

Strategy and Development

ACCOMPANYING NOTES

TO

SECTION 106 AGREEMENTS

AND

UNILATERAL

UNDERTAKINGS

June 2014

www.welhat.gov.uk

**WELWYN
HATFIELD**
BOROUGH COUNCIL



1. Welwyn Hatfield Borough Council's (the Council) templates for Section 106 Agreements (S106s) and Unilateral Undertakings (UUs) **are guides only** as to the type and form of planning obligations the Council may require from you. Each agreement will have to be tailored according to the requirements of the Council and Hertfordshire County Council (HCC) on each planning application.
2. Although each development will be different, the Council will usually require a S106 agreement between all the parties in the following circumstances:
 - there are ongoing obligations that run with the land
 - and/or there are complex planning obligations
 - and/or there are numerous parties are required to be to be a party to the agreement
 - and/or there is detailed ongoing monitoring required of the s106
 - and/or reciprocal commitments required by the Local Planning Authority e.g. clawback provisions

A UU will only usually be appropriate for straightforward financial contributions where applicant only needs to be bound or at appeals or call-ins where there is difficulty reaching a negotiated settlement and the submission is unilateral of the developer.

3. Legal costs of dealing with S106s and UUs – The Council and HCC will require that your solicitor provides a Solicitor's Undertaking before any work is commenced for the payment of their costs necessitated in the preparation and/or completion of any S106 or UU, whether or not the matter proceeds to completion. In the Council, the legal work associated with s106s and UUs is usually externalised and you will be advised of the estimated charges by the external legal advisers, when they are first instructed.
4. Negotiation costs of the Planning department dealing with S106s and UUs – The Council will usually require that the charges for officer's time in negotiating any S106 or UU, whether or not that matter proceeds to completion, is paid before any work is commenced.
5. Proof of ownership – You will be required to provide the Council and HCC's legal representatives with up to date title to the development site, as the law requires all persons with an interest in the land to be a party to the S106 or UU. A pre-completion search may also be carried out.

6. Mediation/ Arbitration Clause – This clause will only usually be necessary when covenants under the S106 require further agreement at a later date. It is unlikely that such a clause will be required where the only obligation(s) are the payment of financial contributions before the commencement of the development. The Council takes the view that whilst a mediation clause may be appropriate, an arbitration clause will not be, as this may constitute a fetter upon the Council’s statutory discretion.
7. Where a development is very large and/or where the payment of contributions are phased to be paid at a point in the future, the Council may require a Bond. A parent guarantee is not acceptable in lieu of a Bond because in the event of a breach, the financial contribution must be available immediately.
8. The Council’s position on “walk away” clauses reflect HCC’s. The Council will only agree to an appropriately worded clauses which do not remove liability by the Owner over the time he/she had ownership over the land concerned. Examples of acceptable clauses are set out in HCC’s Guidance contained in its toolkit on Section 106 Agreements.
9. The Council’s Planning Obligations Supplementary Planning Document 2012 may be found on the Council’s website <http://www.welhat.gov.uk/index.aspx?articleid=1048>
Hertfordshire County Council’s Planning obligations guidance – toolkit for Hertfordshire, Hertfordshire County Council’s requirements, January 2008 may be found through the following page:
<http://www.hertsdirect.org/your-council/hcc/resandperf/hertsprop/planningobs/>
These documents detail the obligations that might be sought.

For any clarification on the legal templates, please contact the Legal Services Manager on 01707 357575.

Planning related queries should be referred to the Development Management Service Manager on 01707 357247.

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