

Tendring District Council



GUIDANCE NOTE FOR APPLICANTS ON THE COMPLETION OF A PLANNING OBLIGATION (UNILATERAL UNDERTAKING) in respect of financial contributions for open space, sport and recreational facilities

Purpose of this guidance note

If you are making a Planning Application to develop land for one or more dwellings, you will be asked by the Council to enter into a legal agreement known as a Planning Obligation or a Unilateral Undertaking. This guidance note explains the reasons why you are being asked to enter into such an agreement and the procedures that you must follow.

What is a Planning Obligation/Unilateral Undertaking?

A Planning Obligation is a legally binding commitment which is made under Section 106 of the Town and Country Planning Act 1990. Government guidance on the use of Planning Obligations is contained in Circular 05/2005.

The creation of new dwellings places additional demand on existing community facilities. To offset these additional demands, the Council's policy is to seek a financial contribution towards the provision and maintenance of recreational facilities serving the locality of your development. This will include facilities such as public open space, sports, outdoor play equipment and other recreational facilities.

The amount of the contribution will be dependant on the size and scale of the development i.e. number of bedrooms and number of units. An example of a calculation is provided in the Annex to this guidance note.

What are the implications for my planning application?

The need for a Planning Obligation is dictated by the form of the proposed development. Such a requirement **must not be taken to mean that planning permission will automatically be granted**. Furthermore, until the legal documentation has been completed permission cannot be granted and, if the application is contrary to policy, it may be refused.

Unilateral Undertakings can take a long time to complete. The Council has introduced a standard form of Unilateral Undertaking to help speed up the process. The procedure aims to facilitate the Council making decisions on planning applications within Government targets. Applicants should also benefit by the quicker determination of applications by the use of a standard obligation than through a negotiated legal agreement.

If a Unilateral Undertaking is not completed within the target date for determination of the application, the application may be determined as it stands and may be refused planning permission. You will be advised of the target date for determining your application in the acknowledgement letter which is dispatched by the Council upon receipt and registration of your application.

Your contribution made under the Planning Obligation is known as "The Public Open Space Contribution".

Type of Unilateral Undertaking

The Council uses two standard forms of Unilateral Undertaking. The "FULL APPLICATION" template is applicable if your application is for a Full Planning Permission. The "OUTLINE APPLICATION" template is applicable if your application is for Outline Planning Permission. NOTE: Where your application covers more than one piece of land with different landowners, please refer to the Legal Agreements Manager on 01255 686109 for guidance.

In the "FULL APPLICATION" Unilateral Undertaking the total amount of the financial contribution that is payable for your development must be recorded in the relevant section. The FULL APPLICATION template provides the formula for the calculation of the financial contribution dependant upon the size and scale of the development.

The financial contribution will be subject to index linking from the date of the Unilateral Undertaking until the date of payment to the Council. When you notify the Council's Planning Service of the date that you plan to commence the development, index linking will be calculated and you will be advised of the exact amount that you will need to pay to discharge your obligation.

In both cases, all owners of the land (all people in whose name the land is registered) and anyone else with an interest in the land (e.g. leaseholder) must be named and sign the Unilateral Undertaking. This will include any Bank or Building Society if there is a mortgage on the land.

Whether your application is for Full or Outline Planning Permission, if your application is approved, then the Public Open Space Contribution will become payable before commencement of the development.

Procedure for the completion of FULL APPLICATION and OUTLINE APPLICATION templates

The completion of legal documentation can seem complicated. The Legal Agreements Manager will be pleased to assist you in the completion of your Unilateral Undertaking. If you would like his help, please telephone him on 01255 686109 to discuss this.

Alternatively, you can complete the standard document yourself and the key steps in involved in completing your Planning Obligation are: -

- Both FULL and OUTLINE APPLICATION templates require you to insert certain information in the blanks
- Ensure that the full forenames and surnames of all parties are entered into the document

- All owners of the application site must be named on the form and sign it with their signatures being witnessed.
- The document must be dated.
- If you have a mortgage or other charge on the land to be developed, the holder of the charge (e.g. Bank or Building Society) must also be named and sign the form.
- When submitting your application to the Council, this should be accompanied by your cheque for a payment of the Monitoring fee. The Monitoring fee is £325 for each Planning Obligation.

IMPORTANT NOTES

THE COUNCIL STRONGLY RECOMMENDS THAT YOU SEEK LEGAL ADVICE BEFORE ENTERING INTO A PLANNING OBLIGATION.

Legal title to the application site must be provided when you submit the completed Unilateral Undertaking to the Council. If the land is registered at H M Land Registry, up to date Office Copies of the Title and the Title Plan to prove your ownership must accompany the Unilateral Undertaking. These can be obtained by contacting H M Land Registry by telephone or can be obtained from their website on the internet. (www.landregistry.gov.uk)

If the land is not registered at H M Land Registry, you must ask your solicitor to provide a Certificate of Title using the form that can be downloaded from the Council's website or from the Council Offices together with a certified copy of the plan from your deeds.

Where there are complexities in the title to the property on which you are applying for planning permission, it may be necessary for our standard form to be amended to suit this. In these circumstances the amendments will need to be made by your solicitor with the Council's solicitor approving the amendments. You will be responsible for both your and the Council's solicitors costs. The Legal Agreements Manager will provide you with guidance on this.

When you return the completed documentation to the Council, you must enclose a cheque made payable to Tendring District Council for the appropriate Legal Agreement Monitoring Fee. This fee reflects the administration involved in the collection of the financial contribution and monitoring its subsequent expenditure.

You are advised that the standard text of the Unilateral Undertaking template must not be altered or amended in any way. If changes are made to the text of the templates, any additional legal costs in checking the alterations will be charged to the applicant at an hourly rate.

Under the terms of the Unilateral Undertaking, the Public Open Space Contribution will be payable before commencement of the development for which Planning Permission has been granted. Please note that the payment of your contribution must only be made by cheque or bankers draft and the Council will not accept payment in cash.

Completion of the Unilateral Undertaking does not guarantee that your Planning Application will be approved.

Upon receipt of the duly completed Unilateral Undertaking, your application will be either determined by officers under delegated powers or it will be considered by the Council's Planning Committee in accordance with the Council's Constitution.

Nothing in this guidance prevents you from submitting a Unilateral Undertaking or seeking to agree or negotiate a Planning Obligation with the Council. If you wish to use a template other than those provided it is essential that you contact our Legal Agreements Manager in Planning Services either in writing or by telephone (01255 686109) in the first instance to discuss the standard clauses that the Council will require in the document. In this instance the applicant will be responsible for the Council's legal costs to be paid directly to their solicitors.

Once the Planning Obligation has been completed it will be registered by the Council as a Local Land Charge against the application site.

If your application is refused or withdrawn the documentation and the Monitoring Fee paid in advance will be retained pending instructions from you. In the case of a Refusal you will be notified that you have six months in which to appeal the decision to the Planning Inspectorate. You will be provided with a copy of the Unilateral Undertaking in case you decide to appeal the decision as you will need to submit this to the Appeal Inspector. The Monitoring Fee will be retained pending the Appeal decision.

In other cases the Legal Agreements Manager will contact you to ascertain whether you are going to submit a new application and whether you require the Monitoring Fee to be retained. When a new application is submitted a new Unilateral Undertaking will be required and up to date evidence of title provided. Please contact the Legal Agreements Manager to discuss.

The Standard templates available from the Council are identified as: -

- FULL APPLICATION Unilateral Undertaking
- OUTLINE APPLICATION Unilateral Undertaking

The Council will allocate the contribution towards projects for open space, sport or recreational facilities.

WARNING: In the event that work on the development is commenced prior to the Public Open Space Contribution being paid to the Council, the Council will take action to stop all further work until payment has been made in full and for all of its costs in bringing the action.

ANNEX

SCALE of CONTRIBUTIONS ASSOCIATED WITH THE COMPLETION OF PLANNING OBLIGATIONS
In respect of financial contributions for open space, sport and recreational facilities

<u>The Schedule</u>		
<u>Number of bedrooms per unit</u>		<u>Contribution</u>
Studio Flat		£544
1		£845
2		£1690
3		£2253
4		£2816
5		£3380

NOTE:- Where Planning Permission is granted, the amount of your contribution will increase in line with the increase in the "All Items" index figure of the Index of Retail Prices from the date of your Unilateral Undertaking to the date of payment of your contribution in full to the Council.

Example: -

If for the purpose of this example the proposed development is a mix of units comprising: -

- 3 x 1 bedroom units
- 1 x 2 bedroom unit
- 3 x 3 bedroom units

The total contribution will be calculated as follows: -

No of bedrooms per unit	Contribution per unit	No of units in category	Sub Total
(A)	(B)	(C)	(B) x (C) = sub total
1	£845	3	£2535 (X)
2	£1690	1	£1690 (Y)
3	£2253	3	£6759 (Z)

TOTAL	£2535 (X) +£1690 (Y) +£6759 (Z) = £10984
--------------	---

Please note that the payment of your contribution must only be made by cheque or bankers draft and the Council will not accept payment in cash.

The Monitoring fee payable to the Council in respect of a financial payment within a Unilateral Undertaking is £325 per Planning Obligation. In the example above, the Monitoring fee will be £325.