

Guidance

Unilateral Undertaking Templates – an alternative to a S.106 Agreement

What are S.106 Agreements?

As part of the planning process, the Council and a developer seeking planning permission may enter into a legal agreement that will set out the terms for the developer to provide or fund the provision of infrastructure, services, or other impact mitigation measures or planning controls on or off the development site. This agreement is referred to as a “Section 106 Agreement or Planning Obligation”.

What are Unilateral Undertakings?

A unilateral undertaking like a S.106 agreement is a legal deed where developers covenant to perform planning obligations however unlike S.106 agreements they don't have to be entered into by the local authority. A unilateral undertaking comes into effect when planning permission to which they are linked is granted.

When should Unilateral Undertakings be used?

Where financial contributions are known at an early stage and the package of planning obligations is relatively straight forward, namely involving commuted payments for affordable housing (for 1-9 unit schemes), or permit free obligations, applicants are encouraged to submit a unilateral undertaking with their application. The intention is that the unilateral undertaking can be included with the suite of documents associated with the planning application. While S.106 agreements are often prepared following Planning Applications Committee (PAC) the draft form of unilateral undertaking can usually be agreed prior to PAC (the heads of terms may need to be changed following PAC decision on the application) thereby avoiding delays in getting a final decision. Unilateral undertakings will not usually be appropriate for major applications including applications for 10 or more new dwellings.

Where can I find Merton's Unilateral Undertakings templates?

Merton's unilateral undertaking templates used to be found on the [Planning application forms and fees](#) page. Merton is currently revising its unilateral undertaking templates. When complete the new revised set of templates will be placed on this page. In the meantime templates can be found on the [Law Society website](#), or by contacting the South London Legal Partnership, Gifford House, 67c St Helier Avenue, Morden, SM4 6HY, Tel: 020 8545 3338, email: legalservices@merton.gov.uk

What will the Unilateral Undertaking require, payments etc?

It will require the developer to pay financial contributions towards affordable housing. It may also require all additional dwellings to be built to be permit-free which means that no occupants of those flats will be entitled to residential parking permits.

To help you to calculate affordable housing financial contributions that have been deemed necessary for your development you could use our free calculator on the S.106 web-page. Please note: the calculator is for guidance only and does not determine the final value of the contributions and other obligations or heads of terms that will be confirmed by the Development Control Case Officer who has been/will be assigned to process your application.

The unilateral undertaking will also require the developer to pay the Council's legal fees and monitoring fees. Legal fees are necessary to meet the Council's costs for checking agreeing and registering the unilateral undertaking as a local land charge. Monitoring fees are required to meet the Council's costs for monitoring compliance of the terms of the Unilateral Undertaking and for ensuring that information regarding the planning obligations is properly communicated within the Council and the community. The monitoring fees can be calculated once the financial contributions and in-kind obligations are confirmed in accordance with current planning policy guidance in relation to planning obligations.

When will the financial contributions become payable?

The templates state payment of financial contributions will be upon commencement of development. In S.106 agreements and undertakings

Commencement usually is when building works start on the site after site preparation, clearance and demolition has commenced. Monitoring and legal fees will need to be paid before the unilateral undertaking is accepted and (any) grant of planning permission.

When do I need to start preparing a Unilateral Undertaking?

Applicants should submit a unilateral undertaking with their application so it is important to start preparing the unilateral undertaking as soon as possible prior to submitting a planning application.

Preparing and submitting a Unilateral Undertaking

Unilateral Undertakings should be submitted to Merton's Development Control Team as part of the planning application. Applicants are to accompany the unilateral undertaking with an up to date official copy of the register and plan of the title to the property which is the subject of the planning application from the Land Registry. Merton will not accept unilateral undertakings where all parties with a legal interest in the land according to the official copy above are not parties to the unilateral undertaking and signatories to it. It is recommended that applicants employ a solicitor to assist in filling out the unilateral undertaking and in making any amendments to it requested by the Council. Unilateral undertakings should be submitted in draft form – i.e. not signed or dated – and where possible in electronic format. This is so they can be checked by the Council's Legal Department and any alterations made before the final – signed and dated (including the site plan attached) – Unilateral Undertaking is submitted.

What are Merton's legal fees for checking draft Unilateral Undertakings and their fees in relation to other S.106/278/38 legal agreements?

The fees which will be payable before the final signed and dated Unilateral Undertaking is approved by the Council are as stated in the templates and differ according to the template that is used as follows:

Type	Legal Fee
Unilateral Undertakings for permit free/commuted payment	£950

Bilateral Agreements covering the above plus travel plans/car management schemes etc	£1500
Bespoke Agreements covering the above plus affordable housing/overage/highways matters	£3000 (minimum)
Highways Agreements (s.278/38)	£1500 (minimum)
Stopping up	£500

If the wording of the unilateral undertaking that has been submitted differs to that of the wording of the templates then there may be further legal fees payable due to the increase in costs for the Council's Legal Services involvement in getting an acceptable form of Unilateral Undertaking agreed.

Do I still need to pay the financial contributions if the planning application is refused?

No, only the legal fees would be payable. The unilateral undertaking only becomes effective if planning permission is granted. However it is worth retaining a record of the unilateral undertaking even if permission is refused so as to not have to do the work all over again should you wish to submit a new application.