



1 b) Section 106



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Planning obligations are made under s106 of the [Town and Country Planning Act 1990](#). The use of s106 is governed through secondary legislation ([Community infrastructure regulations 2010](#), as amended, Regulation 122), which states;

A planning obligation may only constitute a reason for granting planning permission or the development if the obligation is—

(a) necessary to make the development acceptable in planning terms;

(b) directly related to the development; and

(c) fairly and reasonably related in scale and kind to the development.

Planning obligations may be created by agreement between the developers and local planning authorities (and other relevant parties) or may be created by the person with the interest making an undertaking (“a Unilateral Undertaking”). Planning obligations are negotiated within the context of the determination of a planning application. They may restrict development or use of the land, require operations or activities to be carried out in, on, under or over the land; require the land to be used in any specified way; or require payments to be made to the authority either in a single sum or periodically. [Section 6](#) of this framework provides a firm indication of the matters that applicants will be expected to address as part of their proposal.

Planning obligations run with the land and may be enforced against both the original covenantor and against anyone acquiring an interest in the land from him/her, unless the agreement specifies otherwise. They are also a local land charge for the purposes of the Local Land Charges Act 1975 and so must be registered with the [Local Land Charges Register](#).

It is especially important that our policies, practices and procedures in respect of s106 agreements and unilateral undertakings are clearly set out and have regard to the development plan and supplementary planning documents. This is to facilitate:

- A shared understanding of what may and may not be achieved;
- Clearly focused and constructive joint working between the council officers, developers and service providers;
- Avoidance of any unnecessary delay in negotiating and delivering service improvements;
- Ensuring that the necessary s106 benefits are maximised through managing those risks associated with the pre-application phase.
- Ensuring that we do not act (and is not perceived to act) in an inconsistent, arbitrary or opaque manner in seeking s106 Agreements.

The successful implementation of these procedures and practices depends on:

- Fostering support from service providers/beneficiaries and the development community through strengthening joint working protocols;
- Training for officers in the potential and limitations of s106 Agreements and effective negotiation skills;
- Building new capacity and capability into existing legal, administrative and monitoring systems;
- A solid evidence base to support our values towards compliance and good governance.

Standard templates and clauses are available in Word format, on request, and included as templates within this framework. The unilateral template can be amended where necessary for Hertsmere only obligations.

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