

Section 106 Planning Obligations – Draft ‘Head’s of Terms’
(Without prejudice & subject to contract)

1. Introduction

S106 planning obligations are based upon a proposal of 7 x 1 bed apartments and 8 x 2 bed apartments

Please Note:

- Current Council policy stipulates that affordable housing is exempt from contributing towards leisure and education planning obligations. As such, only the ‘market’ apartments would generate planning obligations

2. Viability

Developers/Owners must ensure “due diligence” in the acquisition of development sites i.e. land value should take account of LDP policy compliant requirements

3. Affordable Housing

The site lies within the Housing Target Area of Newport West, where there is a requirement for 30% of the development to be affordable dwellings i.e. 5 apartments (mix and type to be agreed with Housing).

In exceptional circumstances (if requested by Housing), a commuted sum can be paid in-lieu of on-site provision (in accord with the formula in the Affordable Housing SPG)

4. Education

‘School Capacity’ is calculated taking account of: current school capacities; demand generated by extant permissions and/or Joint Housing Land Availability supply; and, future pupil number projections over the lifetime of the related planning permission;

Primary

The development is served by St Woolos Primary School. Taking into account the scale and type of development and ‘School Capacity’, no contribution is required.

Secondary

The development is served by John Frost High School. Taking into account the scale and type of development and ‘School Capacity’, no contribution is required.

5. Leisure

There is a deficit of ‘Equipped’ and ‘Formal’ play provision in the Stow Hill ward. As such, the proposed development would require £43,279 to improve and maintain outdoor play space at Baneswell playground and/or Belle Vue Park

All Leisure Sums will be index linked to the Retail Price Index and paid prior to occupation of the 7th dwelling

6. Fees

Administration Fee

The Council charges an Administration Fee of £1,380 for progressing and subsequent monitoring of the S106 planning agreement. To be paid upon signing of the legal agreement

Legal Fee

Planning Obligations can be contained in Unilateral Undertakings or s.106 Agreements. Unilateral Undertakings are usually drafted by the developer's solicitors, whereas s.106 Agreements are usually drafted by the Council's in-house solicitors (but there is no general objection to developers arranging for their own solicitors to draft the s.106 Agreement with prior agreement). Either way the developers will be responsible for the Council's legal costs incurred in relation to the process of drafting, approving and completing the s.106 Agreement and Unilateral Undertakings, including costs of title investigation which is necessary to ensure the correct parties enter into the Deed. There is a minimum contribution to legal costs of £500, although more time-consuming and complex documents would require an increased contribution to legal costs.

Please Note:

Planning Obligations can be contained in Unilateral Undertakings or Agreements. Unilateral Undertakings are usually drafted by the developer's solicitors, whereas Agreements are usually drafted by the Council's in house solicitors (but there is no general objection to developers arranging for their own solicitors to draft the Agreement if preferred). Either way the developers will be responsible for the Council's legal costs incurred in relation to the process of drafting, approving and completing any Deed of Obligation, including costs of title investigation which is necessary to ensure the correct parties enter into the Deed.

You are required to agree to these Heads of Terms in writing. In doing so you also agree to an extension of time for the determination of your proposal in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits)(Wales) Regulations 2015 and the Town and Country Planning (Development Management Procedure)(Wales) Order 2012. This will extend the statutory period for determination of your application by 16 weeks from the date the Local Planning Authority resolve to grant your planning permission (i.e. the Planning Committee date or the delegated Agenda date) subject to a legal agreement. This extension of time is required to enable completion of the section 106 Agreement (although the Local Planning Authority will endeavour to determine your application as soon as possible prior to this date).

Once your written agreement to the Heads of Terms for section 106 has been received by the Authority and a resolution made on the basis of such agreement, the Local Planning Authority will NOT enter into any negotiations that seek to alter the Heads of Terms in terms of discounting agreed figures due to, for example, viability reasons before the final Notice of Decision is issued. It is important that you check the Heads of Terms you receive thoroughly and if you have any questions regarding the figures included or the justification for them, you must raise these and satisfy yourself that

the request is reasonable, relevant and necessary, prior to providing your written agreement to the Terms.

Any negotiations must take place before Heads of Terms are agreed by you and if you seek to discuss or re-negotiate section 106 Heads of Terms having agreed them in writing and having received a resolution (but not a decision notice), your application must be withdrawn to enable re-negotiation to take place. Failure to sign a section 106 within 3 months of any resolution being made may lead to your application being refused. Alternatively, you may proceed to complete the section 106, receive a Notice of Decision and then make a new submission to the Authority that will enable altered terms to be negotiated. Please be advised that any such re-submission will likely attract a new planning application fee.

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