

## **PLANNING OBLIGATIONS IN DEVELOPMENTS**

The position on planning conditions, financial, social and affordable and other housing contributions operate differently to those in Ireland. Generally, planning obligations are imposed through conditions on the planning permission and also by way of a specific Section 106 Agreement which is a formal legal obligation entered between the developer, local authority and any relevant third parties. The agreement is detailed and precise and will usually be negotiated by legal representatives. These will typically deal with transfer of lands, social and affordable housing conditions and a range of other issues relevant to the development.

### **S.106 Agreements**

Planning obligations and contributions which are secured by way of planning conditions in Ireland are secured by way of Planning Agreements or "Section 106" Agreements in England and Wales. Planning obligations are usually the means providing a public benefit or other obligation which the Planning Authority deems necessary as a package in granting the planning permission. The Planning Agreement would generally be entered between the developer and the local Planning Authority. It is drawn up as a legal agreement generally by the parties solicitors. The planning obligation will usually derive from an agreement with the Planning Authority which would be formulated before final grant of planning permission.

Planning obligations can restrict development in some way and can require specific activities to be carried out or can provide for payment of money. It is normal practice for the planning obligation to be made before the grant of a planning permission.

The DCLG has issued policies as to the appropriate content of planning obligations. They are to be fair open and reasonable and are not to amount to a purchase of a planning permission. They must be necessary. The relevant circular is circular 0/5/205 and is available on the internet. Obligation must be relevant to planning, must be

necessary, directly relate to the development, be fairly and reasonably related in scale and reasonable in all other respects. The circular indicates that a matter such as the provision of affordable housing mitigation the impact of development by compensating for loss or damage caused by the development by replacement of landscape, open space, right of way etc.

Examples of planning obligations could include contribution towards costs of new access road, bus shelters, open space, improved junction layouts, new or improved rail/bus station facilities, park and ride, measures for cyclists, pedestrians, library facilities, social education, recreation or sporting facilities. They are also used to secure inclusion of affordable housing in residential developments.

The Planning Agreement can provide for payment of a sum or the provision of a benefit in kind by way of planning contributions.

In 2006 the DCLG published practice guidelines for Local Authorities on conditions and a model Section 106 Agreement drafted by the Law Society. This is available at [www.communities.co.uk](http://www.communities.co.uk). The Section 106 Agreement deals with such matters as are necessary in order for the proposal to be acceptable to the Local Authority but which cannot be dealt with by way of conditions. They can be a very flexible means of solving problems that a development may cause. Section 106 planning obligations may have long run consequences for the land. They are registered as a Local Authority charge and will be thereby notified to all future owners of the land.

### **Housing Policy**

The present housing policy is enshrined in PPS 3 issued by the DCLG. It directs local planning authorities to plan for a full range of market housing. In particular they must take into account the need to deliver low cost housing as part of the general housing mix. Affordable housing is defined to include social rented housing and intermediate housing. Social rented housing is rental housing owned and managed by local authorities and registered social landlords for which guideline target rents are determined through a national rent regime. Intermediate affordable housing is defined as housing at prices and rents above those of social housing but below market costs.

The procedure for providing affordable housing usually takes the form of the developer entering a Section 106 Agreement where either land is transferred to a housing authority, charitable organisation or similar body. Alternatively, the developer itself may undertake the role of registered social landlord and manage the units as affordable housing either directly or through a housing association. The obligation is likely to deal with the mix of affordable housing, nomination rights, occupation criteria, location and provision to assure the units remain affordable. In some circumstances the local authority makes a financial contribution to enable the local authority to provide the houses elsewhere.

### **Agreements with Utility Services Providers**

Frequently, development sites need to be linked when adjoining public road (described as a highway). The Highway Act provides that if a Highway Authority is satisfied that it would be to the benefit of the public by the Authority to enter an agreement with a person (normally a developer) to carry out highway works the Authority may do so on terms that the person pays the whole or part of such costs.

Highway Act Agreements will commonly be required where say in relation to new estates which require connection to the highway network which is maintained at public expense

The water and sewerage authorities were privatised in the UK 20 years ago. It is often necessary to enter specific agreements with the water and sewerage body for the area so that they allow connection to services and allow for the take over of pipes, watermains and sewers.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.