

## **Appendix 6**

### **GUIDANCE NOTE ON THE SUBMISSION OF 'HEADS OF TERMS' FOR SECTION 106 AGREEMENTS**

Planning applications requiring a Section 106 Agreement must be submitted with a Draft Heads of Terms document to set out the contributions and obligations that developer agrees to provide to mitigate the impacts of the development.

Planning obligations are generally required in connection with major housing developments to provide affordable housing; large scale commercial developments; all development within 7 km zone of the Ashdown Forest (and larger development close to the 7km boundary); new agricultural/equestrian dwellings and some proposed annexed buildings.

Each case is considered on its merits and the required obligations and/or contribution amounts for a specific development should therefore be discussed with the planning case officer at the pre application stage.

The Heads of Terms submitted by the applicant should meet the Council's requirements and be provided in the format set out in the Heads of Terms template available on our website. If highways obligations are required, East Sussex County Council will also need to be a party to the Agreement.

In addition to the Heads of Terms, information is required as follows:

#### **Proof of Title**

The Council require you or your Solicitor to provide details of the Site's ownership and the legal title to the land. This should be done by sending up-to-date Land Registry Official Copies including a colour copy of the Official Title Plan.

Anyone with a legal interest in the site, including mortgagees, will normally be required to be party to the Agreement. If the Site is subject to other interests, you should ensure that these parties are in agreement with the draft deed and are aware they will need to sign the agreement. Informing them early of the Heads of Terms can help avoid unnecessary delay in the completion of the Agreement.

#### **Undertaking to Pay Costs**

The Agreement will be drafted by the Council's Legal Services Department. Before legal work is commenced, an undertaking is required from your Solicitor to ensure the legal costs, incurred by the council, will be met by you whether or not the Agreement proceeds to completion. Please can this be provided in the following format:

*"[Name of Solicitor / Law firm] irrevocably undertakes to pay the council's reasonable legal costs and disbursements in the preparation and completion of the planning obligation subject to planning permission [Application number]. This undertaking is limited to a maximum of [£To be advised] plus any reasonable disbursements incurred up to a maximum of £100, and applies whether or not the matter proceeds to completion."*

The council's legal costs will be incurred on a time spent base as follows:-

£180 per hour – S106 Agreements (minor) including standard Deeds of Variation, Unilateral Undertakings relating to individual dwellings to secure mitigation sums towards the Newick Sang or the management of the Ashdown Forest.

£240 per hour - S106 Agreements (major) S106 Agreements and Deeds of Variation relating to "major development" as defined in the Development Management Procedure Order 2015

It is not normally anticipated that the time spent will exceed 10 hours although the undertaking amount required will be advised on a case by case basis.

In the event the matter becomes complex or protracted and the undertaking amount is exceeded, an increased costs undertaking will be sought from your Solicitor to secure a new upper limit before further legal work is carried out.

Subject to submission of all of the above information, the Council's Legal Services Department will draft the Agreement using the agreed Heads of Terms provided by you. The draft document will be sent to your Solicitors for their comments. This work will be undertaken concurrently whilst the planning application is being considered.

The Council will endeavour to complete Agreements within 28 days of the recommendation of approval. This will expedite the planning process and enable a streamlined procedure for applications requiring a Section 106 Agreement.

In the circumstance that the Agreement has not been completed within 3 months of the recommendation of approval, the planning application may be refused. Failure to submit Heads of Terms that are not as agreed or required may result in the planning application receiving an unfavourable recommendation.