

## OPC POSITION STATEMENT 6:

# ONE PLANET DEVELOPMENT

## AND S106 AGREEMENTS



VERSION 1.0, 09/05/2021

### **The One Planet Council encourages the adoption by all LPAs in Wales of a consistent form of words for Section 106 Unilateral Undertakings used for One Planet Developments (OPD).**

First, this will avoid significant costs to both applicants and planning departments incurred for legal drafting and scrutiny. Second, it will reduce the time taken to deal with applications. Third, it will ensure fairness and consistency across developments. We have noted that there is wide variation in the interpretation of what is necessary and the time taken to agree on appropriate wording. This is an unnecessary burden on all concerned.

We encourage all parties to keep formal legal agreements as short as possible, in the interests of clarity and enforceability. For comparison, other forms of development including the similar Rural Enterprise Dwelling (also described in TAN6) do not require a S106 at all. We are aware of S106 agreements for existing OPDs including clauses which are unnecessary given the requirement for the residents to carry out the OPD Management Plan and annual reporting (such as covenants on subsequent owners and permission from LPA before any sale). If due to the context of a specific development further requirements are included beyond the minimum, we would expect LPAs to provide a clear explanation of the rationale for the additional requirement and the potential situation it is designed to address.

Technical Advice Note 6 (TAN6) suggests that “A S106 agreement should be used to tie the dwellings to the land which justified the grant of planning consent”. We note that this tie-to-land clause presents problems for OPDs who might wish to downsize in future to a smaller land area which can still fulfil the land-based activity requirements, or indeed those who might wish to move into more extensive farming such as sheep or cattle. To do so would require a renegotiation of the S106 with the LPA but should in principle be acceptable; why, in that case, should it be so rigidly defined in the first place?

We consider a tie-to-the-land clause unnecessary repetition, because any dwelling can only continue to be occupied while all the other conditions (including fulfilment of the Management Plan) are met, requiring the availability of sufficient land to carry out the land-based activities. If the land were disposed of separately to the dwelling, it would no longer be able to fulfil the OPD criteria (required by condition) and would forfeit the residential permission. We therefore recommend that such a clause is not included unless there are particular circumstances that mean it is not covered by other restrictions.

Other restrictions may be dealt with either by planning condition or S106. It is the position of the One Planet Council that S106 obligations can also include two occupancy clauses: 'sole residency' and 'land-based activity'. Any restrictions relating to the Management Plan, timescales and drawings should be dealt with by condition, because these aspects of an OPD are likely to change over time.

We recommend the following wording for the S106 Agreement:

The Owners covenant to the Council:

- That the Dwelling shall at all times be the sole residence of the person(s) in Occupation of the Dwelling, and their Household.
- That the Dwelling shall be Occupied only by the person(s) currently or last employed in the carrying out of land based activities relating to the Development, and their Household.

A full template S106 is available on request. We encourage OPD applicants to contact the One Planet Council if they or their LPA wish to depart from the above wording. We also strongly encourage planning officers to consider at the time of decision whether it would be more appropriate to incorporate the above requirements as planning conditions rather than as a S106 undertaking.

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The One Planet Council is an independent voluntary body which enables and promotes One Planet Development. This forward-thinking planning policy provides a genuinely affordable and sustainable way for people to live and work on their own land, bringing social, economic and environmental benefits. It was adopted by the Welsh Government in 2011 as part of its One Wales: One Planet scheme.

The One Planet Council provides a bridge between applicants and local planning authorities, with guidance and tools to support practitioners and professionals. The aim of the One Planet Council is to enable a broad range of exemplar One Planet Development projects throughout Wales, comprised of people from all walks of life. And to see these sites serve as an inspiration to the people of Wales and beyond.