

PLANNING PERFORMANCE AGREEMENTS: A NEW WAY TO MANAGE MAJOR APPLICATIONS

A planning white paper 'daughter' consultation response
from the Royal Town Planning Institute (RTPI)



RTPI

mediation of space · making of place

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1. Introduction

This 'daughter document' represents part of the RTPI planning white paper response, addressing the government's proposals on planning performance agreements.

It forms part of a suite of responses to the planning white paper listed below:

- Planning for a Sustainable Future: a High Level Response;
- Planning for Major Infrastructure: Making the New System Work;
- Permitted Development Rights for Householders;
- Improving the Appeal Process; and
- Planning Fees.

Copies of all the white paper responses can be downloaded from:

- <http://www.rtpi.org.uk/item/606>

2. Planning Performance Agreements

Planning performance agreements commenced their life as 'planning delivery agreements' or 'planning process agreements'. The 'delivery' component of their name has been amended in response to concern that it could be perceived by the public as meaning that the agreements are designed to underpin determination in favour of the applicant. This is not the case. The agreements are strictly intended to underpin processes and not outcomes.

The proposed agreements arose from a PAS co-ordinated pilot project carried out in 2006. This included 22 local planning authorities, developers/applicants and application sites. The PAS made recommendations to CLG following the pilot, which included the following proposals:

- *[Planning performance agreements or] 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, and a new target agreed between applicant and planning authority; and*
- *guidance should be provided to help planning authorities undertaking PPAs.¹*

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

The RTPI strongly supports the principle of PPAs, as being a means of enabling a pragmatic agreement between applicants and local planning authorities about the reasonable process and duration for the consideration of applications.

The PPA proposal represents a considerable step forward from the current 13 week 'majors' target regime, which places much of the negotiation of major proposals beyond the framework of the statutory target, providing less rather than more certainty to applicants, local planning authorities and communities.

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

The RTPI is not entirely convinced that it is necessary to define large-scale major applications at all and has concerns that the currently proposed definition may lead to some unlooked for outcomes, where the PPA mechanism is not available to some applicants who would see it as beneficial, due to the arbitrary nature of the proposed definition.

There is an argument that a definition is not needed and that PPAs should be available to any major applicant who sees benefit in making an agreement. Such an approach would apply a 'principle of voluntarism'. Noting that applicants' circumstances differ and that not all major applicants will perceive themselves as benefiting, the key test for the availability of a PPA would appear to be perception of benefit and agreement to sign by the applicant and the local planning authority. Again, the scope of an agreement ought be something on which guidance is provided, but the ultimate test would be not that the guidance had been strictly complied

¹ Source PAS 2006.

with, but that the applicant and the local planning authority view the agreement as useful and are prepared to sign.

One important observation to make is that, if the benefits of PPAs are to be more widely disseminated on the 'principle of voluntarism', it will be important to ensure that the drafting and management of agreements does not in itself become a source of unjustifiable complication and delay. To this extent, the RTPI considers that it would be possible to support the PPA process with a systematised 'Manual of Development Approval Practice'. In concept, this would be an online toolkit that would set out the typical stages in the delivery of a proposal through the planning system, codifying desired behaviours, measures, outcomes and indicative timelines. A draft PPA could be created at an inception meeting using the online tool, by dragging relevant process stages into an agreement timeline, allowing stakeholders to then examine the degree to which the indicative timeline was achievable or should be varied.

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?

The RTPI has ongoing concerns that the BV 109 target regime leads to unlooked for outcomes and impacts on applicants and stakeholders. The removal of all large-scale major applications as proposed to be defined should significantly reduce but will not eliminate the perverse effects of the target regime.

In tandem with our remarks above that a 'principle of voluntarism' should enable PPAs to apply to all major applications, the RTPI considers that, where the local planning authority and the applicant agree, there is no reason why any major application could not be determined in a timescale other than that set out in BV 109. In the short term, guidance could make clear to applicants that there are process benefits to agreeing a waiver of BV 109 for larger applications, that a PPA can achieve such a waiver and that it should normally provide for a waiver. However, the guidance could also make clear that an applicant does not have to agree to waive the benefit of BV 109 timescales unless they consider it is in their interests to do so (although they should note that a local planning authority may not perceive benefit in a PPA where this element is excluded).

The RTPI recognises that there is wider work in train, including research jointly undertaken between RTPI and CLG and LGA and CLG, seeking to develop a more outcome oriented approach to targeting. The RTPI accepts that reform of the BV 109 regime will need to be an incremental process that should have regard to the outcomes of research and will require to be closely linked to guidance on the operation of PPAs.

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?

PPAs hold out the significant potential to carefully target resources to major applications.

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

PPAs are proposed to be charged for as a discretionary activity under section 93 of the Local Government Act 2003. Fees will be set on an authority by authority basis and may be actual costs or scale fees. The RTPI considers that as PPAs become expected practice, it is

desirable that funding for them (and indeed funding for other pre-application discussions) should at some point be placed on a statutory footing.

The purpose of such an approach would be to recognise that PPA and indeed wider pre-application funding will increasingly relate to a core function of the planning service. Although the currently voluntary nature of PPAs will suggest that an element of discretion must remain, it will nevertheless be the case that the great majority of large-scale major applications would be expected to pass through the PPA route. It also appears that discrepancies in pre-application charging are emerging between Councils and there is a consistency argument in setting a scale of fees, to ensure that PPA charging does not diverge unduly.

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

The RTPI considers that the basic minimum requirements as proposed for a PPA will be likely to be necessary in most PPAs. However, whilst they should be expressed in these terms in guidance, the 'principle of voluntarism' suggests that they should be capable of variation. Fundamentally, a local planning authority and an applicant should be able to make a PPA on any broadly reasonable terms that they agree delivers mutual benefit.

For example, it may be sufficient for an applicant to make an agreement to extend the time for appeal under section 78(2) of the Town and Country Planning Act and to agree a later date at which BV 109 will apply, to enable the collection of foreshadowed data to respond to a limited range of reasonable questions raised by the local planning authority. Such a simple 'limited purpose' agreement may not justify an inception meeting, anything more than an outline statement of issues or plan and may not indeed merit the levying of any fee. It would however deliver benefit to both parties on the basis that it could be brought into effect with the minimum of bureaucracy, for example, by an exchange of letters.

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?

The voluntary nature of a PPA, including the charging of discretionary fees under the Local Government Act, will make it very difficult for a penalty regime to apply. At this stage, the RTPI considers that sufficient benefit will emerge from a generalised test of PPA practice to warrant the proposals proceeding without a penalty regime in place.

If the fees for PPAs were to be placed on a statutory footing, the statutory mechanism could include a refund for breach mechanism where the breach is due to the local planning authority, and an additional increment of charge for breach by an applicant. That being said, some independent adjudicatory mechanism would probably be necessary for circumstances in which parties considered that breach was being alleged unfairly or improperly.

Alternative penalty mechanisms would require the conclusion of private law contracts between applicants and local planning authorities, or the creation of a new statutory contract for this purpose. However, such approaches could be counterproductive if they led to the development of a new industry or bureaucracy of advice and administration around agreements and countermeasures against breaches.

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?

Comments above notwithstanding, the RTPi identifies the effects of the proposed changes as being broadly positive for the practitioners and stakeholders in the planning system, such that PPAs should be implemented in the short term.

At this stage we foresee few unintended consequences. The one worthy of remark would appear to be the non-availability of the PPA route to major applications arbitrarily removed from the scope of the system by the proposed definition of 'large-scale major projects', but where the applicant and the local planning authority would otherwise have perceived a PPA still to be beneficial. We have referred above to a 'principle of voluntarism' that would allow a PPA to be entered into in such circumstances and would encourage consideration of that principle by CLG before PPA guidance is finalised.

3. Conclusions and Recommendations

The RTPI broadly supports the proposals for PPAs as described in the consultation, but detailed monitoring of their performance will be desirable, as will measures to ensure consistency of practice.

However, we have some concern about the coherence of the proposed 'large-scale major' application cut-off. We consider that the main principle that should apply to the availability of a PPA should be that the application is not minor, and that the need for a PPA is agreed jointly between the local planning authority and the applicant.

Further, if such an approach is taken, we also consider that there may be PPAs that do not need to satisfy all of the minimum criteria set out in the consultation, because they have a limited purpose. To this extent, consideration should be given to the enabling of a class of 'limited purpose' PPAs.

This position rests within the framework of a 'principle of volutarism' under which we consider that CLG could enable a wider application of PPAs to all parties to major applications who perceive entry into an agreement to offer benefits.

Recommendations

- Planning performance agreements should proceed to early general implementation broadly as consulted upon.
- However, recognising that they are a new instrument, their performance should be monitored closely.
- The optional and voluntary nature of PPAs should be subject to particular review, with a view to lending statutory consistency to the application of fees and mechanisms for enforcement in due course, should they become a widely used mechanism.
- PPAs should be subject to a 'voluntaristic principle' and should be available for any application that is currently classed as major.
- Consideration should be given to the enabling of 'limited purpose' PPAs that may be seen as valuable to an applicant. These may not need to satisfy the minimum criteria as currently set out in the consultation.
- Any application subject to a PPA should be capable of being exempted from the application of BV 109 by agreement between the parties.