



**OPEN REPORT
COMMUNITY AND ENVIRONMENT COMMITTEE**

Community and Environment Committee 30 July 2024

**THE INTRODUCTION OF PLANNING PERFORMANCE AGREEMENTS AS A
PROJECT MANAGEMENT TOOL**

Report of Director of Place and Economy

Report Author and Contact Details

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Wards Affected

All Wards outside the Peak District National Park

Report Summary

The report proposes introducing Planning Performance Agreements (PPAs) for appropriate planning cases. It explains the benefits of PPAs as a project management tool that in appropriate cases can benefit the Council's planning service at pre-application and application determination. PPAs can provide additional discretionary income which may assist in covering the costs of both pre-application advice and application determination of complex planning applications.

Recommendations

1. That the Council agrees to use Planning Performance Agreements (subject to them being authorised by the Director of Place and Economy or the Development Manager only).
2. That the costs of engaging external consultants to provide this service will be fully passed onto applicants.

List of Appendices

Appendix 1 – Model PPA Agreement (Planning Advisory Service)

Background Papers

None

Consideration of report by Council or other committee

No

Council Approval Required

No

Exempt from Press or Public

No

The Introduction of Planning Performance Agreements (PPAs) as a Project Management Tool

1. Background

- 1.1 Derbyshire Dales District Council recognises that it is essential to operate a consistently high performing development management service, and understands that this is one of the drivers of local development and sustainable growth which can deliver the homes and jobs that are needed locally. As such it is important that the Council's planning team use the right tools to deliver its development management service.
- 1.2 Pre-application advice is a key component of a good planning service, but in recent years for many Council planning teams this has involved more than simply meeting applicants, giving them planning pre-application advice and determining applications; it has involved use of PPAs.
- 1.3 A Planning Performance Agreement (PPA) is a voluntary agreement between a planning applicant and a local planning authority that sets out the actions, resources and timescales for handling a particular planning application.
- 1.4 A common practice of forward-thinking Planning Authorities is to offer PPAs both in addition to and complimentary to their pre-application advice service.
- 1.5 PPAs are now used by many Councils as an opportunity for the applicant to engage in more detailed discussions with a council and to enable both sides to commit resources and timescales to the delivery of key development proposals.
- 1.6 The Planning Advisory Service consider there are four key benefits of PPAs:
 - (1) PPAs can significantly improve the quality of development and places by ensuring there is a team approach to delivering development that meets the aspirations of all parties, not just the developer's brief.
 - (2) PPAs enable stronger working relationships to be built up between all the parties involved in delivering a development.
 - (3) PPAs ensure that applicants have a dedicated resource throughout the planning process to help it to be delivered effectively.
 - (4) PPAs are much more than just a project management tool, they can also help build relationships and allow for a better quality of development. They can be used as a comprehensive way of delivering a development proposal by ensuring there is a positive partnership between the applicant and the LPA from the conception of a development through to its construction.

Fees for PPAs

- 1.7 PPAs sit outside of normal Council Planning Service funding arrangements (where planning application fees are set nationally). PPAs are also different from normal pre-application advice requests, which are linked to tariffs based on the scale of development proposed. PPAs are instead made pursuant to the Localism Act 2011 and the Local Government Acts 1972, 2000, and 2003. Section 93 of the Local Government Act 2003 allows local planning authorities to charge for providing discretionary services, and

legislation is clear that, where charges are made, they must not exceed the cost of providing the service. The Chartered Institute of Public Finance & Accountancy (CIPFA) identify PPA/developer contributions as a revenue stream that should be utilised by planning authorities.

- 1.8 It may be necessary to instruct qualified specialists to review submitted information concerning viability, engineering, legal matters, wind, light, sustainability, Environmental Impact Assessment, or other areas acknowledged by both the Local Planning Authority and the applicant, as requiring independent specialist advice. The applicant will be responsible for paying any reasonable costs incurred by the Council. These costs would be subject to prior agreement and/or appropriate cap on third party fees.

What is a Planning Performance Agreement?

- 1.9 A Planning Performance Agreement is a project management tool which 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. 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. 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.

What does a planning performance agreement comprise?

- 1.10 There is no one-size-fits-all model. It is for the Local Planning Authority and the applicant to discuss and agree a suitable process, format and content which is proportionate to the scale of the project and the complexity of the issues to be addressed. 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. It is important 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.
- 1.11 As a general principle Government guidance is that such agreements should be as simple as possible, consistent with a proportionate approach to the scale of the proposal and complexity of the issues raised. It will usually be agreed in the spirit of a memorandum of understanding (listing target timeframes) rather than as a legally binding contract.
- 1.12 An example PPA is at Appendix 1. The common elements of a PPA are:

- that the agreement is drawn up prior to the submission of a planning application;
- that the LPA and the prospective applicant are signatories to this voluntary agreement;
- the agreement includes one or more agreed milestones to define the process of considering the development proposed, including an agreed date by which an application will be determined by the LPA;
- the agreed determination date supersedes the 13 or 16 week statutory time limit;
- the agreed determination date also supersedes the 26 week planning guarantee.

1.13 A PPA should give greater certainty to the planning process and help foster a collaborative approach to designing better development. PPAs have a particularly useful role in large developments when the scale and value are high, and where impacts on the community are most significant. In these cases, third parties, such as statutory consultees, gain from the transparent process set out in the PPA and can understand their opportunities to engage and influence the proposal.

Application Timescale / Government Recognition

1.14 The use of PPAs is recognised by Government as part of the monitoring process of Council planning performance. Councils are able to separately code PPA cases and take longer to determine applications than the statutory timeframe. It should be noted, though, that the use of PPAs often in reality speeds up the determination of applications (by applying robust performance management through the PPA agreement).

2. Key Issues

2.1 The purpose of this report is to suggest that PPA agreements be implemented by Derbyshire Dales District Council planning on complex planning cases. The experience from other LPAs is universally positive. PPAs are also welcomed by many developers and supported by both the Planning Advisory Service and Central Government.

2.2 It should be noted that if a developer/applicant chooses to enter into this voluntary arrangement it does not guarantee the outcome of any planning application.

2.3 It is important to appreciate that no PPA will fetter the Council in exercising its statutory duties as local planning authority. PPAs will not prejudice the outcome of planning (and related) application(s) or the impartiality of the Council.

2.4 By the same token, no PPA will restrict or inhibit the applicant named in the agreement from exercising the right of appeal under Section 78 of the Town and Country Planning Act 1990.

2.5 The potential changes to the EoT (Extension of time) process will result in a significant risk of application fees being returned under the "Planning

Guarantee". It is in this light that introducing PPAs now becomes particularly timely.

3. Options Considered and Recommended Proposal

- 3.1 This report sets out the benefits of PPAs. PPAs involve a non-binding agreement between two parties. It is recommended that only the Director of Place and Economy or Development Manager be authorised to agree such agreements.
- 3.2 External consultants will be engaged to provide support for these applications and the fees will be applied on a case-by-case basis (it is envisaged that for complex applications this could exceed £15,000 per PPA) and linked to predicted officer time/resource and set on a full cost recovery basis. Appendices 2 and 3 illustrate potential charges.
- 3.3 As an alternative, the Council could decide not to introduce PPAs. However given the broad indication in all political parties to speed up the planning system, and the likelihood that Extensions of Time will be restricted, the pressure on speed of decisions relating to planning applications is very likely to be accelerated. Alongside of the Planning Guarantee, which if not reached results in the planning fee being returned, the introduction of PPAs is seen as a far preferable mechanism whereby the Council can retain a degree of control of timescales and processes for the largest planning applications.

4. Consultation

- 4.1 Not applicable.

5. Timetable for Implementation

- 5.1 The timetable for implementation is depended on the agreement of this direction of travel followed by discussions and formulation of a charging regime with the input of finance colleagues.

6. Policy Implications

- 6.1 None.

7. Financial and Resource Implications

- 7.1 At this stage there are no financial implications beyond staff time associated with this report. All costs associated with the appointment of external consultants to provide the service will be recharged in full to the applicant. Therefore, the financial risk is assessed as low.

8. Legal Advice and Implications

- 8.1 PPAs are made pursuant to the Localism Act 2011 and the Local Government Acts 1972, 2000, and 2003. Section 93 of the Local Government Act 2003 allows local planning authorities to charge for providing discretionary services.

8.2 Paragraph 46 of the National Planning Policy Framework (December 2023) 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.”

8.3 The Planning Practice Guidance supports the use of PPAs as a project management tool under which the LPA and applicant can agree timescales, actions and resources for handling particular applications (Paragraph: 016 Reference ID: 20-016-20150326, Revision date: 20 03 2015).

8.4 Further work will be required alongside procurement to ensure compliant contracts are in place for the external consultancy support required.

9. Equalities Implications

9.1 Decision-makers are reminded of the requirement under the Public Sector Equality Duty (s149 of the Equality Act 2010) to have due regard to: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act (ii) advance equality of opportunity between people from different groups, and (iii) foster good relations between people from different groups.

9.2 The decisions recommended through this paper could directly impact on end users.

10. Climate Change and Biodiversity Implications

10.1 There are no climate or biodiversity change impacts arising specifically from this report.

11. Risk Management

11.1 There is a potential financial and reputational risk, insofar as a PPA is entered into and if for whatever reason the application does not substantively progress - the applicant could assert that the Council has taken the PPA fees and not delivered on the PPA. However, the volume of PPA's will be modest; and the Planning Service would ensure that sufficient resource, management, and monitoring occurs to mitigate any risk.

11.2 Evidence from other Local Planning Authorities is that PPAs are low risk in this regard (almost certainly because they are small in volume and their use is closely monitored by senior planning management).

Report Authorisation

Approvals obtained from Statutory Officers:-

	Named Officer	Date
Director of Resources for Chief Executive	Karen Henriksen	22/07/2024
Financial Services Manager	Gemma Hadfield	10/07/2024

Monitoring Officer (or Legal Services Manager)	Helen Mitchell	29 th May 2024
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APPENDIX 1 – Model PPA (Planning Advisory Service)

The PPA has been developed between <<INSERT COUNCIL NAME>>(the Council) and <<INSERT APPLICANT>> (the Applicant) in recognition of their (The Parties) agreement to work collaboratively and seek to achieve the following outputs for <<INSERT SITE>>.

<<INSERT EXPECTED OUTPUTS>>

The location of this site is outlined in red on the plan attached at Appendix <<XXX>>

<<INSERT ANY COUNCIL MISSION STATEMENT / CORPORATE PRIOTIES OR KEY OBJECTIVES FOR THE PLANNING SYSTEM IF YOU FEEL NECESSARY>>

<<INSERT NPPG AND NPPF REFERENCES IF YOU FEEL NECESSARY>>

PPAs are primarily aimed at large and/or complex proposals. They are voluntary and programme or project specific agreements are used to progress and co-ordinate large and complex proposals in an integrated, open and transparent way. They are a collaborative project management tool which aim to improve the quality of development and decision-making. The parties that are signatories to this agreement commit to an agreed approach, project programme and resource plan establishing project requirements and ensuring that all key planning issues are properly considered and resolved.

The agreement will apply from the date of its signature and remain in force until <<INSERT MILESTONE OR END DATE>>. The document can be revised subject to both parties agreeing the form and content of such changes in advance. Either party may terminate the agreement by providing <<INSERT NUMBER OF DAYS>> working days written notice of its intention to the other party or for any other reason set out below.

The agreement will be terminated if:

- a) The Applicant submits an appeal in relation to the planning application under Section 78 of the Town and Country Planning Act 1990 (as amended); or
- b) the planning application is called in by the Secretary of State.

<<ADD REASONS There may be other scenarios that you identify that would lead to the agreement being terminated immediately and these can be included here>>

This PPA does not constitute a legally binding contract nor is it intended to prejudice or influence the determination of any subsequent planning applications in any way. It does not commit the Council or the applicant to a particular outcome or resolution.

This Agreement is made pursuant to Section 111 of the Local Government Act 1972, Section 2 of the Local Government Act 2000 and Section 93 of the Local Government Act 2003. Section 93 of the Local Government Act 2003 allows local planning authorities to charge for providing discretionary services.

Nothing in the PPA will restrict or inhibit the Council from exercising its statutory functions and views about the development and nothing in this agreement shall predetermine the outcome of any planning application.

