

TONBRIDGE & MALLING BOROUGH COUNCIL
HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

14 December 2023

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

1.1 Introduction

1.1.1 Planning Performance Agreements (PPA) are useful tools in setting out an efficient and transparent process from inception and pre-application to planning application decision and post reserved details and condition discharge. This voluntary process encourages joint working between applicant/developer and the local planning authority whilst potentially involving the community and bringing together other experts and statutory consultees. They are undertaken in the spirit of a 'memorandum of understanding' rather than a legal binding document with statutory sanctions.

1.1.2 A Planning Performance Agreement protocol and charging schedule was adopted and implemented by the Council in April 2020. The protocol objectives and fees were then reviewed in November 2020 and again in 2021 when the current fee schedule was adopted.

1.1.3 We have signed and received fees for five PPA's in 2023 with three currently awaiting additional fees to be validated. These are mostly for large scale developments. The applications relating to these PPA's are currently being assessed by officers.

1.2 The Existing Protocol

1.2.1 The protocol and fee structure, introduced identifies four main development types, as follows including the current fees set in April 2022. These were not increased during 2023/24.

- **Small** development: under 50 dwellings or up to 2,500 sq. m of commercial floor space. (£3,500)
- **Medium** development: between 50 and 99 dwellings or 2,500 – 4,999 sq. m of commercial floor space. (£5,000)

- **Large** development: between 100 and 249 dwellings or 5,000 – 9,999 sq. m of commercial floor space. (£7,500)
- **Strategic** development: over 250 dwellings or 10,000 sq. m of commercial floor space. (£13,800)

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. These vary depending on the size of the development.

1.3 Review of Current Protocol

1.3.1 The Council continues to promote PPAs as a key project management tool to promote sustainable and positive outcomes with particular regard to large and strategic housing and commercial developments. Fees received for this service, which are on a cost recovery basis, are then used to assist in resourcing the Development Management Team. PPA fees currently mostly fund one Senior Planning Officer role in the Major Projects team. However, it has become clear that the current fee schedule, associated with PPAs, does not recover the full costs of the service.

1.3.2 A review of the protocol and template agreement by officers alongside benchmarking against other Kent authorities has identified several key issues which require addressing to ensure PPAs can continue to be valuable tools for the service. (The revised Protocol & Template is attached at **Annex 1**). This review has also been informed by work carried out by the Planning Advisory Service.

Inception Meeting prior to PPA

1.3.3 It has been noted in the current system there are delays on the part of some applicants in completing the PPA and paying the associated fee. The PPA should be completed and paid for prior to the formal submission is made, but habitually this does not happen in good time. There are examples when developers are submitting PPAs just prior to the submission of the application for the only reason to allow them to submit a series of reactive amendments during the planning application stage, without having first undertaking meaningful pre-app and/or undertaking engagement before the application was submitted. Such behaviour places an unnecessary administrative burden on the team along with delays to the initial registration, consultation and assessment processes. It is therefore now recommended as part of the initial engagement and prior to a PPA, that it becomes a requirement that an **Inception meeting** will need to take place between the Council and the developer before a PPA can progress. This will prevent a late request for a PPA at the time a planning application is submitted.

The **Inception meeting** will set out the following “road map” to the PPA:

- Develop structure and content of PPA.

- Agree project vision and objectives.
- A work programme setting out key deliverables (milestones) and responsibilities. Including at what stage a planning application will be submitted; the agreed date will be incorporated into the PPA.
- Identifying key issues for consideration to follow through into individual **topic area meetings** in the PPA.
- Scope the requirements and cost to the developer of external advice.

Inception Meeting template

The table below to be used as the basis of the Council written response to the developer setting out the outcomes of the meeting. Also produced as **Annex 2** to this report

Topic for discussion	Minute	Agreed Actions
Develop structure and content of PPA.		
Agree project vision and objectives.		
A work programme setting out key deliverables (milestones) and responsibilities. Including at what stage a planning application will be submitted; the agreed date will be incorporated into the PPA		
Identifying key issues for consideration to follow through into individual topic area meetings in the PPA.		
Scope the requirements and cost to the developer of external advice		

Decision on whether to pursue the PPA		
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1.3.4 There is a separate fee for the Inception meeting, which is deducted from the resultant PPA. If the PPA is not progressed the Inception meeting fee is non-refundable. It is also worth stating that the **final decision** to progress a PPA sits with the Council.

1.3.5 The Inception Meeting will ensure that the signed and dated PPA and the associated fees paid along with the required milestones identified in the PPA are achieved before any application is submitted.

External Advice – Developer Payment

1.3.6 Furthermore, on occasion applicants have disputed making additional payments to commission reports during the application stage, particularly around viability work. To avoid any ambiguity around the Council's expectations in this regard, the PPA protocol and associated template agreement shall make it clear that the applicant will need to pay for the following:

- Any external specialist advice not covered by statutory consultee pre-app protocols shall be paid for by the developer at **pre-app** and **during the planning application and discharge of conditions**. For example, viability testing, conservation/urban design, ecology & EIA assessment.
- Highways, Environment Agency, and other consultee advice at **pre-app** will need to be paid by the applicant separately to this PPA under the relevant agency's pre-app charging schedule. These charges are in addition to the PPA charges.

1.3.7 It is also important that officers understand that they have the flexibility to negotiate these clauses should they consider it to be necessary. This will be dependent on the parameters set out in the **Inception Meeting** on the scale and nature of individual schemes and will become clear at the first meeting of the PPA (Introduction meeting).

1.3.8 The Inception meeting and the PPA will set out the timelines throughout the process and in particular the pre-application process, taking a development from inception through engagement with Council professional advisors (Planning, Housing, Environmental Health) to external consultees (Highways, Environment Agency) to bespoke commissioned external advice on viability, design, conservation EIA etc to engagement with communities and potentially Members of the Council. Once the proposal has been positively shaped to reflect this engagement further officer/developer discussions can take place during the progression of the planning application usually after a full round of formal/statutory consultee responses allowing for the submission of amended plans.

Planning Application stage and submission of amendments

1.3.9 The Council operates a non-amendments policy on live applications. However, the PPA process gives the developer the opportunity to submit at least one round of amendments (depending on the PPA category) during the application stage to address specific issues raised during the application that have not been highlighted during the pre-app engagement. The number of amendment rounds are set out as follows:

- Small/Medium PPA: 1
- Large PPA: 2
- Strategic PPA: 3

Pre-App Fees

1.3.10 The Council operates a standalone pre-app service separate to the PPA process, albeit the desired outcome of creating sustainable developments are linked. The pre-app fees paid by a developer on the standalone service will **not** be refunded. If at a later stage the developer wants to agree a PPA via the accepted route by first entering and paying for an Inception Meeting, then the Inception Meeting fee is deducted if this is progressed to a full PPA.

Expectations and timelines

1.3.11 Officers have, on occasion, indicated that applicants seek to impose unrealistic deadlines within PPA programmes which cannot be met due to the Council's own processes and committee structures and regardless of whether additional resources are brought in via PPA fees. Whilst it is recognised that there needs to be some flexibility on the Council's part, the protocol should manage developer expectations on what is realistically achievable. Equally, officers should be making this clear during their own negotiations with developers on the programme. It is also worth re-stating that the final decision to progress a PPA sits with the Council and not the developer.

1.3.12 In terms of managing the expectations of developers in dealing with PPA cases, the protocol should be amended to expand on what we require the developer to submit before meetings take place and how meetings will be arranged and conducted. It is the Council's experience that some applicants seek to utilise the PPA process to make unrealistic demands on time and resources.

PPA Fee Structure

1.3.13 It is fully accepted that for the Council to agree a PPA it must provide an agreed level of service which is achievable within the resources available. However, it is increasingly clear the current PPA fee structure does not cover the full cost of this service and while the PPA fee cannot create a profit for the Council, it should cover the full cost of providing the service. The proposed revised fee schedule has been reviewed using the Council's hourly charging rates and best estimate of timescales to cover all aspects of the PPA service. A baseline review has also been undertaken across the Kent authorities to review charging schedules for

these authorities. The fee schedule is reproduced in **Annex 3** and includes the revised number of meetings and member briefings together with the number of amendments permitted at application stage associated with the relevant size of the PPA. This is summarised below:

Size	Existing fee £	Proposed fee £	Approx. % increase
Small	3,500	5,760	65
Medium	5,000	8,060	61
Large	7,500	11,200	49
Strategic	13,800	18,200	32

It will be noted that in percentage terms the greatest increase is at the lower end ie Small PPAs. It became clear through the review that for the smaller PPAs the existing fees fell well short of the resource required on a cost recovery basis when compared to the larger schemes.

1.3.14 There are also ways to improve the efficiency and maximise the benefit of the PPA service. This can include the following around meeting protocol/structure:

- Agree reasonable timelines for providing and exchanging information prior to an arranged meeting.
- Reasonable lead in times when creating a new scheduled meeting.
- Agree how meetings will be managed including agreement of the chair & agenda, production of draft minutes (and by who) and how are action points and outcomes agreed and taken forward.

1.3.15 The protocol and template agreement will be made clearer to reflect the above (see **Annex 1**). It should also make clear that the Council reserves the right to cancel pre-arranged meetings where such deadlines have not been met.

1.3.16 It is just as important to recognise not all development sizes are suitable to progress through a PPA, so existing resources can focus on more complex development proposals. Consequently, it is recommended that there be a minimum threshold cap on the scale and nature of developments that can be subject to a PPA ie. no fewer than 10 residential units and not less than 1,000 sq.m of non-residential floorspace. Please see the proposed fee schedule at **Annex 2**.

1.3.17 For a number of planning reasons not all proposals brought forward by developers are likely to be acceptable. In these instances, while applicants may wish to enter a PPA with a view to narrowing the issues/eventual grounds of refusal it does not necessarily reflect best practice or most suitable use of available resources for the Council. It also creates uncertainty amongst stakeholders and local communities if decisions are unnecessarily delayed. Consequently, it is recommended that the protocol be amended to make clear that through the **Inception Meeting** process

the **Council reserves the right not to enter into a PPA** where it is not considered constructive to do so, or where there are principle reasons why the Council consider the scheme should not progress. This decision on the Council's position would be a matter for the case officer in agreement with Development Manager.

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 annex to the protocol.

1.5.2 The fees to be charged should be subject to annual review.

1.5.3 The increase of fees as detailed above would generate additional income of £10,000 from 2024/25 onwards compared to the revised estimate.

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 **APPROVE** the following amendment with effect from 01 April 2024:
- 1.8.2 It be **AGREED** that amendment and publication of the Planning Performance Agreement Protocol at Annex 1
- 1.8.3 Adopt the Inception meeting template as attached at Annex 2
- 1.8.4 Adopt the updated Planning Performance Agreement Charging Schedule for 2024/25 as attached at Annex 3.

Background papers:

- Annex 1 – PPA Revised Protocol
- Annex 2 – Inception meeting template
- Annex 3 – Inception and PPA Fees 2024/25

contact: James Bailey
Head of Planning

Eleanor Hoyle
Director of Planning, Housing and Environmental Health