

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

11 November 2020

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 REVIEW OF THE PLANNING PERFORMANCE AGREEMENT PROTOCOL

Summary: This report provides a review of the planning performance agreement protocol and sets out the proposed new charges for 2021-2022. It is necessary to review the protocol every year in order to ensure the Council continues to provide a comprehensive, high quality service and that the evidence base remains up to date. The charging schedule should also be considered annually.

1.1 Introduction

- 1.1.1 The current PPA protocol and charging regime was introduced on 01 April 2020 and officers undertook to build in an initial period of review (6 months) to establish how the protocol and associated charging schedule was working in practice.
- 1.1.2 Linked to this, Members will also be aware of the work ongoing to prepare a Planning Obligations Protocol and undertake the annual review of our pre-application advice service. These items are reported elsewhere on the agenda but it is important to remember that they should run concurrently in order to achieve the best positive outcomes for developer across the Borough.

1.2 The current Protocol

- 1.2.1 The protocol and fee structure, introduced on 01 April 2020 identifies four main development types, as follows:
 - 1) Small development: under 50 dwellings or up to 2,500 sq. m of commercial floor space.
 - 2) Medium development: between 50 and 99 dwellings or 2,500 – 4,999 sq. m of commercial floor space.
 - 3) Large development: between 100 and 249 dwellings or 5,000 – 9,999 sq. m of commercial floor space.
 - 4) Strategic development: over 250 dwellings or 10,000 sq. m of commercial floor space.

- 1.2.2 The schedule then goes on to set out expectations for the number of meetings with officers and Member briefings provided for within the PPA.

1.3 Review of current Protocol

- 1.3.1 To date, there has been reasonable uptake on the use of PPAs and officers are in negotiations with developers continually in order to promote them as a key project management tool, particularly for large and strategic development types. The intention is to utilise the fees collected to assist in resourcing the DM team to ensure the programmes agreed within PPAs can be met whilst continuing to meet and, wherever possible exceed, wider targets for decision making.
- 1.3.2 Feedback from officers and developers alike has centred on the fact that the protocol and template agreement need to be more explicit around expectations for payment of the fees for PPAs relative to pre-application advice being sought initially and this can be incorporated into a revised document in a straightforward way. Developers should equally be aware of how and when the Council expects payment to be made when they enter into a PPA, and again this will be made more overt through amendments to the protocol itself.
- 1.3.3 Concern has been raised amongst some officers that the fees for entering into a PPA, particularly for large and strategic developments may not be wholly reflective of the associated work involved. Broadly, it is considered that a longer period of review is needed to accurately capture what any amendments might be in this respect. However, it is already clear that the number of meetings enshrined within the fee charging schedule for strategic developments has been underestimated. Based on recent experiences since the PPA protocol was adopted, it is recommended that this be increased and that there be a fee uplift to reflect this. Furthermore, it would be prudent to also account for the likelihood that Members Site Inspections would be arranged for strategic developments too.
- 1.3.4 The charging schedule has been amended to reflect this at **Annex 1**. For reference purposes, the existing fee charging schedule is attached as **Annex 2**. Should the proposed changes to the charging schedule be considered acceptable, then they could be introduced on 01 April 2021.
- 1.3.5 In terms of the amendments and points of clarification to be incorporated into the protocol and template agreement, it is considered prudent to await any outcomes of the upcoming Developer Forum to establish whether any additional changes should be incorporated. There is however no need to delay publishing the updated version of the Protocol itself until the new fees come into effect on 01 April 2021, in fact it is considered important to expedite these changes at the earliest opportunity. As such, it is recommended that authority to publish the final updated version be delegated to the Director of Planning, Housing and Environmental Health in consultation with the Cabinet Member for Strategic Planning and Infrastructure. This is included within the recommendation that follows.

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 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 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Recommendations

- 1.8.1 It is **RECOMMENDED TO CABINET** to **APPROVE** the following amendment with effect from 01 April 2021:
- Adopt the updated Planning Performance Agreement Charging Schedule 2021/22 as attached at **Annex 1**.

- 1.8.2 It be **AGREED** that amendment and publication of the Planning Performance Agreement Protocol after 12 November 2020 be delegated to the Director of Planning, Housing and Environmental Health in consultation with the Cabinet Member for Strategic Planning and Infrastructure.

Background papers:

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Annex 1: Proposed Charging Schedule 2021/22

Annex 2: Existing Charging Schedule 2020/21

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