

Planning Performance Agreements

Standard Terms and Condition

June 2015

1. General

All advice given by Council officers, whether paid for or not, is given in good faith and to the best of our ability based on the site circumstances and planning policy position pertaining at the time. Where payment is sought it is done so under the powers provided by s93 Local Government Act 2003 for providing a discretionary service which allows for the recovery of costs incurred.

Circumstances and policy considerations can change over time as well as a result of decisions outside the Council's control. For this reason little or no weight will be given to formal advice given over two years ago, or following significant national policy or legislative changes.

Advice is given without prejudice to the formal consideration of any planning application, which will be subject to public consultation and decided by the Council. The payment of fees does not constitute a legal or moral contract between the Council and any other party.

The Council's discretion to determine a formal planning application cannot be prejudiced as a result of any opinions offered by officers during the course of pre-application discussions or through a Planning Performance Agreement process. To this end, we cannot offer guarantees about the final outcome of your application(s).

We seek to process all applications within Department for Communities and Local Government guidelines. However, in our experience, applications typically progress faster where a Planning Performance Agreement has been sought and where our advice has shaped the final proposals submitted to us. This may therefore require an agreed alternative timescale.

2. Third Party Engagement

The Council will use reasonable endeavours to work proactively with other stakeholders, including the Statutory Agencies to facilitate a responsive approach to the development proposals. The Council is committed to sharing existing public information and data in a transparent and open manner and facilitating engagement with communities of interest that may exist in relation to the proposals.

3. Liability

Each party shall indemnify and hold harmless the other party and their respective members, officers and employees from and against damages, liabilities, penalties, costs and expenses incurred in connection with the performance of this Agreement. For the avoidance of any doubt, the parties agree that any losses or liabilities incurred in connection with the performance of this Agreement shall be borne exclusively by the party incurring such losses or liabilities.

The Developer/Promoter acknowledges and accepts that the Authority provides the services under this agreement in good faith and with due skill and care but no warranty or guarantee is given that the services will lead to the grant of any relevant or connected planning permissions.

The parties shall act reasonably and in good faith at all times.

4. Freedom of Information

The Developer/Promoter acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs) The Developer/Promoter shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

The Developer/Promoter acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Developer/Promoter. The Authority shall take reasonable steps to notify the Developer/Promoter of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion

whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

5. Fees and Payment

The Developer/Promoter shall pay the Authority any sums due under any invoice no later than a period of 30 days from the date on which the Developer/Promoter has determined that the invoice is valid and undisputed

(a) Where any party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 6. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 14 days after resolution of the dispute between the parties.

(b) Subject to clause 3 (a), interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

6. Dispute Resolution

If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (Dispute) then the parties shall follow the procedure set out in this clause:

(a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;

(b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice (*or such other agreed timescale*), the Dispute shall be referred to the Authority's nominated senior officer and the Developer's/promoter's nominated senior officer who shall attempt in good faith to resolve it; and

(c) if the Authority's nominated senior officer and the Developer's/promoter's nominated senior officer are for any reason unable to resolve the Dispute within 14 days (or such other agreed timescale) of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under which clause shall apply at all times.

7. Right to Pause

A developer/promoter will have the right to 'pause' this agreement should the requirement arise. For example, once a Design Code for a Reserved Matters application has been approved there may be an interval during which time there is no need for extensive interaction between CBC and the Promoters. In these circumstances or other agreed instances the Promoter may give CBC 14 days written notice of suspension of the PPA. This will also have the effect of suspending the payment schedule.

8. Termination

Either party may terminate this agreement on 7 days notice in the event that the other party is in material breach of this agreement. Neither party is liable to the other for any losses or non performance of this agreement in respect of any force majeure event. Force majeure event includes (*but is not necessarily limited to*) any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster,