

10 January 2019**Agenda Item:5****REPORT OF THE CORPORATE DIRECTOR, PLACE****INTRODUCTION OF A PLANNING PERFORMANCE AGREEMENT CHARTER
FOR THE COUNTY COUNCIL****Purpose of Report**

1. To seek Members approval for the introduction of a Planning Performance Agreement Charter to be used by the Development Management Team in connection with planning applications determined by the County Council.

Information

2. Planning Performance Agreements (PPAs) were originally introduced in 2008 by the Government with the objective of improving the quality of major and complex planning applications and the decision making process. In April 2008 the Department of Communities and Local Government (DCLG) (alongside ATLAS – the advisory team for large applications) published a guidance note “Implementing Planning Performance Agreements - Guidance Note”. This followed the 2007 DCLG consultation entitled “A new way to manage large scale major planning applications”. Their aim was to bring together the local planning authority, the applicant and any other key participants in the formulation, consultation and assessment of development schemes.
3. PPAs remain a voluntary agreement between local planning authorities and applicants. The National Planning Policy Framework states:

“Applicants and local planning authorities should consider the potential for voluntary planning performance agreements, where this might achieve a faster and more effective application process. Planning performance agreements are likely to be needed for applications that are particularly large or complex to determine”. Planning performance agreements are becoming increasingly used by local planning authorities nationally.

4. Section 93 of the Local Government Act 2003 gives local authorities the legal power to charge for discretionary services which they have no obligation to provide to enable them to recover the costs incurred in providing the service. Introducing a Planning Performance Agreement Charter is considered to be timely and will enable the County Council to recover reasonable costs from the applicant which would otherwise be borne by the taxpayer and/or the Council. The PPA service, along with the paid-for Pre-application Advice service already

offered by the County Council, will together reflect an “enhanced” planning service available to applicants.

Introduction to Planning Performance Agreements

5. A Planning Performance Agreement (PPA) is a project management tool which local planning authorities can use to agree timescales, actions and resources for handling particular planning applications. PPAs encourage joint working between applicants and local authorities, but can also involve other stakeholders such as consultees and local communities. PPAs can be used for any size or type of application but are most likely to be used for larger applications covering more complex issues. A simpler form of agreement may be used for smaller schemes, based upon the key milestones that need to be adhered to. As well as covering the planning application determination stage, PPAs may also encompass the very earliest pre-application stage of a proposal and, subsequently, cover the post decision phase, should planning permission be granted, such as the consideration of reserved matters and approval of conditions. The PPA must set out a realistic timetable to which all parties are working to and an end date for the completion of the planning application, including any associated legal agreements.
6. There is no set model for a PPA. It is for the local planning authority and the applicant to discuss and agree the most appropriate process, format and content which is proportionate to the scale of the project and the complexity of the issues to be addressed. The PPA, as a minimum, should set out the agreed timetable, development objectives and responsibility for the required tasks. It is usual that the PPA would have a cost attached, to be borne by the applicant, to cover additional resources relating to the project management work that goes beyond the Council’s statutory duty of determining the planning application, in addition to any abnormal costs associated with the processing of the application such as significant number of public representations. This resource needs to be used for additional capacity that is genuinely required to ensure a timely and effective service. The payments agreed by the applicant and the Council must not exceed the cost of the additional work involved and must not have implications for the decision. Local planning authorities may charge for the administrative work involved in agreeing and implementing the PPA itself, to the extent that this goes beyond an authority’s statutory function. The PPA fee will be paid by the applicant in addition to the nationally set planning application fee. The Government advises that charging agreements should be kept separate from the PPA. For larger, or more complex, PPAs there may need to be a framework for staggered or phased payment dates.
7. PPAs should be drawn up and agreed by the applicant and the Council prior to the submission of the planning application. The PPA will usually be agreed during pre-application discussions to set out the scope and timetable for the submission and subsequent determination of the application. The PPA should be signed by appropriate representatives from the local planning authority and the applicant. If the PPA is signed ahead of the submission of the application the agreed determination date supersedes the 8/13 or 16 week statutory timeframes. It also

supersedes the 26 week planning guarantee (after which the local planning authority (LPA) must return the planning fee if no extension of time has been agreed). If the LPA fails to determine the application by the agreed date then the applicant may appeal against non-determination in the usual way. The determination date specified in the PPA will be the date used by central government for the LPA's performance management in regard to the designation criteria and planning guarantee.

8. PPAs are not legally binding but are intended to be agreed in the spirit of a 'memorandum of understanding'. The parties are encouraged to make the existence and content of the agreement publicly available so that the agreed process and timescale are transparent. This is important to maintain the integrity of the Council in its duty of determining planning applications in an impartial manner. PPAs can be useful for identifying the preferred approach to community engagement, including the identification of the communities to involve, the process of engagement and the best approach to incorporating their views.

The Benefits of Planning Performance Agreements

9. There are many recognised benefits of PPAs to all the parties involved including the local planning authority, the applicant and the community. Benefits include:
 - Identification of key issues and relevant consultees at an early stage;
 - Setting more realistic and predictable timetables, with a structure of deadlines and action points;
 - Improved collaborative working between the various parties;
 - Better overall management of advice at pre-application and post application stages;
 - Greater accountability, transparency and communication;
 - Better project management with a guarantee of dedicated Council resources;
 - Removal of statutory timescales for the determining applications;
 - Greater commitment from relevant consultees to respond in a timely manner, particularly internal consultees;
 - Better commitment to community engagement and consultation, enabling communities to influence planning decisions;
 - Ability to recover costs, thereby reducing the financial burden on Council resources.

Nottinghamshire County Council Context

10. Planning Performance Agreements have not been used by this authority until recently. Earlier this year the County Council received a planning application to vary a number of conditions relating to an existing gypsum quarry. The application, accompanied by an Environmental Impact Assessment, sought to amend the working and restoration scheme to allow extraction of significant quantities of gypsum, albeit as a Section 73 application (application to vary planning conditions) with a nationally set planning fee of £234. Given the significant amount of mineral proposed to be extracted and the scale of the proposal, the applicant was sympathetic to the anomaly with the Fees

Regulations and agreed to enter into a PPA in order to allow the County Council to recover its reasonable cost associated with assessing the application. A PPA has subsequently been agreed but the process of putting the PPA together has highlighted the need for there to be a PPA Charter in place which sets out a consistent approach to drawing up PPAs in the future.

Shale Gas Development and PPAs

11. The Government has clearly advocated that PPAs should be used to ensure that shale gas applications are determined in a timely manner. In the document 'Shale exploration – support for minerals authorities' published in May 2018 the Ministry of Housing, Communities and Local Government (MHCLG) sets out the key stages when minerals planning authorities (MPAs) can apply for funding, namely at the pre-application, the post-receipt of an application, and the post-decision stages. If a PPA is not in place for a proposed shale gas development, bids for funding can only be made for any of these three stages when a particular trigger point is met. For example, a bid for funding for the post-receipt of a planning application stage can only be made once the MPA has validated the application. This makes the bidding process reactive and can delay the release of funds to the MPA.
12. However, if the applicant and MPA have already agreed a PPA at an early stage, the Government allows for bids for funding for the entire planning process, covering all three stages. The document states:

"In a change from previous years, mineral planning authorities will also be able to bid for funding to cover the entire planning process within a single bid. The full amount of each stage totals up to a maximum £250,000 to cover each trigger point from pre-application through to post-decision. A mineral planning authority can only bid for this full process funding where a signed Planning Performance Agreement is in place. If approved funding would be released in increments once written notification has been received from the mineral planning authority confirming when each trigger point has been reached with relevant evidence. The Planning Performance Agreement must set out clear and measurable milestones to the submission and determination of relevant applications. Where applications are not forthcoming, milestones are missed or applications withdrawn, funding for subsequent triggers will not be released and a revised bid will need to be made".

13. Officers consider that PPAs should not be restricted to shale gas applications but are relevant to all types of minerals and waste development and also to applications for the County Council's own development.

Use of PPAs in the Future

14. In the future it is anticipated the PPAs will be suggested to applicants, at the pre-application stage for appropriate applications including major and complex minerals, waste and County Council development applications. They could also be used for Section 73 applications or for the discharge of conditions when complex issues are likely to arise. In these instances it will be suggested to

applicants that they may wish enter into a voluntary agreement through a PPA with the Authority who will provide an indicative timescale for determination and guaranteed staff resources. These will take the form of the content set out below.

Charging Rates for Officer Time Associated with PPAs

15. It is proposed that a flat rate of £56 per hour, which includes VAT, be charged for officers to provide services under a PPA which are detailed below. This rate will be charged throughout the process from meetings held at the pre-application stage, for application progress meetings, through to time spent at the post decision stage for discharging conditions or site monitoring. This rate reflects an average cost to the Authority for planning officer time and will be reviewed on an annual basis.

Services that the PPA Fee will Cover

16. As referred to in paragraph 4 above local planning authorities have legal powers to charge for “discretionary services”. Most planning applications are subject to a nationally set planning application fee and, as such, the Council is not able to charge for the determination of a planning application through the PPA process. However, local planning authorities are able to charge for the administration work involved in agreeing and implementing a PPA to the extent that this goes beyond an authority’s statutory responsibilities. Officers have also identified a range of “enhanced” planning services that will be provided through a PPA at the applicant’s expense and these are set out below. It should be noted that any officer time required as part of a PPA would be subject to VAT.

Setting up the Planning Performance Agreement

17. This would be subject to a flat fee of £400, which includes VAT, based on an estimated six to eight hours of officer time required for this process which will involve completing the PPA template, identifying the services to be provided and obtaining signatures from representatives of the Council and the applicant.

Pre-application Meetings/Advice

18. It is anticipated that the Council and the applicant will hold meetings prior to the submission of the application to discuss matters relating to relevant planning policies/site history and specialist matters such as ecology/restoration, archaeology, flood risk etc. At these meetings an indicative timeframe for determining the planning application will also be discussed, in addition to discussing the most appropriate way to engage local communities before an application is submitted. The costs of any planning or other specialist officer involvement in these meetings shall be covered by the applicant through the PPA.

Pre-application Community Engagement

19. One of the key benefits of PPAs is the potential for enhanced engagement with the local communities. The Council already welcomes the involvement of local

communities at the early stages of the planning process to enable local residents and businesses to have a meaningful dialogue with potential applicants in order to influence planning proposals. In the Council's adopted Statement of Community Involvement, reviewed earlier this year, it states:

"there are benefits to 'front-loading' the process by encouraging pre-application dialogue with the wider community. This early stage offers a real opportunity for local residents to influence a development before final proposals are drawn up and submitted. While the County Council cannot make pre-application discussions compulsory (with a few exceptions) it will continue to encourage developers to enter into them, and welcomes the involvement of the local community".

20. As stated above, under planning legislation there are very few circumstances where applicants must undertake pre-application consultations with local communities. By entering into a PPA with applicants, there is an opportunity for the County Council to make early community engagement a fundamental part of the planning process.
21. In order to achieve this the applicant will be expected to organise and facilitate community engagement event/s reflecting the communities likely to be affected by the proposed development. These events will provide an opportunity to take on board any comments and concerns raised by local residents or businesses and, where possible, address and incorporate these into the final design of the scheme. Where appropriate, this could include a site visit to the operator's existing site/facility. The Applicant shall cover the costs of hiring any community facility required for these events. Planning and other appropriate Council officers shall attend such events, and their costs in doing so shall be covered through the PPA. The purpose of their attendance will be in order to explain the planning application process to the local community, including how to make representations to the Council, speaking at planning and licensing committee and the likely timescales involved in determining the application, but shall not discuss the merits or otherwise of the proposal.

Local Member Involvement

22. Where relevant, planning officers will provide advice to the Local Member about the draft proposals at the pre-application stage or at any other appropriate stage of the application. This would include informing the Local Member of any public meetings or exhibitions to be held with the local community.

Application Progress Meetings

23. When an application is submitted, the applicant will be provided with a Progress Chart detailing an indicative timeframe for the determination of the application, including the target committee date. The PPA will provide for the holding of meetings approximately once a month following the submission of the application to allow for the Council and the applicant to discuss the progress of the application against the timescales set out in the Progress Chart and to amend the Progress

Chart accordingly. The costs of any officer involvement in these meetings shall be covered by the applicant through the PPA.

24. Progress meetings will be used to identify of the need for the provision of additional information to be submitted by the applicant. This will include essential information required to enable the validation of the planning application and specialist information required following responses received from statutory and non-statutory consultees. Requests for additional information made under Regulation 25 of the Environmental Impact Assessment Regulations 2017 are likely to have implications for the determination timescale of the application due to the requirement to undertake additional formal publicity and consultation under the EIA Regulations. The Progress Chart and the indicative determination date will be reviewed to reflect this.

Processing Significant Levels of Public Representations

25. It is considered by officers that where the Council receives a significant level of public representation in response to consultation and publicity undertaken on a planning application then the Council should seek to recover “costs” incurred in processing these representations. The Government’s Planning Practice Guidance makes provision for this, stating the following in relation to Planning Performance Agreements *“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.”*
26. From an investigation of our planning applications database since 2000/2001, when officers first started using it, it has been found that 33 applications (the highest 5%) generated between 58 and 2,749 representations from the public. This gives an indication of the level of public representation above which it is considered that the Council could seek additional resources through the PPA to deal with these representations.

Specialist Technical Input Required to Address Issues Relating to the Application

27. There has been a small number of occasions when the County Council has had to engage specialist technical advice to deal with a particular matter relating to a planning application which the broad range of statutory and non-statutory consultees have not been able respond to. On one occasion, a representation was received regarding a planning application for a biomass building and which raised concerns that the proposed building would have a shadowing effect on adjacent agricultural land, thereby affecting its agricultural land classification. Upon the receipt of additional information, including shadowing models for different times of the day at different times of the year, the use of the agricultural land, local weather conditions, and soil characteristics, the technical expert engaged for this specific purpose was able to advise the County Council as to whether the overshadowing effects of the building would have an adverse impact on the adjacent agricultural land.

28. On another occasion, the County Council had to engage consultants to provide technical geological advice relating to the criteria used by an applicant to determine the chosen application site for exploratory shale gas boreholes from a wider area of search. Additional information was requested regarding the basis for the location and extent of a 3D seismic survey and the potential to use directional drilling techniques from outside the area of search. Upon the submission of this additional information, the technical expert was able to advise the County Council as to the suitability of the applicant's geological strategy for selecting the site.
29. Given the complex nature of planning applications that the County Council deals with, there is the potential that such specialist advice is going to be required again in the future on matters which cannot be dealt with by consultees. It is considered reasonable for applicants to cover the costs of procuring such advice, including the procurement process itself, through the PPA.

Discharge of Conditions/Site Monitoring

30. In the event that planning permission is granted for a proposal to which a PPA has been signed, the PPA could also provide for any meetings between the Council and the applicant to discuss matters relating to the discharge of any conditions attached to the permission. The costs of any officer involvement in these meetings would again be covered by the applicant through the PPA.
31. Where appropriate, it may be necessary to undertake monitoring of sites during the construction phase, as well as once sites become operational, to ensure that conditions imposed to mitigate impacts are properly implemented and monitored. There is already provision for charging fees for monitoring minerals and landfill sites. Fees included within PPAs will relate to sites which fall outside this existing fee regime.

Scope of PPAs

32. It is anticipated that the range of services above will be offered on major or complex applications. For applications involving Section 73 (Variations) or discharge of conditions (which attract a planning fee of £234 and £116 respectively) the above services will be offered, in addition to other services to recover the Council's costs in determining the application.
33. It is anticipated that the PPA would cover some or all of the elements outlined in paragraphs 16 to 31 above and that staged payments would be made by the applicant to cover these costs. A copy of the proposed PPA charter and a sample template is attached to this report as Appendix 1.

Scheme of Delegation for Planning and Licensing Committee

34. Should Members of this Committee and subsequently Policy Committee approve the proposed PPA Charter, officers consider it appropriate to make a minor revision to the Council's existing scheme of delegation for determining planning

applications. This amendment would require that all planning applications which have a PPA are reported to Planning and Licensing Committee for a decision. A suggested amendment to the existing criterion (d) is shown in italics “Applications which have S106 agreements/Planning obligations *or a Planning Performance Agreement* and those which have other financial implications for the County Council”.

35. This amendment is considered to be in the spirit of transparency and impartiality of the County Council and provides reassurance that the existence of a PPA has no bearing on the ultimate outcome of the application. A report will be taken to Planning and Licensing Committee recommending this revision should Members approve the introduction of PPAs.

Publicity of the Planning Performance Agreement Charter

36. Should members of this Committee, and subsequently members of Policy Committee, be minded to approve this proposed PPA Charter for the Council, officers will undertake appropriate publicity of the new service. The PPA Charter will be publicised on the County Council’s website setting out full details of the Charter, including the services that the PPA will cover, fee levels and the template. Additionally, it is intended to directly contact major minerals and waste operators/agents, together with developers and agents involved in the County Council’s own development, to make them aware of this service. All relevant information will be available as a brochure/leaflet which can be downloaded from the Council’s website.

Review of the Planning Performance Agreement Charter

37. In addition to the charging rates being reviewed on an annual basis to reflect any pay awards, officers will regularly review the overall PPA Charter to assess its use and effectiveness, including identifying any improvements which can be made to it. Should substantial changes to the Charter be required, a report would be brought back for Members’ consideration.

Financial Implications

38. Members should note that PPAs are a voluntary agreement and, as such, the Council has no control over which applicants will engage with the process. Officers intend to encourage their use for appropriate applications, however it is not possible to estimate how many PPAs will be entered into and therefore no estimate can be given as to how much income they will generate.

Statutory and Policy Implications

39. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users,

smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Human Rights Implications

40. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life), Article 1 of the First Protocol (Protection of Property) and Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

RECOMMENDATIONS

It is recommended that:

- 1) Committee endorses the introduction of the Planning Performance Agreement Charter as set out in this report and recommends it to Policy Committee for adoption as a Council policy.
- 2) Subject to Policy Committee adopting the Planning Performance Agreement Charter, a report be taken to Planning and Licensing Committee recommending approval of the amendment to that committee's scheme of delegation as set out in paragraph 34 of this report.

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Constitutional Comments [RHC 4/12/2018]

41. Communities and Place Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference.

Financial Comments [RWK 05/12/2018]

42. The financial implications are set out in paragraph 38 of the report.

Background Papers Available for Inspection

The application file available for public inspection by virtue of the Local Government (Access to Information) Act 1985.

Electoral Divisions and Members Affected

All