

North East Derbyshire District Council

Cabinet

25 January 2024

Delegating authority to officers to enter into Planning Performance Agreements with Developers.

Report of Councillor S Pickering, Portfolio Holder for Environment and Place

Classification: This report is public

Report By: Assistant Director of Planning

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PURPOSE / SUMMARY

To seek approval for the use of powers delegated to the Assistant Director of Planning to enter into Planning Performance Agreements (PPAs).

RECOMMENDATIONS

1. To approve the use of powers delegated to the Assistant Director of Planning to set up a mechanism allowing applicants to enter into Planning Performance Agreements; and
2. To approve the publication of a document on the Council's website explaining the purpose of Planning Performance Agreement to applicants and members of the public, based on the contents of appendix 1.

Approved by the Portfolio Holder – 16.01.2024

IMPLICATIONS

Finance and Risk: Yes No

Details:

Major applications generate a significant cost to the Planning Service in terms of officer time. The fee received for each application offsets this to a degree but often in full, due to the time taken to resolve complex issues. PPAs offer Councils a mechanism for recouping these additional costs from a developer, as opposed to relying on the general fund.

On Behalf of the Section 151 Officer

Legal (including Data Protection):

Yes

No

Details:

Powers are delegated to Assistant Directors under section 22 (Delegation of Council Function and Executive Functions to Officers), paragraph 9.9 of the constitution to 'decide the terms upon which services will be provided to the public (which may include providing services on different terms to different individuals or classes of individuals.)' The introduction of Planning Performance Agreements and the associated charges would be covered by this delegation but Cabinet approval is advisable given that this would be a new charge.

On Behalf of the Solicitor to the Council

Staffing: **Yes**

No

Details:

There are no significant adverse staffing implications directly arising from the introduction of PPAs as we are duty bound to assess planning applications whether a PPA is in place or not. PPAs do impose timescale commitments that will need to be met but the Planning Guarantee already imposes a significant penalty in terms of fee refund if an extension of time beyond 26 weeks (for major applications) cannot be agreed.

On behalf of the Head of Paid Service

DECISION INFORMATION

Decision Information	
<p>Is the decision a Key Decision? A Key Decision is an executive decision which has a significant impact on two or more District wards or which results in income or expenditure to the Council above the following thresholds:</p> <p>BDC: Revenue - £75,000 <input type="checkbox"/> Capital - £150,000 <input type="checkbox"/></p> <p>NEDDC: Revenue - £100,000 <input type="checkbox"/> Capital - £250,000 <input type="checkbox"/></p> <p><input checked="" type="checkbox"/> <i>Please indicate which threshold applies</i></p>	No
<p>Is the decision subject to Call-In? (Only Key Decisions are subject to Call-In)</p>	No
District Wards Significantly Affected	None
<p>Consultation: Leader / Deputy Leader <input checked="" type="checkbox"/> Cabinet / Executive <input type="checkbox"/> SAMT <input type="checkbox"/> Relevant Service Manager <input checked="" type="checkbox"/> Members <input type="checkbox"/> Public <input checked="" type="checkbox"/> Other <input type="checkbox"/></p>	<p>Yes</p> <p>Details: Portfolio Holder and Leadership</p>

Links to Council Plan priorities or Policy Framework including Climate Change, Equalities, and Economics and Health implications.
All

REPORT DETAILS

- 1 **Background** *(reasons for bringing the report)*
 - 1.1 PPAs are an important tool for proactive engagement between developers and Local Planning Authorities when determining major planning applications. They allow for a collaborative approach to agreeing the key milestones for a project and realistic timeframes for their delivery. The agreed timeframes may well extend beyond the nationally set targets but the purpose of a PPA is to provide certainty for all parties as to the timescales in which decisions will actually be made.
 - 1.2 Section 93 of the Local Authorities Act 2003 allows Councils to introduce discretionary charges to support cost recovery. The use of PPAs would fall under this legislation and would allow the Council to recoup a greater proportion

of the cost of processing major applications than is currently covered by the nationally set planning application fees.

2. Details of Proposal or Information

- 2.1 The key advantages of a PPA for a developer is the certainty that they provide in relation to the amount of time allocated to planning in the wider project plan for delivery. The fact that the costs (or at least a large proportion of these costs) of processing these complex schemes can be recouped through PPA's ensures that there would be less pressure on the general fund to finance the Planning Service. This is the key advantage to PPAs from the Council's perspective.
- 2.2 PPA's can vary from a simple agreement to cover an agreed set of milestones for the determination of a planning application through to more complex agreements for the largest development proposal where, for example, it would extend to cover the various stages through from pre-application advice to the point at which conditions are discharged following the granting of planning permission.
- 2.3 PPAs therefore tend to apply to the largest development proposals that are submitted to the Council. At present the Council does not charge for pre-application advice. There is however a commitment to review this situation as part of the Council Plan and officers are undertaking benchmarking work that will inform options in this regard which will be presented to the Portfolio Holder in the first instance in early 2024. Whatever the outcome of that process, PPAs can stand separate from the general pre-application advice offer as they also cover the application and post-decision process.
- 2.4 It is important to emphasise that entering into a PPA in no way implies that either planning officers would recommend approval for an application or that the Local Planning Authority will grant planning permission and the wording of such agreements will make this caveat very clear to all signatories.
- 2.5 Officers propose to publish guidance on the purpose of PPAs on the Council's website, in order to make the public aware that this is a service that the Council offers and to explain the appropriate parameters of such Agreements. The draft text version of this document is attached at appendix 1 for consideration by Cabinet.
- 2.6 The use of PPA's supports the delivery of an effective and efficient planning service and in turn supports growth and investment in the borough. They also assist the council with making timely determination of planning applications and meeting government targets for performance.
- 2.7 In terms of risk, any PPA is entered into on a voluntary basis and so the only real risk is a failure to determine the application within agreed timescales or failure to meet any key milestones within the PPA. The worst-case scenario is that this might trigger a refund request from the developer and officers would

clearly look to avoid this through ensuring that the expectations of each PPA is reasonable before it is signed.

- 2.8 The use of a PPA does not replace the 26-week Planning Guarantee (refund of a planning application fee if not determined within 26- weeks or an agreed timescale thereafter) and so this risk remains unchanged and would be managed in accordance with existing protocols.
- 2.9 The use of a PPA will place a greater emphasis on services who act as consultees to perform and meet the agreed milestones. The Assistant Director will liaise with Derbyshire County Council and other key stakeholders (some will be site specific) to ensure that they are signatories to the PPAs and wherever possible, as signatories, they would have input into and be aware of the key milestones within the PPA.
- 2.10 Given that PPAs are voluntary, officers are not currently proposing to set any income target at this stage. It is considered more appropriate that the income generated from PPAs would be a 'reserve' to address resource pressures within the Planning Service.

3 Reasons for Recommendation

- 3.1 The use of PPAs will allow the Council to recoup a large part of the costs associated with officer time spent on proactively dealing with the large-scale planning applications received by the Council. The use of PPAs is compatible with the legislation quoted previously in the report and will reduce the cost of the Planning Service to the Council's general fund.

4 Alternative Options and Reasons for Rejection

- 4.1 Officers consider that there are 2 main alternative options:
 - 1. Not to use the powers delegated to the Assistant Director of Planning to establish a charging mechanism for entering into PPAs. This option is considered to hinder the ability for the Local Planning Authority to easily enter into PPAs with developers and would not support the delivery of an effective and efficient planning service.
 - 2. The second alternative would be to simply retain existing statutory arrangements as set out in The Town and Country (Development Management Procedure) (England) Order 2015 which provide the fall-back position for determination dates. Officers consider that this approach would not support the delivery of a high quality service to developers and investors and does not allow for cost recovery.

DOCUMENT INFORMATION

Appendix No	Title
Appendix 1	Draft guidance note on Planning Performance Agreements
Background Papers (These are unpublished works which have been relied on to a material extent when preparing the report. They must be listed in the section below. If the report is going to Cabinet (NEDDC) or Executive (BDC) you must provide copies of the background papers)	
Click here to enter text.	