

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

10 November 2021

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 AND FEE CHARGING SCHEDULE

Summary: This report provides a review of the planning performance agreement protocol and sets out the proposed new charges for 2022-2023. It is necessary to review the protocol every year 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 PPA protocol and charging regime was first introduced on 01 April 2020. Since then, officers have been regularly reviewing how the service is utilised by applicants and how successful it has been in meeting its objectives.

1.2 The current Protocol

1.2.1 The protocol and fee structure, introduced 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.

1.2.3 The current fee charging schedule is produced at **Annex 1** for Members' information.

1.3 Review of current Protocol

1.3.1 There remains a strong uptake on the use of PPAs and officers are in negotiations with developers continually to promote them as a key project management tool, particularly for large and strategic development types. The intention remains 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. This has, to date, occurred on an ad hoc basis but within the context of extremely high volumes of cases being received within the team which has had implications for wider resourcing and resilience this year. Officers are currently considering other options for utilising this income to bring in dedicated resources to work on some of the higher level, strategic developments we know are likely to come forward before the end of the year. This would be in association with more general backfilling to ensure the officer team are sufficiently resourced and resilient going forward.

1.3.2 Comprehensive review of the protocol and template agreement by officers has identified several key issues which require addressing to ensure PPAs can continue to be valuable tools for the service. These are discussed as follows:

1.3.3 Commonly, it has been noted that there are delays on the part of applicants in completing the PPA and paying the associated fee. These should be completed and paid for prior to the formal submission being made but habitually this does not happen in good time. Such delays place an unnecessary administrative burden on the team along with delays to the initial registration, consultation and assessment processes. It is therefore recommended that the expectations enshrined within the protocol should be more explicit to ensure that signed and dated PPAs and the associated fees are submitted well in advance of the application submission documents. Internal processes should also be finessed to reflect this.

1.3.4 Furthermore, on occasion applicants have disputed making additional payments to commission reports during an application, particularly around viability work. To avoid any ambiguity around our expectations in this regard, the protocol and associated template agreement should be amended to ensure the scope for commissioning such work and paying for it is sufficiently broad. It is also important that officers also understand that they have the flexibility to negotiate these clauses should they consider it to be necessary. This will be dependent on the scale and nature of individual schemes and will become clear as the pre-application discussions are taking place.

1.3.5 Questions have recently been raised as to whether it is possible or appropriate to enter into PPAs once an application has been submitted and initial assessment has taken place. Our view is that whilst this is legally possible it has the effect of

diluting the entire rationale behind the PPA process. The PPA negotiations are supposed to take place at the pre-application stage, indeed at the very earliest of opportunities, to ensure their value. As such, the Council should not agree to PPAs once an application has been submitted for formal consideration and the protocol should be amended to make this clearer and avoid any future confusion on the part of the applicants.

- 1.3.6 Furthermore, as Members will have noted elsewhere on the agenda, PPA discussions will take place during the initial pre-application enquiry. If the parties decide that a PPA would be appropriate in the prevailing circumstances, the initial pre-application fee paid is in no way refundable or discounted from the subsequent PPA fee. This should be made explicit in the protocol itself and will be cross-referenced within the information contained within the pre-application advice pages of the website.
- 1.3.7 Officers have, on occasion, indicated that applicants seek to impose unrealistic deadlines within PPA programmes which simply cannot be met given our own processes and committee structures, regardless of whether additional resources are brought in via PPA fees. Whilst it is recognised that there needs to be some flexibility on our part, the protocol should manage developer expectations on what is realistically achievable. Equally, officers should be making these factors clear during their own negotiations with developers on the programme. This should be made more overt within the amended protocol itself.
- 1.3.8 Additionally, in terms of managing the expectations of developers in dealing with PPA cases, the protocol should be amended to expand on what we require them to submit before meetings take place and how meetings will be arranged and conducted. It is our experience that some applicants seek to utilise the PPA process to make unrealistic demands on time and resources. Whilst it is fully accepted that PPAs mean we are required to provide an agreed level of service, this must be achievable; expecting officers to attend a meeting with less than 24 hours' notice with no advanced material provided for example is not reasonable and will not result in constructive discussions about the merits of the scheme, which is the overarching purpose of a PPA, as a tool for good decision making. It is therefore proposed that the protocol and template agreement be amended to make far clearer that a minimum time period, to be agreed between the parties, must be adhered to for agendas and associated material to be circulated. It should also make clear that the Council reserves the right to cancel pre-arranged meetings where such deadlines have not been met.
- 1.3.9 Previous reports to this Board have indicated that fees charged for PPAs are likely to be underestimated. This remains a concern, particularly for large-scale and strategic developments given their scale and complexities. Benchmarking has indicated it would be more proportionate in some circumstances to seek a proportion of what the total application fee, which is likely to be more representative of the work sitting behind the application. For example, presently strategic sites such as Broadwater Farm are subject to a flat fee of £13,800

whereas this would be increased to £22,500 based on 15% of the application fee in this instance. This is reflected in the proposed fee charging schedule produced at **Annex 2** to this report. For the avoidance of any doubt, this fee is in addition to the requisite application fee and in addition to any pre-application meetings undertaken before the PPA was entered into.

- 1.3.10 It is just as important to recognise development types where it is less prudent to seek to enter into PPAs in order to suitably focus officer resources on more complex development proposals. With this in mind, it is recommended that there be a threshold cap on the scale and nature of developments that can be subject to a PPA – suggest no fewer than 10 residential units and no less than 1,000 sq.m of non-residential floorspace. Again, this is reflected in the proposed fee schedule at **Annex 2**.
- 1.3.11 Furthermore, there are some schemes coming forward that are unacceptable in planning terms for a range of reasons. In these instances, applicants can seek to enter into PPAs with a view to narrowing the issues/eventual grounds of refusal. Whilst this approach on the part of the applicant is understood, it does not necessarily reflect best practice or most suitable use of available resources for us and creates uncertainty amongst stakeholders and local communities if decisions are delayed. It is therefore recommended that the protocol be amended to make clear that the Council reserves the right not to enter in to a PPA where it is not considered constructive to do so. In terms of internal processes, it would be a matter for the case officer to establish and make recommendations to the Development Manager as to the costs/benefits of entering into an agreement.
- 1.3.12 The recommended amendments to the protocol itself and the associated template agreement should be expedited at the earliest opportunity, certainly before the new fees come into effect on 01 April 2022. 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 2022/23 as attached at **Annex 2**.
- 1.8.2 It be **AGREED** that amendment and publication of the Planning Performance Agreement Protocol after 11 November 2021 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: Existing Charging Schedule 2021/22

Annex 2: Proposed Charging Schedule 2022/23

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