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**ISLE OF WIGHT COUNCIL**  
**GUIDANCE NOTE**  
**AGREEMENTS AND UNILATERAL UNDERTAKINGS UNDER**  
**SECTION 106 OF THE TOWN AND COUNTRY PLANNING ACT 1990**

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## **INTRODUCTION**

1. This note is intended to support agents and architects involved in the submission and agreement of planning obligations in support of planning applications. It is written at the request of the Local Planning Authority and identifies the approach and position that the Local Planning Authority will commonly take with planning obligations.
2. This note is not intended to provide legal advice and individual applicants, land owners; developers etc. are encouraged to seek their own independent legal advice.
3. The local planning authority ensures that planning obligations are only required where they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind.
4. The Planning Practice Guidance suggests<sup>1</sup> that discussions about planning obligations should take place as early as possible in the planning process, including at the pre-application stage. Engaging discussions at an early stage will prevent delays in finalising those planning applications which are granted subject to the completion of planning obligation agreements.

## **DEVELOPERS**

5. It is necessary for the persons who enter into the planning obligation to have an interest in the land<sup>2</sup>. Developers who have no formal interest in the property are unable to be a party to a planning obligation.
6. If a developer has an adequate interest to give a planning obligation it will normally be necessary to also tie in the relevant land owner/s (if different) so that they give the obligation jointly and severally with the developer.

## **APPEALS**

7. Should the obligation be necessary for the purposes of an appeal to the Secretary of State your attention is drawn to Annex N of the Planning Inspectorate's *Procedural Guide for Planning Appeals in England*, or any

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<sup>1</sup> "Planning obligations" Paragraph: 025 Reference ID: 23b-025-20150326

<sup>2</sup> Section 106(1) Town and Country Planning Act 1990  
BG / 1V25-005601 / 956321

document that replaces the guide from time to time. The guide currently requires planning obligations to be produced as follows:-

- a. Appeals by written representations – the agreement or undertaking should be executed and delivered to the council, we will then confirm to the Planning Inspectorate that the document has been delivered for consideration,
- b. Appeals by hearing or inquiry – the agreement or undertaking should be agreed by all parties and the final form should be produced to the Planning Inspectorate for consideration.

## **COMMON MISTAKES**

8. Ensure that any proposed deed is in accordance with the agreed heads of terms or the resolution of the council's Planning Committee, with the latter taking precedence. If there is to be any deviation from the resolution or agreed heads of terms then further discussion will be necessary and in the absence without agreement the application may then need to be reverted back to Planning Committee for a further resolution.
9. Care should be given to the extent of land that is being included in the deed. If land ownership is different from the extent of the application land it is usually necessary for the council to understand the reason for this. Early identification and discussion is key to quickly resolve these issues.
10. If a company is the owner of the land then the agreement or undertaking must be given by that company as a legal entity. The deed will be deficient if it is given only by a Director or major shareholder (although a Director can execute a deed on behalf of the company)
11. Where a company enters a deed it will be necessary for the deed to be executed in accordance with the Companies Act 2006, a helpful practice note is produced by Land Registry<sup>3</sup> which might assist agents and architects in using the correct form of execution. We are more than happy to provide template clauses on request for inclusion within an agreement or undertaking.
12. Any plans accompanying the obligation will need to be signed by the party to the deed which in the case of a company will be the director/s executing on its behalf.
13. Aside from certain types of execution by a company or other corporate body, it is essential that the execution of a deed is witnessed. A party to a deed cannot be an attesting witness. There is no prohibition on a signatory's spouse, co-habitee or civil partner from acting as a witness. It is also

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<sup>3</sup> Land Registry Practice Guide 8 : Execution of Deeds  
<https://www.gov.uk/government/publications/execution-of-deeds/practice-guide-8-execution-of-deeds>

generally acceptable for an employee or another director of a party to witness that party's signature.

14. Attestation involves the witness being present and seeing the document being signed by the executing party and the witness signing a statement in the document that it has been signed by the executing party in his presence. The witness will then need to print his or her name, address and occupation in the attestation clause, in addition to his or her signature.
15. We are more than happy to discuss specific applications in advance of a formal agreement or undertaking being produced in order to avoid disputes at a later date during negotiation of planning obligations.

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**Ben Gard**

Lawyer

Isle of Wight Council

Tel: (01983) 821000

Extension: 6335

[Ben.Gard@iow.gov.uk](mailto:Ben.Gard@iow.gov.uk)

**Laura Croft**

Paralegal

Isle of Wight Council

Telephone: (01983) 821000

Extension: 6361

[Laura.Croft@iow.gov.uk](mailto:Laura.Croft@iow.gov.uk)

