

Planning Performance Agreement

INSERT DATE

ENTER SITE ADDRESS

Between:

Tonbridge and Malling Borough Council and

ENTER NAME OF APPLICANT/AGENT

Table of Contents

1. Executive Summary.....	2
2. Introduction and Purpose	3
3. General Principles	5
4. Form and Content of the Pre-Application Submission.....	6
5. Resources and Liaison	7
6. Application (Project) Programme.....	10
7. Appeals and Third Party Challenges	11
8. Nature of Agreement	12
9. Breach and Termination	13
10. Third Party Rights	14
11. Agreement.....	15
Appendix 1 – Project Programme	16
Appendix 2 – Project Team.....	19
Appendix 3 – Documents	20
Appendix 3 – Documents	21

1. Executive Summary

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

- 1.1 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.
- 1.2 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.
- 1.3 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.

Excerpt from the National Planning Practice Guidance, paragraph 018: Reference ID: 20-018-20150326 (revised 26 March 2015):

- 1.4 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.

2. Introduction and Purpose

- 2.1 Tonbridge and Malling Borough Council is the local planning authority for development within the area in which the development site is located.
- 2.2 The applicant has submitted an Inception Meeting request to scope a PPA and seek advice regarding the DESCRIPTION OF PROPOSAL.
- 2.3 This Planning Performance Agreement is an agreement between TMBC and the Applicant to provide a project management framework for handling both the pre-application advice 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” (as scoped at the Inception Meeting) that make clear what level of resources and actions are required, ensuring all key planning issues are properly considered through Topic Meetings and, wherever possible, resolved.
- 2.4 This agreement does not give a guarantee of planning permission. It relates to the process of considering development proposals and not the decision itself.
- 2.5 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.

Definitions

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

Party	Details
Applicant	ENTER 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
Site Address	ENTER SITE ADDRESS
Project	ENTER PROPOSAL
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

3. General Principles

3.1 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.

3.2 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 paragraphs 5.13 and 5.14 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.

4. Form and Content of the Pre-Application Submission

- 4.1 The pre-application discussions relate to the project's need for TYPE planning permission.
- 4.2 The greater the level of information provided by the applicant at the pre-application stage, the better and more detailed the response. With this in mind, key documents (relating to the specifics of the proposal) 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.
- 4.3 The Applicant shall provide TMBC with the Pre-Application Documentation (as a minimum) as part of the pre-application discussion process.

5. Resources and Liaison

The Project Team

- 5.1 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.

Performance Standards

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

Meetings

- 5.9 Meetings will be attended by the Project Team (unless specific attendance is not required due to meeting topic).
- 5.10 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.
- 5.11 Project Team meetings will be held at the times set out in the Project Programme (unless otherwise agreed or cancelled).
- 5.12 10 working days 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.

Availability of People and Resources

5.13 The parties to this agreement will endeavour to make available members of the Project Team to facilitate meetings within 10 working days from a formal written request, unless otherwise agreed.

5.14 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.

Confidentiality

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

Costs

5.16 The Applicant commits to cover all charges from ENTER DATE OF PPA AGREEMENT:

- 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 (ENTER PRE-APP REFERENCE). These fees are as per the pre-application protocol 2024.
- ii. The Applicant will pay the one-off upfront PPA fee of £ENTER RELEVANT PPA FEE to TMBC. This is in accordance with the Council's PPA Charging Schedule 2024/2025. For the avoidance of doubt, this includes up to ENTER NUMBER OF MEETINGS AS PER PPA SCHEDULE meetings. The PPA fee is to be paid by the Applicant on or before the date the PPA is signed and dated by both parties.
- iii. Additional meetings will be charged as set out in the TMBC PPA charging schedule for additional meetings.
- iv. In the event that it is agreed between the parties that legal representation is required at any meeting, TMBC will agree with the Applicant the required costs in connection with its legal advisor. TMBC's legal advisor 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. Upon agreement, the Applicant will pay for the full costs associated with such an appointment.
- v. 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 costs of such external consultants shall be agreed in writing with the Applicant prior to appointment. If additional work is required, this sum shall only increase with the written agreement of the Project Team. Upon the agreement, the Applicant will pay the full costs of such external appointments.
- vi. 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. TMBC will agree will the applicant the required costs in connection to this appointment.

- vii. Fees for consultants appointed by the TMBC shall be paid directly to the consultant upon the Applicant receiving an invoice from them in accordance with the payment terms contained therein.

6. Application (Project) Programme

- 6.1 The applicant will not submit the planning application to TMBC until the Inception meeting has taken place, the subsequent PPA has been signed and paid for (activated), any additional fees are paid for and the project programme timeline (as agreed in the PPA) has been adhered to.
- 6.2 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 the Planning Portal.
- 6.3 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.
- 6.4 In determining the application there are two agreed stages which in combination set out the agreed date for determination of the application (which will replace the statutory 13 week period). Firstly a ENTER 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. Secondly the subsequent negotiation of the S106 agreement will be undertaken and agreed in ENTER AS NECESSARY weeks after the resolution to grant planning permission. Ideally this should be completed within 4 months of the Committee resolution. This combination of both these dates will provide the date to determine the application.
- 6.5 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).
- 6.6 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.
- 6.7 At the request of any party to this agreement, the parties shall as soon as is reasonably practicable (after the expiry of four 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.

7. Appeals and Third Party Challenges

- 7.1 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 fees for consultants arrangements at clause **Error! Reference source not found.** for any outstanding payments.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 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.

8. Nature of Agreement

- 8.1 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.
- 8.2 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.
- 8.3 Nothing in this agreement shall create, or be deemed to create, a partnership between the parties.

9. Breach and Termination

- 9.1 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.

10. Third Party Rights

- 10.1 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.
- 10.2 Without prejudice to clause 10.1, this agreement may be varied, revoked, modified or supplemented without the consent of any third party.

11. Agreement

11.1 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

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	Parties Involved	Week Number	Date
Signing & payment of Planning Performance Agreement (Activation)	Council and Applicant		
Introduction Meeting	Planning Officer(s) & Applicant Co-ordinator		
Submission of pre-application documentation	Applicant Co-ordinator		
Consideration of submitted Pre-Application Documents	Planning Officer(s) & Statutory Consultees		
Pre-application Meeting	Planning Officer(s) & Applicant Co-ordinator		
Member Briefing(s)	Planning Officer(s) & Applicant Co-ordinator		
Public Consultation & Exhibition	Applicant Co-ordinator		
Submission of all outstanding pre-application documents and material	Applicant Co-ordinator		
Consideration of submitted pre-application documents	Planning Officer(s) & Statutory Consultees		
Further pre-application meeting <i>Planning Officer to arrange with internal Council personnel</i> <i>Applicant Co-ordinator to arrange with external consultees</i>	Planning Officer(s) & Applicant Co-ordinator		

Project Programme - Application Phase

The timescales are based upon the following assumptions:

- The Developer to submit ENTER DATE OF APPLICATION SUBMISSION
- No more than ENTER AS NECESSARY joint working meetings are required (refer to PPA fee schedule)
- The outcomes of the joint working meetings are productive and resolve outstanding issues
- The application is not called in by the Secretary of State

Parties Involved	Week Number	Date	W/b or Date
Submission of Application	Applicant Co-ordinator		
Registration and consideration of the validity of the application <i>Provided that the Application is valid</i>	Technician and Planning Officer(s)		
Consultation in respect of the Application <i>21 days minimum</i>	Technician, Planning Officer(s) and Statutory Consultees		
1st 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	Applicant Co-ordinator		
Re-consultation on amended or additional information <i>21 days minimum</i>	Planning Officer(s) and Statutory Consultees		
2nd Joint Working Meeting <i>Depending on size of PPA</i>	Planning Officer(s) / Applicant Co-ordinator		
Developer Co-ordinator to address issues raised in the 2nd joint working meeting and submit further information if required <i>Depending on size of PPA</i>	Applicant Co-ordinator		
Re-consultation on amended or additional information <i>21 days minimum</i> <i>Depending on size of PPA</i>	Planning Officer(s) and Statutory Consultees		
Preparation of Members Briefing Note	Planning Officer(s)		

Organisation of Members Site Inspection <i>Add-on for Strategic PPAs only</i>	Full Council/Planning Committee		
Developer Co-ordinator to address any issues raised and submit amendments and/or additional information <i>Depending on size of PPA</i>	Applicant 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)/ Applicant representative		
Referral to Secretary of State <i>Three weeks</i>	Planning Officer(s)		
Issue of planning application decision notice	Planning Officer(s)		

Appendix 2 – Project Team

Table 1 – Applicant’s Team

Company	Name	Responsibility	Telephone No	Email

Table 2 – TMBC’s Team

Name	Position	Telephone No	Email

Appendix 3 – Documents

Part 1 – Pre Application Documents

- INSERT PLANS/DOCUMENTS ACCORDINGLY

Appendix 3 – Documents

Part 2 – Application Documents

- INSERT PLANS/DOCUMENTS ACCORDINGLY