

Planning Legal Agreements on behalf of Tunbridge Wells Borough Council

Final Decision-Maker	Full Council
Portfolio Holder(s)	Councillor Alan McDermott – Portfolio Holder Planning and Transportation
Lead Director	Lee Colyer – Director of Finance, Policy and Development
Head of Service	Karen Fossett – Head of Planning
Lead Officer/Author	Karen Fossett – Head of Planning
Classification	Non-exempt
Wards affected	All

This report makes the following recommendations to the final decision-maker:

That the Head of Planning, in consultation with the Portfolio Holder for Planning and Transportation and the Council's Monitoring Officer be delegated authority to explore options and (where appropriate) to agree arrangements with third party Local Planning Authorities (LPAs) to manage, administer and enforce unilateral undertakings (UUs) or S106 agreements, where it is considered advisable.

This report relates to the following Five Year Plan Key Objectives:

- A Prosperous Borough
- A Confident Borough

Timetable

<i>Meeting</i>	<i>Date</i>
Management Board	29 January 2018
Discussion with Portfolio Holder	29 January 2018
Cabinet Advisory Board	6 February 2018
Cabinet	01 March 2018
Full Council	26 March 2018

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1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To secure a decision to enable another authority to act on behalf of TWBC should the need arise in relation to Planning Legal Agreements.
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2. INTRODUCTION AND BACKGROUND

- 2.1 As part of the process to consider and determine planning applications, it is often a requirement that a S106 legal agreement (S106)/Unilateral Undertaking (UU) is required to ensure that certain measures that are deemed necessary as part of the planning decision are secured.
- 2.2 Ordinarily, developers would enter into a S106 agreement with the Council but where the Council is landowner, applicant and LPA, it may not always be possible for the Council to enter into such S106/UU with itself.
- 2.3 Legal advice has been received that suggested one appropriate way forward in such circumstances would be for the Council (as applicant) to enter into the relevant legal agreement with another LPA.
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3. AVAILABLE OPTIONS

- 3.1 If required, either KCC or another neighbouring Planning Authority could be requested and empowered to act on behalf of TWBC, providing that no conflict of interest transpires.
- 3.2 Postpone any decision until further legal advice is received.
- 3.3 Do nothing
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4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 That authority is given to the Head of Planning, in consultation with the Portfolio Holder for Planning and Transportation and the Council's Monitoring Officer, to agree arrangements with third party Local Planning Authorities (LPAs) to manage, administer and enforce unilateral undertakings (UUs) or S106 agreements, where it is considered advisable.
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5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

RECOMMENDATION FROM CABINET ADVISORY BOARD

- 5.1 The Finance and Governance Cabinet Advisory Board were consulted on this decision on 6 February 2018. During the discussion a minor amendment to the recommendation and the fact that the final decision would be taken by Full Council were taken into account. Both aspects are reflected in this report. The Board agreed the following recommendation:

That the recommendations be supported.

RECOMMENDATION FROM CABINET

- 5.2 The Cabinet considered the report at its meeting on 1 March 2018 and resolved as follows:

That Full Council be recommended:

That the Head of Planning, in consultation with the Portfolio Holder for Planning and Transportation and the Council's Monitoring Officer be delegated authority to explore options and (where appropriate) to agree arrangements with third party Local Planning Authorities (LPAs) to manage, administer and enforce unilateral undertakings (UUs) or S106 agreements, where it is considered advisable.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Subject to approval being received, the Council will enter negotiations with other LPAs and secure the necessary permissions to allow them to manage, administer and enforce UUs or S106 agreements subject to there being no financial or reputational risks, or conflicts of interest.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Legal including Human Rights Act	<p>The recommendations within the report reflect advice received on the most appropriate measures for managing and enforcing legal obligations.</p> <p>The Local Government Act 1972, s101(a) enables a local authority to arrange for the discharge of any of their functions by a committee, a sub-committee or an officer of the authority; or (b) by any other local authority.</p>	Patricia Narebor Head of Mid Kent Legal Partnership

	The Town and Country Planning act s106 provides that any person interested in land in the area of a local planning authority may, by agreement or otherwise, enter into an obligation restricting the development and/or operations or use of the land; and/or require sums to be paid. The recommendation will enable the Council to manage, administer and enforce unilateral undertakings (UUs) or S106 agreements, where it is considered advisable.	
Finance and other resources	Costs would be contained within existing budgets.	Lee Colyer, Director of Finance, Policy and Development
Staffing establishment	No staffing implications.	Karen Fossett, Head of Planning
Risk management	Reputational, financial, legal and professional risks would result without the authority requested.	
Data Protection	There are no new data protection risks.	
Environment and sustainability	These will be considered as part of a planning application.	
Community safety	There are no new community safety issues or effects in respect of crime and disorder.	
Health and Safety	There are no new health and safety issues.	
Health and wellbeing	There are no new health and well-being issues.	
Equalities	There are no new equality issues.	

8. REPORT APPENDICES

The following documents are to be published with and form part of the report:

- None
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9. BACKGROUND PAPERS

- None