
ESSEX PLANNING PROTOCOL

Our commitment to working together
to deliver growth across Essex



Protocol endorsed by **EPOA**
at their March 2018 meeting.

May 2018



EPOA
Essex Planning
Officers Association

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Endorsed by **Mark Curle, Chairman of the Essex Developer Group** and **Graham Thomas, Chairman of the Essex Planning Officers Association** on 1 May 2018.



Graham Thomas
Chairman
EPOA

Mark Curle
Chairman
Essex Developers
Group

The Protocol was prepared by Place Services, a traded service of Essex County Council.

INTRODUCTION

Together, local authorities, developers and infrastructure providers are vital to the delivery of quality, sustainable development: this Protocol is our shared commitment.

1. Figures taken from the Greater Essex Growth & Infrastructure Framework (2017) excluding Thurrock and MHCLG housing need methodology (2017).

Up to 160,000 new homes are being planned for through Local Plans in Greater Essex¹. Between 2016 and 2036, our population is predicted to rise by almost 300,000 – an increase of more than 16%.

In line with national trends in recent years delivery in some areas has failed to keep pace with demand. Over the past decade we have only built around 46,000 homes a year at a national level.

We must therefore plan strategically for growth. We will strive to meet projected demand and build resilient, sustainable communities for the future. Good progress is being made across the county in producing Local Plans to support growth.

But only through collaborative working between councils, communities and developers will we secure the right growth for Essex. This Protocol sets out our commitment to working together.



OUR GOALS

Together we aim to:

- Deliver, through the planning process, the environment for quality and sustainable growth in Essex to strive to meet the county’s employment and housing needs.
- Provide increased efficiency and certainty in the planning process for communities and developers.



COMMITMENT 1: Effective communication

Local planning authorities and developers will positively engage through the pre-application process to allow early identification and resolution of key issues.

There is commitment to involve councillors in the development planning process where possible. There will be an increased opportunity for engagement with councillors, through briefings at the pre-application stage. This will ensure that community issues and needs are highlighted for consideration early in the process and that councillors will have a better understanding of developers’ proposals throughout the process.

High quality and consistent pre-application advice will be provided, with service standards published on the website of each council. This will include clear advice on consultation requirements and the information to be submitted with a formal planning application.

Developers will engage early, openly and collaboratively with community and amenity groups and where relevant, town and parish councils before and when planning applications are made. Through any subsequent planning application, developers will demonstrate how the responses to this engagement have been taken into account and have shaped the scheme.

Developers will engage positively and directly with planners and provide the required, high quality, information in a clear and accessible format within a reasonable timescale, including at pre-application stage. This will include provision of information at least five working days before meetings with council officers/councillors to allow meaningful discussion of issues and resolutions.

Council officers will keep applicants updated with information about their applications to facilitate greater common understanding and consensus on planning matters. This should progress to applicants and councils continuing to liaise regarding implementation and discharge of conditions.



COMMITMENT 2: Ensuring certainty and consistency

The use of Planning Performance Agreements (PPAs) will be encouraged to achieve a more efficient and effective application process. Every encouragement should be made for highway teams, lead local flood authority/strategic urban drainage systems teams, legal departments and other relevant parties to be included in PPAs, which should be established and set up at pre-application stage. A template PPA has been included as an appendix to this Protocol as a guide to users.

Developers and councils will seek buy-in from the statutory consultees to the principles of this agreement.

Local authority officers including housing enabling officers will provide planners with



clear and consistent advice at an early stage in the planning process and will maintain dialogue throughout the application process, including the heads of terms of the section 106 agreement.

To avoid commencement delays, developers will seek to closely align their implementation teams with designers/planners – to ensure that permitted schemes can be built as intended and avoid delays caused when new material/alternative layouts are suggested after permission has been granted. Front loading of detail can avoid the need for planning conditions.

Registered providers will be involved at the earliest possible stage in the planning process where affordable housing is required or proposed. However, it must be recognised that the affordable housing type and mix will be specified by the local authority.

Developers will provide draft heads of terms for section 106 agreements in advance of applications and at the earliest opportunity to ensure that all necessary information about the proposed development is available to decision makers. LPAs will report schemes to their development teams at the earliest opportunity to clarify the range and size of any contributions or obligations that may be sought.

All parties will seek to negotiate and conclude section 106 agreements as early as practicable so that planning permissions can be granted without unreasonable delay.

All parties will seek to minimise the number of pre-commencement conditions requiring the submission of further details. To this end, LPAs will seek to circulate a schedule of draft conditions for discussion with applicants prior to the application being taken to committee and a decision issued.

All parties will seek to develop a better shared understanding of design quality standards, with reference to adopted design policies, the Essex Design Guide and, where appropriate, to engage in a design review at the earliest stage.

COMMITMENT 3: Provision of appropriate resources to deliver an efficient, high-quality planning service

All parties will seek to ensure that there are sufficient planners and built/natural/historic environment specialists with the right skills and qualifications to incubate and deliver schemes.



They will work collaboratively and pro-actively to manage development proposals through the planning system, and facilitate sustainable development.

Developers will ensure sufficient resources to make clear, evidenced, quality applications. Developers commit to responding in a timely manner to matters arising through the consultation period. This will ensure that development proposals are made with sufficient and accurate supporting information and are well-presented, enabling planners to efficiently manage the application through the planning system for determination within the statutory period.

Developers, where appropriate, will provide financial support to authorities to secure resources via Planning Performance Agreements, to assist in the efficient management of larger and more complex schemes.

Charges for pre-application advice will be sufficient to support a high quality pre-application advice service, maximising the availability of planning officers to provide advice to developers and developers should utilise this service at the earliest opportunity. Councils will ensure that sufficient resources are available to support this service.

Developers will provide the requisite background information to support pre-application processes well in advance of programmed meetings to support an informed exchange of ideas and suitable guidance from the council.

COMMITMENT 4: Opportunities for training

Councils will work with developers and other bodies to provide training opportunities for their staff and other groups, including councillors, to build capacity and to promote a common understanding of issues, approaches and good practice.

Councils commit to offering regular training on planning issues and developers will support opportunities for site visits including completed schemes.

Monitoring success

This protocol sets out a shared approach to new development between councils and developers. Essex Developers Group, Essex Housing Officers Group and Essex Planning Officers Association will periodically review the implementation and effectiveness of the Protocol and share best practice that emerges from such reviews.



APPENDIX:

EXAMPLE PLANNING PERFORMANCE AGREEMENT TEMPLATE

DATED

(1) NAME OF LPA

-and-

(2) INSERT NAME OF APPLICANT

PLANNING PERFORMANCE AGREEMENT

INSERT SITE ADDRESS

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THIS AGREEMENT is made on INSERT DATE

BETWEEN

(1) NAME OF COUNCIL of INSERT ADDRESS (the "Councils or Councils")

(2) INSERT APPLICANT'S NAME AND ADDRESS (the "Developer")

Herein individually referred to as a "Party" and jointly as the "Parties"

BACKGROUND

A) The Council is the local planning authority (LPA) for developments falling

within the XXXX Authority Area. In two tier areas, the County Council may also be a signatory to the PPA.

- B) The parties desire that the application be dealt with as efficiently as possible as set out in the Project Plan, the Developer's Obligations and the XXXX Council Service Standards included in this agreement.
- C) The Developer agrees to pay to the Council(s) the cost of backfilling to meet the demands of the Council(s) in providing a dedicated Planning Officer(s) and associated specialist officer engaged to process the application from pre-submission to its determination.
- D) The parties are, prior to the submission of the application, agreeing to enter into this agreement in respect of the development and will work in accordance with the Project Plan, the Developer's Obligations and XXXX Council Service Standards, which will be formalised upon the completion of this agreement.

IT IS AGREED as follows:

1.0 DEFINITIONS AND INTERPRETATIONS

"Act" means the Town and Country Planning Act 1990 (as amended)

"Application" means the planning application made by the Developer in respect of the Development

"Commencement Date" means the date of this agreement

"Developer Coordinator" means INSERT NAME AND ADDRESS OF PLANNING AGENT

"Developer Obligations" means those obligations set out in clause 7 and Schedule 2 to this agreement

"Development" means INSERT DESCRIPTION OF DEVELOPMENT

“**Head of Planning**” means the Council’s Head of Planning and/or any successor in title to that post or a duly nominated representative

“**Expert**” means the person appointed in accordance with **clause 11.3** of this agreement

“**External Consultant**” means a consultant appointed by the Council who, in the opinion of the Council, has the requisite expertise to advise in respect of the applications

“**Functions**” means the discharge by the Council of its statutory functions including (without limitation) all aspects of the processing of the applications to be carried out by the Council to ensure the determination of the application in accordance with the project plan and all the Council’s obligations under this agreement

“**Joint Working Meetings**” has the meaning given to it in **clause 8**

“**XXXX Council Service Standards**” means the service standards set out in **Schedule 1** to this agreement

“**XXXX Authority Area**” means the development area for which the Council is (subject to certain exceptions) the local planning authority for the purposes of Part III of the Town and Country Planning Act 1990 (as amended)

“**Parties**” means the Council(s) and the Developer and their successors in title

“**Planning Officer(s)**” means the person or persons or relevant team appointed by the Council in accordance with **clause 6** of this agreement in order to discharge the functions, or their successors

“**Planning Decision**” means planning decision issued pursuant to the applications

“**Planning Officer Contribution**” means the sum of INSERT SUM payable by the Developer to the Council(s) in accordance with **clause 4**

of this agreement which represents the cost of backfilling to meet the demands of the Council providing dedicated a Planning Officer(s) to process the application from its pre submission to its determination, including planning officer time in respect of negotiating the Section 106 agreement THIS CAN BE EXPANDED TO INCLUDE CONDITION CLEARANCE

“**Project Plan**” means the delivery programme in relation to the determination of the application set out in **Schedule 3** (as may be amended from time to time in accordance with the provisions of this agreement)

“**Section 106 Agreement**” means any agreement made under Section 106 of the Act between the Parties in respect of the Development

“**Statutory Consultees**” means those consultees identified as a requirement in processing applications in the appropriate Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended)

“**Submission Date**” means INSERT DATE, being the date upon which the Developer will submit the application to the Council;

“**Term**” has the meaning given to it in **clause 2**.

2.0 TERM

2.1 This agreement will apply from and the functions will be deemed to have commenced on the commencement date and (subject to earlier determination as hereinafter provided) shall remain in force for a period of six (6) months (such period of six (6) months and any consultation thereof referred to in this agreement as the “Term”) and upon the expiry of such period this agreement shall cease and determine but without prejudice to the rights of the parties in respect of any antecedent breach of the terms and conditions hereof.

3.0 FUNCTIONS

3.1 The Council will use all reasonable endeavours to carry out the functions at all times in accordance with the Council Service Standards.

4.0 OFFICER CONTRIBUTION

4.1 The Developer shall pay to the Council(s) the entire Planning Officer Contribution and any additional necessary specialists support required, within fourteen (14) days of the Commencement Date. And this payment will be made directly to the relevant authority providing the officer support.

4.2 For the avoidance of doubt the Planning Officer Contribution represents the entire consideration required by the Council in order to determine the applications in accordance with this agreement. This includes presentations to members, pre-application meetings and the council’s planning officer costs in dealing with drafting the Section 106 agreement. It excludes the statutory planning application fee and any legal costs by the Council’s legal team.

4.3 All travel, subsistence and other out of pocket expenses incurred by the Planning Officer or otherwise.

5.0 JOINT WORKING

5.1 All parties shall act with the utmost fairness and good faith towards each other in respect of all matters in relation to the applications and the development.

6.0 PLANNING OFFICERS

6.1 Without prejudice to its other obligations the Council shall designate a Planning Officer(s), namely INSERT NAME OF OFFICER, who shall be the Council’s lead officer and who will form and lead a development team within the Council and who shall give on-going priority to the performance of the functions as necessary for the Council to carry out the functions in accordance with this agreement.

6.2 The Council shall ensure that the Planning Officer(s), and other members of the development team have sufficient experience of relevant planning matters of a type and scale commensurate with the Development and that he or she and the relevant team have a clear understanding of the terms of this agreement and the functions.

6.3 In addition to the Planning Officer(s), the Council shall use all reasonable endeavours to make available at their cost such other of its employees and where appropriate the specialist services of the County Council as is necessary in the circumstances for the Council to comply with its obligations under this agreement.

6.4 Nothing in this agreement shall affect the terms of the Planning Officer(s) contracts of employment or the Planning Officer(s) rights pursuant to them or any contracts with consultants or other third parties employed by the Council.

7.0 DEVELOPERS OBLIGATIONS

7.1 The Developer agrees to use all reasonable endeavours to comply with its obligations set out in **Schedule 2** of this agreement.

7.2 The Developer will identify a Developer Coordinator who shall be responsible for managing the submission of the Applications and for working with the Planning Officer(s) to progress the applications up to their determination.

8.0 JOINT WORKING MEETINGS

8.1 The parties shall attend a minimum of two meetings, unless otherwise agreed by both parties, during the period of determination. These are to be held after the consultation period of the application and will be to discuss the outcome of the consultation period and any outstanding issues. The latter meeting will also discuss Heads of Terms for the Section 106 agreement.

- 8.2** Attend further meetings as may be agreed as necessary by the parties in order to discuss and attempt to resolve any specific issues that may arise from consultation responses and the processing of the application.
- 8.3** The joint working meetings (unless otherwise agreed by the parties) shall be held at the District Council offices to discuss any matters and issues outstanding at that time arising from the application including any consultation response, letter or any other communication received by the Council and circulated to the Developer Coordinator. Each matter and issue will be evaluated and discussed with the parties and a method of resolution agreed by the Parties.

9.0 BREACH AND TERMINATION

- 9.1** If any party commits any breach of its obligations under this agreement and does not remedy the breach within ten (10) working days of written notice from the other Party to do so, the other Party may notify the Party in breach that it wishes to terminate this agreement. In these circumstances, the agreement will be terminated immediately upon the giving of written notice to this effect to the Party in breach provided always the breach is within the control of the Party that is in breach and is capable of being remedied.

10.0 NATURE OF AGREEMENT

- 10.1** The Council(s) enters into this agreement on the basis that it is without prejudice to its determination of the application subject to this agreement.

11.0 RESOLUTION OF DISPUTES

- 11.1** In the event of any dispute or difference arising between the parties concerning any matter arising out of this agreement the parties shall work together to endeavour to resolve the dispute or difference by mutual agreement and the parties jointly enter into discussions in good faith to settle any dispute as soon as reasonably practicable.

- 11.2** In the event that the parties are unable to resolve the dispute or difference within 20 working days any party to the dispute may refer the dispute or difference to the nominated officer or employee of the parties as follows:
- In respect of the Developer
 - In respect of the Council, the Head of Planning

Or such other person of appropriate seniority within each party as a party may nominate for the purposes of this clause from time to time.

- 11.3** In the event that the parties are unable to resolve the dispute or difference within 30 working days from the date of reference under **clause 11.2**, any party to the dispute may refer the dispute or difference to an expert being an independent and fit person holding appropriate professional qualifications in the nature of the dispute to be appointed (in the absence of agreement) by the president (or equivalent person) of the professional body chiefly relevant in England to such qualifications.

- 11.4** For the avoidance of doubt where there is a dispute as to the meaning or construction of this agreement, the parties may refer the dispute to an independent expert for determination in accordance with this **clause 11**.

- 11.5** In the event that a dispute is referred to an expert pursuant to **clause 11.3** all parties shall continue working together in good faith until the dispute has been resolved.

- 11.6** Each party shall bear its own costs in relation to any reference to an expert under **clause 11.3**.

- 11.7** The costs of engaging the expert shall be borne by the unsuccessful party to the dispute or as the expert shall otherwise determine.

- 11.8** Nothing in this clause shall prevent any party to this agreement from serving a notice of termination under the relevant provision of this agreement.

SCHEDULE 1

XXXX Council Service Standards

In addition to the Council's statutory obligations, it shall use all reasonable endeavours to carry out the functions of this agreement at all times in accordance with the following service standards.

The Council shall use all reasonable endeavours to:

- Respond substantively to all urgent emails, letters and telephone calls from the Developer Co-ordinator within two (2) working days of receipt and, in the case of non-urgent correspondence from the Developer Coordinator, within five (5) working days of receipt. Where circumstances beyond the reasonable control of the Council prevent its compliance with this Service Standard, the Council shall in each case notify the Developer of such circumstances immediately in which case the Council shall respond substantively no later than ten (10) working days after receipt of any communication.
- Circulate to the Development Coordinator statutory and non-statutory consultee comments received by letter, email or online within two (2) working days of receipt.
- Notify the Developer no later than five (5) working days prior to the publication of any agenda for any meeting of the Council's Planning Committee or other relevant Committee at which any report or matter relevant to the application will be discussed and or considered, and to provide the Developer with a copy of any report to the relevant Council Committee or other pertinent details at the earliest reasonable opportunity.
- Provide to the Developer at least five (5) working days prior to any meeting all substantive and relevant documents which are relevant to that meeting and which relate to any relevant action or agenda points identified.
- Where minutes or action points are prepared by the Development Coordinator, agree or comment on the minutes or action points arising from the minutes within three (3) working days of receipt.

SCHEDULE 2

Developer’s Obligations

The Development agrees on commencement of this agreement to:

- Engage with the Council in accordance with the Project Plan
- Use all reasonable endeavours to consider any reasonable concerns raised by statutory consultees prior to the submission of the application to the Council.
- Respond substantively to all urgent emails, letters and telephone calls from the Planning Officer(s) within two (2) working days of receipt and, in the case of non-urgent correspondence, within five (5) working days of receipt.
- Provide the Council(s) with such reasonable additional information as may be requested by the Planning Officer(s) within ten (10) working days of such written request from the Council (or such other time period as may be agreed) in order to enable the Council to discharge their functions for the avoidance of doubt this does not require the Developer to provide any information that would not ordinarily be provided for a similar development.
- Provide to the Council(s) at least five (5) working days prior to any meeting all substantive and relevant documents which are relevant to that meeting and which relate to any relevant action points or agenda identified.
- Minute the joint working meetings and to provide minutes or action points arising from the meeting within three (3) working days of any meeting and to provide them to the Planning Officer(s) for comment.

SCHEDULE 3

Project Plan

The parties shall use all reasonable endeavours to ensure that the application is progressed in accordance with the Project Plan (unless subsequently varied as agreed by the parties.) Dates are timetabled on the basis of a confirmed submission date, and may require amendment to accommodate committee cycles.

ACTION	RESPONSIBILITY	TARGET DATE
Pre-Application Discussions		
Submission of pre-application request	Developer Coordinator	
Arrange meeting and provide pre-application advice	Planning Officer	
Processing of Application		
Submission of application	Developer Coordinator	
Registration and validation of the application	Planning Officer	
Consultation in respect on the application	Planning Officer	
Consideration of consultation responses received and of application submission	Planning Officer	
Meeting to discuss consultation responses and application	Planning Officer & Developer Coordinator	
Negotiation of S106 agreement (if applicable)	Planning Officer & Developer Coordinator	
Meeting to discuss draft planning conditions	Planning Officer & Developer Coordinator	
Decision Stage		
Preparation and submission of delegated or committee report	Planning Officer	
Consideration of application by Planning Manager or Planning Committee	Planning Committee or Planning Manager	
Issue of Decision		
Completion of S106 agreement (if applicable)	Planning Officer & Developer Coordinator	
Issue decision notice	Planning Officer	
Condition Clearance		
Submission of condition discharge application(s)		
Specialist Officers		
Various specialist officers may be involved at different stages of the process and will be identified and determined at the outset		