

constructive talk

investing in pre-application discussions

a collaborative production by:

Planning Advisory Service
Home Builders Federation
CABE

Land Securities Ltd
National Planning Forum
Planning Officers Society
Communities and Local Government
British Property Federation
Addison & Associates

foreword



An active and responsive planning system is vital for the growth of the economy and the development of healthy, pleasant places for communities to grow. This has been the conclusion of recent reviews and is embodied in the recent planning reforms.

The culture change that has given rise to the spatial planning system recognises that there needs to be greater partnership between local planning authorities, the communities and the developers who channel the investment into home, employment and community buildings and spaces. The “us and them culture” of head butting development proposals through a reluctant and unresponsive local authority is being consigned to history. By working together on a project from the early stages developers and local planning authorities can achieve better outcomes for the community and for stakeholders. Open and constructive pre-application discussions, working jointly to creating development that will provide a valuable resource for the economy and the community as a whole, can save time and optimise the potential of a site.

This guidance about how to conduct pre-application discussions effectively marks the watershed of a new relationship. The project team guiding its direction has included both representatives from the public sector and from the development and house building industry. It embodies advice for

both on how to work effectively together and establishes duties and responsibilities for both.

Old attitudes need to change along with old practices on both sides of the development industry. Discussions need to be more transparent to keep public confidence in the system as well as for all parties to know what is possible on a site and what is available for negotiation. To do this local planning authorities in particular have a responsibility to set out clearly their procedures for the discussions that take place well before a planning application is made. Developers have a responsibility to be open and honest about the information they supply and to be responsive to suggestions for change.

The practical advice contained in this document provides a good platform for organising effective pre-application discussions and I would commend it to all the parties who are involved in delivering developments in thriving communities.

A handwritten signature in black ink that reads "Kay Andrews". The signature is written in a cursive, flowing style.

Baroness Andrews
Parliamentary Under Secretary of State

author: Les Sparks OBE,
contractor: POS Enterprises
0845 6019 067

This guidance is particularly written for the heads of service and heads of development control in local planning authorities, and the senior managers of development companies and their professional advisors

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PPS 1: Delivering Sustainable Development states:

Pre-application discussions are critically important and benefit both developers and local planning authorities in ensuring a better mutual understanding of objectives and the constraints that exist. In the course of such discussions proposals can be adapted to ensure that they better reflect community aspirations and that applications are complete and address all the relevant issues. Local planning authorities and applicants should take a positive attitude towards early engagement in pre-application discussions so that formal applications can be dealt with in a more certain and speedy manner and the quality of decisions can be better assured.

introduction

The Barker Review of Land Use Planning (DCLG 2006) advocates an increased use of pre-application discussions as a means to improve the efficiency of planning and the certainty of outcomes. By working together on a project from the outset, developers and local planning authorities can achieve better outcomes and save on costs. Through early dialogue, designs can be developed to optimise the use of a site and relate a scheme more successfully to its context. It is even possible to enhance the profitability of a scheme, whilst at the same time increasing its acceptability to the local community.

The opportunities for creative thinking and collaboration are greatest in the early stages of a project. By the time a planning application has been submitted, developers are usually committed to their approach. Faced with an application, local authorities are locked into a 'quasi-judicial' mode and are bound by practices and timetables that leave little room for manoeuvre.

Both the development industry and planning authorities stand to gain by more effective handling of the pre-application stages of a project. This publication argues the case for pre-application discussions, and offers a toolkit of procedures that can be drawn upon to suit a range of circumstances.

Most of the practices described here relate to the bilateral relationship between developer and local planning authority.

However, good pre-application processes also involve the statutory consultees, and offer the opportunity to introduce the views of councillors and the local community at an early stage. The guidance urges local authorities to act corporately in their negotiations, integrating the Council's different interests and responses, and advocates the preparation of policies, plans and site briefs to clarify its requirements.

The thrust behind much of this advice is to remove, as far as possible, uncertainties as to what is likely to be approved or rejected. This enables the developer to proceed with more confidence and reduces the risk of abortive costs arising from failed applications or expensive redesign work. A climate of certainty for developers is an encouragement to invest. A planning authority that has clear policies and is proactive in working with developers and third parties to overcome obstacles is more likely to secure private investment and regeneration within its area and benefit from good quality development.

In summary, there is much to be gained from early co-operation between developers and local planning authorities. All parties need to re-examine the way they go about their business and ensure they are geared up to constructive working at the pre-application stage. We hope this publication will help to set them on that path.

why engage in pre-application discussions?

It is paramount that senior managers in both local authorities and development companies take an active role in defining the key issues that will need resolution before an application is submitted, and in selecting the appropriate processes and representatives to progress the negotiations.

the benefits of pre-application discussions

The 2004 Planning and Compulsory Purchase Act seeks to move the planning process “away from an often adversarial, reactive and conflict based system to a more pro-active, inclusive and creative approach”. [*Positive Engagement; a guide for councillors* ODPM, PAS, LGA et al]

The submission of a planning application involves considerable expense in the preparation of plans, supporting documents and the application fee. Once the application is validated, the local planning authority is required to determine it within a strict timetable imposed by the Government, including a minimum period for statutory consultations. This leaves limited scope for negotiations between the applicants, the Council and third parties to overcome objections or secure improvements to a scheme. Particularly with major applications, it is often the case that such negotiations cannot be completed within the statutory timetable.

Early discussions between prospective developers and planning officers provide the opportunity to steer projects into a form that will be attractive to the community and acceptable to the local planning authority. This should lead to both the early abandonment of fundamentally unacceptable schemes, and to the reworking or refinement of potentially good projects before detailed plans get finalised. Either way, it should lead to a reduction in the number of planning applications that are rejected, or that suffer from significant delay while undergoing major revisions.

Evidence from a number of local planning authorities shows the significant benefits to be gained from pre-application discussions that offset the costs involved.

Of course, pre-application discussions, however far they result in agreements, must be ‘without prejudice’. The Council must, on receipt of the application, go through the statutory procedures and formal consultations, and assess the outcomes, before it can make its decision. Nevertheless, pre-application discussions are very relevant to that decision, and may be referred to in any appeal process should the decision go against the applicant.

The particular benefits to be derived from incisive pre-application discussions are in:

- **avoiding incomplete applications that cannot be registered...**
by ensuring that the applicant is fully advised about all the plans and supporting information that the local planning authority will require to process, consult on, and determine the application.
- **reducing the number of unsuccessful planning applications...**
by ensuring that conflicts have been addressed and resolved, and requirements have been identified and met before an application is made. Where it becomes evident that a proposal will not be acceptable, there will be clear advice against making a planning application that is expected to fail.
- **saving time and money...**
by reducing wasted resources on unsuccessful applications, and avoiding the expense and delays involved both in making changes to formal applications after submission.
- **reducing confrontation in the planning system...**
by setting up procedures that enable developers and planning

staff to work together from the outset, engaging positive input from consultees and third parties. Relationships tend to be more constructive and productive when seeking solutions at an early stage.

- **raising the quality of developments...**
by providing the necessary time, within a co-operative climate, to negotiate changes to a proposal. Such negotiations may ensure that proposals meet policy objectives and the expectations of the local community, whilst enhancing the development value and profitability for the developer. They provide room for the architect to respond to suggestions regarding the design and to develop it further to strengthen its relationship to its context and create places of lasting quality.
- **gaining community acceptance...**
by eliciting, at an early stage, the issues of concern to the community, and affording the chance to respond to those concerns through meetings and presentations, and by adjustments to the project.
- **securing satisfaction with the process...**
by ensuring that there has been adequate opportunity for all parties to have their views heard and considered through open and honest dialogue. Whether or not participants are happy

with the outcome, it is important that they are satisfied that the process was fair and transparent.

the need to re-invent practices

Pre-application negotiations have long been an integral part of development control, promoted by Government as an important means of improving the quality of development and smoothing the path for projects that conform to planning policy.

However, they tend to be conducted in an ad hoc manner and practice is inconsistent within and between authorities. Discussions often take place without sufficient preparatory thought as to the key issues for negotiation. This generates uncertainty for prospective developers who may be discouraged from approaching the local authority at an early stage. Failure to engage early enough results in missed opportunities to steer a proposal in a direction that has mutual benefits for the developer and the community.

Authorities are recommended to review and re-design all the processes that could and should contribute to securing good quality development and enabling the resolution of issues before submission of an application. Developers similarly need to update their practices in order to share their thinking with local planning authorities at an early stage.

The key message of this guidance is that something more is needed than mere exhortation to engage in pre-application negotiations.

This guidance advocates the *re-invention* of pre-application processes to make them as effective and creative as possible within the practical limitations of time and resources.

the need for a strategic approach

There are three key aspects to effective pre-application processes:

- a strategic approach **by the local authority** to each significant proposal to decide what are the key issues and ensure they are tackled from the outset
- a proactive approach **by the developer**, which seeks to spot potential issues as early as possible and engage with finding agreed solutions
- good project management **by both parties**, so that necessary technical work, negotiations or re-design take place expeditiously and on an agreed basis

With any major project there are innumerable matters to be addressed, most of which must be settled before an application is approved, or addressed later through planning conditions. However, time consuming work on detailed matters may be an expensive misuse of resources if the key issues surrounding a development have not been resolved first.

Therefore it is important for the developer and planning authority to be in clear agreement about the limited number of strategic issues that have to be addressed before turning to more detailed matters. These strategic issues should provide the focus for pre-application discussions.

Focussing on these strategic points will provide the basis for deciding who is/is not critical to these early negotiations, and this will ensure that people are not called to meetings to which they have nothing to contribute. Crucially, those discussions must be led, on both sides, by people with the necessary skills and authority to be effective.

'horses for courses'

This guidance document sets out (in section 5) a number of practices that have been successfully adopted by developers and local authorities. These should be regarded as 'a menu'. Not every process is appropriate to every occasion, and by-and-large they are for use on major proposals only. It must also be said that the very large applications, including major infrastructure developments, require different tools again. A conscious decision needs to be taken for each significant project to decide which practices to adopt and who should lead the negotiations. The approach taken may differ from authority to authority, influenced in part by the resources available and the type of workload. A local authority that has a constant flow of major projects should have arrangements in place to deal with them consistently at the pre-application stage.

Clearly, both planning authority and developer need a shared understanding about how proceedings are to be conducted and the timescales they are working to.

Although this document is mainly intended for larger applications involving developers, there are nevertheless ways in which a local authority can provide pre-application assistance to householders and others carrying out minor projects. Well-prepared advice notes on carrying out home extensions or replacing shopfronts, for example, can be a great help in ensuring that applications are well-prepared and more likely to be successful. Guidance on design and the detailed appraisals of the character of specific high value townscapes such as conservation areas and areas of outstanding natural beauty will also provide an invaluable source of pre-application advice and as such need to be kept up to date.

the key principles

acting corporately

Essential to effective pre-application discussions is a corporate approach on the part of the local authority. Before submitting a planning application the developer wants to know the views of all the relevant Council departments and specialist interests.

These may include transportation, housing, environmental services, drainage, nature conservation, and so forth. Planners have a key role in ensuring that these emerge, as far as possible, in an integrated form rather than as a set of contradictory views.

Section 5 describes the Development Team Approach, Planning Performance Agreements, and arrangements for handling Section 106 Agreements that require a fully corporate approach on the Council's behalf.

a sound policy framework

Everyone benefits, not least the developer/applicant when a local planning authority has a clear, concise vision and sound policy framework within which decisions are made. This framework, set out in accordance with PPS12, should provide a suite of policy documents that is likely to include urban design frameworks, masterplans, design codes, design briefs and design guides. All these documents provide the background

against which a developer can draft proposals with some confidence. They provide the framework for pre-application discussions (and, of course, the subsequent determination of the planning application) and they also establish a level of expectation for the community.

The more site specific the advice, the more help it is to the architect preparing the plans. However, there is a risk if planning and development briefs go further than elucidating key principles for the development of a site. They cannot fully anticipate a developer's ideas and they should provide scope for imaginative development of new approaches to meeting the council's objectives. Pre-application discussions provide the opportunity, assisted by the development of a design and access statement, to test those ideas against the key principles in the brief. For this process to be constructive, it is essential that there is some flexibility on both sides, but also clarity about the aspects that are not negotiable.

Development and planning briefs, design codes and design and access statements are all referred to in greater detail under section 5 b) and c) of this guidance.

negotiation: skills and boundaries

Negotiation skills are important for successful pre-application discussions, and participants will benefit from appropriate training. It is important that both parties are aware of their organisations' objectives, their room for discretion and concessions, and their bottom line. It helps no one if a negotiator concedes more than his or her organisation will support. A developer acquires nothing but extra cost and delay if concessions made by officers in pre-application discussions are rejected when the application comes before the Committee.

It is therefore essential that planning officers are sufficiently senior and experienced to conduct negotiations at the level appropriate to the development in question. It is also essential that there is a regular flow of information up and down the organisation to ensure that the negotiator is well briefed and carries the support and confidence of more senior staff and elected members. It is important to recognise that officers cannot pre-empt decisions by committee.

Planning officers should always attach a note to the file recording the matters under discussion and any advice that has been given. In many instances negotiations should be followed up with a letter confirming the advice that has been offered.

After significant meetings a note of the proceedings should be produced by the developer or planning authority, circulated and agreed between the key parties.

freedom of information act

There is a possibility that, under the Freedom of Information Act, the authority will be asked to provide information regarding enquiries for pre-application advice and copies of any advice provided or correspondence entered into. This information may only be withheld if its disclosure could prejudice commercial interests, inhibit the free and frank provision of advice or exchange of views during the planning process, or could prejudice the effective conduct of public affairs. Prospective developers would be well advised to provide a covering letter that sets out the reasons why, and for how long, any information relating to the case needs to remain confidential.

It will be for the local authority to decide whether information can be treated as exempt from disclosure and all sides need to recognise that the thrust of the legislation is to make information accessible unless there is a pressing reason why not. Each case needs to be assessed on its merits. The passage of time may remove the need for exemption as information becomes less sensitive. Generally, notes and correspondence relating to pre-

application discussions will not be treated as confidential, once a planning application has been submitted and the case is in the public domain.

appropriate forms of behaviour

The planning officer must take a realistic view about the capacity of a commercial development to meet planning and community requirements whilst remaining profitable. It also assists the process if the developer is open and frank about commercial factors, and is willing to discuss site options – rather than presenting a single, non-negotiable solution. Honesty, integrity and good communications are essential to the conduct of successful discussions, and all parties should adopt a positive, problem-solving approach.

Timeliness is just as important. If an instant response is not possible during discussion, a realistic time should be offered and met. Dates for meetings should be mutually agreed, set up sufficiently in advance, and kept to (unless both parties accept that a delay would be beneficial).

the role of councillors

Whilst it is accepted as good practice to delegate the majority of planning decisions to officers, major applications are usually determined by councillors in committee. It is therefore advisable to introduce members to a major project well before they are asked to take their formal decision on the application (see Section 5(h) on Interim Committee Reports).

Considerable nervousness surrounds the involvement of Councillors, especially members of Development Control Committees, in pre-application discussions. It is often held that Councillors cannot act impartially in making planning decisions if they have previously met with developers and/or interest groups. Unfortunately, this has generally led to a withdrawal of members from any engagement with projects before they are considered by the Committee.

However, Government advice is that Councillors *should* involve themselves in discussions with developers, constituents and others about planning cases, provided they observe the advice set out in *Positive Engagement*, a simple guide produced by a number of organisations that have a shared interest in maximising the effectiveness of councillor involvement in planning. They include the LGA, the Standards Board for England, RTPI, PAS and DCLG. The *do's and don'ts* of the guidance are set out in the Appendix. It should be noted that whilst Councillors are encouraged to participate in such discussions at the pre-application stage, once a planning application has been submitted, they are advised to refrain from further engagement.

Further advice and encouragement for involving Councillors early in planning casework is set out in Chapter 4, "Early Member Involvement" of the 2007 DCLG publication *Councillor Involvement in Planning Decisions*.

the involvement of statutory consultees

To ensure good quality and timely decisions it is advisable to go beyond the statutory consultation requirements and involve the statutory bodies like English Heritage and the Environment Agency at the pre-application stage of discussions. This may involve the preparation of a protocol to agree methods of communication, require the local authority to identify particular aspects of a development proposal on which comments are needed, and for the statutory bodies to identify (possibly through checklists) the core documentary and other information they need to enable a quick and full response.

engaging with local communities

Effective pre-application discussions between Council officers and developers are intended to ensure the smooth progress of well-researched and prepared planning applications. There will be many occasions where cases are controversial. Rather than allowing opposition or unforeseen objections to emerge after

the application has been submitted, the local authority and developer should consider how to engage local people and take account of their concerns as part of the pre-application process. Section 5 describes the use of Development Control Forums, Demographic Sampling and Structured Participation processes as ways to secure early community engagement.

The type and frequency of the council's practices for consultation and participation will be set out in its Statement of Community Involvement. However these arrangements may be supplemented in specific cases and do not prevent the authority and developer deciding to consult more widely or use a different technique to get a wider view from the community.

commitments

It is important to establish a positive climate for pre-application discussions, so that planning authorities and developers are committed from the outset to operate in accordance with certain principles.

planning application charters

Charters set out the local planning authority's service commitment to applicants. They provide undertakings to deal with development proposals in accordance with a set of principles and responsibilities, and may also outline the Council's consultation arrangements. Charters should also engage the commitment of statutory consultees, such as the Environment Agency, English Heritage, etc. to work to agreed processes and timescales. It is essential that the Highways Authority be fully signed up to engagement in pre-application discussions, whether or not it falls within the same council as the planning authority.

delivery protocols

Delivery protocols provide a set of actions and behaviours that are to be adopted by all parties engaged in the pre-application process. They provide the basis for joint working and better understanding on all sides, recognising and respecting each

other's roles and relationships. Typically, a protocol will identify a set of commitments from the Council, in exchange for which, it will look to developers to respond with a number of actions, for example:

responsibilities of the planning authority

- encourage pre-application discussions in order to identify the key issues that will need to be addressed as a priority and resolve problems in advance
- arrange meetings and provide information in a timely manner that recognises the needs of the developer
- provide a named point of contact
- identify the people and organisations that need to be consulted and introduce them into discussions at the appropriate time
- identify the information required in connection with a planning application, including any gaps in policy or data that will have to be addressed before it can be determined
- ensure that negotiations involve the right staff, adequately trained and properly prepared for meetings
- identify the full decision-making process, including the

timetable and arrangements for consultation and participation as soon as possible

- make sure the developer gets a co-ordinated view from all council officers involved in the development process
- produce a written record of all discussions for the case file.

responsibilities of the developer

- allow sufficient time and resources to facilitate full pre-application discussions and project development, and seek agreement on target dates for the submission and determination of the planning application
- ensure that representatives sent to meetings have the authority to negotiate effectively
- respond within mutually agreed timescales to requests for further information and/or amendments
- agree and contribute to consultation and participation arrangements, which may involve public meetings and/or exhibitions
- attend meetings with Council officers as and when required
- prepare submission papers in a format that reflects the way that Committee papers are prepared and refers to appropriate

policy and guidance

- provide a completed high quality planning application that takes account of the advice provided, including all necessary plans, illustrative material and supporting statements.

paying for pre-application discussions

Well-organised and corporate pre-application discussions can be demanding on local authority staff resources. However, the benefits to a development company of consistent, reliable and up-to-date advice tailored to its specific needs provides a degree of certainty that is likely to result in cost savings through the avoidance of delays and abortive work. Developers therefore seem willing to pay a reasonable fee for a pre-application service that provides these benefits. Fees need to be set at a level that reflects the additional input from the local planning authority without acting as a disincentive to potential applicants to engage in pre-application discussions. The payment of a fee also leads to the expectation of a thoroughly professional and timely service!

The present planning application fees system does not include a specific fee for pre-application discussions. Section 93 of the Local Government Act 2003 introduces a general power for authorities to charge for discretionary activities, that is, services

that an authority has the power, but is not obliged to provide. In the case of planning, this may apply to areas of activity outside the scope of the existing fees structure, such as pre-application discussion and advice. Taking one year with another, the income from charges for such services must not exceed the costs of providing them.

A small number of authorities are using Section 93 powers to charge in relation to pre-application discussion and advice. These take the form of charges to developers rather than householders, and are usually for major applications as defined by DCLG (10 or more dwellings or 0.5 hectares for residential sites, and 1,000 sq. m. floor space or one hectare for all other uses).

To gain value for money from a pre-application meeting, it is necessary for a developer to provide the council with sufficient prior information so that the planning officer invites all the relevant people to participate. This is likely to include plans and photographs of the site and its surroundings, details of existing use and ownership, and sufficient information about the development proposal to elicit a meaningful discussion. Scheme drawings should include preliminary plans, showing relationships to adjacent buildings, access, servicing and parking, and possibly with some indication of the architectural approach and materials to be used.

The council should provide an agenda covering the topics to be addressed at a pre-application meeting. This will include an explanation of the relevant planning policies and an examination of how the proposal matches up to them. The meeting will investigate any conservation or listed building implications where these arise. The impact of the proposal on the local environment will be a major component of the discussion, along with access and transport implications.

The developer should be able to leave the meeting with a clear view on how the proposals will be assessed by the council, and

an understanding of the changes needed to gain acceptability. The advice should be promptly confirmed by letter, which also provides the opportunity to explain the status of the advice, which must be without prejudice to the formal consideration of any subsequent application by the council.

The London Borough of Camden charges for pre-application meetings on major developments. For this payment, the Council undertakes a site visit and arranges a meeting for the potential applicant with input of all the staff needed to advise on the case. Within 10 days of the meeting it provides written confirmation of the advice and views that were given, and identifies the information needed for a valid application. This will include a list of any supporting statements needed to show how the proposal meets Camden's policies and guidance.

The Council will also advise on whether a Section 106 Agreement is likely to be required, and the process to be used in drawing it up. It also gives advice on the groups and organisations that the developer needs to consult.

All this is set out in a *Pre-application Meeting Report*, for which there is a ten- page proforma.

The pilot scheme has been positively received by developers and is currently being reviewed and refined.

Details are available from:
[www.camden.gov.uk/ccm/navigation/
environment/planning-and-built-environment](http://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment)

procedures and practices – a toolkit

spatial planning

The planning legislation of 2004 creates a more proactive system with the potential to deliver better quality development. The new emphasis on spatial planning brings policies for the use and development of land together with other policies and programmes that influence places and the way they work.

Local planning authorities are required to set a clear vision for the future pattern of development and to focus on outcomes and on the proactive management of changing places (rather than simply defining a set of rules). Within this more active approach, planners have a role in bringing sites together for development, and being proactive in delivering the community strategy vision.

Local Development Frameworks should define broad objectives for environmental and design quality, and set delivery targets for planning, housing, economic development, urban and environmental management. These objectives will inform the area action plans that, with the benefit of community engagement, address the place-making functions of local government.

Pre-application discussions will take place within this overall planning context, and may be governed by a suite of

documents, including the council's core strategy, area action plans, masterplans, design guides and codes, and site specific allocations, such as planning and development briefs.

planning and development briefs and design codes

The most useful planning authority documents for pre-application discussions are likely to be site-specific briefs and design codes. Where a known developer already owns, or has an option to purchase a site, it makes good sense for the brief or design code to be worked up jointly by developer and council at an early stage of the pre-application process.

For guidance on the preparation of planning and development briefs, see *Planning and Development Briefs: A Guide to Better Practice* (DETR, 1998). In general, briefs should concentrate on key principles regarding the development of the site, and avoid prescriptive detail, so allowing scope for the developer and their architect to introduce their own creative ideas.

Guidance on design codes is available in *Preparing Design Codes: A Practice Manual* (DCLG and CABE, 2006). Design codes are technical and precise. They provide detailed written and graphic rules that establish with precision the two and three

dimensional design elements that go alongside a masterplan or area vision. They are particularly appropriate for a large development, often to be built in phases over an extended period.

An example of good practice in this regard is the concept statements produced by Chelmsford Borough Council. These involve a short, concise expression of the design approach deemed necessary to obtain the best from a site and to deal with constraints and opportunities. Statements provide informal officer guidance (based on site characteristics, local context and urban design) but have not been subject to public consultation.

They were praised by the Best Value inspector's report for the Council's development control service in July 2001: "We particularly liked the 'Concept Statement' which we felt to be an example of interesting practice... The statements produced on a folded A3 page set out the planning history and objectives, planning policy and an annotated site plan which gives clear advice to potential developers... and would be useful where, for example, a site came on the market to be sold quickly by tender."

Examples of concept statements are available in pdf format from: www.Chelmsford.gov.uk/index.cfm?articleid=9358

The authoritative brief or design code that has been formally adopted following a consultation process provides the most reliable guidance on the local planning authority's position. Such

guidance should be de rigueur when a public authority is disposing of its own land for development, or where an important site has been earmarked for development through the plan making process.

However, the preparation of an adopted brief or code can be a lengthy process. Many development opportunities occur when windfall sites unexpectedly come on to the market. In these situations a rapidly produced provisional brief or concept statement can be better than no brief at all when it comes to pre-application discussions. In preparing it, the planning officer will, having considered the key criteria for a successful development, be able to engage in a more constructive dialogue with a potential developer.

design and access statements

The preparation of the design and access statement that has to accompany most planning applications, provides a useful agenda for pre-application discussions. Without determining the architectural or landscape detail of a project, it sets out to explain how an understanding of the site's context has informed the amount of development, uses, layout, scale, access, general appearance and landscaping approach. The important role of the design and access statement is to expose the thought processes and rationale behind a proposal.

In dealing with the access part of the statement, it is important that access officers, building control surveyors and highways engineers are given the chance to comment whenever it is appropriate to ensure that the design approach is consistent with other legislative requirements.

The statement is evidence of the extent of analysis and the quality of thought that have been dedicated to developing the scheme. As the basis for communicating and negotiating development concepts, the statement is an ideal mechanism through which the developer and planning officer can discuss

and agree the important principles of a scheme before it is worked up into a detailed application.

It should ensure that the planning officer fully understands the genesis of the scheme, has the chance to interrogate the logic behind it, and is better able to explain the application to the Committee. The Statement, written in plain English, should also help local communities and consultees to understand the basic thinking behind the development.

Advice and guidance on Design and Access Statements are contained in DCLG Circular 01/2006 *Guidance on changes to*

the development control system (June 2006) and the CABE/PAS publication *Design and Access Statements; How to write, read and use them*" (published 2006 and available free from CABE).

a corporate approach – the development team

The Development Team approach is a mechanism for ensuring that the Council acts in a corporate way when dealing with major applications and is an effective mechanism for assigning a cross cutting responsibility for the delivery of development across the whole authority. A corporate team, led by the

Bath and North East Somerset Council is one of many authorities that have established a development team approach. In its advisory leaflet it sets out "The Council's Commitment" as follows:

If the information submitted is of appropriate quality, the Development Team will normally respond to the enquiry within a period of between 14 and 28 days of receipt of the letter, plan(s) and supporting documentation.

On submission the Council is committed to the following:

- providing a comprehensive and consistent response
- indicating the problem areas with any proposal which need to be addressed prior to the submission of a planning application
- identifying subject areas where further information may be required, such as Environmental Statements, Transportation Assessments, Ecological Surveys, etc.

- detailing any corporate requirements such as the provision of transportation measures, affordable housing and community facilities.
- a clear indication of why a proposal might be unacceptable, particularly in relation to current local and national planning policies.

The response made by the Development Team is intended as the first stage of a dialogue between the Council and developers that should take place before a planning application is made. Once the comments and any requests for further information made by the Development Team have been taken into account and acted upon, developers and their agents can then have meetings directly with key members of the Development Team in order to discuss their proposals 'around the table'.

The leaflet *The Development Team: An integrated approach to dealing with development proposals* is available from: Planning Services, Bath & North East Somerset, Trimbridge House, Trim Street, Bath BA1 2DP

development control case officer or occasionally by the head of the planning service, will meet to consider the proposal together and provide coordinated advice. Planning officers will be joined by staff responsible for highways, economic development, housing, conservation, ecology, town centre management, archaeology etc. according to the nature of the site and the development proposed for it. Large urban authorities, where major developments occur regularly, may appoint a 'major developments officer' to provide consistent leadership to a corporate development team.

The development team will be the hub for the council's input into pre-application advice, but it is also important that developers take a similar approach and make sure that they too bring all the disciplines together as a team, especially for the larger developments. They too must avoid a situation where one consultant offers a solution to the authority that cannot be delivered because another consultant rules it out. This causes a loss of trust that undermines successful negotiations and is particularly damaging where the ill-considered suggestion has been put before a community group only to be withdrawn following detailed consideration back at the office.

a project management approach – planning performance agreements

To deal expediently and effectively with particularly large or complex developments, a project management approach is recommended in which the planning authority and developer agree to manage their discussions and the process of dealing with the proposal in accordance with timetables, principles and procedures arrived at together. The agreements are drawn up at the pre-application stage and govern the process through to the submission and determination of the application.

They involve a serious commitment on all sides, and will not be justified on every occasion. However, they are particularly appropriate for:

- developments of major significance in terms of regeneration or investment value
- developments with wide corporate involvement by the council
- developments eligible for large-scale time-limited public funding.

The essence of the approach is teamwork centred on regular project management meetings between local planning authority and developer (and/or their representatives). Each side brings their relevant professional officers and consultants to these meetings. External consultees should be included wherever appropriate. A lead person from each side acts in project management roles, and one of them (usually from the local authority) chairs the meetings. The local authority should also appoint a project champion, such as a senior corporate officer or member.

The lead officer from the local authority is responsible for getting corporate buy-in to the process and securing the participation of all relevant council departments in the project team meetings. According to the nature of the development and/or its location, representatives from other organisations (such as a passenger transport executive, the Environment Agency or English Heritage) may be invited and encouraged to attend these meetings.

The project team will agree on a project plan and programme of work. This must include a commitment to an agreed objective for the scheme, a timetable setting out the key stages in the process with target dates and milestones, identification of key issues and a process for how they will be resolved and who is responsible for identified tasks. The team should identify the risks and threats to the programme and anticipate how these would be overcome. It will regularly review progress against the timetable, and all parties will be committed to taking any action necessary, or increasing resources, to avoid delays and to keep the project on target.

The project team must address a number of key tasks at an early stage. It must review the existing policy framework to establish whether it provides the necessary guidance and certainty. If it does not, it will need to identify how the gaps are to be filled, for example by the preparation of a masterplan, and how and when any additional policy development is produced, and what status it will have.

The team also needs to ensure that the relevant information exists to appraise the development and complete any impact assessments. It should review its evidence base and agree to take early action to commission any further work, for example retail or traffic surveys that will be required. It must also check that all the areas of expertise are available to each side – for example,

does the developer need to add an archaeologist to the team?

It will also be necessary, through the project team, to agree on arrangements for engaging the public. When will this be done, through what procedures, and who will take the lead? Similarly, a careful strategy for engaging local councillors in pre-application discussions will have to be agreed.

The project team through its meetings will provide the forum for discussing a Section 106 Agreement and identifying the heads of teams. Smaller teams, meeting outside the project group, can address the details of the agreement.

It will also provide the forum for clarifying how the local

Birmingham City Council has been using a Project Management approach for some years to deal with major applications like The Mailbox.

The City Council was made aware of the intent to market the redundant Post Office sorting office (at 815,000 sq.ft. the largest single building within the city centre) in early 1997. At the time it was envisaged that the original building would not be retained, but the developer who acquired the building proposed a spectacular mixed-use conversion with additional accommodation added to both the top and the rear.

Significant pre-application discussions with both officers and members, with the City Council appointing a 'project champion' (not the development control officer) ultimately enabled the planning application to be successfully approved within a 13 week timescale. An issues report was presented to committee prior to determination to identify key issues concerning planning obligations, public rights

of way, connectivity and uses. Planning approval itself was innovative, giving the City Council the necessary robustness whilst providing flexibility for the developer to respond to changes in market conditions. The maximum floor areas for each of the proposed uses within the building were granted approval and planning conditions attached to permit the flexibility required by the developer to vary these allocations whilst maintaining a sufficient degree of mixed use. The second phase of the Mailbox – the Cube, has applied the same approach but in this particular case the City Council is also proposing to utilise its CPO powers to assemble the site and facilitate the development.

The developer has made it clear that this constructive relationship with the Council, from the point of acquisition of the property, enabled the financing of the project to go forward based on a form of planning permission that allowed for optimisation of market conditions and negotiations with potential occupiers.

authority will deal with any land and property interests it may have in the development. Again, the detail of these negotiations will be conducted elsewhere, with the project team brought in only when critical issues arise that could jeopardise the progress of the project.

The process will ensure that the developer has a very precise understanding of the extent of material that is required for the planning application, including any supporting evidence, along with a reliable prediction of the time required to process it.

The Department for Communities and Local Government intend to publish a consultation paper discussing proposals for the integration of Planning Performance Agreements into planning practice for major planning applications in the early Spring 2007. This builds on the work undertaken during a pilot project on the use of Planning Delivery Agreements in 2006.

[The role of agreements is described in the *Report on Planning Delivery Agreements* produced in January 2006 by the Advisory Team for Large Applications (ATLAS), part of the Planning Advisory Service hosted by English Partnerships – available from www.englishpartnerships.co.uk/atlas]

section 106 agreements

The negotiation and preparation of Section 106 Agreements is often a main cause of delay to major applications. This is particularly so when more than one Council service (or in two tier authorities, two Councils) have an interest in the case. When different departments have requirements for contributions towards highway improvements, travel plans, affordable housing, education, cultural or open space provisions, it is possible that their collective demands exceed the capacity of the development to contribute. The developer is placed in an oppositionist role whilst the planning officer seeks to mediate between colleagues. The consequent delays and uncertainties are one of the more frustrating aspects of the planning system.

In well-organised local authorities, there are formulae for calculating contributions to different services, and standard templates and model agreements that can be tabled for early examination and discussion by developers. All this can be incorporated within a *Planning Obligations Developers' Pack* that is available to anyone undertaking a project. Where this level of information is available, developers are able to ensure that such costs are built into their financial models, thus avoiding the risk of arguments over viability and site acquisition costs that have been a common feature of negotiations. The appointment of an officer with specific responsibility and a recognised corporate role to produce and maintain such arrangements is recommended.

The principles of any Section 106 Agreement should be discussed as part of the pre-application discussions and the draft section 106 agreement could constitute part of the material submitted with the planning application. It is often beneficial to ensure that the relevant legal officers are brought together early on so that standard requirements and clauses are well understood and can be agreed by both parties and indeed that all the necessary parties are cognisant of the requirement to be a party to the agreement and working to an agreed timetable.

Exeter City Council's Legal Services Department has a web-based Planning Obligations pack that provides a guide to the process, examples of Section 106 uses, an explanation of the implications for applicants, and instructions on what the Council requires. It also provides standard templates and standard clauses for use with the templates.

www.exeter.gov.uk

[See also *Securing community benefits through the planning process – Improving performance on section 106 agreements* published by the Audit Commission August 2006 and available on the website at www.audit-commission.gov.uk or in hard copy through Audit Commission Publications, PO Box 99, Whetherby, LS23 7SA]

structured participation and demographic sampling

A problem commonly encountered in public consultation exercises is the disproportionate impact of a vocal minority implacably opposed to the development. Their extreme behaviour can drown out potential support from a wider cross-section of the community and prevent development that could have been to the benefit of the majority of people.

Techniques are being developed to disseminate information on a development proposal and sample public opinion through specially designed websites and software. At this stage these have not been objectively assessed for fairness or effectiveness but are being used in some very large scale developments by the development industry.

A **structured participation process** that canvasses opinion from a statistically representative sample of the population may be justified where a major development is likely to have wide ranging benefits to the general population, but upset a vocal and local minority.

This process typically involves random sampling of the local population by age, economic activity, race, gender and geographic location to arrive at a small representative group of between 50 and 100 people. These people will be asked to allocate one or two days of their time (for which they will be reimbursed) to engage in discussions with the council and developers about the project. For the process to work well it is essential that they be thoroughly briefed on the issues and

practicalities facing the developer, so that they approach the task with a sense of realism. They will be invited to discuss their aspirations for the area in question and may be asked to help in devising a brief or criteria for the development to meet. The same or a similar group may be invited back later to assess the performance of the proposed scheme against these criteria.

In parallel with this, a complementary programme of workshops for key stakeholder groups may take place. This will draw in local amenity societies, Chamber of Commerce and business groups, and statutory agencies. They may run through a similar process alongside the developer and council officers. All views will be carefully documented and agreed. A further process (which can provide a cross-check against other mechanisms) is to consult a **Citizens' Forum**, again selected through a random structured sampling technique.

a development control forum

This is a means to secure early engagement with the public and politicians. It provides the developer with the opportunity to share the proposal, hear reactions to it, and respond to them before making an application.

Invitees to the Forum may include District Councillors, Parish Councillors, members of residents' associations and adjoining owners, together with (where appropriate) staff from other public bodies, such as the Environment Agency or Highway Authority. The meeting should be open to the public, and the press may attend. It is important to ensure that representation is fully balanced so that all points of view are encouraged and debated.

The expectation is that the Forum provides the opportunity for an open exploration of the issues, with proponents having the chance to hear opposing views. The process is designed to encourage speakers to present their case in a more rational and less emotive way. The overall objective is for subsequent

After its previous plans for the development of the Canon's Marsh site in Bristol had been turned down, **Crest Nicholson** (the developers) decided to carry out a comprehensive programme of public consultation to engage and listen to the public on the future redevelopment of the site before drawing up a new masterplan. The public consultation incorporated two stages. The first stage set about creating a vision for the site, refining the brief for a masterplan, and establishing public criteria for a successful development. The second stage assessed the draft masterplan against these criteria. The developer commissioned consultants to manage and facilitate this consultation programme. A Consultative Group was set up comprising representatives from twenty interested stakeholder groups with the developer and Council, to oversee the process.

The first stage consultation consisted of three workshops, each with sixteen members of the general public, recruited to represent the Bristol demographic. They undertook a tour of the site and received presentations from Crest Nicholson, Bristol City Council and the master-planner before drawing up a set of criteria to represent the public's expectations for

the development.

The second stage of the process involved two workshops, each with a similar number of participants. They were briefed on the public criteria arrived at by the earlier groups, undertook a tour of the site and met with a panel of expert witnesses. They then discussed the initial draft masterplan and rated this against the public criteria.

Finally, a Citizens' Forum was convened with over 100 participants representing the Bristol demographic. They viewed a video of the site, heard from a panel of expert witnesses, received an explanation of the draft masterplan, engaged in full group and small group discussions, and filled in questionnaires to record their individual assessment of the degree of conformity with the public criteria.

The process secured overall endorsement for the principles of the masterplan and, despite vociferous opposition from a local faction, planning permission was granted with overwhelming support from Councillors.

planning submissions to be based on a better understanding of the key issues, for Councillors to be better informed when taking decisions and for major applications to stand a better chance of being determined within the thirteen-week period.

interim committee reports

This is an effective way of building a degree of certainty into pre-application negotiations. At an appropriate stage in negotiations, planning officers may prepare a committee report

that sets out the key issues that have emerged during discussion, and seek member endorsement to the approach that is being pursued, or simply to present the scheme as an information item to members. It also provides the opportunity for committee members to raise questions of their own or seek further information regarding the proposed development. In general, it is important that members (and particularly the committee chairman) are kept informed through regular information briefings about progress on key projects so that pre-application discussions are conducted in a politically aware environment.

Whilst a number of councils hold Development Control Forums after a planning application has been submitted, Waverley Borough Council has been pioneering their use at the pre-application stage. Their procedure has settled into the following format:

- **planning officers will have met the developers beforehand to gain an understanding of the proposed development, and will produce a short briefing note for Councillors**
- **the meeting commences with a short introduction by the planning officer outlining the relevant policy background and the issues identified thus far**
- **the developer has 20 minutes to make a PowerPoint presentation of the proposed scheme**
- **selected parties have 10 minutes each to address the Forum before the Chair invites questions and comments**
- **the main points and issues raised are typed into a laptop during the debate and projected onto a screen at the end of the meeting to ensure that they have been captured to everyone's satisfaction**
- **this summary is printed and e-mailed to participants**
- **the event is recorded on a web cam and posted on the Council's website, where it is available for anyone to examine**
- **meetings run from 1600 to 1800 hours.**

The officers need to make sure that the transparency of this process is maintained for members of the public and to ensure that the councillors are well briefed to avoid expressing opinions that could reasonably be construed as prejudging the final scheme.

agreeing application contents, checklists and presentation materials

A significant cause of delay in the planning system derives from the failure of applicants to supply all the information needed by the local planning authority to determine the application. One objective behind pre-application advice and discussion is to ensure that applicants are aware of and provide all the information required for a complete submission.

Checklists provide a simple guide for prospective applicants and are particularly helpful for dealing expeditiously with minor applications, including those submitted by or on behalf of householders. At the other end of the scale, Planning Performance Agreements provide certainty about what is required for major applications.

Communities intend to publish a revised best practice guidance on validation of planning applications which follows from the consultation paper of Summer 2006. The consultation paper proposed a national checklist list of items which should accompany a planning application and a local planning authority's own checklist of requirements that would meet local circumstances.

Doncaster Metropolitan Borough Council

provides a Major Applications Check List that seeks to ensure that applications contain all the information required to process a decision. The checklist identifies the circumstances in which any of the following items of information will be required:

- environmental impact assessment
- transport assessment
- travel plan
- access statement
- retail impact assessment
- needs and sequential test
- flood risk assessment
- ecological appraisal
- landscape assessment
- trees and hedgerow survey
- heritage conservation assessment

- archaeological survey
- proposal statement (covering compliance with planning policies, details of consultations and community involvement, etc.)
- design statement
- sustainability appraisal
- topographical survey
- noise and/or vibration impact assessment
- contamination survey
- air quality survey
- planning obligations

Applicants are required to complete and sign the checklist for submission with the application, stating their reasons for not providing information alongside any of the items that are not considered relevant to the project.

www.doncaster.gov.uk/Living_in_Doncaster/Neighbourhoods/Planning

Presentation drawings, DVDs, computer realisations, brochures, architectural models can all be very expensive to produce and are a waste of the developer's resources if they are not to form an important part of public consultation or presentations to committee. Planning officers can help developers make sensible judgements about the material they produce, ensuring it is clear, concise, and focuses on the key issues for decision-making. It is a critical part of effective pre-application discussions that the check list of important information to support an application is agreed.

appendix 1

guidance to councillors on discussions with developers

Do

- hold discussions before a planning application is made, not after it has been submitted to the authority
- preface any discussion with disclaimers; keep a note of meetings and calls; and make clear at the outset that discussions are not binding
- recognise the distinction between giving advice and engaging in negotiation
- structure discussions and involve officers
- stick to policies included in adopted plans, but also pay heed to any other considerations relevant to planning
- use meeting to show leadership and vision
- encourage positive outcomes
- ask for training from your council in probity matters.

Do not

- meet developers alone or put yourself in a position where you appear to favour a person, company or group – even a ‘friendly’ private discussion with a developer could cause others to mistrust your impartiality
- accept gifts or hospitality
- expect to lobby and actively support or resist an application and still vote at committee (or even stay in the room during discussions)
- seek to influence officers or put pressure on them to support a particular course of action in relation to a planning application
- invent local guides on probity in planning which are incompatible with current guidance – look for commonly held and common sense parallels in other authorities or the principles set out in the national LGA guidance.

Source: *Positive Engagement; a guide for councillors*
ODPM, PAS, LGA et al, 2005

contact details

Planning Advisory Service
Layden House
76–86 Turnmill Street
London EC1M 5LG
www.pas.gov.uk
tel 020 7296 6880

Home Builders Federation
1st Floor
Byron House
7–9 St James's Street
London SW1A 1DW
www.hbf.co.uk
tel 020 7960 1600

Commission for Architecture and the
Built Environment
1 Kemble Street
London WC2B 4AN
www.cabe.org.uk
tel 020 7070 6700

Land Securities
5 Strand
London WC2N 5AF
www.landsecurities.com
tel 020 7413 9000

National Planning Forum
www.natplanforum.org.uk

Planning Officers Society
Ronaldsway House
Bilstone
Nuneaton
Warks CV13 6NG
www.planningofficers.org.uk
tel 0845 6019 065

Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU
www.communities.gov.uk
tel 020 7944 4400

British Property Federation
7th Floor
1 Warwick Row
London SW1E 5ER
www.bpf.org.uk
tel 020 7828 0111

Addison & Associates
611 Balmoral House
West End Quay
2 Praed Street
London W2 1JL
www.addison-associates.co.uk
tel 020 7087 4123



Planning Advisory Service (PAS)
Improvement & Development Agency
76–86 Turnmill Street,
London EC1M 5LG



telephone:
020 7296 6880 (ihelp)
email: pas@idea.gov.uk
www.pas.gov.uk



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