



Planning Obligations – What You Need to Provide Within 14 days of Planning Application Validation Letter

Land Title

Evidence of 'legal title' to the land to which the proposed planning obligation(s) relates. Title is a term for a bundle of rights in a piece of land.

An applicant for planning permission can only give a section 106 unilateral undertaking if they have 'an interest in the land' which means a legal interest. As a planning obligation relates to the land, it is legally enforceable against anyone deriving title to the land to which the obligation relates (including successors in title such as future owners). This can affect the value of the land (eg where the obligation restricts its use in perpetuity for only affordable housing).

This is why the Council must satisfy itself that all those with a legal interest in the land are ascertained. As a planning obligation can be enforced by the Council against any person deriving title from the owner and against the person entering into the obligation, the Council requires all those interested in the land (including all owners, lessees and mortgagees) to sign the legal instrument containing the planning obligation.

How is title established?

It depends if the land is registered land or unregistered land.

Registered Land (see <https://www.gov.uk/government/organisations/land-registry>)

If the land is registered land, this will be an up to date copy of HM Land Registry's 'Official copy of register of title'.

Part A (Property Register) describes the land and estate comprised in the title.

Part B (Proprietorship Register) specifies the class of property title (ie the type of rights).

Part C (Charges Register) contains any charges and other matters that affect the land (eg mortgages and other loans secured on the land).

Unregistered Land

Please seek the advice of a solicitor or licensed conveyancer in private practice as to what is required.

It would be perhaps easier if any unregistered land is registered with HM Land Registry by submitting a first registration application to HM Land Registry. Details of how to submit an application for first registration is available from HM Land Registry's website –

<https://www.gov.uk/government/organisations/land-registry>

Why does the Council require a mortgagee to enter into the deed if there is a mortgagee?

In order to protect the lender's financial interests, a lender will often require security over its lending and this often takes the form of protection by way of a legal mortgage over the development land. A legal mortgage is an interest in the land.

The Council requires a lender with an interest in the development land to enter into the deed in order to ensure commitment to and compliance with the planning obligations and in particular to widen the number of people against whom the Council can enforce.

You, the developer, will need to ask your mortgagee to agree to you giving a planning obligation and to request the mortgagee to sign up to the deed containing the planning obligation(s). This is presumably on the basis of the anticipated enhanced development land value arising from any grant of planning permission following the giving of the planning obligation(s).

Please note that your lender may well charge you for considering your application for consent and if successful for the work incurred by the lender in entering into such a deed. You need to build these costs into your development brief.

In practical terms, a lender may well want to have some input into the drafting of the deed containing the planning obligation(s). This is in order to properly protect their security as a planning obligation might adversely affect the ability of the lender to realise their security by making it more difficult or indeed impossible to dispose of the development land.

Deed Containing the Section 106 Unilateral Planning Obligation(s) –

What form of section 106 unilateral undertaking is acceptable to the Council?

The Council has prepared various templates of draft deeds which are likely to be acceptable and these are available from the Council for your consideration.

Too often when templates are used, the Deed submitted has not been customised to reflect the particular case circumstances. Take the time now to ensure that the Deed is right.

Please note that the Council will not accept unilateral undertakings where not all those with an interest in the land have agreed to enter into the unilateral obligation. This follows the Planning Inspectorate's advice.

Please remember to provide a plan showing the land concerned for inclusion in the First Schedule to the Deed. (NB. Below the number of copies needed)

Whose responsibility is it to get the Deed containing the unilateral undertaking correct?

The responsibility rests with you and your advisers.

AFTER the executing the Deed, you will need to provide the following:-

Original UPO Deed and Three Colour Copies

The original deed is required for safe-keeping by the Council's Legal Services Unit.

One copy is required for the purpose of registering the section 106 unilateral obligation(s) in the Deed as a local land charge by the Council's Local Land Charges Unit. One copy is required for the Planning

Department. One copy is required for the Housing Section for monitoring purposes. Please note that the plan included in the Deed must in each copy show the land edged in red (a black and white photocopy is not acceptable).

If you fail to provide the necessary documentation, your application is to be refused.

Checklist

		Tick
1.	Have I included up to date proof of legal title(s)?	
2.	Have all those people with a legal interest in the planning site signed the Deed? [If registered land, see Part B of HM Land Registry's 'Official copy of register of title' (Proprietorship Register)]	
3.	Have all lenders (if any) entered into the Deed? [If registered land, see Part C of HM Land Registry's 'Official copy of register of title' (Charges Register)]	
4.	Has a site plan been securely attached to the Deed showing the site edged red. [The site may be larger or smaller than the area of land owned by the parties shown on the title plan]	
5.	Is the plan of sufficient scale (at least 1:1250) and does it adequately aid identification of the site?	
6.	Do you have the copyright of this plan or the copyright holder's permission to use the site plan? [The Council cannot accept a plan if you do not have the legal right to use that plan].	
7.	Has the plan been signed by a party to the Deed?	
8.	Have the correct attestation clauses been used for the relevant parties? [See, for example, The Planning Inspectorate's Good Practice Advice Note 16].	
9.	Has the Deed been signed by all the parties? [If the Deed has been signed by an "authorised signatory", has documentary evidence been supplied to the Council that the signatory is in fact authorised?]	
10.	Have all alterations (if any) been initialled by all the parties?	
11.	Has the Deed been properly witnessed and signed by the witness(es)?	
12.	Has the Deed been dated?	
13.	Have you retained a copy of the Deed for your own records?	
14.	Have you got the original Deed and three true paper copies of it (including the coloured plans) to forward to the Council? Please send to the Planning Department.	

Please note that it is your responsibility to ensure that the Deed has been properly completed and executed. If it has not, the Deed will not be accepted and you will be required to re-execute the Deed and this will cause delay and may result in your application being refused.

You are strongly advised to seek professional independent legal advice before completing the Deed. Legal advice cannot be given to you by the Council or its officers due to conflicts of interest.

UPO Affordable Housing Commuted Sum Templates available at

<https://www.eden.gov.uk/planning-and-building/planning/apply-for-planning-permission/section-106-planning-obligation/>

- Template 1 – One owner and a mortgagee
- Template 2 – Plural owners and a mortgagee
- Template 3 – One owner and no mortgagee
- Template 4 – Plural owners and no mortgagee