



*Planning Performance
Agreements: a new way to
manage large-scale major
planning applications*

Consultation



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planning applications*

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Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Communities and Local Government Publications
PO Box 236
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Tel: 08701 226 236
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Textphone: 08701 207 405
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Background

1. Planning Performance Agreements (PPAs), formerly Planning Delivery Agreements, were proposed in the Planning Green Paper, *Planning: Delivering a Fundamental Change* (ODPM, December 2001), as a means of providing greater certainty with regard to the speed and quality of large planning application assessments and decisions. This was followed by a consultation paper, *Options for Implementation* (June 2005), after which the Advisory Team for Large Applications (ATLAS) was commissioned to produce the report *Planning Delivery Agreements* (January 2006). In response, the Planning Advisory Service, with support from ATLAS, managed a pilot project to trial the use of PPAs as a management tool to aid the efficient handling of major planning applications. The pilot sought to establish whether PPAs would add value to all or some types of large application in terms of contributing towards a better planning decision, making the process more efficient and timely, improving communications, engaging other stakeholders and making the process run more smoothly.
2. The year-long pilot project began in January 2006. It included 22 local planning authorities and their developer partners, and involved 23 sites. The participants all agreed that using a PPA was helpful throughout the planning process, from pre-application discussion to decision (where the project reached that stage). Most said that they would use the process again and apply the principles to other projects. The Planning Advisory Service published a PPA pilot final report, and it made a series of recommendations to the Department for Communities and Local Government, including these:
 - PPAs should be incorporated into the planning system and endorsed as good practice for suitable applications;
 - the principle of a PPA should be voluntary agreement;
 - statutory consultees should be required to take part in the PPA process as necessary;
 - the handling of a PPA should be exempted from BVPI 109a reporting,¹ and a new target agreed between applicant and planning authority; and
 - guidance should be provided to help planning authorities undertaking PPAs.
3. This consultation paper proposes renaming 'Planning Delivery Agreements' as 'Planning Performance Agreements'. There was concern that the word 'delivery' could be perceived as meaning that PDAs ultimately lead to determination in favour of the applicant. A change of name was one of the recommendations in the Planning Advisory Service's PDA project final report.

¹ In order to assess how well they perform, the Government requires local planning authorities to aim to achieve Best Value targets, and report on their success. Best Value Performance Indicator 109a measures the percentage of major applications a local planning authority has determined within 13 weeks.

4. The Planning Performance Agreement process is a project plan framework through which the local planning authority and applicant manage suitable planning proposals. For a PPA to be successful, it is essential that the local planning authority and the applicant establish a collaborative relationship based on trust, with good communication and regular exchange of information. However, it is important to emphasise that a PPA is not a guarantee, nor an indication of likelihood that the application will be approved. It relates to the process of considering development proposals and not to the decision itself.
5. This consultation paper sets out the way forward for PPAs and outlines the proposed key principles and components. As a minimum, a PPA will consist of:
 - a project plan;
 - a list of key issues to be addressed by the various parties to the PPA;
 - an inception day, at which objectives are agreed and any gaps in the evidence base identified; and
 - subject to agreement, other components can also be included.

Following this consultation, we will publish more detailed guidance on the proposed mechanisms later in the year.

Invitation to Comment

6. We welcome your comments on this document. You may also wish to read the final report on the PDA pilot project before responding. The report furnishes evidence that the PPA process would be beneficial for local planning authorities in managing a range of applications, and it has been a significant contributor to these proposals. You can find it on the Planning Advisory Service website at www.pas.gov.uk/pas/aio/33431
7. If responding, please make clear to which element of the consultation paper each comment relates. Ideally, comments should be supported with evidence or data, though even ‘anecdotal’ evidence can serve to illustrate a wider point or identify a risk. We would be particularly interested in your views on the following:

Q1: Do you agree with the principle of having PPAs?

Q2: Are you content with the definition of large-scale major applications?

Q3: Do you think that only PPAs relating to large-scale major planning applications should be taken out of the Best Value 109 target regime?

Q4: Do you think PPAs are the most effective way to ensure that local authorities and applicants/developers devote sufficient resources to the delivery of decisions on significant major planning applications?

Q5: Do you agree with the optional funding arrangements for PPAs?

Q6: Are you content with the basic minimum requirements for a PPA?

Q7: *Should PPAs include financial penalties which would be applied to either the applicant or the local authority for failure to deliver the PPA to the agreed timetable?*

Q8: *What are the likely effects of any of the changes on you, or the group or business or local authority you represent? Do you think there will be unintended consequences?*

8. Please send your **response by Friday 17 August 2007** to:

Janet Amery, (PPAs)
Department for Communities and Local Government
Zone 4/J2, Eland House
Bressenden Place
London SW1E 5DU
e-mail: janet.amery@communities.gsi.gov.uk
fax: 0207 944 5004

9. This consultation document has been produced in accordance with the Government's Code of Practice on Consultation. There is more about that in **Annex B**. When commenting, please say if you represent an organisation or group, and in what capacity you are responding. A summary of responses will be published on the web site within 3 months of the end of the consultation period and, as far as possible, how the concerns raised have influenced the policy. Hard copies of the summary can also be obtained thereafter, by contacting Janet Amery at the above address.
10. All responses will be made public on request, unless confidentiality is requested. Should consultees require information they provide to be treated as confidential, we will take full account of reasons behind this request and accommodate them wherever possible in line with the statutory Code of Practice with which public authorities must comply. Automatic confidentiality disclaimers generated by IT systems will not be respected unless you request the contrary in the main text of your response. The substance of responses may be included in statistical summaries of comments received.

Introduction

11. A PPA is an agreement between a local planning authority and an applicant to provide a project management framework for handling a major planning application.² This framework should improve and speed up the planning process by committing both parties to an agreed timetable containing 'milestones' that make clear what level of resources and community engagement are required, and ensure that all relevant aspects such as sustainability assessments and design standards are properly considered.
12. A PPA is a single process, starting at inception and negotiation and continuing to submission of the application, issue of the decision notice and beyond. It will encompass the signing of a section 106 or other agreement, where such an agreement forms part of the application, and compliance by the developer with any imposed condition which is not open-ended.
13. The fee for a planning application subject to a PPA is the same as that for a normal planning application. However, a local planning authority has the power to charge for services provided in the pre-application phase of a PPA, under section 93 of the Local Government Act 2003. The charge must be on a not-for-profit basis (year by year) and could include, for example, the costs of the inception day and of providing pre-application advice. This will allow the local planning authority to recover costs incurred in developing the PPA.

Principles for Establishing Planning Performance Agreements

14. We propose that local planning authorities be strongly encouraged to offer PPAs for significant major development proposals, although, being a voluntary agreement, a PPA can be established only with the agreement of the applicant(s) and the local planning authority.
15. We have considered the Planning Advisory Service pilot report recommendation to remove applications using a PPA from the Best Value 109 target. First, we propose to split the major category in to 'large-scale major development' and 'small-scale major developments'. The new definitions are set out in paragraph 27. Second, we propose that only applications which fall into the new 'large-scale major development' category be removed from the Best Value 109a target. The PPA process may be applied to small-scale major applications but these applications will not be removed from the Best Value 109a target (determination within 13 weeks). We will collect information about delivery against the targets for large-scale major applications subject to a PPA on forms PS1 and PS2.³
16. A PPA should be regarded as a single planning process, including a pre-application and an application phase, and continuing at least until the application is determined and the decision notice issued. If an application has not been subject to the pre-application phase, but submitted through the normal planning process, it cannot later become a PPA and would not be exempt from compliance with any relevant Best Value 109 target for determining the application.

² This consultation paper includes proposals on splitting the 'major' category into large-scale major applications and small-scale major applications. These proposals are detailed in paragraph 27.

³ PS1 and PS2 forms are statistical returns which collect planning data on development control performance from district planning authorities.

Third party involvement

17. The Government believes that where the nature of the planning application requires significant input from government and non-government agencies, environmental bodies and specific consultees, the project plan should be used to bring them in early in the process. We would also expect the Government Office for the Region to be one of the parties to the discussion. Early engagement with all such bodies should allow the authority and the applicant to plan their community engagement strategy better, so as to ensure transparency and openness.⁴

Core Components

18. We propose a number of core components – basic minimum requirements for following the PPA process and producing a PPA – and these are detailed below. It should be noted that while we propose these components to be the minimum for an application to be classified as a PPA, the local planning authority and applicant are free to agree on any other components. Such components can, with both parties agreement, be charged for within the pre-application element of the PPA fee.

PPA Charter

19. We propose that local planning authorities should develop a ‘PPA charter’, setting out a generic framework for how PPAs will be project-managed. The charter should state the pre-agreed commitments of the local planning authority, statutory consultees and service providers. It should also state the local planning authority’s expectations for community involvement and how the authority will engage members. The Advisory Team for Large Applications (ATLAS) will publish guidance to assist local authorities in developing their charters.

Project Plan

20. A project plan should be prepared for each PPA, setting out the important milestones for delivery of the planning application and a decision on it. We propose that the project plan cover the entire PPA process, namely the pre-application phase, including the inception day (see below) and the application phase. A project plan gives confidence that all parties to the agreement will deliver what is required while, in the event of a change of date, giving a framework for both planner and applicant to discuss amendments and agree on the implications with all parties. The project plan should use the key issues list (see below) to determine meeting schedules, dates at which reports will be submitted and comments passed back, input expected from third parties, and the target submission and determination date. Where appropriate, the project plan should also schedule the negotiation of a section 106 agreement.

⁴ For some types of development there will be more than one permitting authority and applicants can experience overlapping requirements. An example of this is the relationship between planning and pollution control, recently explored by Defra and Communities and Local Government which consulted on the options for improving the interface between the various régimes. The response to this joint consultation is being considered.

Key Issues List

21. We propose that a key issues list be created, setting out all the issues the parties expect to encounter throughout the progress of a particular PPA. The authority and the applicant should use the key issues list to forward-plan, by scheduling meetings at key dates and allocating issues to particular team members. The key issues list can serve as the agenda for meetings, ensuring that progress is monitored on each issue and that the relevant people are invited to meetings at which a specific issue is to be discussed. This list can be used by the applicant as an indication of what kinds of documentation will be required by the local authority to allow validation of the application.

Inception day

22. We propose that an inception day be held during the pre-application phase of each PPA, attended by teams from the key parties, but chaired by someone independent of both and seen to be impartial. In the pilot, the inception day was found to focus parties' minds on a shared vision and objective and on any gaps in the evidence base. Participants also used it to identify outstanding issues and action required, while setting out the mechanisms by which differences between parties were to be resolved. The cost of the inception day may be included in the pre-application phase fee charged by the local planning authority.

Resources and Legal Implications

Legal Background

23. Local authorities have the option to charge for the PPA pre-application phase under section 93 of the Local Government Act 2003. Section 93 introduced a general power for authorities to charge for 'discretionary' activities: services that an authority has the power, but is not obliged, to provide. In the case of planning, this may apply to areas of activity outside the scope of the existing fees structure, such as pre-application discussion and advice.
24. We know that a number of authorities are using section 93 powers to charge applicants in relation to pre-application discussion and advice. Taking one year with another, the income from charges for such services must not exceed the costs of providing them. The power is available equally to all authorities and is not dependent upon performance categorisation following Comprehensive Performance Assessment.⁵ However, such charges must relate to the purposes for which they are set. As with the setting of planning fees, neither central nor local government is empowered to go beyond cost recovery, into profit.

⁵ *General power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003* (ODPM, 2003)

Fees for PPAs

25. Where a local planning authority opts to charge a fee for the pre-application phase of a PPA, this will need to be negotiated with the applicant and agreed early in the process. It can meet the cost of any discussions, the inception day and other relevant expenditure by the authority. Any fee levied for the pre-application phase may be charged at commencement of the PPA by negotiation with the applicant(s), or else charged in instalments as the PPA progresses. A local planning authority cannot use section 93 to secure additional money once the planning application has been submitted. Generally, local authorities should charge for pre-application discussions only where it will not significantly diminish demand for that service.
26. Where a PPA fails at the pre-application phase, any unresolved disputes would have to be settled in private law.

Redefinition of application categories for major development

27. A large-scale major application will be defined as:

- Residential: a large-scale residential major is one where the number of residential units⁶ to be constructed is 200 or more. Where the number of residential units or floor space to be constructed is not given in the application, a site area of 4 hectares or more should be used as the definition of a large-scale major development.
- Non-residential: for all other uses a large-scale major development is one where the floor space to be built is 10,000m² or more, or where the site area is more than 2 hectares.

A small-scale major application will be defined as:

- Residential: a small-scale residential major application is one where the number of residential units to be constructed is between 10 and 199 inclusive. Where the number of dwellings to be constructed is not given in the application, a site between 0.5 hectares and less than 4 hectares should be used as the definition of small-scale major development.
- Non-residential: for all other uses, a small-scale major development is one where the floor space to be built is between 1,000m² and 9,999m², or where the site area is greater than 1 hectare but less than 2 hectares.

⁶ This refers to buildings, not caravans.

Annex A

Partial Regulatory Impact Assessment (RIA)

Planning Performance Agreements: A New Way to Manage Large-scale Major Planning Applications

Objective

The proposal for the introduction of Planning Performance Agreements (PPAs) is intended to provide local authorities with a mechanism to improve the management of large-scale major planning applications. The target date for implementing Planning Performance Agreements is October 2007.

Background

The Planning Advisory Service undertook a PPA pilot project trialling the use of PPAs as a management tool to aid the efficient handling of major planning applications. The year-long pilot project commenced in January 2006 and included 22 local planning authorities and their developer partners, and involved 23 sites. The pilot project found PPAs to be good practice which tends to improve the management of major planning applications to the benefit of the local authority, applicant and often other stakeholders.

Each PPA will be negotiated in the pre-application stage and delivered in the application phase. In addition to the appropriate planning fee payable under the Fees Regulations, the local authority and applicant can agree a fee for the pre-application phase of the individual PPA which will be chargeable under section 93 of the Local Government Act 2003. Local authorities are able, under section 93, to charge for 'discretionary' activities: services that an authority has the power, but is not obliged, to provide. In the case of planning, this may apply to areas of activity outside the scope of the existing fees structure, including pre-application discussion and advice.

A number of authorities are already using section 93 powers to charge applicants in relation to pre-application discussion and advice. The proposition for Planning Performance Agreements builds on this by introducing an integrated project management process for which LPAs could charge. The income from payment for such services must not, taking one year with another, exceed the costs of providing them. The power is available equally to all authorities and is not dependent upon performance categorisation following Comprehensive Performance Assessment.⁷ As with the setting of planning fees, neither central nor local government is empowered to go beyond cost recovery, into profit.

⁷ *General power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003* (ODPM, 2003)

PPAs respond to stakeholder concern that the Best Value 109(a) target encourages local authorities to focus on those major applications that can be determined within 13 weeks.⁸ Removing large-scale applications delivered through Planning Performance Agreements from the target regime addresses those concerns by encouraging the authority and applicant to negotiate a flexible timescale which responds to and reflects the circumstances of the individual application. It is expected that a PPA should result in a well-informed local authority making a considered yet timely determination of a planning application which is tailored to the needs of the area.

Options

Option 1 – Do Nothing

Do nothing: all large-scale major applications will continue to be managed through the existing planning process.

Option 2 – Apply PPAs to all large-scale major applications

The option here is that local authorities are strongly encouraged to offer PPAs for significant large-scale development proposals. Where the authority and applicant agree to establish a PPA, they will need to negotiate the core components and any optional fee for the pre-application phase. Large-scale major PPA applications will be taken out of the Best Value 109 target regime. We expect that option 2 will be chosen, as it comprises the most suitable proposals.

Option 3 – Apply PPAs to all major applications

This proposal recommends that local planning authorities are strongly encouraged to offer PPAs for all proposals that fall into the ‘major’ category. Where the authority and applicant agree to establish a PPA, they will need to negotiate the core components and any optional fee for the pre-application phase. PPA applications would be removed from the Best Value 109 target regime. A consequence of option 3 would be that a greater number of applications would be eligible for PPAs. This may be advantageous, as the Planning Advisory Service’s PPA pilot study found PPA techniques to be beneficial across a range of applications; however, this could have significant resource issues for local planning authorities.

Benefits

Option 1 yields no additional benefits and local authorities will continue to have little incentive to allocate resources to the 34.5% of major applications which take longer than 13 weeks. 19.6% of major applications take between 26 weeks and more than two years to be determined.

⁸ The Best Value 109 target requires authorities to determine 60% of major applications within 13 weeks.

Option 2 should lead to significant major planning applications becoming PPAs. These are the applications which are most likely to be in the 19.6% that take more than 26 weeks and which, by their nature, will benefit most from a PPA. One of the benefits of encouraging authorities to offer PPAs only for significant major applications is that it will prevent PPAs being overly burdensome to local authority resources. This resource allocation is important: applications in this category often consist of proposals that would have significant social, economic and strategic impact on the local community. Furthermore, restricting the applications (large-scale major developments) which can be taken out of the Best Value 109 target regime will mean that smaller-scale major applications will still be subject to the 13 week target for determination of major applications.

Option 3 would mean that all major applications can utilise PPAs. This would have benefits: the PPA pilot found the PPA process beneficial for applications across the 'major' spectrum. It would also give authorities who rarely receive large-scale major proposals a greater opportunity to exercise PPA project management techniques. However, this could result in an unintended consequence: the proposed exemption from Best Value 109 target regime could encourage local planning authorities to undertake an excessive number of PPAs to ensure they meet the Best Value 109 target. As authorities may lack the staff to manage more than a few PPAs, this could reduce the effectiveness of the Best Value target and cause the quality of PPAs to deteriorate.

Environmental and Social Benefits

Members of the public should benefit if PPAs are introduced as it should result in a more efficient planning service, particularly with regard to the large-scale major applications most likely to be of interest to communities. Early and detailed consideration of the impact of major development should benefit the environment.

Benefit to business

The business sector affected is the applicants themselves. However, PPAs require the agreement of the applicant, who will negotiate the fee with the LPA. The negotiated fee is likely to be low relative to the value of development and the costs of professional advisers, particularly on large-scale major development projects. By agreeing to undertake a PPA, applicants will benefit from greater certainty on the agreed timetable and an increased level of resource devoted to their proposal. Furthermore, several local authorities already use Section 93 powers to charge for pre-application discussions, so the principle that local planning authorities can charge for voluntary and discretionary services on a non-profit basis has been established.

Issues of equity and fairness

The options do not fall differentially on any sections of the community as the PPA option will be voluntary and LPAs will be free to apply PPA project management techniques to all applications.

Costs

Compliance costs

The LPA will have the option of charging to achieve full recovery of costs incurred in delivering the agreement. There need be no additional cost remaining to be met by the LPA.

Cost to business

The estimate of the cost of a 'basic' PPA is based on the premise that the local planning authority would charge for officer time to handle the PPA and pre-application discussions, plus the cost of the inception day and independent facilitator. We have estimated that the pre-application phase would be 13 weeks long with a senior planning officer working on the PPA approximately 50% of the time and a planning officer supporting for 5 days. The inception days conducted in the PPA pilot were on average attended by six members of LPA staff, the applicant's staff/development team and an independent facilitator. In such a scenario, we estimate that the PPA would cost the applicant approximately £15,000, which can be broken down as £11,000 for overall staff costs plus £4,000 for the inception day/facilitator.⁹ Using this approximated cost, if two PPAs per annum are undertaken and charged for in each local planning authority area, the total cost to business would be £11 million. This would increase to £22 million if local planning authorities and applicants establish four PPAs per annum.

Where the local planning authority wishes to charge a fee for the pre-application phase of the PPA, this should be negotiated between the authority and applicant and will vary depending on the complexity of the planning proposal, infrastructure or s.106 agreements and regional variations in cost. Furthermore, local authorities may choose to charge different fees for an hour of staff time depending on seniority, and different PPAs may require different members of staff. Therefore, the PPA estimated costs should be considered a ballpark figure and not a standard that can be applied across PPAs.

Implementation

Each of the proposals falls within the existing regulatory functions of local authorities, but could require them to amend guidance material and give advice to applicants. Costs would be low-level.

Environmental and Social Costs

No significant negative social impacts are expected from any of the Options.

There is no environmental impact expected from an increase in fees associated with any of the Options.

⁹ The figures derive from Arup research report *Planning Costs and Fees (2007)*, being published on the website www.communities.gov.uk

Risk assessment

If PPAs are not introduced, some authorities may not allocate sufficient resources to the 34.5% of major applications which take longer than 13 weeks. There will continue to be an information gap on the fate and circumstances of large-scale major applications, some of which are likely to contain proposals of significant regional impact.

Unintended consequences

In theory, allowing the large-scale major applications subject to a PPA to be taken out of the Best Value target regime could lead to authorities agreeing to more PPAs than they could manage. However, this is not expected to occur, as the number of large-scale major proposals each year is relatively low. Furthermore, Communities and Local Government will collect information on its PS1 and PS2 forms on the targets set in PPAs in terms of the timescale for delivery of decisions, and it can monitor closely any anomalies.

Consultation with Small Business

The Small Business Service will be consulted and Small Firms' Impact Test part 1 carried out.

Competition Assessment

The competition assessment filter has been applied. We do not believe that the proposed changes would have a disproportionate impact on any particular sector. Therefore it is considered unlikely that there would be appreciable competition impact arising from Planning Performance Agreements.

Enforcement and Sanctions

If a PPA were to break down at the pre-application stage, then all fees paid would be non-refundable; unresolved disputes would have to be settled in private law. Once the application is made, the existing planning appeals process applies.

Monitoring and Review

We will collect information on targets set in PPAs on the PS1 and PS2 forms and will review the process periodically.

Consultation

This partial RIA forms part of the formal consultation with stakeholders of the planning system and is included for comment.

Implementation of option 2 is recommended as the best way to ensure maximum benefit from the introduction of Planning Performance Agreements without burdening local authorities.

Annex B

The consultation criteria

The Government has adopted a code of practice on consultations. The criteria below apply to all UK public consultations on the basis of a document in electronic or printed form, and will often be relevant to other sorts of consultation.

Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), the instructions below should otherwise generally be regarded as binding on UK departments and their agencies, unless Ministers conclude that exceptional circumstances require a departure.

Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.

Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.

Ensure that your consultation is clear, concise and widely accessible.

Give feedback regarding the responses received and how the consultation process influenced the policy.

Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.

Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The full consultation code may be viewed at:

www.cabinet-office.gov.uk/regulation/Consultation/Introduction.htm

If not satisfied that this consultation has followed these criteria, or if you have other observations about ways of improving the consultation process, contact:

Albert Joyce,
Consultation Co-ordinator
Communities and Local Government
Zone 6/H10, Eland House, Bressenden Place, London, SW1E 5DU;
or by e-mail to: albert.joyce@communities.gsi.gov.uk