

Report

Cabinet Member for Regeneration and Investment

Part 1

Date: 3 November 2016

Item No:

Subject Planning Performance Agreements

Purpose To seek approval to enter into, and implement Planning Performance Agreements (PPAs) as part of Development Management procedures

Author Development and Regeneration Manager

Ward All Wards

Summary PPAs are a project management tool that the Government has developed to help local authorities and applicants deliver decisions on planning applications for major, complex or long term developments, where appropriate. In essence, a PPA is an agreement between a developer and a local authority (and potentially other key players, such as statutory consultees) setting out who will do what and when. It is designed to address some common problems encountered by local authorities and applicants, such as timescales, resources, and the quality of applications and decisions, by providing a framework and management approach for delivering good quality outcomes. They have the potential to give developers greater certainty and confidence in the planning process. They are not purely a way of delivering decisions faster and are not an income generating tool. They are a way of achieving collaboration between an applicant, the local authority and other stakeholders. In addition to key benefits, there are pitfalls which the following report outlines.

Proposal To agree to the introduction and implementation of PPAs as part of the Development Management Service offered by the Council, where appropriate.

Action by Head of Regeneration, Investment and Housing

Timetable Immediate

This report was prepared after consultation with:

- Head of Law and Regulation
- Head of Finance
- Head of People and Business Change

Signed

1. Background

- 1.1 Periodically Development Management receive requests to consider entering into a Planning Performance Agreement in order to project manage the planning application process for major developments as well as engagement required for schemes subject to the Developments of National Significance (DNS) and Nationally Significant Infrastructure Projects (NSIP) regulations. Although not universally supported or sought by major developers, there are clearly some larger developers/agents/inward investors that support their use and some that have had experience of them elsewhere. National organisations such as the British Property Federation also actively encourage their use
- 1.2 To date, Newport City Council has not used them as part of its planning service. However, it is apparent that such agreements are suitable for certain types of scheme and we need to have authorisation in place to negotiate and implement such Agreements, where appropriate.
- 1.3 As an entirely voluntary tool, PPAs are not part of the service's statutory function nor is it obliged to consider or enter into them. The Agreements themselves are not legally binding nor is there any recourse available to any party to challenge failure to meet any agreed timetable. It is, first and foremost, a business document – a project management device, that the Authority can enter into if there are merits in doing so. Similarly, any parameters and timetables in the Agreement are included and agreed by mutual agreement and can be tailored to suit the Authority's resources, the expectations of the developer and the nature of the project for example. They will have the effect of overriding the statutory timescales for determination of a planning application as set by Welsh Government. So the 8/16 weeks timescales for applications are replaced by those agreed in the PPA and therefore such applications are effectively removed from the standard performance monitoring process. Applicant rights of appeal to the Planning Inspectorate for non-determination will be applicable if targets are not met. All applications associated with a PPA will need to be subject to normal planning fees but the Agreement is not to be used as an income generator, it must only cover the costs incurred by the Authority to meet the terms of the Agreement.

2. The Benefits

- 2.1 These are summarised below:
 - They can afford some developers greater confidence in the planning process by mutual agreement of planning timescales for major or complex proposals;
 - They encourage collaboration between an applicant, authority and other stakeholders;
 - Early discussions associated with a PPA encourages early discussion of key elements of the proposal(s) thereby facilitating the front-loading of the planning process;
 - It can encourage a greater mutual understanding of the project needs and resources required to set realistic expectations and provide greater certainty;
 - It can minimise the risk and costs of appeal;
 - It allows the LPA to recoup the costs of additional resources that may be required in order to meet the terms of the PPA. Such charges can be set by the Authority but would need to be agreed with other parties and must not be profit-making. It is likely that additional staff may need to be recruited to enable an existing member of staff to focus on the development associated with the PPA, the cost of this will be fully met by the PPA;
 - Applications subject to PPA are not subject to normal performance reporting in a similar way to applications where extensions of time are agreed, the 8/16 week determination periods will not apply. However, targets in the PPA must be met or rights of appeal and reporting decisions made outside statutory timescales will apply;
 - They can also be applied to the negotiation of Section 106 legal agreements, reserved matters, discharges of conditions and other consents;
 - In some cases, the Authority may not have in house expertise and skills to consider aspects of the proposal. Ordinarily, this may require the Authority to pay for external consultants for

example. Where skills gaps are identified at an early stage, the cost of this resource can be built into the PPA.

- The Agreement can be flexible in respect of cost recovery, allowing the Authority to agree a capped figure and then invoice on a time basis (for example) in order to ensure that the Authority does not incur unexpected costs.

3. The Pitfalls

3.1 These are summarised below:

- A PPA may be seen as unfair, or lacking transparency as it can be viewed that a developer is being given a preferential service;
- It will impact on existing resources in respect of the preparation, implementation and management of Agreements;
- A PPA may be seen as pre-judging the outcome of a planning application, particularly where money has been paid for non-statutory services;
- It is likely that significant work will need to be undertaken in respect of the preparation of a framework for PPAs and associated charges prior to agreeing to enter into any Agreements;
- PPAs are not appropriate in all cases and should be reserved for those cases where the Authority considers them to have considerable merit;
- Its content must be mutually agreed and cannot be imposed on a particular development, irrespective of the merits of having a PPA in place;
- They are not legally binding and there is no recourse for the Authority if things go wrong;

4. Financial Summary

4.1 The proposed use of PPAs raises issues with regards to staff and financial resources. Discretionary charges for non statutory services can be levied in the same way as the Authority currently charges for non-statutory pre application advice, and there will likely be a need for a charter or framework for such charges in the short term. The preparation and review of the use of PPAs will require staff resources over and above those currently committed, however is it not anticipated that additional staff will need to be recruited to develop the charter or framework, nor to oversee the completion of the actual agreement. However there is likely to be a requirement for additional resources in order to deliver the terms of the agreement. This may be in the form of existing staff being seconded to a certain project and the PPA paying for the temporary replacement of relevant Officers. It may involve the secondment of an Officer from another Local Authority who has better experience of the scheme proposed. Again the PPA would need to cover these costs in their entirety.

4.2 Whilst the PPA process allows for costs to be recouped, the charges will apply after the signing of any Agreement and any requirement to pay these charges will not be legally binding, albeit with major inward investors/developers there is a clear incentive to comply with the terms of the Agreement. Any discretionary charges will need to be open to scrutiny and reviewed as this arrangement is undertaken on a not for profit agreement and cannot be seen as an income source.

5. Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Potential additional financial and resource burdens on the LPA.	H	L	Major and complex development proposals already incur significant resource costs by the Authority. Following initial training, PPAs should not increase these costs as any extraordinary resource implications should be recouped via the Agreement.	Development Services Manager
The Authority will be requested to enter into PPAs in all cases	H	L	PPAs will not be acceptable in all circumstances. If significant requests arise in the future, the Authority can legitimately refuse to enter into PPAs and only accept cases where it believes there is significant merit in doing so. If regularly used, the Council will need to prepare a Charter or framework to inform the PPA process and further clarify the circumstances in which they may be appropriate.	As above
Other stakeholders will consider them unfair and unaccountable	M	M	A lack of knowledge of PPAs may result in criticism from other stakeholders of the planning system who may view it as a method to leapfrog normal planning services for a premium. PPAs will need to be carefully worded, publically available and mutually agreed and any charges made must reflect resource costs only.	As above

6. Links to Council Policies and Priorities

- 6.1 The Development Management service is a statutory function of the Council. PPAs would assist with the delivery of the Council's policies and priorities through the determination of planning applications, provision of pre application planning advice and post determination services such as discharges of conditions, to a mutually agreed timetable.

7. Options Available

- 7.1 The options available are:

- a) To proceed to agree to PPAs in appropriate circumstances, i.e. on suitable major proposals or schemes subject to DNS or NSIP regulations, where an applicant requests or agrees to it and where the Head of Regeneration, Investment and Housing considers a PPA will be of mutual benefit to the scheme and service delivery;
- b) To proceed to confirm that the Council will not enter into PPAs in any circumstances;

8. Preferred Option and Why

- 8.1 Option (a) above is the preferred option. The proposed use of PPAs has implications for the function of development management within Newport and may raise a number of concerns along with many benefits in appropriate circumstances. It is therefore important that the Council's views are taken into account in its decision to offer PPAs as part of its Development Management Service.

9. Comments of Chief Financial Officer

- 9.1 Resources will be required for the Council to implement and provide the new scheme which will be funded by the additional income streams developers will pay for the service once it is established.
- 9.2 A framework for setting fees and recovering costs will need to be developed. The Council must carefully monitor both the costs incurred to implement and provide the scheme along with the charges made to ensure it is seen to be provided on an equitable and not for profit basis.

10. Comments of Monitoring Officer

- 10.1 The proposed Planning Performance Agreements are in accordance with the Council's incidental planning powers and the power under Section 93 of the Local Government Act 2003 to charge for discretionary services. The agreements are effectively a project management tool which Council and developers can use to agree timescales, actions and resources for handling particular applications. They cover the pre-application and application stages but may also extend through to the post-application stage and the negotiation of section 106 agreements. Planning performance agreements can be particularly useful in setting out an efficient and transparent process for determining large and/or complex planning applications and would not be appropriate for all types of planning applications. The Council will, therefore, need to establish clear guidelines and charges for the use of these PPA's, to cover the costs of providing these discretionary planning services. It also needs to be made clear that the project management services provided under these PPA's will not compromise the impartiality or objectivity of the planning application process.

11. Staffing Implications: Comments of Head of People and Business Change

- 11.1 The proposal to move to a more efficient way of working through Planning Performance Agreements in appropriate circumstances is supported.
- 11.2 The involvement of stakeholders and requirement for transparency is emphasised under the Wellbeing of Future Generations Act 2015 and as such the Cabinet Member will need to be assured that the process identifies the involvement of stakeholders when PPAs are used, noting the risks identified.
- 11.3 There are no direct HR implications contained within this report. However any additional staffing resource that may be generated by this approval (ref: p2.1) would need to be considered via a recruitment business case.

12. Comments of Cabinet Member

12.1 Cabinet Member has approved the report.

13. Comments from Non Executive Members

None received

14. Local issues

14.1 The proposals affect all wards of Newport.

15. Scrutiny Committees

15.1 The Consultation Paper has not been through Scrutiny Committees.

16. Equalities Impact Assessment

16.1 N/A

17. Children and Families (Wales) Measure

17.1 N/A

18. Consultation

18.1 The Council has not undertaken any consultation in relation to this report. Officers from Development Management have been involved in the preparation of this document and examples of PPAs successfully used by neighbouring Local Authorities have been considered.

19. Background Papers

19.1 None.

Dated: 3 November 2016