

**CABINET**

**21st February 2024**

**Subject: Development Management Update**

**Cabinet Member: Councillor Gibson – Strategic Planning  
Councillor Mountford - Resources**

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**1. Purpose of Report**

To note the response from the Chief Executive to the Department for Levelling Up Homes and Communities in respect of possible designation intervention due to a drop in the planning performance against statutory targets of major planning applications. To endorse the action plan to sustain improved service.

**2. Links to Council's priorities and objectives**

This report impacts on the Corporate Plan objectives - Economy and Growth, Place and Environment and Resources.

**3. Recommendations**

- 1. Cabinet notes the letter dated 10 January 2024 from the Department for Levelling Up, Housing & Communities and the response from the Chief Executive dated 26 January 2024.**
  - 2. Cabinet endorses the actions already taken for sustained improvement in the service, including the revised pre-applications service policy.**
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**4. Background**

- 4.1** On 10 January 2024 the Chief Executive received a letter from the Department for Levelling Up, Housing & Communities ("DLUHC") advising that the Council could be liable for designation under Section 62 of the Town and Country Planning Act. This was on the basis of the Council's performance in determining applications for major development within the statutory time limits set by the Government. The letter from the DLUHC can be found in **Appendix 1**. Please note that names, the signature and email addresses of DLUHC staff have been redacted.

- 4.2 The Council was invited to respond to the letter and to set out why designation should not be applied. The response was sent from the Chief Executive on 26 January 2024 and can be found in **Appendix 2**.
- 4.3 The response was clear in setting out why the performance had dropped and the improvement in performance in Q3 of 2023/24 and the projected performance in Q4, which combined would address the decline. As the performance measure is based on a 2-year rolling average, a correction within one quarter above the targets may not be sufficient to achieve the target over a two-year average.
- 4.4 As set out in the Chief Executive's letter, as the Council has already improved performance and is putting in place measures to sustain that performance – including recruitment and a revised pre-application process – there is no need for designation.

### **Designation**

- 4.5 It is not clear from the DLUHC letter what form designation would take. Three local planning authorities have been formally notified of designation: Uttlesford, Chorley and Fareham.
- 4.6 In such cases, and depending on the reason for the designation, councils can have some or all of their decision-making powers removed. In the case for the designation liability notice for Castle Point, this applies to major development so the Council could remove decision-making for major developments, which could include applications being made directly to the Planning Inspectorate, for example.
- 4.7 There are many risks associated with designation:
- The loss of decision-making and local accountability
  - Loss of fee income and costs, to be borne by a council or another organisation making decisions
  - Loss of staff and staff morale
  - Impact on a council's reputation.
- 4.8 Designation can be time limited after which, if a council can demonstrate that it can sustain performance, the designation may be lifted. Previously, when liability of designation is first sent to a council, the Government may agree to review the performance again in six months. If it has improved and is sustainable, then designation may be avoided.
- 4.9 The Government has also asked the Planning Advisory Service (PAS) to reach out to local authorities whose performance has dropped below targets, so that they work with the councils on matters such as training, improvement plans and general advice on best practice.
- 4.10 Officers have met with PAS on a number of occasions. PAS also provided Member training in December. Officers will continue to work with PAS and seek their advice on what improvements can be made as the performance improves.

## **Performance Targets**

- 4.11 As set out in the Government's Planning Guidance on Determining a Planning Application, time limits are set for determining applications:

*'The statutory time limits for applications for planning permission are set out in article 34 of the Town and Country Planning (Development Management Procedure (England) Order 2015 (as amended)). They are 13 weeks for applications for major development, 10 weeks for applications for technical details consent, and (from 1 August 2021) applications for public service infrastructure development, and 8 weeks for all other types of development (unless an application is subject to an Environmental Impact Assessment, in which case a 16-week limit applies).'*

- 4.12 These time limits are in place to help speed up the determination of applications and they provide a basis on which after the time period has expired an applicant may be on the grounds of non-determination.
- 4.13 However, the Government also recognises that not all-time limits can be met; where, for example, the application is complex or revised plans are required. In such instances an Extension of Time can be agreed between the applicant and the council. This in effect creates a new target date against which performance is then measured.
- 4.14 The speed of decision-making within the time limits forms the basis for the main planning performance indicators. These indicators set by Government are that at least 60% of major applications should be determined within 13 weeks or an agreed extension of time or planning performance agreement; and 70% of minor applications within 8 weeks.

## **5. The Council's performance and actions**

- 5.1 The performance of Castle Point dipped to 30% over a rolling two-year period in Q1 2023/24.
- 5.2 As mentioned in paragraph 4.3, performance improved in Q3 to 67%, which improves the rolling two-year performance to 47%. Performance in Q4, the current quarter, is on track to be above 60%.

### **Actions**

- 5.3 As set out in the Chief Executive's response, the dip in performance is unusual for the Council, as in the last 10 years performance has met targets and in three years been at 100%. The letter sets out why performance dropped:
- Not having extensions of time in place.
  - Not agreeing extensions of time for an adequate period beyond a Development Management Committee date to issue the decision notice if the application is contrary to the officer's recommendations.
  - Our practice of seeking to ensure quality of development rather than speed of decision-making, which has led to delays.

- 5.4 The Council has not disputed the statistics, but a minor accounting practice means that one application has been removed from the list and the figure was actually 33%.
- 5.5 However, the downturn in performance coincided with the loss of staff within the development management team, including the two most experienced officers who retired. As a small team, the loss of staff has a major impact. However, the team is now fully staffed, and as part of ongoing improvements we are looking at how we can use additional income (planning fees were increased in December and to be increased yearly from April 2025 in line with inflation) and we have secured £30,000 of the Planning Skills Delivery Fund to be spent on staff and a further £70,000 to be spent on design codes; the compliance will speed up decision-making.
- 5.6 We have also secured £100,000 of funding from the Digital Planning Improvement Fund to be spent on digitising TPO records, which will make that element of the service more customer facing and efficient, saving officer time. That fund also means that we are now part of a national network investigating and sharing best practice on the use of technology to improve planning performance and decision making.
- 5.7 The progression and eventual adoption of the castle Point Plan will ensure that we have the policies in place, with supplementary guidance, that will provide greater certainty and help sustain performance.
- 5.8 Officers will now seek an extension of time where applications are likely to not be determined within the target period and, in the case of those being decided by the Development Management Committee, the extension period will be set at least one month post committee to allow for finalising the decision notice and any Section 106 agreements.
- 5.9 Finally, the pre-application process has been reviewed using best practice. This is set out in **Appendix 3**.
- 5.10 Pre-application discussions are not counted towards the Government's performance. They are designed to help developers through the application process, so that any application is likely to meet validation requirements, our policies and guidance, and thereby reduce the risk of refusals (subject and without prejudice). This consequently reduces appeals or resubmissions. The more certainty there is, and the faster applications can be determined, without diminishing quality of development.

## **6. Corporate Implications**

### **a. Financial implications**

The financial implications are set out in the body of this report. If the Council is subject to designation, a further report on the likely financial implications will be needed.

### **b. Legal implications**

The Council is permitted to charge for providing discretionary services on a cost recovery basis, as set out in Section 93 of the Local Government Act 2003.

**c. Human resources and equality implications**

**Human resources**

The Planning Team is resourced to a level where it has previously been able to provide this service and will recommence doing so from 1 March. Where income from pre-application fees or planning performance agreements is significant, additional resources will be brought in on a temporary basis to manage workload.

**Equality implications**

All Policies and procedures are scrutinised to ensure that none of the provisions conflict with the Council's equality obligations.

**d. Timescale for implementation and risk factors**

The revised Pre-application Service will come into immediate effect.

**Report Author:** Ian Butt – Director of Place and Communities  
Stephen Garner – Assistant Director for Development Services

[REDACTED]  
[REDACTED]  
Department for Levelling Up, Housing & Communities  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Castle Point Borough Council  
[Via Email]

10 January 2024

Dear Chief Executive,

**Local planning authorities that may be liable for designation under section 62A of the Town and Country Planning Act 1990**

I am writing to you to let you know the latest statistics on the speed with which planning applications for major and non-major development have been determined over the past two years were published on 7 December 2023. They are available here: <http://tinyurl.com/bxpn2fv>

The figures show that your authority **may** be liable for designation for the speed of its decisions on applications for major development under section 62A of the Town and Country Planning Act 1990, with reference to the updated designation criteria that were laid before Parliament on 19 October 2022 (available here: <http://tinyurl.com/lc8d7hc>).

For the 2024 designation round, the thresholds for the speed of decisions are:

- **For applications for major development: less than 60 per cent** of an authority's decisions made within the statutory determination period or such extended period as has been agreed in writing with the applicant;
- **For applications for non-major development: less than 70 per cent** of an authority's decisions made within the statutory determination period or such extended period as has been agreed in writing with the applicant.

The statistics show that your authority determined **30** per cent of applications for major development within the statutory determination period or such extended period as has been agreed in writing with the applicant.

Before any designations are considered, I would be grateful if you could inform us:

- (a) Whether any adjustments are required to correct any errors or omissions in the published data. Please use the attached spreadsheet to record the corrections. Clear evidence with supporting justification should be provided in respect of any proposed corrections submitted. Data in respect of applications made under S73 (1) should be removed from the published data where it will assist the authority.
- (b) Whether there are any exceptional circumstances that have affected your authority's performance which, in your opinion, would make a designation

under section 62A unreasonable. The attached Q&A provides further information on exceptional circumstances.

Requests that exceptional circumstances should be considered will be judged against two general tests:

- whether the issue affects the reasonableness of the conclusions that can be drawn from the recorded data for the authority, over the assessment period; or
- whether the issue had a significant impact on the authority's performance, for reasons that were beyond its control.

Any material in response to these points will be taken into account before final decisions are made, and should be sent to [REDACTED]

[REDACTED] and arrive no later than 26 January 2024.

I am copying this letter to your Chief Planner.

Yours Sincerely,

[REDACTED]

[REDACTED]  
[REDACTED]  
Department for Levelling Up, Housing &  
Communities  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

26<sup>th</sup> January 2024

Dear [REDACTED]

**Local planning authorities that may be liable for designation under section 62A of the Town and Country Planning Act 1990**

**1.0 Introduction**

- 1.1 Thank you for your letter dated 10 January 2024 advising me that Castle Point Borough Council might be liable for designation under section 62A of the Town and Country Planning Act 1990 due to its performance in determining applications classified as majors within the requisite statutory determination period, or such extended period as agreed in writing with the applicant.
- 1.2 This letter and its enclosed appendices represent the full response of Castle Point Borough Council and set out the progress to date that has been made by the Council to address the performance; the reasons for the Q1 & Q2 23/24 figures; and the steps being taken to maintain high performance.
- 1.3 The Council acknowledges that its performance has dropped from what had been consistently high levels. However, despite the drop in speed performance, the Council has maintained the high quality of developments and decisions that it prides itself on, by working collaboratively with developers and applicants.
- 1.4 This letter will attempt to set out the background behind the data. In particular we will highlight why our performance was so low, and how close some decisions were (which had extensions of time been in place, would have resulted in a performance of 78%).



- 1.5 This letter addresses the two main tests or exceptional circumstances as set out in paragraph 22 of Improving Planning Performance: Criteria for designation<sup>1</sup>, namely:
- 1.5.1 Whether the issue affects the reasonableness of the conclusions that can be drawn from the recorded data for the authority, over the assessment period; or
- 1.5.2 Whether the issue had a significant impact on the authority's performance, for reasons that were beyond its control.

## **2.0 The performance**

- 2.1 The Council does not dispute the figures in the published data, and we have double checked that these numbers are accurate. However, taking your advice that data in respect of applications made under S73 (1) should be removed from the published data where it will assist the authority, we note that there is a requirement to make a minor correction to the published data. The requested correction has been set out in the spreadsheet that you have provided. In summary, a S73 application from Q1 2023/24 should be removed. The corollary of this correction to the published data contributes to an increase to the local planning authority's performance to 33% over the monitoring period. Clearly the Council does not dispute this still falls well below the 60% target required for determination of major planning applications based on the methodology employed.
- 2.2 The Council anticipated a drop in performance as a result of a series of events which will be explained in more detail later in this letter. This meant that an improvement programme was identified at an early stage and this is continuing to be implemented with significant additional financial investment, including with additional funding through the Planning Skills Delivery Fund.
- 2.3 The aim of the improvement programme together with the additional resourcing is to swiftly improve the Council's major's performance. We believe this is already bearing fruit. In Q3 of 23/24 the Council achieved 67% on time for major applications which has contributed to improving the two-year rolling average to 42%. The Council is currently on track to achieve above 60% in Q4 2023/24 working in collaboration with applicants to bring forward suitable developments, with a positive outlook also projected in Q1 24/25 above the target threshold.

## **3.0 Designation**

- 3.1 The circumstances of designation are understood by the Council. The supporting documents accompanying your letter<sup>1</sup> rightly emphasises the crucial role that local planning authorities play in enabling development to deliver home ownership, building homes people can afford to buy and supporting economic growth.
- 3.2 The Council accepts and agrees that the level of service for determining major applications within the relevant statutory timeframes has (albeit temporarily) fallen short of targets, and below our own standards, which have, until last year,

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<sup>1</sup> Improving planning performance Criteria for designation (updated 2022) – Department for Levelling Up, Housing and Communities October 2022

been high. The planning system should be valued, resilient and capable of providing the service that local people and planning applicants expect.

- 3.3 Furthermore, the Council is also aware of the detrimental impact slow decisions can have on bringing forward developments through potential increased costs for developers and the potential to delay or discourage investment within the Borough. However, in the circumstances that sit behind the raw data, we would say that the delays have been minimal, and in two instances, the delayed decision has not stopped the residential development from taking place and discharge of conditions has been swift to enable development to take place.
- 3.4 It is the Council's view that speed of decisions alone are not the determinant factor in speed that development takes place. Post decision, developers can apply for amendments and have to discharge conditions, many of which are pre-commencement. Whilst the Council always seeks to minimise the number of conditions to reduce the time to a start on site (and will delay decisions to do so) conditions are used where statutory consultees insist or where a developer has failed to provide enough details with the application.
- 3.5 The Council absolutely recognises and agrees that a consistently high performing development management service is critical, alongside the Local Plan, to delivering and driving local development and economic growth for the benefit of local people and businesses. We understand that it is important that developers have confidence in the economy of the local area and the commitment of the Council as a whole to deliver the investment in homes and jobs that is needed both nationally and locally.
- 3.6 In alignment with the importance of the issues described above, the Council is preparing a strong programme to encourage growth, development and economic investment across the Borough. This will be achieved in several ways:
  - 3.6.1 Through the preparation of the Castle Point [Local] Plan for submission by April 2025;
  - 3.6.2 By working collaboratively and supporting developers and applicants to bring forward the best possible development through a new and re-imagined pre-application advice service using the Planning Advisory Service's documentation and advice as exemplars of best practice, whilst also engaging with local stakeholders;
  - 3.6.3 By committing to provide suitable resourcing and resilience within the planning team;
  - 3.6.4 By working proactively with landowners in identifying sites for development and maximising the use of the brownfield sites register; and
  - 3.6.5 By taking advantage of initiatives promoted by the Government to assist growth and development through the Planning Skills Delivery Fund and the Local Digital Declaration, as well as committing to the assistance afforded by the Planning Advisory Service to undertake a review of the development management service.

- 3.6.6 Through the development of Design Codes and a review of the Council's Residential Design Guidance these are promoting good design to minimise the risk of refusals and amendments to development.
- 3.7 We maintain good working relationships with developers and applicants to bring forward high quality developments. We provide agents and developers with detailed, open monthly newsletters which not only set out the root cause of delays and what the local planning authority is doing to resolve them, but also offer advice and assistance on planning matters across the board. These open newsletters have received positive feedback from recipients. We will shortly start a new agents and developers forum (we are active participant at an Essex level through the Essex Developers Group).
- 3.8 This engagement has contributed to the Council not receiving any formal complaints for late decisions. In fact, the Council continues to receive a number of compliments for the positive approach it has taken, which is a testament to the hard work and collaboration between officers and developers/agents. Indeed, correspondence received from a local agent who represents a significant number of developers supports the Council's approach and does not identify the local planning authority as being a primary inhibitor to development within the Borough (Appendix 2).
- 3.9 As this letter and its attachments demonstrate, the temporarily slower performance of the local planning authority has not inhibited development within the Borough, and, therefore, has not hindered new housing to be brought forward and further economic development to take place.
- 3.10 Historically the Council has maintained a very high standard of performance as illustrated in Figure 1 below.
- 3.11 The recent decline represents a small portion of this period, highlighting the temporary nature of this decline. Over the last ten years the Council has met the threshold in nearly 90% of the quarters, with 100% being achieved in 72% of quarters.
- 3.12 The Council considers that it should avoid designation at this current point in time as this would damage the confidence and trust that third parties have in the local planning authority to support much needed development. The impact of designation on these relationships and ability to bring forward suitably high-quality developments would be dire and in the opinion of the Council would not speed up the process of determining major applications. Most importantly, designation, would damage the reputation of the Council and discourage investment, whilst having a significant financial impact on the Council. This would not be in the spirit of the use of designation powers.
- 3.13 The Council would not advance this argument if we were unable to evidence that there was a strong history of high performance in this area and that the current performance was continuing to improve rapidly. Whilst there has undeniably been underperformance in the service between Quarter Four 2022/23 and Quarter Two 2023/24, this underperformance is not persistent or prohibitive in the determination of major applications. The table below illustrates the historic high performance of the Council and the latest trajectory. More

information below will demonstrate the cause of the most recent performance figures and how they are being addressed.

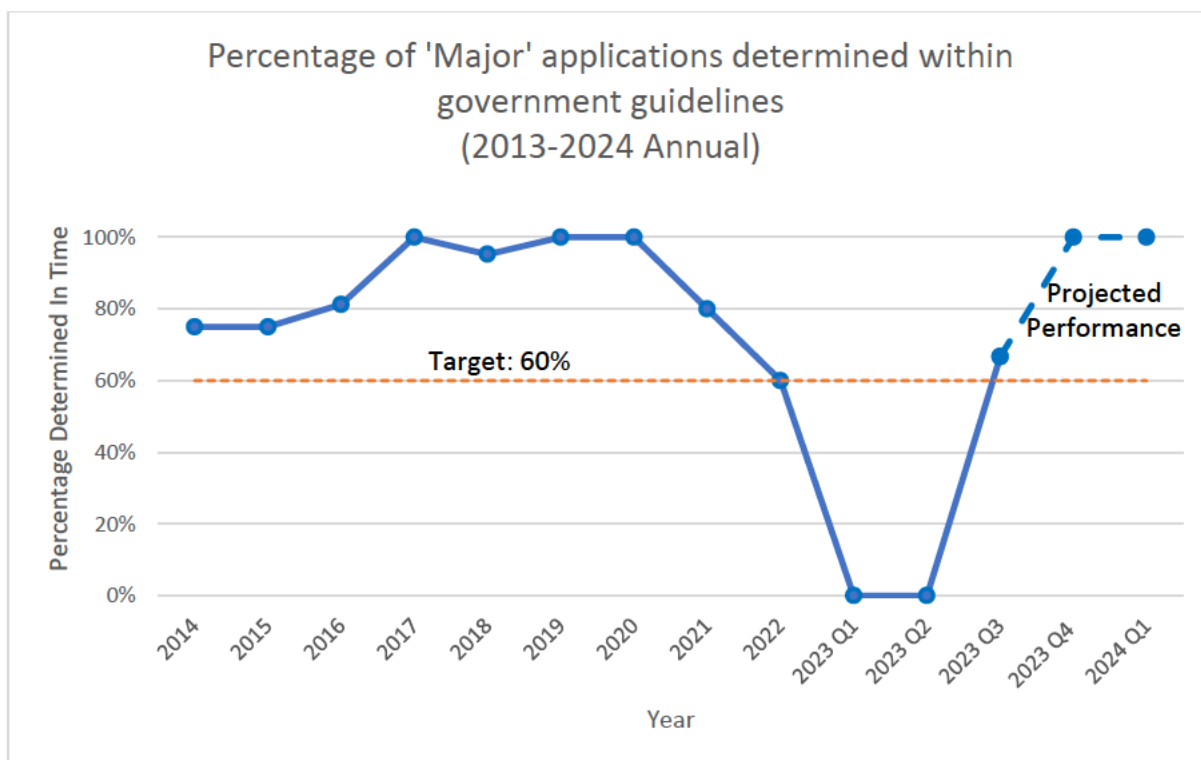


Figure 1 – Past Major Application Performance – Q1 14/15 to Q3 23/24 with Q4 23/24 and Q1 24/25 projected performance

#### 4.0 **Improvement in performance**

4.1 Figure 1 above shows the most up to date performance of Castle Point Borough Council in determining major planning applications, including the most recent quarter Q3 23/24, which has just been reported, but will show an upturn to 67%.

4.2 This upturn will result in the two-year average increasing to 42%.

4.3 It is anticipated that Q4 performance will be similarly strong (c75%) as will Q1 24/25, both of which are projected above the threshold.

#### 5.0 **Exceptional Circumstances – applications which fell outside the time limit**

5.1 Examining the individual cases behind the data introduces a number of exceptional circumstances which the Council considers should be taken into account. A detailed case by case analysis is included in Appendix 1, but can be distilled into four key aspects, which each in their own way merit exceptional circumstances.

5.1.1 Firstly, the local planning authority have in three identified cases (21/0922/RES, 22/0339/FUL & 22/0922/FUL), not utilised the extension of time mechanism. This was a mistake, caused by working in a high-pressure environment to reduce the backlog of planning applications which was seen as the priority and also focusing on making sure that a robust, defensible and right decision was made.

Going forward the local planning authority has changed its approach to requesting extensions of time and will be more stringent about requesting extensions of time in all cases where they are genuinely required. The Council will continue to determine applications within the time limits and seek an extension of time where it has requested additional information from developers; awaiting statutory consultation responses; and/or in order to ensure that the development is of the highest standard and can proceed at pace post decision i.e. by reducing the number of pre-commencement conditions or appeals, both of which delay development.

- 5.1.2 Secondly is the adherence to the Council's governance and legal processes involved in determining applications. Whilst 96% of applications are delegated to officers, majors are generally determined by the Development Management Committee. The Council has been convening additional Committee meetings in order to determine applications more swiftly.

For two applications (21/1137/FUL & 22/0037/FUL), the decisions **were made within the determination period** by the Development Management Committee, but the decision notices were issued outside of the period. In both instances members overturned the officer's recommendations (overturns from recommendations of approval to refusal). In such instances the wording of the reasons for refusal is agreed by officers in consultation with the Chairman of the Committee after the meeting. This meant that, statistically, they were determined out of time by five and one working day(s) respectively. As the officer's recommendation of approval were overturned, it was not possible to agree extensions of time.

Past practice where applications were to be presented to the Committee was to agree an extension of time, where necessary, for a period of a week after the Committee to allow the decision to be issued. Reflecting on applications going out of time, we have changed our current practice to request longer periods of time (up to a month) to allow for overturns, amended decisions, deferrals and signing of S106 agreements.

This will be further augmented with additional compulsory elected member training, on top of that already carried out with specific reference to robust and defensible decision making, the need for speed and efficacy within the planning process and also how best to bring forward high quality development.

We are in the process of inviting the Local Government Association and Planning Advisory Service back for an update on a peer review conducted in 2019, that will also lead to, if necessary, revisions to the Development Management Committee handbook which is an adjunct to the Council's constitution.

- 5.1.3 Thirdly, in addition to the two previous cases, there have been two further cases (22/0633/FUL & 23/0085/FUL), where there has been an unwillingness from developers to agree to reasonable extensions of time. This is despite the Council seeking to design out identified issues, submit additional required documentation or waiting for consultation responses from key stakeholders which are central to determining the application.

In each case, officers were seeking to resolve matters of concern with the full knowledge and no disagreement or non-determination appeals, from the developers. Officers made efforts to agree extensions of time, but the applicants could not agree. Had they agreed, the applications would have shown as being within time.

Although these two applications, therefore, fell out of time, by continued working with developers to resolve objections, ultimately better, higher quality forms of development have been determined. It is further considered that this amounts to exceptional circumstances and has not delayed development.

These two applications highlight an important point. Where no extension of time is agreed by the developer, it is open to the Council to refuse the applications within the time period. This would be unreasonable and goes against the principle of collaboration the Council seeks and the achievement of high-quality development. Furthermore, refusing permission would only delay development pending the appeal process or submission of a revised application.

- 5.1.4 Fourthly, across the board, officers of Castle Point Borough Council have taken a pro-active approach to engage and work with developers during the application process to design out problems in line with the aims and advice contained within Chapter 4 of the NPPF.

This positive and proactive approach to seeking solutions to problems is also highlighted and emphasised in the Development Management Procedure Order<sup>2</sup> which requires local planning authorities to set out in a statement on decision notices how it has acted to find resolutions to identified problems.

An example of this proactivity was an application for development of 12 dwellings which was submitted in 2023 (23/0423/FUL). Following identification of multiple significant issues with the proposal, discussions took place with the developer and solutions were put forward in a collaborative redesign of the scheme through several meetings. Despite the significant changes to the proposal, officers were able to present this item to the Committee and receive a favourable decision within 13 weeks of submission. The alternative would have been a refusal and significant delay whilst waiting for the appeal to be determined.

Further examples of collaborative working and proactive solution based working practices can be seen in Appendix 1, specifically with reference to Hobsons (22/0633/FUL). Permission was initially granted for 30 units. The developers submitted a revised proposal for 32, that the Committee refused. The developer was keen to start on site so we worked proactively with the developer post permission to map out a way that they could build the 30 unit scheme and should they get permission for the additional two, that they could construct those with minimal disruption to their work programme. The larger

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<sup>2</sup> Paragraph 2 Section 35 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended)

scheme was won at appeal<sup>3</sup> but they have since advised us that they do not intend to build the larger scheme, so it has not stymied development.

Even though the developer only received notice that the additional two were allowed on appeal in January 2024, the development is nearing completion so the delay in dealing with the application for two dwellings did not stop 30 dwellings from being completed.

In addition, another example as set out in Appendix 1 (23/0043/FUL), we tried to work with the developer to resolve the issues, which included a vehicle parking stacker which would have crushed the cars due to lack of head room, however insufficient changes were made which forced a refusal to be issued and the application was determined in time. We are now seeking to work with the developer to resolve these matters on a subsequent scheme to avoid delays invoked by a subsequent appeal.

This behaviour in resolving problems is to be highly commended and is something which senior management strongly encourages and helps to facilitate with their officers.

- 5.2 The Council is not disputing that these applications went out of time and on reflection had we put in place the measures that are now in place to avoid these recurring, our performance would have been considerably above the threshold.

## **6.0 Further Exceptional Circumstances outside of our control**

- 6.1 During 2022/23 Castle Point Borough Council has experienced a rapid and significantly impactful loss of staff. The changes of staff in a small team have included:

6.1.1 Loss of two thirds of the experienced and knowledgeable staff;

6.1.2 Difficulty in recruitment of experienced staff and, consequently, an over-reliance on agency contract staff; and

6.1.3 An increase in the number and complexity of major applications, including those submitted on sites which had been previously allocated in the emerging Local Plan.

These factors are detailed below. But there is a clear relationship between the drop in performance and these circumstances.

- 6.2 The Council is a small local planning authority and has historically relied upon a small but strong team of six experienced officers who knew the Borough well and had developed high functioning relationships with local stakeholders. However, the downturn in performance coincided with the [REDACTED] within one-year (spring 2022 to spring 2023). Another experienced planner left shortly afterwards [REDACTED] a senior planner left

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<sup>3</sup> An award of costs for this application was dismissed as the Development Management Committee had made a legally sound and robust decision







- 6.10 In addition to this, the Council, aware of its performance, applied in September for the Planning Skills Delivery Fund (PSDF) to bring in additional temporary resources to help determine applications in a prompt and proactive fashion. Confirmation of a successful PSDF bid was confirmed in December which has been gratefully received.
- 6.11 Whilst it had initially been envisaged that if successful with the PSDF funding bid that temporary staff could begin in October or the beginning of November, the delay in confirmation of the PSDF delayed appointment of agency staff. One further agency officer started at the beginning of January 2024 to help provide additional capacity and support within the department. In addition, an ex-member of staff is being re-recruited to help create additional capacity.
- 6.12 Given the circumstances outlined above, it is not surprising that there has been a dip in performance for the time taken to determine major applications. However, officers have worked extremely hard to provide the best possible service in the circumstances to ensure there is no drop in the quality of development and no delays in development taking place.
- 6.13 The Council considers that with the resources that are in place, it has already taken great strides to address performance as illustrated by the much-improved performance of 67% in Q3 23/24.

**7.0 Monitoring, awareness and how the fall in performance is being managed?**

- 7.1 The Council has been aware of its decline in performance, which is regularly reported to Cabinet at least quarterly. In addition to this, weekly and monthly monitoring of application statistics has been taking place to keep up to date with the situation. A positive outcome from this monitoring is that it has not been necessary to issue any application fee refunds as a result of the Planning Guarantee.
- 7.2 However, as the analysis within this response has identified, monitoring demonstrates instances where extensions of time would have been appropriate but have not been utilised. The Council has taken on board these findings and will in the future, where appropriate be setting clear expectations and timeframes with applicants, agreeing extensions of time which allow greater flexibility for administration of decision issuing, whilst still providing certainty, an effective and efficient service for applicants.
- 7.3 This, in part, covers the Council's plan for addressing the fall in performance through addressing staffing shortages. However, the overall plan goes much further than just ensuring the replacement of staff who have left the authority and upskilling existing staff.
- 7.4 Castle Point Borough Council has been working closely with the Planning Advisory Service (PAS) to provide necessary training and support to officers

and Councillors. Through a combination of officer briefings and a training session delivered by PAS, elected members have been made acutely aware of the serious threat that designation poses and the real need to embrace change and new ways of working to ensure that this does not happen again.

- 7.5 The officer and political leadership of Castle Point Borough Council are united and wholly support the need for change. We are committed to supporting the service, utilising the assistance and advice provided by PAS to ensure an improved and resilient service is created.
- 7.6 The LGA/PAS undertook a Peer Challenge in 2019 which was successful in bringing about necessary change when it came to the functioning of the Development Management Committee. The Council is proposing to invite PAS back this year to undertake a similar Peer Challenge on key elements of the development management process; to make changes where necessary based on examples of best practice and reaffirm strong foundations within the service.
- 7.7 As part of this, the Assistant Director for Development Services will be working with other local planning authorities across Essex to identify opportunities to improve based on examples of best practice elsewhere, whilst also using their experience to advise on the lessons that have been learnt through this process. For example, the Council has agreed to participate in an initiative by the Essex Planning Officers Association, which will allow the better pooling of resources and collaborative recruitment.
- 7.8 The Assistant Director for Development Services and their service plan will be supported through the process by me and all of the Council's Senior Leadership team with appropriate financial and personal resourcing to ensure real change can happen. To aid this, it has already been agreed by the Council that the additional income generated through the increase in planning fees in December 2023 will be reinvested to fund improvements within the service. This will help to ensure that any evidenced improvement to the performance of the service is sustainable in the long term so that it can be delivered consistently, rather than just over a short period of time. Sustainable, long-term, high-quality performance is a key target for the service improvement plan and review.
- 7.9 The Council recognises the pressures it faces as well as the causes of these pressures and has already taken steps to rectify this and will continue to implement these steps to ensure measurable improvement in a service which is at the heart of the Council's aims and strategies. This is another reason why the local planning authority believes that it would be unreasonable for it to be designated at this time.
- 7.10 Whilst engagement and collaboration to create high forms of development throughout this period has still taken place, the Council has identified through its review and action plan that this is an area which could still be greatly improved to provide an even better-quality service for applicants and to encourage investment and development within the Borough.
- 7.11 As part of this it is intended to bring forward a re-imagined pre-application advice service which will be prepared through engagement with developers/applicants, which has already taken started, so that it fit for purpose and delivers quality and speed on decision making. A report of this re-imagined

service will be being presented to the Council's Cabinet in February for endorsement. The aim of this pre-application advice service is to truly embrace the opportunity for collaboration proactivity between the Council and applicants to bring forward the best possible forms of development, embracing the requirements of Chapter 4 of the NPPF.

- 7.12 The delivery of the service improvement plan is central to the Council's priorities and will be being monitored through the Council's performance monitoring metrics, which align with the Government's performance monitoring, and are reported to the Council's Senior Leadership Team as well as Cabinet.

## **8.0 Local Plan Intervention**

- 8.1 Paragraph 23 of Improving Planning Performance: Criteria for designation, also states that the Secretary of State will '*take into account before confirming any designation whether he or she has made directions relating to, or intervened in the local authority's local plan<sup>13</sup> during the 24 month assessment period, and considers that the intervention is likely to lead to an improvement in the speed and/or quality of the authority's decision making in the year following the assessment period.*'
- 8.2 Castle Point was one of 7 Councils which on 19 December 2023, received notice of possible intervention in respect of not having an up-to-date local plan in place. The Leader of the Council wrote to the Secretary of State on 12 January 2024 setting out why there are exceptional circumstances for not intervening based on the good progress being made to date on the Castle Point Plan; that the submission deadline will be met; and whether such intervention would result in a local plan that meets need and or will be delivered any sooner.
- 8.3 A copy of that letter is enclosed and a revised Local Development Scheme is being presented to the Council on 31 January 2024 (see pdf page 53 onwards at <https://www.castlepoint.gov.uk/download.cfm?doc=docm93jjjm4n7702.pdf&ver=13341>).

## **9.0 Conclusion**

- 9.1 The Council has not failed to engage with the issues regarding performance. It identified them quickly and early on put in place plans for improvement. Seeing those plans through is of great importance to the corporate aims of the Council and remains central to the political and officer leadership of the Council.
- 9.2 Changes already enacted have resulted in the planning service being fully staffed and an immediate improvement in performance. Interim appointments will be converted to permanent positions as part of the service re-design and improvement process so that the effectiveness and resilience of the service are baked into its core structure. By looking to appoint permanently rather than rely on agency staff, it importantly provides the ability for an improved service to continue, but with a higher degree of certainty, stability and continuity, whilst representing a more sustainable long-term resourcing solution. The solution of interim resourcing in the short term and a longer-term, permanent solution is supported across the Council, with the necessary budget to make these changes happen available to the service.

- 9.3 To that end, Castle Point Borough Council strongly considers that it would be unreasonable to designate the Council at the current point in time. As set out above, the performance drop is temporary and a sustainable and effective plan has been put in place to ensure performance continues to improve and is consistently above the 60% threshold. The trajectory for Q3 23/24 already demonstrates the success of this plan with performance already at 67% and performance for Q4 projected to also be above the 60% threshold, at 75%. This improvement demonstrates that the improvement plan has made a significant improvement to the speed of determination for major applications and will continue to do so, with further improvements due to be delivered and realised in the first half of 2024.
- 9.4 Designation would harm the delivery of housing and economic growth through damaging confidence in the Council's ability to deliver, which is also working on in regard to the new Castle Point Plan. We do not believe that designation would speed up this process when instead the Council have a sustainable action plan comprising collaborative pre-application advice and development management process to encourage and bring forward high quality development at a fast pace.
- 9.5 For these reasons the Council strongly believes that it would be unreasonable to be designated at this point in time when a viable improvement plan is already being enacted and is already delivering real world improvements, which are forecast to continue and will result in the 23/24 performance being above the designation threshold. The Council would be pleased to submit to a review of its performance in six months, whereby it is projected that the Council will be able to demonstrate performance above 75% in Q4, with current targets on track to hit 100% and with additional Committee dates timetabled to bring forward determinations on decisions quicker.
- 9.6 For your information, a report will be presented to the Council's Cabinet at its meeting on Wednesday 21 February 2024, that will include your letter and this reply, which will be published on our website.
- 9.7 I apologise for the length of this matter but you will appreciate the need to ensure that all points are made comprehensively and in detail. It goes without saying that we remain at your disposal to meet with you, the Housing Minister of State and your officials at any time to discuss this further.

Yours sincerely



Angela Hutchings  
Chief Executive

cc List:

[REDACTED]

[REDACTED]

Rebecca Harris MP

Cllr Dave Blackwell – Leader of the Council

Cllr Warren Gibson – Deputy Leader of the Council

Ian Butt – Director of Place and Communities

Stephen Garner – Assistant Director for Development Services

[REDACTED]





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**Castle Point Borough Council**

**Pre-Application Advice Guidance**

Version Number: 5.0

Published Date: 12<sup>th</sup> February 2024

The Council wants to ensure that the highest quality of development is delivered in the Borough. We want to approve your planning application, but only where it accords with policies and guidance and delivers quality.

If you are unsure if your scheme is likely to be considered favourably because, for example, it is not in accordance with policies and guidelines then you can ask for an officers opinion through our Pre-application Advice Service.

#### **Aims of the Pre-application Advice Service:**

- **To bring forward and encourage the creation of high-quality forms of development;**
- **To provide a collaborative and proactive, solution focused approach to problem solving;**
- **To provide a quick and efficient service to promote high-quality development proposals; and**
- **To provide clear and reliable advice, so that your application is ready for submission with the right documents to the right standard**

### **1. Why make a pre application enquiry?**

Our pre-application service allows you to work with officers before you submit an application<sup>1</sup>, helping to:

- Avoid unnecessary delays caused by invalid applications and subsequent amendments;
- Avoid costly resubmissions;
- Save the cost of pursuing unacceptable applications;
- Reduce the time (and fees) of your professional advisors;
- Understand the relevant policies that apply to your development;
- Work collaboratively with the Planning Department to overcome resolvable problems; and
- Provide clarity of the quality of development expected.

The National Planning Policy Framework encourages engagement with Councils and local communities to achieve early consideration of planning issues and improved outcomes for local development.

Whilst we cannot design a scheme for you, we can provide a professional judgement on the likelihood of success of your application and how we apply the policy requirements of the local development plan and national policy requirement.

Early involvement with planning officers and discussion can help you gain a clear understanding of the proposal, to receive policy and guidance advice to understand the planning history of the site, to gain specialist and technical advice in regard to

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<sup>1</sup> Pre-application service is a discretionary service of the Council as permitted by Section 93 of the Local Government Act 2003

the application, and to understand the approach the Council make take in determining your application.

It helps to indicate the likely success or otherwise of your proposal and ensures a good healthy dialogue early in the process. These discussions will also allow the planning officer to set out relevant information requirements to you that should be supplied with any application for planning consent.

Overall this process should assist you in speeding up your application through the planning system and offer you a level of comfort before embarking on your project fully. Having written advice will provide clarity of the proposal to you.

Requesting pre-application written advice or having pre-application discussions can you help save time and wasted expense.

The guidance given by the Council's officers can then be taken into account in the preparation and working up of your proposals, which makes them more likely to comply and increase the likelihood of being acceptable.

However, pre-application advice is no guarantee of success, and will only be given without prejudice to the outcome of your application. By using the service, any issues are identified early before you submit your application.

Not all types of development require a pre-application service. If you follow the guidance on the Council's website, the Castle Point Local Plan 1998 and the National Planning Policy Framework, then you are increasing your chances of a successful application. Pre-application works best if your proposals does not comply with all our guidance and policies.

## **2. What is included?**

### **Your officer and the process**

Requests for advice will be allocated to a planning officer according to the complexity of your proposal. Major schemes will normally be dealt with by a senior or principal officer. To ensure that the process is as seamless as possible, the planning officer will usually also deal with your subsequent planning application.

The officer to whom the case has been allocated will review the materials you provide and contact you if they have any questions. What you should submit with your pre-application request is set out in Section 4 below.

Where a meeting is held, a written summary of the points will be sent after the meeting. The written summary will be sent by email.

You will receive you written response within the timescales set out in within Section 10, below.



The planning officer will assess the submitted information and will aim to provide you with constructive comments on the scheme in relation to the following so far as they are relevant:

- Relevant development plan policies and other Council strategies that may have a bearing on the proposal
- Site constraints, e.g. statutory designations such as conservation areas, Tree Preservation Orders and other constraints including listed buildings, flood zones and rights of way.
- Relevant planning history
- The details of the proposal, i.e. the acceptability of the design and amenity considerations, land use
- Infrastructure requirements, including the need for affordable housing, open space and contributions towards Council or County Council services.

We may be unable to give a definitive answer on some aspects without the cooperation and responses of consultees.

In the case of major development proposals, it may (at the officer's discretion) be necessary to consult statutory consultees and other groups prior to providing advice.

### **Pre-application consultations**

Some consultees may not respond to pre application queries, but those that do may charge for the service. These charges would be in addition to the pre-application fee and would have to be paid by the applicant. We will advise you if a fee is requested although generally this applies to the more complex applications.

Where we need to consult, the pre-application process may take longer in order that we are in a position to provide a comprehensive response. Prior to incurring any additional costs proposed, these would be discussed with you.

The officer will let you know about consultees in their initial response.

### **Agreeing the application documents**

We will advise you what we require to be submitted with your application and the information requirements (plans and supporting details/studies) to assist with the validation.

The Validation Checklist can be found at [Validation Checklist](#).

### **The Development Management Process**

We will also explain to you how the development management process operates, the consultation process, decision making arrangements including committee and the likely timetable for assessment of a planning application.

Please note that Development Management Committees are held monthly.

## **Conditions and Section 106**

For more complex schemes, conditions are likely to be attached, so we will run through how we will help you discharge those conditions.

There may also be a Section 106 Agreement and we will use the pre-application process to identify what that could contain and set out our requirements. Our preference is that where a Section 106 agreement is required to we agree the scope prior to the submission of an application, so that we can save time post decision finalising the agreement.

## **Specialist advice**

The fee payable does not include the cost of specialist advice on ecology, design, historic buildings and archaeology. This is provided by Essex County Council. If this advice is to be provided there will be an additional fee payable to Essex County Council which the applicant would be required to pay.

## **Major developments**

For major<sup>2</sup> schemes we would encourage at least two meetings before submitting a full application.

The first meeting allows officers to discuss the principle of development with you and identify concerns that need to be addressed.

The second meeting will review any changes made and provide additional advice based on those changes on whether the application is likely to be accepted.

However, if after the first meeting the planning officer considers that a second meeting is not required, then you will be advised.

There are no limits to the number of meetings which can be had, however for major schemes, so that officers can work with and support the applicant to facilitate the best form of development it is expected of applicants to commit to undertaking at least two meetings.

The first meeting is part of the pre-application fee, but for each subsequent meeting the meeting fee will apply.

## **Planning Performance Agreements**

For the most significant schemes or strategic<sup>3</sup> scale development, a Planning Performance Agreement (project management plan) will be appropriate.

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<sup>2</sup> 10-49 new dwellings or extensions to or new commercial premises from 1,000 to 2,499sq.m. of floor space.

<sup>3</sup> 50 or more new dwellings or extensions to or new commercial premises above 2,500 sq.m. of floor space.

In such cases it is likely that a range of meetings will be required in an iterative process that takes you through a variety of issues – design, access and transport, ecology etc.

A Planning Performance Agreement defines a process of dealing with the proposal in accordance with a timetable, principles and procedures are agreed together.

The planning officer will advise you on the need for a planning performance agreement.

### **3. How do I obtain pre application advice?**

Requests for pre application advice should be made using the online form.

<https://www.castlepoint.gov.uk/pre-application-meetings-and-advice/>

Supporting documents and plans should be emailed to

[Planning@castlepoint.gov.uk](mailto:Planning@castlepoint.gov.uk).

Please note this is not a mailbox for general enquiries.

When you submit the pre application request form you will be given a reference number. Please ensure you quote this when you email your supporting documents and plans.

Upon receipt of your request and payment for pre application advice, we will aim to contact you within 10 working days either to request further details or to confirm that your request is complete and will be allocated to a planning officer for action.

We will endeavour to deal with all requests for pre application advice but there may be occasions when conflicting workloads do not allow sufficient time to commit to the pre application process, we aim to advise you within 10 working days of receipt, if we are unable to accept an application.

### **4. What should I include in my submission?**

As a bare minimum your include: -

- Location or site plan at a scale of no less than 1:500
- Existing plans
- Proposed plans
- A short document setting out your proposal, and the advice you are seeking from the department.
- Any supporting studies (for major developments)

If advice is required only on specific elements of a proposal, these elements should be clearly specified in the initial submission and can permit less details to be submitted.

However, you should be aware that the more relevant information provided, the more specific the advice provided can be.

Larger pre-application enquiries should also make reference to the Validation checklist on the Council's website, and consider submission of further relevant documents that would aid the officer in providing relevant advice.

## **5. How do I pay for pre application advice?**

Payment of the relevant fee must be made by Debit / Credit card to the Councils Customer Services Team 01268 882200. All fees are inclusive of VAT.

For Strategic developments you will need to submit your request online and the officer will inform you of the fee once determined.

## **6. What do I need to do before advice can be given by the Council?**

We will expect the following to be provided to enable your request to be actioned:

- Completed online Pre Application Advice form
- Payment of relevant fee (by debit / credit card only)  
For Strategic developments you will need to submit your request online and the officer will inform you of the fee once determined
- Submit the documents outlined in Section 4

To ensure that requests for pre application advice are as productive as possible, applicants or their agents will be expected to provide sufficient information and plans to describe and explain their proposals. On receipt of the pre application request officers may require further information before they are able to proceed. In such cases, the pre application process may take longer in order that we are in a position to provide a comprehensive response.

If advice is required only about specific elements of the proposal, this should be clearly specified in the initial submission.

Please note that you can submit as much detail above the minimum requirements as you feel is helpful.

Supporting documents and plans should be emailed to

[Planning@castlepoint.gov.uk](mailto:Planning@castlepoint.gov.uk)

Please note this is not a mailbox for general enquiries.

When you submit the pre application request form you will be given a reference number. Please ensure you quote this when you email your supporting documents and plans.

## **7. What if a subsequent decision on an application does not follow the advice I was given?**

Advice given will be based on the case officer's professional judgement and assessment of the information provided.

**Pre application advice whether favourable or not is given on a 'without prejudice' basis** since the Council must on submission of an application go through the statutory procedures and formal consultations and assess the outcomes before a decision can be made.

Whilst advice will be given in good faith, we cannot guarantee that a subsequent planning application will be successful. We nevertheless believe that pre-application advice is an extremely important part of the planning process.

Fees for pre application advice will not be refunded and do not affect any statutory planning application fee subsequently required.

## **8. What if I disagree with the advice received?**

We recognise that you may not like the advice you receive, and it remains open to you to reject the advice and submit a formal application for determination.

Except where additional meetings are deemed necessary for major and large major proposals, pre application advice is provided for the scheme submitted only. Significant changes that result in a different form of development , may need to be the subject of a new enquiry and may require a further fee.

## **9. What if I want to withdraw my request for pre application advice?**

You can withdraw your application and request a refund, at any time up to and including the day you receive confirmation of your pre-app. This refund will be subject to a £30 administration fee. If you do not withdraw your request within the timeframe specified above, the full fee will remain payable and is non-refundable.

## **10. Confidentiality**

Requests for pre application advice and the response provided are treated as confidential and will not be placed on the Council's website.

There is however the possibility that under the Freedom of Information Act, we will be asked to provide information about enquiries for advice and copies of any advice given. We will need to decide whether such information can be treated as exempt from disclosure, for example if it is clear that its release could prejudice commercial interests.

You are therefore encouraged to indicate whether and for how long any information needs to remain confidential when making your request for advice. We may also state that pre-application advice has been given when determining any subsequent planning applications.

## **11. How much is the Pre-Application service, and how long does it take to receive a response?**

The fees for each type of pre-application advice are set out on the Council's website at <https://www.castlepoint.gov.uk/pre-application-meetings-and-advice/>

These fees reflect average officer time and costs for providing the service. The fees are part of the Council's fees and charges and will increase in accordance with inflation annually.

For a pre-application meeting, you will receive both the meeting and written advice. Therefore, the total cost will be the fee for written advice and the meeting.

For any further meetings, you will need to pay the additional meeting cost.

## **12. What to expect from each pre-application advice**

- Pre-application written advice will only provide a written evaluation of the proposal.
- Pre-application meeting advice will involve a meeting with an officer and a written summary of what was discussed at the meeting and advice given.
- For written responses, the target time frame is within 42 days of receiving your application.
- For meeting requests, the officer will contact you after their first review of your request to agree a timeframe for the meeting.
- A written summary of the meeting and advice given will be within 21 days of the meeting, unless otherwise agreed.
- The target timeframes do not start until the Local Planning Authority has received proof of cleared payment and it has received all required accompanying documentation.
- We will expect the following to be provided to enable your request to be actioned:
  - Completed online Pre Application Advice form
  - Payment of relevant fee (by debit / credit card only) For Strategic developments you will need to submit your request online and the officer will inform you of the fee once determined
  - Location and site plans
  - Sketch or indicative plans of the proposal
  - Indicative interior layouts (if advice is required)
  - Supporting studies/information (for major schemes)
- Applications which are submitted without indicative existing or proposed plans, but with a description of the proposal may exceptionally be allowed with the

agreement of the Assistant Director for Development Services, but feedback will be limited to discussions on the principles of development.

- Submission of additional documents/plans later in the process, not at the request of officers, may attract additional fees or may not be considered in their assessment. Everything needed to be considered should be submitted at the start of the application.
- The length of calls for general advice is half an hour.
- The length of meetings for householder and small scale pre-application advice is up to 1 hour. For minor and major applications the length of meetings is increased to up to 2 hours. Only the site subject of the application can be discussed in these meetings. Strategic site meeting lengths will be individually determined.
- If a pre-application advice meeting is applied for, meetings at the council offices or via Teams will be hosted free of charge. However, if a different venue is required, these costs will be passed onto the applicant. Onsite meetings/site visits will only be undertaken where an officer considers it necessary.
- The fee payable does not include the cost of specialist advice on ecology, design, historic buildings and archaeology. If this advice is to be provided there will be an additional fee payable which the applicant would be required to pay.
- For the most significant schemes or strategic scale development, a Planning Performance Agreement (project management plan) may be appropriate in which the process of dealing with the proposal in accordance with a timetable, principles and procedures are agreed together. A Planning Performance Agreement would be drawn up at the pre application stage and would lead the process through the application stage.