



**ACCOMPANYING NOTES
TO
SECTION 106 AGREEMENTS
AND
UNILATERAL UNDERTAKINGS**

October 2018

1. Each Section 106 Agreement (s106) and Unilateral Undertakings (UU) will have to be tailored according to the requirements of the Council and Hertfordshire County Council (HCC) on each planning application. 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 required 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 or non financial obligations where an 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. A template UU for neighbouring developments requiring to be constructed simultaneously is available.

2. 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.

3. 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 whilst the S106 or UU is being prepared/negotiated.

4. 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.

5. 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.

6. 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.

7. "Walk away" clauses

The Council will only agree to appropriately worded clauses which do not remove liability by the Owner of the site over the time he/she has ownership over the land concerned.

8. 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.

Planning related queries should be referred to the case officer handling your particular application or the Planning Obligations Officer.