

**Tonbridge and Malling Borough Council**

Gibson Building  
Gibson Drive  
Kings Hill  
West Malling  
Kent  
ME19 4LZ

**Planning Performance Agreement**

DATE

SITE ADDRESS

PLANNING REFERENCE

Between:

Tonbridge and Malling Borough Council

and

AGENT/APPLICANT

## **Planning Performance Agreements**

Excerpt from the National Planning Practice Guidance, paragraph 016 Reference ID: 20-16-20150326 (revised 26 March 2015):

A planning performance agreement is a project management tool which the local planning authorities and applicants can use to agree timescales, actions and resources for handling particular applications. It should cover the pre-application and application stages but may also extend through to the post-application stage.

Planning performance agreements 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 planning performance agreement 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.

Paragraph 018: Reference ID: 20-018-20150326

A planning performance agreement can extend to matters beyond the formal application process – such as programming the negotiation of any section 106 agreement and related non-planning consents. For very large or complex schemes the agreement may also provide a basis for any voluntary contributions which the applicant has offered to pay to assist with abnormal costs of processing the application. The parties will want to ensure that such payments do not exceed the cost of the additional work involved, are not seen to have any implications for the decision on the application, and do not deflect resources from processing other cases; any additional resource provided in this way needs to be used for additional capacity that is genuinely required to ensure a timely and effective service.

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## 1. Introduction and Purpose

- 1.1 Tonbridge and Malling Borough Council is the local planning authority for development within the area in which the development site is located.
- 1.2 The applicant has submitted a pre-application submission seeking advice regarding the DESCRIPTION OF PROPOSAL.
- 1.3 This Planning Performance Agreement is an agreement between TMBC and the Applicant to provide a project management framework for handling both this pre-application submission and the forthcoming planning application from receipt of a valid submission through to the determination stage. This framework seeks to appropriately resource these discussions and should improve and speed up the pre-application advice process by committing both parties to an agreed timetable containing “milestones” that make clear what level of resources and actions are required and ensure that all key planning issues are properly considered and, wherever possible, resolved.
- 1.4 This agreement does not give a guarantee of planning permission. It relates to the process of considering development proposals and not the decision itself.
- 1.5 This agreement is made pursuant to Section 111 of the Local Government Act 1972 Section 93 of the Local Government Act 2003 and Section 1 of the Localism Act 2011.

## 1.6 Definitions

- 1.6.1 Terms in this agreement shall have the meanings assigned below unless the context requires otherwise:

Applicant	
Applicant's Team	Those personnel employed or appointed by the Applicant in connection with the Project set out at Table 1 of Appendix 2

Application Documents	The documents set out at Part 2 of Appendix 3 of this agreement
Planning Counsel	Any of the following Barristers:
Pre Application Documents	The documents set out at Part 1 of Appendix 3 of this agreement
Project	DESCRIPTION
Site	SITE ADDRESS
Third Party Challenge	Any legal challenge against a decision made by TMBC in connection with the Project, including any appeal in the higher courts.
TMBC	Tonbridge and Malling Borough Council
TMBC's Team	Those TMBC personnel involved in the Project as set out at Table 2 of Appendix 2

## 2. General Principles

2.1 The objective of this Planning Performance Agreement is one of co-operation and consistency throughout the negotiation and discussion relating to the pre-application and application processes to provide a degree of certainty for the intended outcomes and to improve the quality of the Project and of the planning decision.

2.2 TMBC and the Applicant agree to be governed at all times by the following principles:

**Principle 1:** To work together in good faith, and to respect each other's interests and confidentiality.

**Principle 2:** To commit and provide promptly information to support and manage the development management process, in accordance with the Performance Standards contained in paragraph 4.4 of this agreement.

**Principle 3:** To be transparent and consistent at all times between all parties so that outcomes are anticipated, defined and understood.

**Principle 4:** To help to facilitate (where appropriate) effective involvement and consultation with the surrounding community, statutory and other stakeholders, and any individual or group with a legitimate interest.

**Principle 5:** To reach agreement milestones which will remain fixed unless agreed by all parties otherwise.

**Principle 6:** To identify and involve specialist consultees and advisors including authority officers/managers where appropriate.

**Principle 7:** All parties will seek to use the pre-application period to address matters that would otherwise arise via planning conditions, and significantly reduce the level of potential conditions, particularly in respect to those preventing commencement of works. However, nothing in this Principle shall fetter the TMBC's power as local planning authority to impose such conditions on any grant of planning permission in connection with the Project as it considers appropriate in its absolute discretion.

### **3. Form and Content of the Pre-Application Submission**

3.1 The pre-application discussions relate to the Project's need for TYPE planning permission.

3.2 The greater the level of information that can be provided at the pre-application stage, the better and more detailed the advice which can be provided to the applicant. With this in mind, key documents that will influence the nature of a development coming forward will be requested at the earliest opportunity during the pre-application discussions. The dates for the provision of such information shall be fed into the timetabling to help TMBC efficiently allocate time and resources.

3.3 The Applicant shall provide TMBC with the Pre-Application Documentation (as a minimum) as part of the pre-application discussion process.

### **4. Resources and Liaison**

4.1 **The Project Team**

The Project Team will comprise of the Applicant's Team and TMBC's Team, as defined within Appendix 2. The Project Team will be amended/expanded or reduced where necessary and the party amending its Team shall notify the other Team at the earliest opportunity. All personnel shall be suitably qualified and experienced to bring forward the Project.

#### **4.2 Performance Standards**

- 4.2.1 Communications, be it via email or hard copy correspondence shall be acknowledged within 5 (AMEND AS NECESSARY) working days of receipt with a suitable response where possible.
- 4.2.2 Telephone messages shall be returned within 3 (AMEND AS NECESSARY) working days of receipt.
- 4.2.3 Relevant information will be circulated by all parties no later than 3 (AMEND AS NECESSARY) working days prior to a meeting.
- 4.2.4 The Applicant's Planning Agent to circulate meeting agendas, unless otherwise agreed, no later than 3 (AMEND AS NECESSARY) working days prior to any meeting.
- 4.2.5 Unless otherwise agreed, the Applicant's Planning Agent will circulate minutes no later than 3 (AMEND AS NECESSARY) working days after the meeting.
- 4.2.6 Unless otherwise agreed, actions arising from meetings shall be agreed no later than 5 (AMEND AS NECESSARY) working days after the minutes of that meeting have been circulated.
- 4.2.7 If requested by the Applicant or Applicant's Planning Agent, TMBC shall provide informal feedback on information presented at a meeting within 10 (AMEND AS NECESSARY) working days from that meeting.

### 4.3 **Meetings**

- 4.3.1 Meetings will be attended by the Project Team (unless specific attendance is not required due to meeting topic).
- 4.3.2 The Applicant's Planning Agent, in conjunction with the TMBC Case Officer, will act as PPA Project Managers and will convene meetings, organise agendas and produce minutes to be agreed by the Project Team.
- 4.3.3 Project Team meetings will be held at the times set out in the Project Programme (unless otherwise agreed, or cancelled).
- 4.3.4 Three working days (AMEND AS NECESSARY) in advance of any meeting the Project Team shall agree whether any specialist advice is required and seek to ensure the relevant personnel are available to attend.

### 4.4 **Availability of People and Resources**

- 4.4.1 The parties to this agreement will endeavour to make available members of the Project Team to facilitate meetings within 10 (AMEND AS NECESSARY) working days from a formal written request, unless otherwise agreed.
- 4.4.2 The parties will also share with each other project tools (such as traffic models, visualisation models and development viability information) subject to protecting commercial confidentiality and Freedom of Information considerations.

### 4.5 **Confidentiality**

- 4.5.1 Confidentiality protocols will be agreed and applied to specific issues and/or information as they emerge.

### 4.6 **Costs**

- 4.6.1 The Applicant commits to cover all charges from DATE.

- i) TMBC's costs incurred in the staffing and resourcing of necessary meetings between TMBC's Team and the Applicant's Team during the life of the pre-application discussion (FINF REFERENCE). The pre-application protocol for TMBC is available on the Council's website [www.tmbc.gov.uk](http://www.tmbc.gov.uk).

Charges incurred to date (to be paid on the date of this agreement):

Meeting at TMBC DATE	£ ????.??
Site Visit DATE	£ ????.??
PPA and initial written response	<u>£ ????.??</u>
	£ ????.??

- ii) Subsequent meetings will be charged under the TMBC pre-application protocol for strategic sites at FINF FEE which will include all background material and research work.
- iii) In the event that it is agreed between the parties that legal representation is required at any meeting, the Applicant shall pay TMBC's costs in connection with its legal adviser.
- iv) TMBC's legal adviser shall be its internal planning lawyer (at the date of this agreement the post-holder designated as "Principal Solicitor (Litigation)") unless due to resourcing issues it is necessary for TMBC to appoint an external solicitor to provide advice and representation.
- v) The costs of such representation shall be:
- in the case of the internal solicitor the rates set by TMBC's Finance, Property and Innovation Board (as amended from time to time) which at the date of this agreement are FEE per hour, to a maximum of 5 (AMEND AS NECESSARY) hours. If additional work is required this sum shall only increase with the written agreement of the Project Team.
  - in the case of external representation the full costs of such representation.
- vi) In the event that TMBC deems necessary (in its reasonable opinion) to appoint external consultants to provide an independent review of any of the Application Documents or Pre-Application Documents (or to provide technical advice in connection with consultation responses), the Applicant shall pay the full costs of such external consultants. This shall relate to a maximum of 5 (AMEND AS NECESSARY) separate reports, including the Viability Report, at a maximum cost of FEE per area of expertise. If additional work is required this sum shall only increase with the written agreement of the Project Team.

- 4.6.2 If required by TMBC the Applicant will pay TMBC the costs of appointing an additional Planning Officer (not to be part of the Project Team) for the duration of the Project to enable TMBC to adequately resource the Project within the timescales set out in this agreement. This shall be at a cost of FEE per hour (for an agency planner of medium experience) for a 37 hour week.
- 4.6.3 TMBC will invoice the Applicant for each payment due within 5 (AMEND AS NECESSARY) working days of a meeting taking place.
- 4.6.4 The Applicant will pay such invoices within 28 days. In the event the Applicant does not pay any invoice when it becomes due, TMBC reserve the right to refuse any additional meetings unless and until outstanding invoices are paid.

## **5. Application (Project) Programme**

- 5.1 The Applicant will not submit the planning application to TMBC until the Pre-Application Documentation has been submitted and the contents of that documentation has been reviewed and TMBC has had the opportunity to offer informal comment.
- 5.2 When the Applicant submits the planning application for the Project, the planning application will include the Application Documentation listed in Appendix 3. The submission shall be made by CD or DVD and also include 7 paper copies.
- 5.3 The PPA Programme is devised to provide a realistic timeframe for planning and resourcing the pre-application discussions, with the aim of agreeing a submission date. The Applicant acknowledges that the timetable may be subject to change which will be kept under review moving forward. The Project Programme is detailed in **Appendix 1** of this document.
- 5.4 It has been agreed that a ?? (AMEND AS NECESSARY) week timeframe for the Project programme is appropriate for consideration of the planning application and a resolution from Full Council/Area Planning Committee. The subsequent negotiation of the S106 agreement will be undertaken speedily by both parties.

- 5.5 Within the agreed timeframe, meetings will be arranged as above and when considered necessary by agreement, with suggestions of appropriate meetings set out within the Project Programme (Appendix 1).
- 5.6 If there is a delay in the Project Programme, the Project Team will review whether the Project Programme is still realistic or whether the Project Programme and the Planning Performance Agreement determination timeframe need to be revised. Any revisions to the Planning Performance Agreement determination timeframe shall be agreed in writing by the Applicant and TMBC.
- 5.7 At the request of any party to this agreement, the parties shall as soon as is reasonably practicable [after the expiry of xx weeks from the date of this agreement] in good faith discuss the progress of the consideration of the planning application (or Pre-Application Documents as may be the case) against the project programme as set out at Appendix 1 and review whether any extension of any period will be necessary in order to enable TMBC to discharge its planning functions in respect of the Project and ensure compliance with the project programme.

## **6. Appeals and Third Party Challenges**

- 6.1 Nothing in this agreement shall restrict or inhibit the Applicant from exercising their right of appeal under Section 78 of the Town and Country Planning Act 1990. In the event of such an appeal, this agreement shall terminate immediately without further notice to either party, save in respect of the invoicing arrangements at clause 4.6 for any outstanding payments.
- 6.2 In the event of a Third Party Challenge, the Developer and TMBC shall jointly appoint such expert legal representation from Planning Counsel as shall be agreed between them, and upon such appointment shall request a legal opinion as to the merits of the challenge and the likelihood of a successful defence. The parties shall bear the costs of such instruction equally.
- 6.3 In the event that Planning Counsel's opinion is that the Third Party Challenge has a reasonable prospect of success, TMBC shall consider whether to revoke or modify the relevant planning permission, or to consent to judgement.

- 6.4 Should TMBC decide to revoke or modify planning permission in relation to the Project on the advice of Planning Counsel, and such a determination would ordinarily attract the payment of compensation under s.107 of the Town and Country Planning Act 1990 (or otherwise), the Applicant shall not pursue the payment of any such compensation.
- 6.5 If TMBC decides to proceed with the defence of a Third Party Challenge against the advice of Planning Counsel, it shall do so at its own cost.
- 6.6 In the event that Planning Counsel's opinion is that the Third Party Challenge does not have a reasonable prospect of success, or more generally gives a positive opinion that the decision under challenge is suitably robust, the parties agree to joint instruction of Planning Counsel for the purposes of defending the Third Party Challenge and will bear the costs of such instruction equally.
- 6.7 Nothing in this agreement affects the ability of TMBC or the Applicant to instruct their own solicitors to provide advice and assistance in connection with any Third Party Challenge.

## **7. Nature of Agreement**

- 7.1 Nothing in this Agreement shall operate or be construed as any fetter on TMBC's discretion either as the local planning authority in connection with the Project or more generally as a local authority. For the avoidance of doubt, nothing in this agreement is intended to commit TMBC to the delivery of an approval of any planning application.
- 7.2 If any provision of this agreement is held by any court or other competent body to be void or unenforceable in whole or in part, then the other unaffected remaining provisions of the agreement shall continue.
- 7.3 Nothing in this agreement shall create, or be deemed to create, a partnership between the parties.

## **8. Breach and Termination**

If any party shall commit any breach of its obligations under this agreement and shall not remedy the breach within 10 working days of written notice from the other party to do so, then the other party may notify the party in breach that it wishes to terminate this agreement forthwith and the agreement shall be terminated immediately upon the giving of

written notice to this effect to the party in breach provided always that the breach is within the control of the party that is in breach and capable of being remedied.

**9. Third Party Rights**

9.1 Nothing in this agreement creates, or is intended to create, any right for any third party to enforce its provisions by virtue of the Contracts (Rights of Third Parties) Act 1999.

9.2 Without prejudice to clause 9.1, this agreement may be varied, revoked, modified or supplemented without the consent of any third party.

**10. Agreement**

TMBC and the Applicant hereby agree to the content of this Planning Performance Agreement.

**Tonbridge and Malling Borough Council**

**Name:** .....

**Signature:** .....

**Position:** .....

**On Behalf Of:** .....

**Date:** .....

**Applicant**

**Name:** .....

**Signature:** .....

**Position:** .....

**On Behalf Of:** .....

**Date:** .....

## APPENDIX 1 – PROJECT PROGRAMME

TMBC and the Applicant shall work to ensure that the consideration of the proposal is progressed in accordance with the Pre-application programme set out below (unless a variation to the Pre-application programme is agreed in writing in by both the Applicant and TMBC).

### **Project Programme - Pre-application Phase**

Task	Party(ies) involved	W/b or Date
Signing Planning Performance Agreement	Council and Developer Co-ordinator	
Pre-application meetings	Planning Officer(s) and Developer Co-ordinator	
Presentation to Members	Planning Officer(s) and Developer Co-ordinator	
Public Consultation Public Exhibitions	Developer Co-ordinator	
Submission of all outstanding pre-application documents	Developer Co-ordinator	
Consideration of submitted pre-application documents	Planning Officer (s) and Statutory Consultees	
Further pre-application meeting Planning Officer to arrange with internal Council personnel Developer Co-ordinator to arrange with EA and KCC H+T (AMEND AS NECESSARY)	Planning Officer(s) and Developer Co-ordinator	

## Project Programme - Application Phase

The timescales are based upon the following assumptions:

The Developer to submit DATE

No more than 2 (AMEND AS NECESSARY) joint working meetings are required

The outcomes of the joint working meetings are productive and that all resulting matters can be resolved

The application is not called in by the Secretary of State

Task	Party(ies) involved	W/b or Date
Submission of Application and consideration of the validity of the Application	Development Co-ordinator and Planning Officer(s)	
Registration and validation of the application (provided that the Application is valid)  Consultation in respect of the Application	Technician and Planning Officer(s)	
1 <sup>st</sup> Joint Working Meeting - consideration of consultation responses received	Planning Officer(s) and Developer Co-ordinator	
Developer Co-ordinator to address issues raised in the joint working meeting and submit further information if required	Developer Co-ordinator	
2 <sup>nd</sup> Joint Working Meeting	Planning Officer(s) / Developer representatives	
Developer Co-ordinator to address issues raised in the 2 <sup>nd</sup> joint working meeting and submit further information if required	Developer Co-ordinator	
Re-consultation on amended or additional information	Planning Officer (s)	

<b><i>Decision stage</i></b>		
Preparation of Members Briefing Note	Planning Officer (s)	
Organisation of Members Site Inspection	Full Council/Planning Committee	
Developer Co-ordinator to address any issues raised and submit amendments and/or additional information	Developer Co-ordinator	
Preparation and submission of Report to Full Council/Planning Committee	Planning Officer(s)	
Consideration by Full Council/Planning Committee	Full Council/Planning Committee	
Negotiation and completion of Section 106 agreement	Council legal representative / Planning Officer(s) / Developer representative	Both parties to use their best endeavours to negotiate the S106 agreement and release the decision within 4 months of the date of the Full Council recommendation
Referral to Secretary of State  (three weeks)	Planning Officer (s)	
Issue of planning application decision notice	Planning Officer(s)	



**Table 2 – TMBC's Team**

Tonbridge and Malling Borough Council	NAME	POSITION	TELE NO.	EMAIL

**Appendix 3**  
**Part 1 – Pre Application Documents**

**FOR EXAMPLE**

- The Masterplan
- Draft Planning Statement addressing all relevant policies
- Transport Statement
- Draft Flood Risk Assessment
- Contaminated Land Factual Report
- Odour Risk Assessment
- Draft Air Quality Chapter
- Draft Ecology Appraisal including GCN, Reptile and Bat surveys

**Appendix 3**  
**Part 2 – Application Documents**

**FOR EXAMPLE**

- Masterplan
- Planning Statement
- Employment Land Market Review
- Affordable housing statement
- Archaeological and Heritage assessment
- Design and Access Statement
- Landscaping details
- Open, play space and recreational assessment
- Photographs and photomontages
- Parking and servicing provision
- Draft Head of terms for planning obligation
- Schedule of works
- Telecommunications information
- Transport assessment
- Utilities and foul sewage assessment
- Viability statement
- Environmental Statement to include
  - Air quality assessment
  - Biodiversity survey
  - Contaminated land assessment
  - Flood risk assessment
  - Noise impact assessment

and the following information as detailed in the Scoping Report REFERENCE IF APPLICABLE  
issued DATE