

	ACTION TAKEN UNDER DELEGATED POWERS BY CHIEF OFFICER 19th April 2017
Title	Planning Performance Agreement – North Finchley Town Centre Framework Supplementary Planning Document (SPD)
Report of	Cath Shaw Deputy Chief Executive and Commissioning Director - Growth & Development
Wards	Woodhouse and West Finchley
Status	Public
Enclosures	Appendix A – North Finchley Town Centre Framework SPD Planning Performance Agreement (excluding exempt Schedule 2 - Not for publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 as amended as this relates to the financial or business affairs of any particular person including the authority holding that information).
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Summary

This report seeks approval to enter into a Planning Performance Agreement (PPA) between the Council and Joseph & Partners (“the Developer”) for the provision of a dedicated planning resource to produce a Town Centre Framework SPD for North Finchley (“the SPD”). The preparation of an SPD has been commissioned in order to guide

development and planning for North Finchley Town Centre and the surrounding area. The Developer has commissioned the SPD to enable any future applications made by it to be considered and determined by the LPA within a robust planning framework of the proposed SPD

Decisions

To approve the enclosed planning performance agreement for execution

1. WHY THIS REPORT IS NEEDED

- 1.1 Barnet Council and Re have ambitious plans for North Finchley Town Centre. To progress these proposals, the Council's Policy & Resources Committee agreed (December 2016), that a Supplementary Planning Document (SPD) be prepared for the town centre and surrounding area. It is envisaged that the SPD will establish a development framework for change, ensuring that North Finchley is a vibrant and successful town centre in the 21st century.
- 1.2 The terms of a Planning Performance Agreement (PPA) were agreed in principle with the Developer in March 2017 based on the delivery of an SPD as a formal statutory document supplementing policies and proposals in Barnet's Local Plan. The SPD will influence and control development of North Finchley town centre and take the form of a Development Framework with accompanying Design Guidelines and illustrative plans (where needed). The SPD will provide the Framework for a suite of mini planning briefs for a maximum of six sites within North Finchley. Sites will be prioritised through discussion with Re. The mini planning briefs will be adopted by the Council as part of the Supplementary Planning Document (SPD).
- 1.3 This report is therefore required to give the necessary authority for the Council to enter into the PPA as drafted.

2. REASONS FOR DECISIONS

- 2.1 The purposes of entering into the PPA are to enable the following:
 - to provide the resource to the Council to procure, appoint and manage consultants to prepare the SPD (in accordance with national planning guidance);
 - to agree timescales in the form of a project programme ("the Project Programme") for the Council to manage delivery of the SPD that will then inform any emerging planning application(s) related to North Finchley Town Centre. For the avoidance of doubt, support in relation to future planning applications is not covered by this Agreement;

- to meet the agreed costs of the Consultant procured by the Council to prepare the SPD;
- to provide the resource to the Council to undertake a sustainability appraisal of the SPD and produce a sustainability appraisal report;
- to provide the resource to the Council to undertake an equalities impact assessment of the SPD and produce a equalities impact assessment report.
- to agree to establish the need for and if required resource the Council to undertake a further strategic environmental assessment of the SPD;
- to agree the governance and review mechanisms in respect of the Project Programme and the scope/terms of the PPA; and
- to agree the appropriate measures for monitoring compliance with the respective parties' obligations under the PPA.

2.2 The proposed PPA is shown appended as 'Appendix A – Planning Performance Agreement' and has been agreed in principle with the Developer and is ready for execution.

2.3 The Developer has agreed to fund the cost of time spent by the Council's appointed officer/s and dedicated planning officer/s for the purposes of procuring, appointing and managing a consultant to prepare an SPD for North Finchley Town Centre up to a maximum of £140,012 over the term of the PPA. This is based on a fixed payment of £11,668 per calendar month from the date of commencement of the PPA. The Developer has agreed to fund the preparation of the SPD as it intends to bring forward proposals for the comprehensive regeneration of North Finchley Town Centre through the redevelopment of a number of sites as well as public realm improvements. An adopted SPD will enable any future applications submitted by the Developer to be considered and determined by the LPA within a robust planning framework

2.4 Council will undertake a sustainability appraisal, an equalities impact assessment and if required a strategic environmental assessment of the SPD produced by the Consultant.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3.1 The alternative option is not to enter into the PPA with the Developer and for the Council to fund the production of an SPD. Although a standard pre-application advice service is offered by the Council for development proposals, it is considered that in view of the strategic significance, context and complexities of North Finchley Town Centre, that a more comprehensive approach is put in place to manage developments in the area for the long term and in order to deliver corporate priorities and objectives (see below). The standard pre-application advice process is considered to be a less effective way for officers to consider and determine the

redevelopment proposals to be submitted by the Developer for the North Finchley Town Centre area.

4. POST DECISION IMPLEMENTATION

4.1 Subject to approval of the officer's recommendation, the PPA is ready to be signed by the Council and the Developer. The PPA will be reviewed on or before the review date, being three (3) months from the date of commencement of the PPA.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 Approval of the proposed PPA is aligned with the Council's Corporate Plan (2015-2020 with 2016/17 addendum and targets) priorities (page 4) to:

- Manage demand for services by delivering services differently and more efficiently ("Fairness" principle);
- Get the basics right to ensure that clients who need to transact with regulatory services such as Planning and Building Control are able to do so with greater speed and certainty ("Opportunity" principle); and
- Manage the budget reductions in place to 2020 by delivering (services) more efficiently (differently and better) by the Council and the wider public sector. ("Opportunity" principle)

5.1.4 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.1.5 The PPA requires the Developer to pay a fixed payment of £11,668 per calendar month to the Council from the date of commencement of the PPA. This payment excludes the costs of any appointed consultant. The Council shall invoice the Developer monthly in arrears for particular Council services and the Developer shall pay the agreed costs within 20 working days of receipt of a valid invoice.

5.1.6 The fees referred to under 5.1.5 equate to a total of £140,012 over a 12 month period.

5.1.7 The PPA obliges the Council to devote sufficient officer resources to ensure compliance with the purposes of the PPA. It is expected that the costs of delivering the SPD by the Council and any consultant will be met by the Developer in full.

5.1.8 There are no ICT implications arising from the proposed PPA.

5.1.9 In December 2016 the Policy and Resources Committee authorised the drafting of a preliminary agreement to make Council land available for development in North Finchley following the putting in place of a Town Centre Framework SPD.

5.2 Legal and Constitutional References

5.2.1 The Government paper 'Planning for a Sustainable Future' (DCLG, May 2007) introduced the concept of the planning performance agreement as an effective collaborative mechanism for handling complex planning applications. Although a PPA has no statutory legal status it allows a developer and LPA to agree and project plan a delivery programme including the appropriate resources necessary to process a planning application in a timely manner. A PPA provides a developer with greater certainty with respect to timescales, costs and advice from relevant professionals.

5.2.2 Section 93 of the Local Government Act 2003 empowers the Council to charge for negotiating a PPA on an actual cost of service provision basis.

5.2.3 Section 1 of the Localism Act 2011 empowers the Council to enter into a PPA under its general power of competence.

5.2.4 The Commissioning Director – Growth and Development post holder is authorised to discharge the statutory functions detailed in Responsibility for Functions, Annex B (Scheme of Delegated Authority to Officers) (Article 9.08, March 2016, page 4) including taking and implementing any decision required for operational effectiveness of planning & development management and strategic planning (Article 15, Annex B 'Responsibility for Functions - Scheme of Delegated Authority to Officers', December 2015, page 21)

5.3 Risk Management

5.3.1 A project programme has been agreed with the Developer which identifies the steps to be taken by the LPA and other Council officers to deliver a Town Centre Framework SPD. The clear steps mitigate the risk of redevelopment proposals for the Town Centre coming forward outside of the robust planning framework of an SPD to guide its consideration and determination.

5.4 Equalities and Diversity

5.4.1 Section 149 of the Equality Act 2010 ("the Act") imposes important duties on the Council in the exercise of its functions including a duty to have regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act; advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.4.2 The draft SPD will be subject to an Equalities Impact Assessment. The proposed terms of the planning performance agreement do not conflict with the Council's Equalities Policy or the commitments set out in the Council's Equality Scheme and support the Council in meeting its statutory equality responsibilities.

5.5 Consultation and Engagement

5.5.1 The SPD will be subject to a statutory period of six (6) weeks public consultation. The appointed consult will be required to produce an Engagement and Communications strategy as part of its appointment.

6. DECISION TAKER'S STATEMENT

6.1 I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that the issues involved in this report do not raise significant levels of public concern or comment or give rise to any policy considerations and that I do not need to seek the view of the Chairman of the Planning Committee. I am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and legal issues including Equalities obligations.

7. CHIEF OFFICER'S DECISION

I authorise the following action

7.1 The signing of the enclosed planning performance agreement

Signed

Date

APPENDIX A

PLANNING PERFORMANCE AGREEMENT

Planning Performance Agreement

In respect of

The Proposed North Finchley Town Centre and Surrounding Area Supplementary Planning Document (“the SPD”).

1. Parties

1.1 This Agreement is made on 2017 between the following parties:

The Mayor and Burgesses of the London Borough of Barnet of the Town Hall, The Burroughs, Hendon, London, NW4 4BG (“the Council”);

and

JOSEPH & PARTNERS (“the Developer”), 5 Neville Court, Abbey Road, London, NW8 9DD

2. Recitals

2.1 The Council is the local planning authority for the area covered by the SPD.

2.2 The Developer and the Council agree to enter into this Planning Performance Agreement (“the Agreement”) (for the following purposes):

- to provide the resource to the Council to procure, appoint and manage consultants to prepare the SPD (in accordance with national planning guidance);
- to agree timescales in the form of the Project Programme for the Council to manage delivery of the SPD that will then inform any emerging planning application(s) related to the Site. For the avoidance of doubt, support in relation to future planning applications is not covered by this Agreement;
- to meet the agreed costs of the Consultant procured by the Council to prepare the SPD;
- to provide the resource to the Council to undertake a sustainability appraisal of the SPD and produce a sustainability appraisal report;
- to provide the resource to the Council to undertake an equalities impact assessment of the SPD and produce a equalities impact assessment report.
- agree to establish the need for and if required resource the Council to undertake a further strategic environmental assessment of the SPD;
- to agree the governance and review mechanisms in respect of the Project Programme and the scope/terms of this Agreement; and
- to agree the appropriate measures for monitoring compliance with the respective parties’ obligations under this Agreement.

2.3 This Agreement is intended to facilitate the management of the preparation of the SPD including meeting the agreed costs of the Consultant to be procured and managed by the Council in consultation with the Developer in accordance with the terms of this Agreement. Once adopted, the SPD will inform the decision-making process for any future planning

applications related to the Site. Once the SPD has been produced by the Consultant, the Council will undertake a sustainability appraisal, an equalities impact assessment and review the need for and if required undertake a strategic environmental assessment of the SPD.

3. Definitions

- “Commencement Date” means the date of this Agreement; “Consultant” means the consultant appointed by the Council to produce the SPD in accordance with this Agreement;
- “Council’s Appointed Officers” means officers appointed by the Council, to advise on this project; such advice to cover a range of Council services as required under the Agreement (as listed in appendix 5);
- “Council’s Services” means the projected scope of work set out in the Council’s monthly report to the Developer;
- “Dedicated Planning Officer” means a qualified planning officer with the relevant experience of a type and scale required in order to handle the tasks covered in the Agreement and dedicated solely to the Development (as listed within appendix 5);
- “the Developer’s Agent” means any agent appointed by the Developer to act on their behalf to carry out the functions set out in this Agreement;);
- “Development” means the proposed development set out in Appendix 1 or as otherwise agreed in writing between the Council and the Developer;
- “Joint Working Meetings” means the monthly meetings between the Council’s Appointed Officers and the Developer’s consultant team and any other similar or substitute meetings as requested by either party;
- “Parties” means the Council and the Developer;
- “Project Programme” means the programme set out in Appendix 3 of this Agreement;
- “Re” means Regional Enterprises Limited, the joint venture between the London Borough of Barnet and Capita (Registered in England 08615172 at 17 Rochester Row, London, England SW1P 1QT) to run the development and regulatory services of the Council from 1st October 2013;
- “Reasonable Endeavours” means that the obligor shall take all steps that are reasonably required to achieve the stated outcome and not merely some of them but shall not be obliged to take any step beyond that which any reasonable commercial undertaking would take to achieve the stated outcome or which involves commencing or responding to legal proceedings;
- “Services” means the activities and advice provided by the Council using Re to include town and country planning, urban design, master planning, transportation, highways, regeneration and support services pursuant to this Agreement;
- “the Site” means North Finchley Town Centre and the surrounding Area outlined in

red on the plan attached at Appendix 2; and

- “Working Days” means a day which is not a Saturday, Sunday or a Bank Holiday in England and Wales.

4. Statutory Authority

This Agreement is made pursuant to Section 93 of the Local Government Act 2003, Section 111 of the Local Government Act 1972 and Sections 1 and 2 of the Localism Act 2011.

5. Term

This Agreement will apply from the Commencement Date and shall remain in force until the earlier of the date the SDP has been adopted by the Council or 12 months from the Commencement Date (or such extension of this term as is agreed by the Parties in writing).

6. Functions

The Developer and the Council will use their Reasonable Endeavours to adhere to the terms and timelines for the tasks set out in this Agreement in accordance with the Council’s Service Standards contained in Schedule 1, the Developer’s Obligations contained in Schedule 2 and the Project Programme contained in Appendix 3.

7. Joint Working

All Parties shall act with the utmost fairness and good faith towards each other in respect of complying with their respective obligations under this Agreement.

8. Dedicated Planning Officer

Without prejudice to its other obligations the Council shall designate the Dedicated Planning Officer through Re who alone or as part of a team shall be responsible for overseeing or carrying out the obligations in accordance with this Agreement PROVIDED ALWAYS THAT the Council shall designate a Dedicated Planning Officer who has the relevant experience of a type and scale required in order to handle the tasks covered in the Agreement and who is dedicated to the Development and has at all times sufficient capacity to ensure performance of the Council’s obligations under this Agreement. In the event the Dedicated Planning Officer leaves the post the Council will provide the Developer with the curriculum vitae of any further candidates and will consult with the Developer before any further appointment.

9. Developer’s Obligations on Funding and Resource

9.1 The Developer agrees to pay to the Council:

9.1.1 The sum of £140,012 (one hundred and forty thousand and twelve pounds), based on a fixed payment of £11,668 per calendar month from the Commencement Date based on the rates as set out in Appendix 4 being the costs of funding the Council’s Appointed Officer(s) and the Dedicated Planning Officer for the purposes of procuring, appointing and managing the Consultant to prepare an SPD for the Site.

The Council will undertake a sustainability appraisal, an equalities impact assessment and if required a strategic environmental assessment of the SPD produced by the Consultant..

9.1.2 The total payable sum to the Council (excluding the Consultant's costs which shall be paid separately in accordance with clause 9.2) will be £140,012 (one hundred and forty thousand and twelve pounds) and is exclusive of any future planning applications related to the Site.). The actual sum payable by the Developer will be a fixed rate £11,668 per calendar month. The charge is calculated on a time charge basis (amount of time incurred multiplied by time charge rates) as set out at Appendix 4 PROVIDED ALWAYS that:

- (a) the Council shall provide a monthly report identifying the time spent on the project and the cost for these works (including the hourly rates for the relevant officers as set out in Appendix 4)
- (b) the Council shall invoice the Developer monthly **in arrears** for the Council's Services approved pursuant to 9.1 above and the Developer shall pay the agreed costs within 20 working days of receipt of a valid invoice.

9.2 The Council will procure, appoint and manage the Consultant to prepare the SPD:

9.2.1 prior to retaining the Consultant, the Council will:

9.2.2 set out a proposed scope of works for the relevant consultant in relation to preparing the SPD and invite several companies to tender for that work;

9.2.3 obtain a fee proposal from each consultant identified by the Council for the relevant scope of works; assess the fee proposals and appoint the consultant that best meets the scope of works; and

9.2.4 obtain the Developer's written agreement for the consultant that best meets the terms under (iii) above and the appointment of the relevant consultant.

9.3 Subject to agreement in writing by the Developer of the fee proposal for the relevant consultant the Developer shall pay the agreed fees incurred by the Council for the relevant consultant appointed pursuant to 9.2 above within 20 Working Days of receipt of a valid VAT invoice produced by the Council which shall be submitted one calendar month in arrears.

9.4 Subject to Clauses 9.1, 9.2 and 9.3 above the Council will provide sufficient resource(s) to discharge its obligations in compliance with the Agreement set out in the Project Programme.

10. Review

At the request of either Party, the Parties shall review the Agreement and in good faith discuss the progress of the SPD and accompanying sustainability appraisal, equalities impact assessment and if required strategic environmental assessment against the Project Programme and review whether any extension of the timescale set out in the Project Programme will be necessary in order to enable the Council to discharge its obligations under the Project Programme or the Developer to comply with the Project Programme.

11. Breach and Termination

- 11.1 If either party shall commit any material breach of its obligations under this Agreement and shall not remedy such breach within 10 Working Days of written notice from the other party to do so, then the other party may notify the party in breach that it wishes to terminate this Agreement forthwith and the Agreement shall be terminated immediately upon the giving of written notice to this effect to the party in breach PROVIDED ALWAYS that the breach is within the control of the party that is in breach and it is capable of being remedied.
- 11.2 Without prejudice to their rights the Parties may by mutual agreement terminate this Agreement with immediate effect.
- 11.3 In the event of early termination of this Agreement neither party shall have any further rights or obligations under this Agreement save for:
- 11.3.1 the rights of either party in respect of any earlier breach of this Agreement; and
- 11.3.2 the obligation to make any pro-rata outstanding payment of the monthly fee calculated in accordance with clause 9 of this Agreement.
- 11.3.3 the obligation under clause 9.3 to pay the agreed fees incurred by the Council for the relevant consultant appointed pursuant to clause 9.2 up to and including the date on which this Agreement is terminated such fees to be paid within 20 Working Days of receipt of a valid VAT invoice produced by the Council.

12. Nature of the Agreement

- 12.1 Nothing in this Agreement shall create, or be deemed to create, a partnership between the Parties.
- 12.2 If any provision of this Agreement is held by any court or other competent body to be void or unenforceable in whole or part, then the other unaffected remaining provisions of the Agreement shall continue.
- 12.3 Nothing in this Agreement shall fetter or restrict the Council in the exercise of its powers under any enactment statutory instrument regulation order or power for the time being in force.
- 12.4 The Council enters into this Agreement on the basis that it has done so without prejudice, and nothing in this Agreement is intended to unlawfully fetter the statutory powers, duties or discretions of the Council.
- 12.5 A person who is not named in this Agreement (other than successors in title to the parties to this Agreement) does not have any right to enforce any term of this Agreement under the Contract (Rights of Third Parties) Act 1992.

SCHEDULE 1

The Council's Service Standards

- 1.1 Subject to the Council not fettering its lawful discretion, it shall use Reasonable Endeavours to carry out its obligations at all times in accordance with the following service standards. The Council shall use Reasonable Endeavours to:
 - 1.1.1 Respond substantively to all urgent emails, letters and telephone calls within 3 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 forthwith and the Council shall endeavour to respond substantively no later than 5 Working Days after receipt of any communication.
 - 1.1.2 Notify the Developer no later than 20 Working Days wherever possible or at the earliest time thereafter to allow the Developer to consider the SPD prior to any meeting of the Council's Policy & Resources Committee at which any report or matter relevant to the SPD will be discussed and or considered and to provide the Developer with a copy of any report to the Policy & Resources Committee at that time.
 - 1.1.3 Provide to the Developer at least 3 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. These can be provided in electronic format.
 - 1.1.4 To provide to the Developer within 10 Working Days of any meeting at which any report or matter relevant to the SPD will be discussed and or considered (not attended by the Developer) the minutes or action points arising from that meeting.