



8 a) Financial and Legal Matters



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As far as practicable, all trigger dates are to be based on commencement dates, although on larger schemes this may be possible on a phased basis to be agreed between the council and the developer.

Generally, trigger dates based on 'Occupation', are prone to high risks, difficult to monitor and should be avoided. This type of condition or s106 clause will result in trigger points, which are unclear and require greater resources and time to monitor.

Included in the s106 will be a requirement for developers to notify the Planning Unit's s106 Monitoring Officer of trigger dates such as the commence of development or a particular phase within the development.

It is important to note that any agreed trigger date for completing a number of units will not necessarily be the same as the time in which the entire development is completed. The council will be flexible in seeking immediate payment of outstanding contributions in cases where the developer or a representative gives notification that the agreed date cannot be met and a reasonable alternative date is offered and agreed between the s106 monitoring officer and the developer.

Other key principles to note are as follows:

Compliance:

Section 106 requirements and trigger points will be monitored by the s106 Monitoring Officer who will inform the signatories to the agreement if any monies or works have not been undertaken as agreed in the s106. If, after a polite letter of reminder, there are cases in which monies remain unpaid or works not carried out as agreed, then the council will refer the matter to its Head of Legal Services.

Deeds of Variation:

Where changing circumstances have led to part or all of a s106 agreement becoming obsolete, then the developer can apply for a deed of variation. In the first instance the developer should contact the Planning and Building Control Unit Department at Hertsmere Borough Council.

Conditions:

Where items could be provided by a condition rather than as an item in a s106 agreement, generally they will be provided by condition.

Monitoring:

Details of s106 agreements will continue to be presented every six months to the Hertsmere Overview and Performance Committee. It is vital that the Monitoring Officer is kept informed by all parties of any changes related to s106 payments, conditions and disbursements. The Section 106 Officer should be notified of all s106 monies being released for spending prior to the actual monies being released and is accountable to ensure that all monies are spent in accordance with the relevant s106 agreement

Section 106 Payments:

All s106 payments should be made to the s106 Monitoring Officer for monitoring and ratification with the respective s106 agreement clauses.

Indirect Payments:

Where external organisations might benefit from monies paid under s106, such benefits will need to be indirect and paid through the council, via the s106 monitoring officer.

Index-Linking:

Hertsmere contributions will normally expect to be index-linked using the Consumer Price Index (CPI) with the exception of Affordable Housing payments which will be linked to the Land Registry sales data for Hertsmere.

Late s106 Payments:

The Developer / Owner shall in addition, pay interest calculated at

a rate equivalent to 4% per annum above the base lending rate offered by the bank for the account, where the funds would have been deposited, at the time of the signing of the s106 (or any other interest rate agreed between the council's legal team and the developer).

Refund Provision:

Where refunds are specifically sought by the developer and agreed with the council for incorporation into the s106, if any item of s106 infrastructure is not spent or committed by the agreed anniversary of the receipt of the monies, then the relevant organisation (e.g. Hertsmere Borough Council or Hertfordshire County Council) will refund to the developer any unspent contributions along with any interest accrued.

Company Searches:

At the time of exchanging draft heads of terms, where deemed necessary a full Company search will be undertaken for all the firms expected to be included in the obligation to ensure they are bona fide. The Council's Legal Services department will commission the search. If any other firms are added to the heads of terms later on then they also have to be subject to a Company Search. Trigger Points: The Council will adopt the most appropriate trigger point for each s106 clause when a trigger mechanism is required.

The Legal Agreement:

Once planning obligations have been agreed in principle between the parties, a draft s106 document may be drawn up. This can be produced by the council's legal team, or by the applicant's solicitor. To speed up the process, the council recommends using the [Law Society Model Agreement](#).

The council's Legal Services department will, when considering / drawing up s106 obligations require the following:

1. The name and address of your solicitor.
2. A solicitors undertaking on behalf of the applicant, undertaking to pay the reasonable legal fees of the Council in considering/drawing up the obligation.
3. Whether the obligation is to be an agreement or undertaking.
4. Whether your solicitors would be preparing the first draft.
5. Up to date land Registry Office Copies and Filed Plan of the application site confirming ownership.
6. If the planning applicant is not the freehold owner of the land, and/or any other person, mortgagee, lessee, corporation, executor or trustee, has a legal interest in the land, then we require full contact details of these.

If this information is provided early in the planning process it will ensure that the agreement / undertaking is completed as swiftly as possible.

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