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.

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?

- Government policy, as expressed in Circular 05/05, requires planning obligations to meet 5 tests. They must be:
 - ⇒ necessary;
 - ⇒ relevant to planning;
 - ⇒ directly related to the proposed development;
 - ⇒ fairly and reasonably related in scale and kind to the proposed development;
 - ⇒ reasonable in all other respects.
- 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. This is because applicants retain an immediate right of appeal, whilst the terms of an obligation may only be appealed against after five years.

What can be included in a planning obligation?

- Planning obligations may relate to any matter, provided they satisfy the government's 5 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 Metropolitan Borough Unitary Development Plan (adopted 14th July 2006) 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 five tests are satisfied.
- The Council is currently preparing 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 being prepared over the next 2 years. Please see your case officer for up to date information.

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 costs of preparing the planning obligation. This will be a minimum of £500 and depend 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 very 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). 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.
- The methods for calculating the contributions for POS which may be payable, are detailed in appendix one 'Contributions towards public open space'. These are subject to an annual review and therefore please check with your case officer for the current figures.
- The Council will return contributions to developers if they have not been spent within an agreed timeframe. This will be a minimum period of 5 years for capital contributions.

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 an annual report 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:

Planning Services
Environmental Services
Level 12
Civic Centre
West Street
Oldham
OL1 1UQ
Tel: 0161-770-4105 email: planning@oldham.gov.uk
www.oldham.gov.uk

Appendix one

Contributions towards Public Open Space (POS)

Until the preparation of the Open Space, Sports and Recreation Supplementary Planning Document, the Council have approved an interim approach to using the up to date Open Space needs assessment and audit figures with the standards set out the adopted Unitary Development Plan (2006).

Why should a contribution be paid?

- The current Unitary Development Plan (adopted July 2006) sets out the following policy (R2.1) to guide the requirements for new and improved open space, sport and recreation facilities in relation to residential developments:

Policy R2.1

For developments of 30 or more dwelling units, there will be a requirement for the on-site provision of public open space and/or outdoor sport and recreation facilities, examples of which are listed in Policy R1.

Where there is evidence of an existing or potential local deficiency in open space or sport or recreation facilities and the development proposed is for 5 – 29 dwelling units inclusive, there will be a requirement for on-site provision unless there are exceptional circumstances that mean it is neither practicable nor desirable to do so. In this case one of the following alternatives will be required:

- The provision of open space, sport and recreation facilities by the developer on another site which should be at least as accessible to the occupiers of the new dwellings and convenient for existing residents in the area, and at least equivalent in terms of usefulness, attractiveness and quality, and if provision were being made on-site; or***
- If it is agreed that provision on another site is neither practicable nor desirable, the developer will be required to make a payment to the Council in lieu of the capital costs of the provision, for the Council itself to use the funds to provide the additional facilities in the general locality of the development site; or***
- A mixture of both approaches to be agreed with the Local Planning Authority***

Please note that the Open Space, Sports and Recreation Open Space Supplementary Planning Document is currently being prepared and should be available in early 2008. This will supersede this appendix.

What is the contribution based on?

Depending on whether the developer is providing on-site POS or contributing towards enhancements to existing POS, will determine how the commuted sum is calculated. Potentially the commuted sum could comprise of two elements: laying-out costs and maintenance costs.

Laying-out costs (October 2007)

<u>Size of dwelling</u>	<u>Lay-out contribution per dwelling</u>
1 bedroomed dwelling	£536 per dwelling
2 bedroomed dwelling	£857 per dwelling
3 bedroomed dwelling	£1,072 per dwelling
4 bedroomed dwelling	£1,287 per dwelling
5+ bedroomed dwelling	£1,501 per dwelling

- These contributions will be used either to enhance existing specific public open spaces near the development site or to fund the cost of laying out new facilities in the area. The contribution is based on the size of each dwelling, as measured by the number of bedrooms, since this is related to the potential demand for good quality public open space from future residents.

- Capital contributions will be refunded if not spent within a minimum of 5 years from receipt, unless otherwise agreed with the developer.

On site POS

- If public open space is to be provided as part of the development and laid out by the developer at their own expense, then the contribution need only comprise the costs of future maintenance by the Council, if the Council is to take responsibility for the POS. If this is the case, the agreement will also need to include details of and requirements for the handover, acceptance and transfer of the land to the Council.
- If the public open space is within the development site but is to be laid out by the Council, then the contribution will comprise laying-out costs, as detailed above, in addition to the 12-year maintenance costs set out below.

Off site POS

- Where the developer is contributing to the enhancement of existing local public open space not within the development site, the contribution will comprise laying-out costs, as detailed above, in addition to the 12-year maintenance costs set out below.

Maintenance costs

This will normally depend whether the public open space or children's play area are to be incorporated in the development or provided elsewhere, and whether the developer expects the Council to take on responsibility for the future maintenance. This will be the subject of negotiation between the developer and the Planning case officer, in consultation with other relevant Council officers. There may also be a requirement for a land transfer to be incorporated into the agreement.

The maintenance contribution will cover the first 12 years maintenance and include an annual percentage increase based on the Retail Price Index (RPI) published by the Office of National Statistics (www.statistics.gov.uk) to ensure that the real value of the contribution does not decline over the 12-year period.

Maintenance of on site POS & landscaping

- This is calculated according to the size and content of the public open space provided by the developer and will be assessed by the Council and multiplied to cover 12 years maintenance.

Maintenance for off site POS contributions

- This will be based upon the contribution received from the developer and will usually equate to 10 % of the capital contribution multiplied by the 12 year period of maintenance.

Future changes to this procedure

- Changes will be made through the adoption of the Open Space, Sports and Recreation Supplementary Planning Document.

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