

GOOD PRACTICE GUIDANCE NOTE

Strategic Applications

Moving from a Development Team Service to a Design Team Service to deliver good design

Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have published this guidance so our members can improve what they do.

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1 Introduction

- 1.1 Delivering good design has risen up Government's agenda. The NPPF now requires the system to achieve well designed spaces¹ whereas in the original Framework good design was just a requirement². This signals a more focused approach from Government towards delivery. The 2019 version of the NPPF changes the overall policy position from "The Government attaches great importance to the design of the built environment"³ to "The creation of high quality buildings and places is fundamental to what the planning and development process should achieve"⁴.
- 1.2 On 25 April 2018 MHCLG held a conference (Achieving Well-Designed Places) in London attended by over 300 people to start a conversation with the sector on how they could improve design quality through the planning process. This was followed up by three regional seminars. This engagement was part of the work by MHCLG in drafting the revised NPPF and giving effect to its stronger emphasis on delivering good design.
- 1.3 Government subsequently set up the Building Better, Building Beautiful Commission "to tackle the challenge of poor quality design and build of homes and places, across the country and help ensure as we build for the future, we do so with popular consent. The Commission will gather evidence from both the public and private sector to develop practical policy solutions to ensure the design and style of new developments, including new settlements and the country's high streets, help to grow a sense of community and place, not undermine it."⁵ It produced an interim report, Creating space for beauty, on 9 July 2019⁶ and its final report, Living with Beauty, on 30 January 2020⁷.
- 1.4 MHCLG have subsequently produced a National (England) design guide⁸ that sets out the characteristics of well-designed places and demonstrates what good design means in practice. It forms part of the government's collection of planning practice guidance and should be read alongside the separate planning practice guidance on design process and tools⁹.
- 1.5 The gauntlet has been thrown down by government: they want the planning system to consistently deliver good design. We need to rise to that challenge.

¹ NPPF 2019 Chapter 12

² NPPF 2012 Chapter 7

³ NPPF 2012 paragraph 56

⁴ NPPF 2019 paragraph 124

⁵ Purpose / role of the Commission from its Terms of Reference:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792148/terms_of_reference.pdf

⁶ <https://www.gov.uk/government/publications/creating-space-for-beauty-interim-report-of-the-building-better-building-beautiful-commission>

⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/861832/Living_with_beauty_BBBC_report.pdf

⁸

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843468/National_Design_Guide.pdf

⁹ <https://www.gov.uk/guidance/design>

2 From DTS to DTS!

- 2.1 For many years a Development Team Service approach has been used to speed up the planning application process for complex cases and provide developers with a greater level of certainty following the submission of a planning application. It moves the emphasis of the planning process away from arbitrary deadlines, towards a structured timetable and negotiated solutions that are agreed by both parties. What is needed now is to ensure that this process is locked into the design process to ensure that good design is a planned and required outcome from the process; we need to move to a Design Team Service approach.

RIBA Plan of Work

- 2.2 Architects generally follow the stages in the RIBA Plan of Work¹⁰ in developing a major scheme from inception through to delivery. This eight stage process produced by the Royal Institute of British Architects is an internationally recognised methodology for designing and constructing buildings and other such development. Designing the pre-application process to mirror this approach means that you can get in early in the design process and have the maximum influence on it. The aim is to become part of the design team rather than just a commentator on it.
- 2.3 As planners we of course are looking at all aspects of the design – not just the building, but then so should good architects. Our job is place making and, as the Farrell Review¹¹ mnemonic helpfully reminds us, that means Planning, Landscape, Architecture, Conservation and Engineering. It is important that good urban design, landscaping, highways etc, as well as architectural input occurs.
- 2.4 A pre-application process should be designed to track the RIBA stages and ensure the right input is provided at each stage of the process. Officers operating the service must understand this, so it will be important that it is articulated and communicated to them. The RIBA stages go from 0 to 7 but it is only the first four stages (0 to 3) that are relevant to the pre-app process. These stages are:

RIBA WORK STAGES	CORE OBJECTIVES
Stage 0 Strategic Definition	Identify client's Business Case and Strategic Brief and other core project requirements
Stage 1 Preparing the Brief	Develop Project Objectives, including Quality Objectives and Project Outcomes, Sustainability Aspirations, Project Budget, other parameters or constraints and develop Initial Project Brief. Undertake Feasibility Studies and review of Site Information.
Stage 2 Concept Design	Prepare Concept Design, including outline proposals for structural design, building services systems, outline specifications and preliminary Cost Information along with relevant Project Strategies in accordance with Design Programme. Agree alterations to brief and issue Final Project Brief.

¹⁰ <https://www.architecture.com/knowledge-and-resources/resources-landing-page/riba-plan-of-work#>

¹¹ <http://www.farrellreview.co.uk>

RIBA WORK STAGES	CORE OBJECTIVES
Stage 3 Developed Design	Prepare Developed Design, including coordinated and updated proposals for structural design, building services systems, outline specifications, Cost Information and Project Strategies in accordance with Design Programme.

- 2.5 A planning application is generally an output from stage 3, or possibly stage 2/early stage 3 if it's an application for outline planning permission. The remaining stages are:
4. Technical Design – pre-commencement conditions will be discharged and amendments made at this stage
 5. Construction – other conditions and further amendments will be dealt with at this stage
 6. Handover and Closeout – planning is not normally involved at this and the next stage
 7. In Use
- 2.6 Many planners (and developers) think that there is no need for Development Management to be involved until designs are produced (RIBA Stage 2) but this is fundamentally misplaced. It is vital that you seek to work with the developer and their design team at the earliest stage in the process: RIBA Stage 0. This is when the applicant's brief is being formed. The Council also has a brief: its corporate and development plans and associated guidance. Articulating and aligning these two briefs early in the process maximises the chances of a mutually acceptable development being designed and delivered.
- 2.7 It should also be remembered that for a large scheme to be taken to RIBA stage 2 will cost several hundreds of thousands of pounds. To be involved for the first time when the concept design has emerged is far too late if you have fundamental concerns about it. You not only have to persuade the design team to adopt a different approach but spend a lot more money in doing so. A much harder proposition than being part of the team and being able to influence the initial design choices.

Pre-application stages

- 2.8 A good Development Team Service will be project managed and the stages that are followed should mimic project management stages: with a Project Implementation Document (PID) to initiate the project and a formal Closedown stage at the end. In this case the PID should be a Planning Statement/Project Plan and the Closedown is making sure that the proposal is ready for submission by checking that it is complete so that the application can be validated on receipt, but more on those later. This paper recommends that the following five stages should be the framework for any strategic application pre-application process:
- Initiation: strategic input
 - Urban Design: defining the place
 - Community engagement
 - Application preparation: addressing the issues
 - Closedown: finalising the application

- 2.9 They will be expanded on later, but essentially they are designed to add layers of detail to the design process so that the right inputs can be identified at the right stages so that the process moves forward smoothly with issues being addressed at the right time by the right people.

Bringing the two together

- 2.10 The relationship of the RIBA stages to the pre-app process are as follows:

PRE-APP STAGES	RIBA WORK STAGES
Initiation: Strategic input	Scheme moves from Stage 0 Strategic Definition to Stage 1 Preparing the Brief
Urban Design: Defining the place	Scheme moves from Stage 1 Preparing the Brief to Stage 2 Concept Design
Community engagement	Finalise Stage 2 Concept Design
Application preparation: Addressing the issues	Scheme moves from Stage 2 Concept Design to Stage 3 Developed Design
Closedown: Finalising the application	Finalise Stage 3 Developed Design

3 A Design Team Service

- 3.1 The process involves a number of meetings and workshops, project managed by a senior planning officer – the case officer. It involves in-depth research, consultation with statutory and non-statutory bodies and comprehensive advice put together by officers from different departments. It should also involve councillor engagement via presentations to Planning Committee. Finally, there is an expectation that there will be active and meaningful community engagement, to be organised and facilitated by the developer's team but steered by the Council.
- 3.2 The process will be governed by two documents, which are explained below under "How does it work?". They are:
- A Planning Statement and Project Plan
 - A Planning Performance Agreement
- 3.3 The process is structured into five key stages. These are summarised in the tables below, together with what is expected from the developer, what happens at each stage and the expected outcomes.

Stage 1 Initiation: strategic input

What we expect from the developer	What happens	What is the expected outcome
OS map of the site Description of development	Meeting with more senior officers (on large schemes Corporate & Political Leadership) to look at strategic issues Consider and agree strategic issues and the process needed to address them	Planning Statement/masterplan Project Plan Planning Performance Agreement Draft community engagement strategy EIA Screening Opinion Ward member input

Stage 2 Urban design: defining the place

What we expect from the developer	What happens	What is the expected outcome
Draft Design & Access Statement including an urban design analysis Draft concept scheme, potentially including options	Establish urban design principles in one or more design workshops. Understand the site, it's surroundings and the nature of the development and how it can be accommodated Discuss consultation methodology & identify relevant consultees	Design & Access Statement Concept scheme, potentially including options EIA Scoping Opinion (if required) Confirmation of required technical studies Consultation Strategy Design Review Panel Presentation to Members

Stage 3 Community engagement

What we expect from the developer	What happens	What is the expected outcome
Illustrative material of proposed scheme, potentially including options	Meaningful engagement with the community affected An explicit feedback session	Draft statement of community involvement Amendments to concept scheme

Stage 4 Application preparation: addressing the issues

What we expect from the developer	What happens	What is the expected outcome
Draft planning application Draft EIA (if required) and other supporting documents Draft heads of terms of S106 legal agreement	Consider and address the comments raised by the local community One or more workshops to understand the details of the development, its impacts on immediate neighbours and the surrounding area	Completed planning application EIA (if required) Agreed S106 heads of terms Ward member input Design Review Panel Presentation to Members

Stage 5 Closedown: finalising the application

What we expect from the developer	What happens	What is the expected outcome
Final amendments to planning application Final EIA and other supporting documents Final amendments to heads of terms of S106 legal agreement	Address any final comments from members Finalise the application & S106 legal agreement	A valid planning application ready for submission A well-designed scheme that benefits from a fronted loaded process Review of process

- 3.4 For less complex schemes, these stages will be less distinct and probably combined. Flexibility is key, and the process should be tailored to meet the needs of each development proposal.
- 3.5 These stages do not represent the whole of the service; in between you should continue to communicate with the developer and his team by phone, email or letter.
- 3.6 Depending on the complexity and scale of the proposal, the DTS team may comprise Council officers with expertise in Building Control, Urban Design, Planning Policy, Regeneration, Conservation, Housing, Highways, Education, Environmental Health, Climate Change and Legal. The process may also involve engagement with other agencies, such as Highways England, Historic England and the Environment Agency.
- 3.7 Feedback should be provided throughout the process which will take a number of different forms: the Planning Statement, minutes of meetings and formal pre-application reports to Planning Committee Members. At the end of the process, the developer will have a final report and minute that set out the advice of the Planning Service (and any comments made by Members) which should carry weight when any planning application, based on that advice, is submitted to the Council.

4 How does it work?

Stage 1: Initiation

- 4.1 The model set out in this guidance note is focused on a developer approaching the LPA to discuss an application that they intend to submit. It is however the case that developments emerge in other ways. The LPA may be proactive in identifying sites and producing planning briefs or masterplans to kick start the process. However a development materialises, this early initiation stage and the alignment of strategic briefs is arguably the most important part of the process.
- 4.2 During this stage the scheme will move from RIBA Work Stage 0 (Strategic Definition) to RIBA Work Stage 1 (Preparation and Brief).
- 4.3 It is often recognised that applicants might wish to engage in “high level” discussions with key senior Council officers prior to formal engagement in a pre-application service: often called a pre-pre-app. This is the first stage of this process and is, arguably, the most important stage. This is where the project is initiated and where both parties should have that all-important Spice Girls conversation, “tell me what you want, what you really, really want”!
- 4.4 These meetings will not deal with the planning merits of the proposed development. In fact, you must insist that no plans are produced – it is too early in the process to do so. It is an initiation meeting to kick off the design process. This is a high-level meeting, for the very large schemes it should involve the political leadership (Leader & relevant Cabinet Member(s)), to ensure that both the Council and the developer are clear about what strategic outcomes they expect from the process. Both parties are in effect trying to align their strategic briefs. The Council’s brief is expressed within its development plan and other relevant corporate strategies and needs to be articulated in the context of the site and the proposed development.
- 4.5 Where a proposal cannot be supported by the development plan, the process can still proceed on that basis so that the other issues that the development raises can be addressed and resolved so that the matters in dispute (that may result in a refusal of planning permission) can be limited.

Planning Statement

- 4.6 A Planning Statement should be a key output from the Initiation stage covering the main constraints and opportunities relating to the site and the key strategic policy and urban design issues raised by the scheme. It is essentially partly a high-level development brief and partly a PID. This is a key document because it articulates the Council’s strategic brief. Whilst the Council will collaborate with the developer on its production, ultimately it is produced by the Council and sets out its strategic brief for the site.

Project Plan

- 4.7 A Project Plan (Gantt Chart) should be agreed by both parties, with deadlines and a set of commitments on both sides, so that the likely number of meetings and the cost of the service can be estimated. You should also identify relevant consultees and discuss the broad methodology and timings for carrying out effective consultation and build this into the project. This will enable you to estimate the cost of the service.

Planning Performance Agreement

- 4.8 The Planning Statement and Project Plan will form the basis of a Planning Performance Agreement (PPA) which together will enable the project management of the pre-application process. A PPA is an agreement between the Council and the applicant that sets a realistic timescale for processing and determining the pre-application submission and fee arrangements. It will utilise project management techniques to manage and formalise terms of engagement between the parties. Central Government advice encourages the use of PPAs as best practice. A template is set out in an Appendix A. It will be noted that a lot of the detail about the pre-application process, that often is included in a PPA, is contained within the Planning Statement. The reason for this is to avoid encouraging too much negotiation around these elements. They define the service that is being offered by the LPA and should not be subject to redesign by each developer.
- 4.9 A PPA operated at pre-application stage can be transferred to the subsequent planning application and post decision stages, such as clearing conditions or dealing with amendments.

Stage 2: Urban design

- 4.10 During this stage the scheme will move from RIBA Work Stage 1 (Preparation and Brief) to RIBA Work Stage 2 (Concept Design).
- 4.11 Your advice at this stage will concentrate on ensuring that the proposal addresses established urban design principles. This includes appreciating the context, creating an urban structure, making the connections, detailing the place and understanding the planning policy requirements of the development (viewed alongside viability considerations).
- 4.12 You should also give advice on whether the strategic policy issues have been addressed, including compliance with land-use and affordable housing policies as well as environmental and transportation impacts. You will start to identify the more detailed local policy and planning issues. Dependant on how far advanced the scheme is, you will begin to identify the relevant consultees and if appropriate, initiate an informal consultation process.
- 4.13 It is at this stage that the Design and Access Statement that will accompany any planning application should be developed. A concept scheme, potentially including options where appropriate, will be produced.

Design Review Panel

- 4.14 At this stage an early presentation to a Design Review Panel should be considered for the very large schemes.
- 4.15 There are different models employed throughout the country. Some Councils have an in-house organised panel, others use locally organised panels (eg Design South East). Cabi still offer a national design review service. The Farrell Review¹² recommended that design review should become Place Review with Place standing for Planning, Landscape, Architecture, Conservation and Engineering thus enabling the whole design team to be involved.

¹² <http://www.farrellreview.co.uk>

- 4.16 Whatever model is used, it is vital to ensure that the Panel are properly briefed on the project and are clear about what they are expected to comment on. If some parts of the scheme have been agreed and are not open to change, the panel must know that, as commenting on such matters is of no use in such circumstances.

Presentation to Members of the Planning Committee

- 4.17 To be most effective, this stage should finish with an applicant's presentation of the concept scheme(s) to the Council's Planning Committee members. This should provide clarity around land use as well as design development and should clearly explain the form, quantum and extent of affordable housing delivery, linked to a general understanding of scheme viability and any associated constraints. Advice on how developers should prepare for this meeting should be given so that the meeting gets the information that they need. Officers should review a developer's presentation prior to the meeting and provide any pointers and advice accordingly.
- 4.18 Involving Planning Committee Members in the development of strategic schemes through the planning process is best practice and has been promoted by both the public sector and private sector parts of the development industry over the last decade¹³. The key members who should be involved are those who will make the final decision: Planning Committee.
- 4.19 Officers are often faced with the dilemma of how to organise this. It is recommended that it is a meeting in public and not one held behind closed doors. The probity rules are the same whether it is a private meeting, or one held in public, so it is hard to understand what advantages there are to not having the meeting in public and all the benefits of openness that brings. The next question is whether to have it as part of a Planning Committee meeting or as a separate meeting. The disadvantage of a separate meeting is that attendance can be poor. Having it as part of a planning committee meeting means that you have whole committee attendance. Council's need to decide what suits their particular circumstances best. For ease of drafting the rest of this guidance note will assume presentation to planning committee but the principles apply equally to other approaches.

Probity matters

- 4.20 The challenge is to ensure that the probity rules, that Councillors must comply with, are respected. There is a false perception that Members must not express a view on development proposals prior to their final determination at Planning Committee. This has meant that the introduction of Member involvement in the process has often been discouraged or neutered because of the perceived risk of Members expressing a view and thereby excluding themselves from further involvement.

¹³ *Connecting Councillors with Strategic Planning Applications* London First and POS London 2011 and *10 Commitments for Effective Pre-Application Engagement* LGA and BPF 2014

- 4.21 This concern was recognised by government, and legislative provision was made in the Localism Act that “prior indications of view of a matter [are] not to amount to predetermination”¹⁴ to deal with the problem. However, the impact of this provision has not been significant because it was in fact little more than the existing legal position and therefore added very little. Nevertheless, the message it sent was that it was OK to express a view provided you took appropriate precautions.
- 4.22 The solution is quite simple. The key is to understand the difference between predetermination and predisposition in the context of planning applications:
- **Predetermination** is where the impression is given that a Councillor has made up his/her mind in advance of the final committee meeting – they have a closed mind and are not open to new arguments.
 - **Predisposition** is the expectation that Members will be predisposed to good design, a safe highway network, the delivery of their affordable housing policies etc. Essentially that is what they are there for – to deliver the Council’s planning policies.
- 4.23 In a pre-application meeting, therefore, it is perfectly acceptable for Members of Planning Committee to express their view on the **elements** of a development, provided they do not express a view on the development **as a whole**. They are expressing their legitimate predisposition but are not predetermined. For example, the fact that a Councillor says that he/she dislikes the design and therefore wants the developer to review it, does not mean that if the design is unaltered when the case is finally determined that he/she will vote to refuse planning permission. Other issues may outweigh the perceived design deficiencies and therefore granting planning permission may be the Councillor’s balanced conclusion. The Councillor would not have made up his/her mind but is merely, and naturally, in the process of making it up and pursuing the issues that are important to him/her and his/her organisation.
- 4.24 It is often forgotten that the probity rules that govern what members do, apply equally to officers! You are of course predisposed to delivering good design, a safe highway network, your affordable housing policies etc and regularly express your views on these elements of the schemes that you deal with. You do not (or at least you should not) express a clear view on the scheme as a whole that amounts to an impression that you have made your mind up before you are in a position to do so; ie when a committee or delegated decision report is drafted. Members can and should operate in the same way. Training will be important so that they clearly understand their role.
- 4.25 It should be made clear that overriding, in-principle policy objections (eg a development in the Green Belt) should not be discussed at the meeting at this stage because of the greater risk of appearing to be pre-determined when expressing views about in-principle issues. Whilst attention must be drawn to such issues in the officer report and presentation, the committee members should be advised by officers that they should not discuss them; the developer should be told to not raise them either. To ensure appropriate discipline, both clear advice should be provided to the developer in advance from senior officers and the committee chair should indicate at the meeting that if the developer raises such matters, the presentation will be halted and potentially abandoned.

¹⁴ Section 25 of the Localism Act 2011

Pre-application committee practicalities

- 4.26 The involvement of Planning Committee Members in the process is scalable to suit a wide range of circumstances. For bigger schemes, Member engagement would typically occur at the end of the urban design stage and close to the end of the stage before the application is submitted. For small strategic schemes or an outline scheme that doesn't contain a high level of detail, a single presentation may be all that's necessary. For very large, complex schemes more committee presentations may be required.
- 4.27 If being reported to a planning committee, the agenda should be split between Presentations and Determinations. If a strategic planning committee is not formed, we also recommend splitting Determinations between strategic applications and other applications. The order of the agenda would therefore be:
- Presentations
 - Strategic applications for determination
 - Other applications for determination
- 4.28 The logic behind this ordering is that the strategic presentations and determinations should be dealt with first for the following reasons:
- The length of time presentations take is more predictable than determinations which makes the management of the rest of the agenda easier.
 - Dealing with the strategic issues first enables the committee to act more strategically.
 - Such developers are likely to have a large team of consultants and keeping them waiting for long periods does not send out the right message.
- 4.29 The order of business for each presentation item should be:
- A brief introduction by officers: usually just where and what the development is. The only exception to this would be where there was a matter of principle about which there were potential LPA objections. These need to be raised so that they are not discussed.
 - Developer presentation – allow 15 minutes.
 - Members' Q&As – generally allow 30 minutes.
 - Officer summing up the main points raised by members, which would form the Minute record of the meeting.
- 4.30 The question of public speaking often arises in the context of pre-application presentations. Given that members are not making a decision and the purpose of the meeting is to enable members to input constructively into the design process, it is difficult to see what benefit there is for members of the public to have public speaking rights. To hear local objections at an early stage in the process when a scheme is evolving would not be helpful to a process that is trying to be constructive. It is therefore recommended that this is not provided for. The public will have the opportunity to comment on the scheme when the applicant engages with them (see next section) and will of course be able to object to the application when it is made and should be able to address the committee when it is set to determine it.

- 4.31 The templates for reports to committee will need to take on board the fact that the committee will generally receive three reports over the period the scheme goes from the pre-application stage to determination. In essence this will be the same report being built up as more detail emerges from the pre-application design and Development Management processes. The report structure needs to take account of this.
- 4.32 Members should receive succinct reports that convey to them the information that they need to engage effectively in the pre-application process and to make sound planning decisions at the end of the process. The reports that go to committee during the pre-application stage will need to be carefully written, respecting the predisposition and predetermination rules. However, this will not prevent members from having a clear understanding of what officers think about the elements of the scheme at this stage. They should state their provisional conclusions on individual issues, but not state any definitive conclusions, using language like, “this requires more design development” or “this issue is progressing well”.
- 4.33 It is important to remember that it is not the role of the report to relay the content of the application file, they just need to contain the information that is relevant to enable committee to make a decision. There is a misconception that the more that’s in a report the less likely you are to be challenged successfully. Experience suggests that the opposite is closer to the truth. A long report gives the impression that everything is included and something that isn’t therefore appears to have been missed. Whereas a report that seeks to deal properly with the main issues and summarises the material, but routine, issues (as an Inspector’s decision on a planning appeal does) is much safer if something is not specifically mentioned.

Stage 3: Community engagement

- 4.34 This model has the community engagement stage occurring before the end of the RIBA Concept Design Stage after input from the LPA’s officers and members. This is generally the optimum time to engage as there is something to show the community that they can comment on, but it is still evolving as a design and the community’s views can be properly reflected as it develops. There will be sites where the community’s involvement at an even earlier stage in the design process is seen as beneficial and this can easily be accommodated into this model.
- 4.35 During this stage the scheme will move from RIBA Work Stage 2 (Concept Design) to RIBA Work Stage 3 (Developed Design)
- 4.36 For this stage illustrative material of the proposed scheme, preferably including options, are required. However, it is important that the style of this material gives the correct impression. The scheme is still at an early stage and the material is effectively a series of sketches. Modern CAD, BIM and illustration software, such as Photoshop, allows designers to convert these sketches into illustrations that look very realistic. To the non-professional this can convey the wrong impression: that the scheme is more developed than it really is and therefore is a “done deal”. Architects and other designers should be encouraged to remember this when designing and producing their illustrative material.

- 4.37 This stage should be an engagement, not a promotion exercise. Developers who approach it with an open mind and take on board what the community has to say about their proposals get the most from it. It is the community's neighbourhood, which most of them will know very well. They are a valuable resource that can provide unique insights into the location that the developer is looking to develop. When approached in this way, most developers and their design team find it a highly beneficial exercise that produces valuable design inputs.
- 4.38 There are a wide range of techniques that can be used to enable effective community engagement. The LPA should advise and discuss these options with the developer and provide contact details of local community representatives, including local ward members. What should be encouraged is, at the end of the community engagement process, that the developer facilitates an explicit feedback session where they set out to the community the main comments received from them and how they have addressed these issues, or otherwise, in the scheme: a "you said this" and "we did this" session.
- 4.39 When the developer presents to Planning Committee Members at the next stage the LPA should expect them to report on the results of this engagement process: to set out what the community said about the scheme and how they have responded.
- 4.40 This stage enables a Statement of Community Involvement document to be prepared and to consider the final amendments necessary to the concept scheme so that it can be developed to the next stage of the design process.

Stage 4: Application preparation

- 4.41 During this stage RIBA Work Stage 3 (Developed Design) will be finalised.
- 4.42 After the community engagement exercise, the LPA should work with the developer to develop their scheme in detail to ensure that it addresses the detailed policies in the development plan and represents good quality design and best practise. The scheme's impact may need to be examined via a full Environmental Impact Assessment and it is at this stage that it should be finalised. In all cases the external impacts of a development will need to be analysed, understood and mitigated where necessary.
- 4.43 The type of information that may be required in any subsequent application would be set out in the Council's published list of local requirements for planning applications. The developer should be advised during the pre-application stage of what information is needed to accompany their scheme in any subsequent planning application. During this stage of the process those plans, reports and other supporting information will be finalised.
- 4.44 A second visit to a Design Review Panel would be necessary for the very large schemes and a first presentation for the smaller strategic schemes. Again, good clear briefing of the panel is necessary.

- 4.45 The developer should have a further opportunity to present their scheme to Planning Committee Members to ensure that they are fully aware of the impending planning application, to allow the developer to report on the outcome of the community engagement process, to provide further clarity around affordable housing delivery (including quantum, mix and tenure splits), to further determine the extent to which the scheme has been amended or further developed to reflect previous comments made by Members and to give them a further opportunity to engage in the process. Again, overriding, in-principle policy objections should not be discussed at the meeting.

Stage 5: Closedown

- 4.46 The Planning Statement and officer's Committee Report(s) will be a material planning consideration in the determination of the subsequent planning application. The LPA should also provide minute notes of the meetings held throughout the process so that the developer is clear about the advice given.
- 4.47 The LPA should make sure that the proposal is ready for submission by checking that it is complete, so that the application can be validated on receipt. Reviewing a "dummy" planning application (prior to formal submission) to ensure that the various issues and considerations have been thoroughly assessed and considered in accordance with previous conversations is an effective way to do this.
- 4.48 You should also ensure that the heads of terms of any s106 Agreement are acceptable in principle and you should provide general advice as regards the likely CIL liability. The PPA should be finalised to properly timetable the post-application submission process and deal with any residual funding issues.

Review

- 4.49 It is good practice for projects generally to review performance and outcomes. This should be done both at the project level (ie reviewing individual pre-app processes and development outcomes) and at the programme level (ie reviewing the overall process and outcomes). This will ensure that lessons are learnt, and continuous improvement is built in. The programme level review could be published in the Authority's Monitoring Report.

Consultee input

- 4.50 It is important to recognise that statutory consultees, such as Historic England and the Environment Agency, do not have a duty to respond to pre-application consultation requests within a given deadline, prior to the submission of a planning application. However, every effort should be made to involve them early on in the process to ensure that they have the correct information necessary for them to provide a timely and meaningful response. Applicants will need to recognise that these statutory consultees may also charge for their services as part of their own pre-application process. LPAs should facilitate joint meetings.

Involving the local community

- 4.51 Developers should be expected to engage meaningfully with the local community on their pre-application submission. It is important to include local communities early in the process and this is strongly supported by the National Planning Policy Framework. Objections are often based on a lack of information or a fear of the unknown; this process should help to reduce such risks. Guidance should be offered to developers on how they should carry out their own consultation processes to complement those of the Council's, so that developers can be satisfied that their responses are robust, including "hard to reach" communities.

The role of Councillors

- 4.52 Given that large-scale applications will usually be determined by Planning Committee, it is desirable that Councillors and other key elected representatives (such as the Leader and relevant Cabinet Members) are introduced to proposals early in the process so that they understand them and can contribute to the design and engagement process. The DTS is designed to facilitate scheme presentation by the applicant to Planning Committee Members, followed by a Q&A session with the members. Generally, this will be done once the initial plans have been discussed and evolved, prior to engagement with the local community, and a further presentation after engagement and subsequent scheme amendments, prior to application submission. This process is designed to enable councillors to comment upon the elements of a scheme (eg design, highway impact etc) without holding or expressing a view on the acceptability of the scheme as a whole, thus complying with probity requirements.
- 4.53 This will be a new role for many Councillors and training will be very important. In addition to the usual staples on the basics of planning and general probity, specific training around the differences between predisposition and predetermination as set out in section 4 above under Presentation to Members of the Planning Committee will be needed. An appreciation of urban design should also be delivered as key training session.
- 4.54 Due to probity issues, the views of the Planning Committee Members on the acceptability or otherwise of a scheme as a whole cannot be solicited and officers should always advise Members of the need to remain impartial. For this reason, overriding, in-principle policy objections should not be discussed at pre-application presentations. Whilst attention can be drawn to such issues in any officer presentation, members should be advised by officers that they cannot discuss them. Developers should also not raise them.
- 4.55 Developers should be advised not to lobby Members of the Planning Committee nor seek to meet them outside of the framework of a pre-application advice service, as this may be perceived by the public to be prejudicing Members' impartiality.

5 What are the outcomes?

- 5.1 The two key outcomes of this process should be a well-designed planning application and the final pre-application committee report, which will be a material consideration in the determination of any subsequent application. However, there are some additional benefits which include:
- Early identification of any "show-stopping" issues

- Earlier decisions on applications
 - Avoiding incomplete applications
 - Higher level of certainty
 - Reduced confrontation
 - Cost savings
- 5.2 The main benefit is that by providing the necessary time within a generally co-operative framework, the development stands a better chance of meeting policy objectives and the expectations of the local community. Room is also created for the architect to respond to his/her brief within a sound urban design and planning policy context and to develop the scheme to strengthen its relationship to that context and create places of lasting quality.

6 Funding the service?

- 6.1 Fees should be set at a level that reflects the cost of providing the service, including the commitment to formally engage with elected representatives. The aim should be that the developer will receive an efficient, professional and tangible return for their investment.
- 6.2 The approximate number of meetings required for each scheme should be agreed at the Initiation Meeting in the Project Plan and included in the PPA. The Project Plan will look at ways in which issues might be considered in meetings. Therefore, you should be able to estimate the likely overall cost of the pre-application process by applying a range of standard charges to the different elements of the process.
- 6.3 Timescales for providing the service should be set out in the Project Plan. Planning officers engage in pre-application processes alongside other work duties. As such, applicants need to appreciate that the priority afforded to pre-application engagement will be aligned and managed alongside the officer's other work commitments. However, LPAs can lawfully provide a Dedicated Planning Officer Service, for schemes where the applicant wants a greater level of priority to be given to their scheme. This is generally where a developer pays additionally for that officer's time so that he is dedicated to that project and it therefore gains a priority in the officer's workload.
- 6.4 We recommend adopting up-front fee payment arrangements rather than invoicing. The whole fee in advance would be too much, so the following breakdown of fees is a recommended approach:
- Prior payment of a fee covering the Initiation Meeting(s).
 - As part of the initiation stage, the preparation of a PPA and Project Plan, the full cost of the service will be estimated. The Council should require payment of 50% of the fees upfront before further meetings take place.
 - No further meetings following the mid-point of the pre-application process (as determined by the Project Plan) should take place until such time as the outstanding fees specified in the PPA have been paid.
- 6.5 The PPA should make it clear that the initial fee proposal is an estimate based on the number and type of meetings expected at that stage. Adjustments to that figure will need to be made towards the end of the process.

7 Conclusions

- 7.1 The approach to pre-application for strategic developments set out in this guidance note is aimed at delivering better quality developments by integrating the design process into the pre-application process. By working together from RIBA stage 0 the two teams (the developer's and the council's) are more likely to align their briefs at an early stage, work collaboratively on addressing issues and be focused on producing a quality development. The community should be seen as an important input into the design process rather than an inconvenience to be worked around. The members of the planning committee, who will ultimately determine these applications, must have an active part in the process so that they can both understand the journey that the design of the scheme has taken, but also so that they can input into that process. It is unreasonable if a planning committee are unsighted on a scheme and disenfranchised in the process but are then expected to approve it at the end of the process because they are told it's fine!
- 7.2 We are required to "approach decisions on proposed development in a positive and creative way", "work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area" and to "seek to approve applications for sustainable development where possible"¹⁵. This guidance will help you do that.

¹⁵ Paragraph 38 of NPPF 2019

APPENDIX A: PPA Template

This is a draft PPA. Wording to be amended is in [square brackets].

PLANNING PERFORMANCE AGREEMENT

This Planning Performance Agreement (PPA) is made XX day of XXX 20XX between

1. [NAME OF COUNCIL], [ADDRESS] (“Council”)
2. [NAME OF DEVELOPER], [ADDRESS] (“Developer”)

1 Recitals

- 1.1 The Council is the local planning authority for development within the area in which the Development (set out in Schedule 1) is located.
- 1.2 The Developer intends to submit a Planning Application for the Development to the Council.
- 1.3 The Developer has entered into pre-application discussions with the Council regarding the Development.
- 1.4 The Planning Application will be an application for planning permission [and any related application for listed building consent] submitted to the Council for the Development. Reference to a Planning Application in this PPA is to an application that has been submitted to the Council by the Developer and has been registered by the Council on the Statutory Register as a valid planning application.
- 1.5 Given the complexity of the proposals and the range of issues involved, it is acknowledged by the Developer and the Council that the Council is unlikely to be able to formally determine the Planning Application within the statutory period of [8][13][16] weeks. Nevertheless, both parties wish to ensure that the Planning Application is considered in a timely manner and as expeditiously as is practicable, having regard to the timetable set out in this PPA and compliance with relevant statutory procedures.
- 1.6 This PPA seeks to agree requirements and timescales for:
 - the pre-application process;
 - the consideration and determination of the Planning Application; and
 - [the post decision period (such as dealing with conditions or amendments),]for the purposes of providing the parties with a level of certainty as to the process and timescale to be followed.
- 1.7 The PPA does not act as a legal agreement with respect to these requirements and timescales but as a memorandum of understanding to enable the requirements and timescales to be achieved.
- 1.8 This PPA will not fetter the Council in exercising its statutory duties as local planning authority. It will not prejudice the outcome of the Planning Application or the impartiality of the Council. This includes the timing and method of determining the Planning Application.
- 1.9 This PPA shall not restrict or inhibit the Developer from exercising their right of appeal under Section 78 of the Town and Country Planning Act 1990.

- 1.10 This PPA 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.

2 Term

- 2.1 This PPA will apply from the date it is signed by both parties and shall remain in force until the Decision Date (see Schedule 2) unless terminated earlier pursuant to clause 4.

[or if to cover post decision services]

- 2.2 This PPA will apply from the date it is signed by both parties and shall remain in force until terminated by agreement or terminated earlier pursuant to clause 4.

- 2.3 Upon its expiry or earlier termination this PPA shall automatically terminate.

3 Amendment and Review

- 3.1 The PPA shall be subject to review as may be agreed between the Developer and the Council and any agreed variation of its terms shall be evidenced in writing signed by both parties.
- 3.2 For the avoidance of doubt, a two-way exchange of emails between both parties that clearly state that a variation of its terms is agreed by both parties, shall serve that purpose.

4 Breach and Termination

- 4.1 Provided always that any breach is within the control of the party that is in breach, if either party considers that:

- the circumstances that brought about this PPA no longer apply;
- the principles and intentions of this PPA are not being followed; or
- there is a material failure by the other party to comply with the terms of this PPA,

it will draw their concerns to the attention of the other party. The other party will then have a period of not less than 10 working days within which to comment on and/or address the concerns. If the concerns are not addressed, the first party may then terminate the agreement at any point following the expiry of that period.

- 4.2 The PPA will also be terminated where:

- the Developer submits an appeal under Section 78 of the Town and Country planning Act 1990 in relation to the Planning Application (for whatever reason);
- the Planning Application is called in by the Secretary of State; or
- the Mayor of London issues a Direction pursuant to Section 2A of the Town and Country Planning Act 1990.

5 Obligations

- 5.1 All Parties shall act with fairness and good faith in respect of all matters related to the pre-application process and the handling of the Planning Application and will work jointly in complying with their respective obligations under this PPA.

- 5.2 The parties to the PPA have agreed to progress the pre-application process to the timetable and performance standards set out in the Planning Statement & Project Plan documents. This will be subject to monitoring and mutual adjustment as necessary by the parties.

Developer's obligations

- 5.3 The Developer agrees to use its reasonable endeavours to:
- follow the agreed Pre-Application timetable set out in the Project Plan;
 - comply with the Performance Standards set out in the Planning Statement; and
 - meet the Performance Deadlines set out in Schedule 2 of this Agreement.

Council's Obligations

- 5.4 Without prejudice to its role as local planning authority, the Council agrees to use its reasonable endeavours to:
- follow the agreed Pre-Application timetable set out in the Project Plan;
 - comply with the Performance Standards set out in the Planning Statement; and
 - meet the Performance Deadlines set out in Schedule 2 of this Agreement.

6 Fees

[NOTE: Select the paragraphs necessary, depending on the fees that are agreed to be paid]

[PRE-APPLICATION SERVICE]

- 6.1 In consideration of this PPA, and in addition to the application fees payable under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (as amended) upon submission of the Planning Application, the Developer agrees to pay the Council's pre-application charges for its Development Team Service and at this stage the service for this Development is expected to cost a total of £XX,XXX + VAT.
- 6.2 Fifty percent of the fee will be paid prior to the first meeting following the Initiation Meeting and the remaining fifty percent will be paid at the mid-point identified in the Project Plan.

[PRE-APPLICATION SERVICE + DEDICATED OFFICER(S)]

- 6.3 In consideration of this PPA, and in addition to the application fees payable under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (as amended) upon submission of the Planning Application, the Developer agrees to pay:
- a. the Council's pre-application charges for its Development Team Service and at this stage the service for this Development is expected to cost a total of £XX,XXX + VAT; and
 - b. a contribution towards the cost of [a][two][x] Planning Officer[s] who will deal with the pre-application process and the Planning Application to assist the Council in providing the level of service required to meet its obligations under this PPA.

- 6.4 Fifty percent of the fee set out in subparagraph (a) above will be paid prior to the first meeting following the Initiation Meeting and the remaining fifty percent will be paid at the mid-point identified in the Project Plan.
- 6.5 In respect of subparagraph (b) above, the parties have agreed a budget of £XX,XXX + VAT which will be available to draw from for the first 3 months [commencing XX Xxx 20XX] [following the signing of this PPA by both parties]. Following the end of the 3-month period further budgets will be agreed for subsequent periods unless section 4 of the PPA is evoked or the PPA's term expires.
- 6.6 The Council will be entitled to draw down money from the agreed budget to cover the costs referred in subparagraph (b) above following receipt by the Developer of a valid VAT invoice properly addressed to the Developer for the amount claimed.
- 6.7 The Council will only draw down money from the budget to cover the costs of filling the post of the dedicated officer or to backfill the post of the dedicated officer, up to the total budget. If in the unexpected event that additional fees are required within any 3-month budget period, these will need to be agreed in writing with the Developer.
- 6.8 The Developer shall have 5 working days following receipt of the valid VAT invoice to query any matter identified. Any sums not subject to a query shall be paid by the Developer at the end of the 5 working day period. If the Developer does not respond within the 5 working day period, all such matters shall be deemed approved and the Developer shall pay the full amount claimed at the end of such period.

External consultants

- 6.9 the Council may require external consultants to provide independent advice in relation to the following matters:
- [Development viability]
 - [Sunlight and daylight impacts]
 - [Retail impacts]
 - [Transport appraisals]
 - [EIA assessment]
- 6.10 Should such external independent advice be required the Developer agrees to the Council commissioning the appropriate consultant(s). The Council will consult with the Developer on the commission and take into account any views expressed by the Developer. The Developer will pay the cost of the consultant(s).

Legal Fees

- 6.11 The Developer agrees in principle to pay the reasonable and proper legal costs incurred by the Council for work associated with the drafting and engrossments of any legal agreement(s) necessary for the determination of the Planning Application.

S106 monitoring fees

- 6.12 The Developer agrees in principle to pay the cost of monitoring the legal agreement(s) necessary for the determination of the Planning Application. These costs will be calculated on the basis [...].

7 Confidentiality

- 7.1 Applicant's generally request that at this stage their pre-application request is treated as confidential.
- 7.2 The Council is governed by the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 in how it handles the information that it holds, and this includes pre-application information.
- 7.3 Under this legislation, there is a presumption that Councils should disclose information to the public, unless its disclosure would adversely affect the interests of the person who provided the information (Regulation 12(5) Environmental Information Regulations). Therefore, as a matter of law, the Council retains an absolute discretion on the disclosure of any information it holds.
- 7.4 If the Developer wishes the Council to treat any pre-application material as confidential, then the Developer will need to identify the specific information that this applies to, set out the reasons why and for how long it needs to remain confidential. This statement should refer to the provisions in the Regulations, particularly Regulation 12(5).
- 7.5 Generally, the Council will treat as confidential the pre-application information it receives from the developer up to the point that the scheme is reported to the Council's Planning Committee or otherwise made public by the Developer (eg when a planning application is made).
- 7.6 Thereafter, if the Council receives a request to disclose pre-application information, it is under a duty to consider why the specific information cannot be disclosed at that time. If the developer has indicated that they wish us to treat any material as confidential, the Council will contact the Developer to see if the circumstances have changed, whether you still wish the material to be treated as confidential and the reasons for this, before we decide about disclosure. The law requires the Council to retain absolute discretion on the disclosure of any information it holds.

8 Signatures

- 8.1 The Council and the Developer hereby agree to the content of this Planning Performance Agreement.

The Council

Name _____

Position _____

Signature _____

Date _____

The Developer

Name _____

Position _____

Signature _____

Date _____

SCHEDULE 1

The Development

Address of the application site:

- XXX

Description of the Development:

- XXX

SCHEDULE 2

Performance Deadlines (planning application)

The parties to this PPA shall use their reasonable endeavours to achieve the following performance deadlines.

The Commencement Date: the date the Planning Application is received by the Council	[XX day of XXX 20XX]
The Determination Date: the date the Planning Application is to be reported to committee or considered under delegated powers by the Council	[XX day of XXX 20XX]
[For use in London where application is referable to GLA]	
The Referral Date: where the London Mayor has indicated he wishes to be consulted before the Council determine the Planning Application, the date the Planning Application is referred to the London Mayor by the Council	Not later than 5 working days after committee or delegated determination of the application by the Council and the completion of the drafting of the S106 agreement
The Decision Date: the date the planning decision is issued by the Council	Not later than 20 working days [after committee or delegated determination of the application by the Council] [following receipt by the Council of any direction made by the London Mayor]

Performance Deadlines (conditions or amendments)

The parties to this PPA shall use their reasonable endeavours to achieve the following performance deadlines.

- XXX