

**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**PLANNING and TRANSPORTATION ADVISORY BOARD**

**13 November 2019**

**Report of the Director of Planning, Housing & Environmental Health**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)**

**1 PLANNING PERFORMANCE AGREEMENT PROTOCOL**

**Summary**

**This report seeks approval for the adoption of a Planning Performance Agreement Protocol, which is intended to provide a clear and transparent framework in respect of how the Service will encourage the use of PPAs in all appropriate circumstances and how such agreements will be administered and facilitated. The use of PPAs will incur fees for the management of the tasks agreed within them and as such this report proposed a fee schedule.**

**1.1 Introduction**

1.1.1 Members will be aware that the Service is continuing to receive increasingly complex schemes for planning permission which demand dedicated resources in order to process, assess and determine in an effective and efficient manner. This will inevitably continue as the Local Plan progresses through examination and adoption.

1.1.2 One useful way to assist in managing such cases is through a Planning Performance Agreement (PPA). This is a project management tool which the local planning authorities and applicants can use to agree timescales, actions and resources for handling particular applications.

**1.2 Relevant policies and guidance**

1.2.1 The Council's objectives in producing such a protocol are consistent with the National Planning Policy Framework (2019) (NPPF).

1.2.2 Paragraph 46 of the NPPF relates to the enforcement of planning control and states:

*“Applicants and local planning authorities should consider the potential for voluntary planning performance agreements, where this might achieve a faster and more effective application process. Planning performance agreements are*

*likely to be needed for applications that are particularly large or complex to determine.”*

### **1.3 Use of Planning Performance Agreements**

- 1.3.1 PPAs can be particularly useful in setting out an efficient and transparent process for determining large and/or complex planning applications. They encourage joint working between the applicant and local planning authority, and can also help to bring together other parties such as statutory consultees. A PPA is agreed voluntarily between the applicant and the local planning authority prior to the application being submitted, and can be a useful focus of pre-application discussions about the issues that will need to be addressed.
- 1.3.2 They allow for both the developer and the local planning authority to agree a project plan and programme which will include the appropriate resources necessary to determine the planning application or pre-application master planning within a defined timetable.
- 1.3.3 In order to ensure prospective applicants, developers and agents understand how the Council intends to deal with PPAs, a protocol and fee charging schedule has been drafted and is produced as an annexe to this report.
- 1.3.4 Given that at this juncture the fees that would be collected as a result of such charging is somewhat of an unknown quantity, it is not possible to accurately project what income might be generated at this time. A report back on this, along with experiences gained from having the protocol in place would be made next year. The detailed contents of the protocol and the fees charged could then be formally reviewed.
- 1.3.5 This protocol should be read alongside the pre-application protocol and charging regime and the local validation requirements which are already published on the Council's website.
- 1.3.6 It is the intention to review the protocol within the first 12 months to allow for an assessment of its effectiveness as a tool in assisting efficient decision making.

### **1.4 Legal Implications**

- 1.4.1 PPAs are intended to be agreed in the spirit of a 'memorandum of understanding'. They are not intended to be a legally binding contract, unless the parties wish to approach it in this way. It is helpful to be clear about its status in the planning performance agreement itself. The parties are encouraged to make the existence and content of a planning performance agreement publicly available, so that the agreed process and timescale are transparent.
- 1.4.2 A PPA does not differ from other forms of pre-application engagement. It does not commit the local planning authority to a particular outcome. It is instead a commitment to a process and timetable for determining an application.

## 1.5 Financial and Value for Money Considerations

- 1.5.1 The Planning Practice Guidance (PPG) states that local planning authorities may make a charge for the administrative work involved in agreeing and implementing the planning performance agreement itself. As such, a fee schedule is produced as an appendix to the protocol.
- 1.5.2 Officers have taken the opportunity to carry out appropriate benchmarking with other authorities in Kent to ensure that the fees set are proportionate. The fees to be charged should be subject to annual review.

## 1.6 Risk Assessment

- 1.6.1 Encouraging the use of PPAs at the early stages of engagement with applicants, agents and developers will create greater certainty in the decision making process in terms of expectations placed on each of the parties and in particular timescales for determination. This should assist in ensuring appeals against non-determination are avoided because the existence of a PPA means that the statutory time limits for determining the application no longer apply (to the extent that the agreement specifies a longer period for the decision, in which case the agreement will count in the same way as an agreed extension of time). If an authority fails to determine the application by the agreed date, then the applicant may appeal.

## 1.7 Equality Impact Assessment

- 1.7.1 None required.

## 1.8 Recommendations

- 1.8.1 It is **RECOMMENDED TO CABINET** to **APPROVE** the following proposals:

- 1) Adopt the Planning Performance Agreement Protocol as attached at **Annex 1**;
- 2) Adopt the Planning Performance Agreement Protocol Appendix 1 Fee Schedule as attached at **Annex 2**.

The Director of Planning, Housing & Environmental Health confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers:

Planning Performance Agreements Protocol and associated appendices [1] and [2]

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