

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 may 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 and the CIL Regulations 2010.

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 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.

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. Should the property be subject to a mortgage, the mortgagee will also be required to sign the document and this will take a minimum of 2 weeks, and often longer to complete from the time that you send it to them. 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.

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.

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.

UNILATERAL UNDERTAKING preparation and completion

Unilateral Undertakings can take a long time to complete. In an effort to simplify the process, the Council has introduced standard forms of Unilateral Undertaking. 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.

The Council's Legal Agreements Manager will prepare the correct document once he has received evidence of legal title to the application site when requested by 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 purchased 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 with a certified copy of the plan from your deeds using the form that will be sent to you.

There may be occasions where the title is complex and therefore the document will need to be prepared by the Council's solicitor in which case you will be required to pay the Council's solicitor's fees.

NOTE: If you have any questions about this, please refer to the Legal Agreements Manager on 01255 686109 for guidance.

You will be required to pay a fee for the preparation of the Unilateral Undertaking of £100. (This fee is non-refundable and covers the Council's costs for the work involved in preparing the document). In addition, the Council charges a Monitoring Fee for the monitoring of the Unilateral Undertaking of £300. (The Monitoring Fee is refundable where your application is refused or you withdraw it).

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

IMPORTANT NOTES

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 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.

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 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
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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 £300 per Planning Obligation. In the example above, the Monitoring fee will be £300.