

FREQUENTLY ASKED QUESTIONS

What is a Planning Obligation?

The principle of a developer agreeing to provide additional benefits, generally for the benefit of the wider local community, is generally referred to as a Planning *Gain* or *Obligation*. The developer contribution may be by way of providing:

- development in kind (ie the developer provides the roads infrastructure, open space, or play park on the development site); or
- a lump sum payable to the local Authority in lieu of on-site provision (ie to upgrade or provide open/amenity space); or
- maintenance payments (ie regular financial contributions for the upkeep of children's play areas).

How are Planning Obligations Secured?

By way of an agreement under S.75 of the Town and Country Planning (Scotland) Act 2006.

What are Planning Agreements?

Legal documents binding against successors in title often used to offset the planning disadvantages of a proposed development; or as a means of controlling developments in the light of the uncertainty of conditions (ie securing financial contributions or as a means of providing additional benefits, generally for the benefit of the wider local community.)

When is an Agreement Appropriate?

When a causal link is established between the development and an adverse impact on the community and/or infrastructure. Agreements may only be used to make a development acceptable in land use planning terms and the quality of development enhanced. Development plans may identify certain situations where an Agreement will be sought (ie to provide open space, public art, etc.) however, there will be instances when the nature of the development itself will impact on the wider community (eg existing roads infrastructure cannot support the proposed development until improvements are undertaken). Additionally, Agreements are used to secure financial bonds for the restoration of temporary permissions (eg quarries).

Who May enter into a Planning Agreement?

Under the Town and Country Planning (Scotland) Act 1997 an agreement may only be between the Local Planning Authority and a developer and any third party who has an interest in the land. The Agreement imposes obligations or restrictions on a developer that bind the land subsequent to the granting of planning permission. Consequently they may be enforced against

both the original covenantor and against anyone acquiring an interest in the land (unless the Agreement states otherwise). We would strongly advise that anyone entering into a planning agreement, or purchasing land with a planning obligation, seek independent legal advice.

How are Planning Agreements Enforced?

Shetland Islands Council are responsible for the enforcement of planning agreements and may either apply to the courts to recover any financial contributions payable through an agreement, or carry out any works outlined in an agreement and retrospectively recover the cost from the person or persons against whom the agreement is enforceable.

Can a Planning Agreement be Modified or Discharged?

Only by agreement between the Local Planning Authority and the person, or persons, against whom it is enforceable. Any agreement to modify or discharge an agreement must be by way of a further deed.

What is the Procedure for entering into a Planning Agreement?

Whether a development will trigger a requirement to provide additional facilities and/or infrastructure in line with Council policy will generally have been identified during pre-application discussions or at an early stage in the consideration of an application. The Council's requirements will be clarified during discussions between the developer and the Planning Service.

Wherever possible consideration will be given to identifying whether the requirements can be controlled by condition. Where this is not possible (as will always be the case where a financial contribution is required) and an undertaking is acceptable in principle, then wherever possible a draft agreement must be submitted to the Council for consideration alongside the planning application in order that officers can consider its acceptability. The Council's Legal Service will require to be satisfied with the details of title and other relevant matters.

Alternatively, where title to the land is not held by the developer, the planning application may be progressed with a written undertaking from the developer agreeing to enter into the required Agreement. Following consideration by the Planning Sub-Committee (there is no delegated power to the Executive Director), approval may be granted for the development pending the completion of the Agreement. A decision notice for the proposed development will not be issued until the Agreement is finalised and registered.

Who is responsible for the Legal Fees associated with Agreements and Undertakings?

Applicants are advised to contact the Council's Legal Services for details of the costs involved in entering into planning obligations. It is normally expected that the developer meets all costs relating to search dues and recording fees.