

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO CABINET

18 MAY 2021

### REPORT OF THE CORPORATE DIRECTOR COMMUNITIES

#### USE OF PLANNING PERFORMANCE AGREEMENTS AND OTHER COST RECOVERY MEASURES FOR THE DETERMINATION OF PLANNING APPLICATIONS

##### 1. Purpose of report

- 1.1 The purpose of this report is to seek Cabinet's authorisation to use Planning Performance Agreements (PPAs) with developers as part of a system of cost recovery in dealing with (mainly) major development proposals and to introduce additional cost recovery measures.

##### 2. Connection to corporate well-being objectives / other corporate priorities

- 2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015:-**

1. **Supporting a successful sustainable economy** – taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.
2. **Helping people and communities to be more healthy and resilient** - taking steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services. Supporting individuals and communities to build resilience, and enable them to develop solutions to have active, healthy and independent lives.

##### 3. Background

- 3.1 The main purpose of a PPA is to provide a framework, agreed between the Local Planning Authority (LPA) and the applicant or potential applicant, about the process for considering a major development proposal. A PPA is a flexible mechanism, adaptable to proposals where the issues raised are relatively straightforward to those where the issues are complex, a number of parties may be involved and the process could be staged over a long period. In the case of a planning application this could range from the pre-application submission to the final agreement of planning conditions. There is no standard PPA as each one is likely to be unique to its particular circumstances. A PPA should be viewed as an efficiency tool, which provides a clear timeframe to progress significant development proposals with associated economic benefits as well as where necessary additional resource is provided to ensure service continuity.
- 3.2 The process that a PPA sets out will vary according to the number and complexity of the issues to be considered and the type of development proposed. Relatively modest development proposals with straightforward planning issues may not benefit from a PPA approach, although even smaller scale schemes may require specialist input for example ecological, landscape and visual or highways expertise. In this case the determination period will likely be extended and additional resource needed to allow the LPA is make an informed, on balance, decision or recommendation. Most large scale or significant

development proposals will require some form of additional or extraordinary input and the PPA will agree the extension to determination periods, which is allowable under current regulations.

- 3.3 A PPA could be agreed by way of a mutual understanding between the parties or by way of formal agreement. In most cases some form of written agreement will be required in order to agree timescales. This will be more pertinent when there is a financial contribution over and above the normal planning fee, which would be used to provide any additional resources necessary to determine the application.
- 3.4 A PPA should not be considered as a means of 'buying' a planning consent or circumventing the normal planning process. Notwithstanding any agreement on the use of a PPA for any particular planning application, it is a requirement under planning law for each planning application to be considered on its merit, taking into account all material considerations including national and local land use policy. It will be highly unlikely that a LPA will enter a PPA related to a development that has little or no chance of receiving a favourable recommendation.
- 3.5 The common elements of a PPA are generally considered to be:
- The agreement is usually drawn up prior to the submission of a planning application.
  - The LPA and the prospective applicant will be signatories to this agreement.
  - As a general principle, the agreement should be as simple as possible, consistent with a proportionate approach to the scale of the proposal and complexity of the issues raised.
  - The agreement should include 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 will supersede the normal statutory time limits.
  - The simplest PPAs will be an agreement between the council and the applicant setting an appropriate determination date for a planning application.
  - More often the PPA will be agreed during pre-application discussions to set out the scope and timetable for pre-application engagement and subsequent submission and determination of the planning application.
  - An additional financial contribution to cover any extraordinary costs over and above the planning fee may be agreed.
- 3.6 There is no direct reference to PPAs in current Welsh planning law or policy, however the Local Government Act 2003 allows Councils to make charges for additional services. In the case of a PPA, the additional services would include the cost of engaging temporary or agency staff to backfill officers engaged full time in working on the project or to procure specialist advice to assist in the determination of the proposal. The use of a PPA would allow a project management approach to major developments, with a dedicated project manager and/or team, whilst not compromising business as usual work streams.

#### **4. Current situation/proposal**

- 4.1 The lack of adequate resource of planning functions within local authorities in Wales is a national issue identified by both Welsh Government and the Royal Town Planning Institute (RTPI). It is apparent that there is a critical loss of planning and related skills within local authorities together with a corresponding impact on the ability to deliver sustainable development in line with national policy. Lack of adequate resource within planning authorities is also identified as one of the principal reasons behind delays in the planning system. The Auditor General for Wales undertook a thorough examination of the Planning System in Wales and specifically its ability to implement the aims and objectives of the Well-

being of Future Generations (Wales) Act (Effectiveness of Local Planning Authorities in Wales, June 2019). Further to this, both the Welsh Parliament Public Accounts Committee (Effectiveness of Local Planning Authorities in Wales, June 2020) and Future Generations Commissioner (The Future Generations Report 2020) raised concerns on the ability of planning teams to deliver key national legislation and policy. Lack of adequate resource within planning teams is cited as a key risk factor across all these independent reports.

- 4.2 Against this background many local authorities have employed PPAs as way of securing additional resource in order to manage effectively major development proposals. The situation in Bridgend reflects the national situation and despite significant efficiency savings over the last decade critical areas remain, particularly with regard to determination of major planning applications and highway input to major schemes as well as overall general resilience.
- 4.3 Due to high workloads, increasing complexity of technical submissions, as well as the implementation of far reaching national legislation and policy including the critical placemaking agenda, the service is losing the efficiency gains with a risk of potentially reducing service levels to provide a focus on core statutory functions only.
- 4.4 Bridgend has also seen a number of large development proposals coming forward over the last year, for example, the expansion of the WEPA paper mill in Maesteg was a significant project with subsequent economic benefits both locally and regionally. This application tested the teams quite considerably from pre-application through to post decision and at one point required full time input for a number of officers. In this case, the project was time sensitive but was delivered on time following the grant of planning permission although other work streams within the service were delayed as a result.
- 4.5 The use of a PPA in this circumstance would provide an agreed framework for the processing of the application from pre-application stage through to the discharge of conditions as well as the potential to secure additional resource to assist in covering those staff members fully engaged on the project.
- 4.6 Bridgend is seen as a key area of growth and is identified as such in the recently published Future Wales: The National Plan 2040. It is highly likely that other key inward investment proposals will be forthcoming. Added to this is the Replacement Local Development Plan (LDP), due for adoption in mid-2022, which will identify a number of key strategic sites within the County Borough together with the corresponding need for planning consent. There is demonstrative need for a PPA system to be introduced in time to meet the challenge of future strategic planning. Furthermore, there is increasing evidence of the willingness of developers to enter PPAs as part of the regular planning process as it provides additional certainty on the outcome of an application and key investment.
- 4.7 It is proposed to introduce the use of PPAs within Bridgend to be included as part of a revised and updated Pre-Application Advice Service. Bridgend has had a system of paid pre-application advice since 2011, which was radically overhauled in 2016 and updated more recently to include more categories of development. The service has proved successful and popular with prospective developers and results in higher quality development outcomes as well as additional resource income that can be re-invested within the service area.
- 4.8 Principally PPAs would be used for larger development schemes (major and above) but could also be used for any type of development that requires an extraordinary response from the LPA. This could include renewable energy schemes or essential development on sensitive sites. PPAs could also be used as part of a response to consultations on Developments of National Significance (DNS) applications. These applications are submitted to and determined by the Welsh Ministers via the Planning Inspectorate, which takes most of the planning fee. In this case, the local authority will be a statutory consultee

and will be responsible for discharging the conditions and any subsequent enforcement. It is essential therefore that any costs incurred by securing critical advice can be recovered from the developer.

4.9 PPA principles could also be applied to smaller scale development and value added initiatives. While these have been implemented to good effect in other local authority areas any such scheme must be in the interest of sound planning and not prejudice any other legitimate process.

4.10 In terms of the current paid pre-application advice service it is proposed to introduce:

- A 5% increase over the next two years on our pre-app charging schedule (last updated January 2019).
- An increase in the hourly rates for specialist consultee advice from £50 an hour to £60 an hour.
- Pre-Purchase Certificates and Completion Certificates up to £300 per request for individual houses and between £500 and £1000 for larger scale premises.
- Pre-submission validation checks £90 - £200 dependent on complexity.
- Charge for completing a National Resources Wales (NRW) Derogation licence for an applicant - £250.
- Also introduce a charge for undertaking highway stopping up orders as required by planning permission based on the above hourly rate and any legal fees or publicity requirements.

4.11 It is apparent that the use of PPAs within the mainstream planning process is increasing with a willingness on the part of both developers and decision makers to enter agreements to secure timely consents, added value functions and achieve higher quality development. This is due in part by pressures of resource limitations within LPAs and the increasing complexity of legislation and policy. Added resource secured through PPAs will assist in longer viability and resilience of the Planning and Development service area.

4.12 The principle of the use of PPAs within the planning process has been formally endorsed by the Development Control Committee.

## **5. Effect upon policy framework and procedure rules**

5.1 The statutory town and country planning system is governed by the Town & Country Planning Act 1990, the Planning and Compulsory Purchase Act 2004, the Planning Wales Act 2015 and various regulations.

5.2 The Local Government Act 2003 allows local authorities to recover the costs of providing services or improvements to services that they might not otherwise have been able to justify providing or been in a position to provide.

## **6. Equality Act 2010 implications**

6.1 An initial Equality Impact Assessment (EIA) screening has identified that there would be no negative impact on those with one or more of the protected characteristics, on socio-economic disadvantage or the use of the Welsh Language. It is therefore not necessary to carry out a full EIA on this policy or proposal.

6.2 As part of the wider statutory planning process the effective management of land and its change seeks to help to eliminate inequality and disadvantage in people's lives. This has been reflected in the recently published Planning Policy Wales 11 (PPW11), which aligns the

planning system with other key Welsh Government strategies including the Wellbeing of Future Generations Act 2015 and the Scio- Economic Duty.

- 6.3 Any additional costs arising from the introduction of PPAs and from an increase in pre-application service charges will be borne by the developer/applicant. However, there is discretion within the system to allow dispensation for individuals or groups at risk of social or economic disadvantage. Any outcome would also need to be balanced against the potential social and economic benefit of the development and associated investment.

## **7. Well-being of Future Generations (Wales) Act 2015 implications**

- 7.1 The statutory planning system is administered in accordance with the 7 Wellbeing goals and the 5 ways of working as identified in the Act.

## **8. Financial implications**

- 8.1 The cost of the administering the statutory town and country planning system is met from current budgets and offset by planning and pre-application fee revenue. The introduction of a PPA system will strengthen resilience within the service with the potential to increase revenue streams in order to fund any extraordinary costs associated with the determination of a planning application not otherwise covered by the planning fee.

## **9. Recommendations**

- 9.1 It is recommended that Cabinet:

1. Approves the use of Planning Performance Agreements and any resulting or associated financial contribution as part of the planning process.
2. Approves
  - A 5% increase over the next two years on our pre-app charging schedule.
  - An increase in the hourly rates for specialist consultee advice from £50 an hour to £60 an hour.
  - The addition of Pre-Purchase Certificates and Completion Certificates to the pre-application advice service up to £300 per request for individual houses and between £500 and £1000 for larger scale premises.
  - The addition of pre-submission validation checks of £90 - £200 depending on the complexity of the proposal.
  - That a charge be made for completing NRW Derogation licence for applicant to send off to NRW in the sum of £250
  - The introduction of a charge for undertaking highway stopping up orders as required by planning permission.
3. Authorises the Corporate Director Communities to take all necessary steps to introduce Performance Planning Agreements and to agree appropriate charges to be made in Performance Planning Agreements and, in consultation with the Chief Legal Officer to enter into Planning Performance Agreements as required

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**Background documents:**  
Equalities Impact Assessment Screening Form 28<sup>th</sup> April 2021