

Company Directive

STANDARD TECHNIQUE : EW1H

Relating to the use of a Wayleave to Easement or Site Acquisition Side Letter Agreement

Policy Summary

This standard technique sets out the requirements for the use of a side letter agreement in circumstances where a Deed of Grant, Transfer or Lease cannot be completed before works need to be carried out.

Author: Geraint Griffith

Implementation Date: June 2017

Approved by 

Bruce Pollard
Consents and Wayleaves Manager

Date: 29th June 2017

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IMPLEMENTATION PLAN

Introduction

This document describes the procedure for the use of a side letter agreement in circumstances where a Deed of Grant, Transfer or Lease cannot be completed before works need to be carried out on private land by WPD.

Main Changes

First publication.

Impact of Changes

Provides guidance on the deployment of the new document which is intended for infrequent use in exceptional circumstances where a legal document cannot be completed before the start of works on private land.

Implementation Actions

Team Managers to brief staff of the changes.

Implementation Timetable

This Standard Technique shall be implemented with immediate effect.

REVISION HISTORY

Document Revision & Review Table		
Date	Comments	Author
June 2017	<ul style="list-style-type: none">• New Document	Geraint Griffith

1.0 INTRODUCTION

- 1.1 This standard technique sets out the requirements for the use of a side letter agreement in circumstances where a Deed of Grant, Transfer or Lease cannot be completed before works need to be carried out by WPD.
- 1.2 This procedure is being introduced as there have been occasions where WPD has carried out work and energised sites before Deeds of Grant, Transfers or Leases have been completed and the Owners of the land, often developers, fail to honour their commitment to enter into such documents.
- 1.3 The side letter agreement is intended to provide WPD with some contractual leverage in such situations by requiring the owner to enter into a Deed of Grant, Transfer or Lease at WPD's request. It is not, however, a substitute for these.

2.0 REQUESTS TO USE SIDE LETTER AGREEMENT

- 2.1 The side letter agreement is to be used in circumstances where terms have been agreed for a Deed of Grant, Transfer or Lease of land to WPD and instructions have been issued to Geldards using the usual proforma instruction.
- 2.2 Where it becomes clear that there is no possibility of the Deed of Grant, Transfer or Lease being completed by the time that works are required to start, despite the best endeavours of both parties and after discussing with Geldards the suitability of the side letter agreement in the particular circumstances, a request to use the side letter agreement may be made.
- 2.3 The form at Appendix 1 is to be used to seek approval for the use of the side letter agreement. The Estates/Wayleave Specialist will give reasons why it is appropriate to use it in a particular case, including confirmation that Geldards have advised regarding its suitability, and seek the recommendation of their Team Manager.
- 2.4 The form is then to be sent to the relevant Wayleave Manager for the WPD Licence Area for approval.

3.0 PROCEDURE

- 3.1 Once the use of the side letter agreement has been authorised the Estates/Wayleave Specialist will instruct Geldards to prepare a clean copy of the letter at Appendix 2 or 3, depending on whether it is a Deed of Grant, Transfer or Lease, to be sent by WPD to the landowner in duplicate with a Wayleave Consent or copy of the [Characteristics and Charge Statement] for the owner to countersign and return to WPD.

- 3.2 On receipt of the signed documents they are to be sent to Geldards who will apply to the Land Registry or the Land Charges Department to register a unilateral notice or a land charge (as appropriate). Since the letter constitutes a contract it is capable of registration although registration of the side letter does not prevent the Owner disposing of the property.
- 3.3 The original instruction to Geldards should remain in force and all reasonable steps taken to ensure the completion of the Deed of Grant, Transfer or Lease.

Application to Use Side Letter Agreement

1. Please give reasons for the use of the Side Letter Agreement

2. Provide evidence of attempts to complete Deed of Grant, Lease, or Transfer

Signed

Estates/Wayleave Specialist

Recommended by:

Team Manager

Approved:

Wayleave Manager

[DRAFT SIDE LETTER TO BE TYPED ON WPD LETTERHEAD]

[Owner's name and address]

[DATE]

Dear Sirs

[PROPERTY ADDRESS] ("Premises")

We refer to the Wayleave Consent ("Wayleave") of today's date (copy attached) and in consideration of WPD agreeing at your request, as a temporary measure, to carry out the Works (as defined in the Wayleave) on the basis of the Wayleave pending completion of a deed of grant ("Deed") in WPD's favour and in WPD's standard form [copy attached], you agree to enter into the Deed [when/within a reasonable time after being] requested by WPD to do so and procure that any [Occupier (as defined in the Wayleave)/occupier of the Premises] joins in the Deed to consent to its terms.

If you do not comply with your obligations in this letter, you agree to indemnify WPD from and against all actions, claims, costs, demands, expenses and losses arising from such breach.

The above obligations are intended to be legally binding on you and your successors in title to the Premises.

Signed:

For and on behalf of WPD

[On counterpart letter] I/We agree to and accept the above.

Signed:

For and on behalf of [Owner's name]

[DRAFT VARIANT SIDE LETTER TO BE TYPED ON WPD LETTERHEAD]

[Owner's name and address]

[DATE]

Dear Sirs

[PROPERTY ADDRESS] ("Premises")

We refer to the [Characteristics and Charge Statement ("Statement")] [of today's date/dated []] (copy attached) by which you accepted WPD's offer to carry out the Works (as defined in the [Statement]) and in consideration of WPD agreeing at your request, in order to expedite matters, to [complete/energise] the Works on the basis of the [Statement] pending completion of a [lease/transfer and/or deed of grant] (["Lease"/"Transfer" and/or "Deed"]) in WPD's favour and in WPD's standard form [copy attached], you agree to enter into the [Lease/Transfer and/or Deed] [when/within a reasonable time after being] requested by WPD to do so and to use reasonable endeavours to procure that any other party with an interest in the Premises either joins in the [Lease/Transfer and/or Deed] or otherwise consents to its terms in order to give effect to the rights contained therein.

If you do not comply with your obligations in this letter, you agree to indemnify WPD from and against all actions, claims, costs, demands, expenses and losses arising from such breach.

The above obligations are intended to be legally binding on you and your successors in title to the Premises.

Signed:

For and on behalf of WPD

[On counterpart letter] I/We agree to and accept the above.

Signed:

For and on behalf of [Owner's name]

APPENDIX A

SUPERSEDED DOCUMENTATION

None

APPENDIX B

ASSOCIATED DOCUMENTATION

None

APPENDIX C

IMPACT ON COMPANY POLICY

The side letter process relates to the purchase by WPD of land or rights over land in connection with projects for operational purposes or new connections. It therefore has direct relationships to ST:EW1C/5 (Relating to Obtaining Landowners' & Occupiers' Agreement for Overhead Lines & Cables) and ST:EW1D/3 (Relating to the Acquisition of Routes and Sites).

APPENDIX D

IMPLEMENTATION OF POLICY

This Standard Technique shall be implemented with immediate effect. Team Managers shall ensure that copies of this Policy are provided to all staff who are involved with obtaining permissions/consents from land owners or occupiers.

APPENDIX E

KEY WORDS

Side letter, Deed of Grant, Easement, Transfer, Lease.