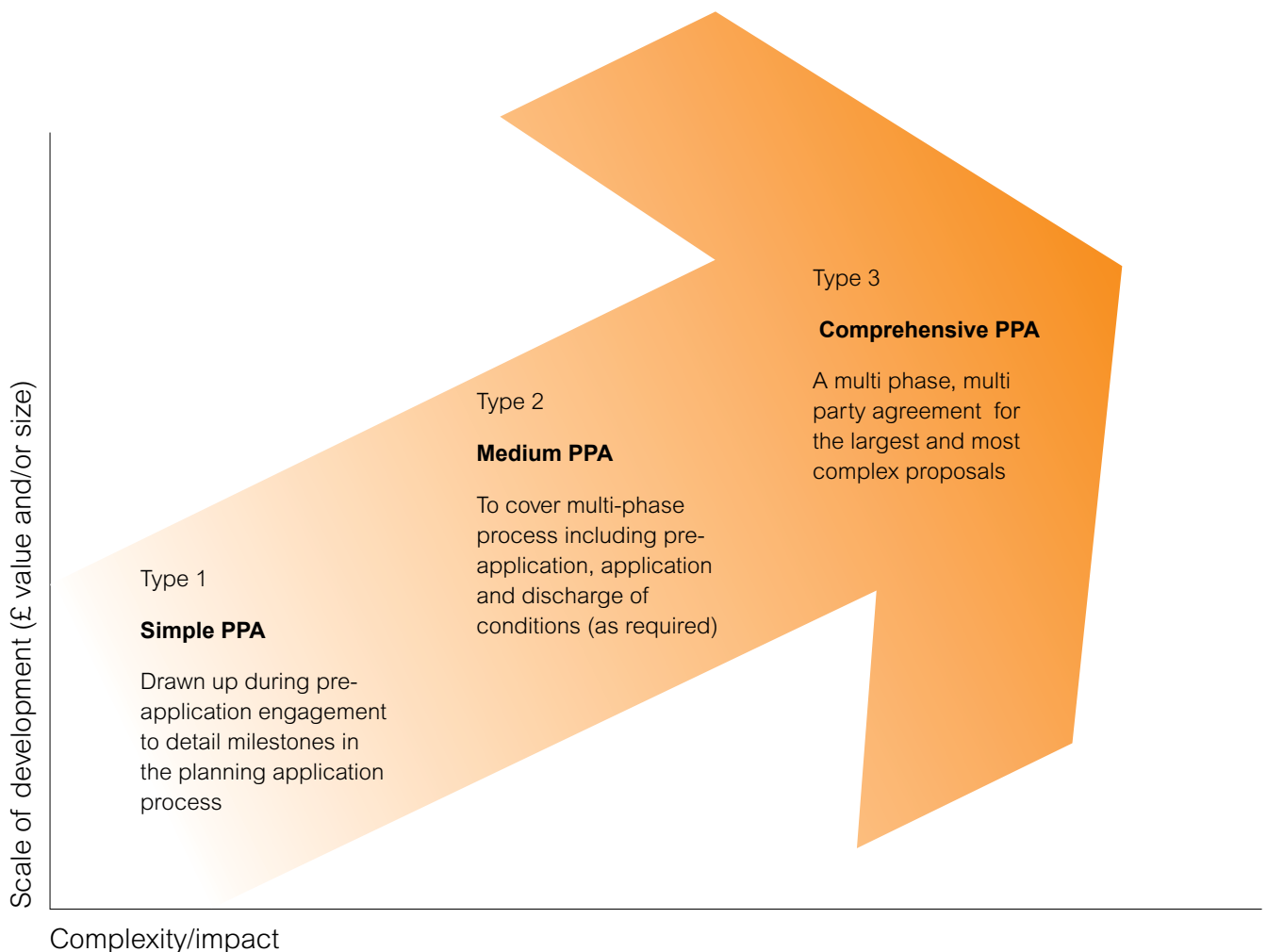


# 3. Planning Performance Agreements

## i) A flexible project management tool

The main purpose of a PPA is to provide a framework, agreed between the LPA and the applicant or potential applicant, about the process for considering a major development proposal.

A PPA is a flexible mechanism, adaptable to proposals where the issues raised are relatively straightforward to those where the issues are complex, a number of parties are involved and the process may be staged over a long period. No standard PPA will fit all of these circumstances. The process that the PPA sets out will alter according to the number and complexity of the issues to be considered. Therefore the form and content of the PPA will likewise be more complex for proposals that have a greater number of issues to consider and a greater number of parties involved. This is more of a sliding continuum than discrete types; but for illustration, simple, medium and comprehensive types are described here. LPAs are advised to use these as a starting point for their own use of PPAs.



As a general principle the agreement should be as simple as possible, consistent with a proportionate approach to the scale of the proposal and complexity of the issues raised. It will usually be agreed in the spirit of a memorandum of understanding rather than as a legally binding contract. The common elements of a PPA are:

- that the agreement is drawn up prior to the submission of a planning application
- that the LPA and the prospective applicant are signatories to this voluntary agreement
- the agreement includes one or more agreed milestones to define the process of considering the development proposed, including an agreed date by which an application will be determined by the LPA.
- the agreed determination date supersedes the 13 or 16 week statutory time limit
- the agreed determination date also supercedes the 26 week planning guarantee.

The simplest PPAs will be an agreement between the council and the applicant setting an appropriate determination date for a planning application.

More often, the PPA will be agreed during pre-application discussions to set out the scope and timetable for pre-application engagement and subsequent submission and determination of the planning application.

For large strategic development the PPA may encompass the very earliest stages and include collaborative work on visioning, feasibility and developing local plan documents that support its delivery. PPAs can also cover post decision phases, such as the consideration of reserved matters and conditions if agreed between the parties.

In early pre-application discussions, a PPA can:

- build a shared understanding of the vision and objectives for a major development and its fit into the community
- identify the information requirements necessary to address the issues raised by a proposed development
- set out a process for assessing this information
- map the process for engaging the community and involving elected members.

A PPA should give greater certainty to the planning process and help foster a collaborative approach to designing better development. PPAs have a particularly useful role in large developments when the scale and value are high, and where impacts on the community are most significant. In these cases, the community and other parties, such as statutory consultees, gain from the transparent process set out in the PPA and can understand their opportunities to engage and influence the proposal.



## ii) Frequently Asked Questions about PPAs

The following table sets out questions and answers to provide more detail on some of the issues that have perhaps prevented their more widespread adoption in the past:

<p><b>When would a PPA be worthwhile?</b></p>	<p>While a PPA could be agreed in respect of any development, for most small scale developments there would not be sufficient benefit to justify the process e.g. for development proposals where the prospective applicant is content to utilise the basic level 1 or 2 kind of pre-application service and when the council will expect to consider and determine within the statutory period.</p> <p>Type 1, Simple PPA: Where the applicant has chosen level 1 or 2 pre-application services, some limited issues may remain to be considered during the planning application phase. In these circumstances a PPA setting out a straightforward project plan for dealing with these issues could be appropriate. This simple PPA should be agreed and signed prior to submission of the application.</p> <p>Type 2, Medium PPA: This kind of PPA provides a framework suitable for significant major applications. It is a fitting tool to support pre-application discussions where the applicant chooses to take up level 2 or 3a pre-application services in the expectation that matters of concern will be worked through before an application is submitted. The PPA will probably include milestones for the pre-application as well as for the application phases.</p> <p>The agreement is likely to be between the council and the prospective applicant, although if appropriate, the timetable can set out a path for the involvement of statutory consultees, community groups and members, with the council agreeing to act as co-ordinator.</p> <p>Type 3, Complex PPA: This is a tool to support the delivery of the most complex, strategically important development proposals such as for pre-application services offered in level 3b of the pre-application model. The PPA is likely to be agreed at the earliest stages and may include inception meetings, the preparation of local plan policies, masterplans or development briefs, site assembly, infrastructure planning as well as shaping the development proposals itself. The PPA will aid project management providing a continuous framework for integrating consideration of planning, site acquisition and other regulatory regimes/permitting. This approach facilitates phased development and post application work including permits, highway works and delivery of infrastructure. It can be adapted to set out an agreed process to include a number of participants including statutory consultees, town and parish councils, community groups and statutory consultees.</p>
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<p><b>Does participation in a PPA oblige the council to grant approval of a planning application?</b></p>	<p>Although pre-application engagement and PPAs are a means of encouraging a collaborative approach to considering and resolving issues about a development, these agreements do not imply any obligation on the part of the council to approve the planning application for the proposal.</p>
<p><b>Can the council make a charge for a PPA?</b></p>	<p>Under Section 93 of the Local Authorities Act 2003, councils can make a charge for providing discretionary services such as pre-application advice. These charges should be on a cost recovery basis only. The charges should be clear and calculated transparently.</p> <p>The charge for pre-application advice is separate from the planning application fee, which is set by regulation and designed to meet the council's costs when considering the application. Where the PPA is a means of project managing the planning application, a council should only make an additional charge for work that goes beyond the council's statutory duty. This would include the elements of a PPA that relate to the pre-application and to post application stage discussions, except in relation to the discharge of conditions themselves, which are also covered by the fee regulations.</p> <p>The government advises that charging agreements should be kept separate from the PPA. For medium and complex PPAs that deal with phased projects over a longer time period there may need to be a framework for staggered or phased payment dates. A separate payment agreement will ensure that the focus of the PPA is on the efficient timely determination of the development application.</p>
<p><b>Who needs to be part of PPA?</b></p>	<p>A PPA is normally signed by the LPA and the developer, although there is nothing to prevent other parties joining as signatories if this is appropriate. The inclusion of other parties who will play a key role in progressing the proposals, such as statutory consultees, can ensure better integration and smoother consideration of all the relevant issues.</p> <p>For setting out the strategy for community engagement in a PPA, the council and prospective applicant will be well-advised to look for some input from that community in order to make sure that the process is suitable and achievable. Where suitable groups such as parish councils could also be a signatory to the PPA.</p> <p>The most important issue is that in a PPA, those who sign up must acknowledge a mutual commitment to ensuring that the milestones are met.</p>

<p><b>What needs to be set out in a PPA?</b></p>	<p>As with all project management approaches it is sensible to keep the content of PPAs straightforward. The guiding principle should be that the parties <b>agree</b> the way forward. PPAs need to be:</p> <ul style="list-style-type: none"> <li>• agreed between the council and the applicant</li> <li>• recorded in writing</li> <li>• signed by a duly authorised person for each party.</li> </ul> <p>They also need to:</p> <ul style="list-style-type: none"> <li>• set out what the development comprises</li> <li>• set out an end date for completion of the planning application – including a Section 106 agreement and section 278 obligations</li> <li>• encapsulate a realistic timetable assuming that all parties are working with the best of intentions to complete in the shortest time possible given the resources available.</li> </ul> <p>Type 3 PPAs are also likely to include more information about the working arrangements between the parties, possibly including formal governance arrangements and include a project plan.</p>
<p><b>How can a PPA set a new determination date?</b></p>	<p>Article 29 of The Town and Country Planning (Development Management Procedure) (England) Order 2010 – the DMPO – sets out the requirement for councils to give the applicant notice of their determination of a valid application within a specified period; being either the statutory time limit or ‘such extended period as may be agreed in writing between the applicant and the local planning authority’. The extended period can be specified in either a PPA or an extension of time agreement.</p> <p>The determination date specified in the PPA will be the date used for the LPA’s performance management in regard to both the designation criteria and planning guarantee. Provided applications are determined within the agreed time they will be counted positively for the purposes of the performance management of the LPA.</p>



<p><b>What is the incentive for a developer to enter into a PPA?</b></p>	<p>The advantages of entering into a PPA are very clear:</p> <ul style="list-style-type: none"> <li>• the process of considering a proposal either at pre-application or through the planning application is set out and much more transparent – it reduces any surprises and sets out defined boundaries</li> <li>• the (potential) applicant has a chance to work with the council and other participants to set out the process – rather than simply reacting to the council's perception of what is required or indeed the council's timetable, he/she can make suggestions, influence the final timetable and clear up ambiguities and so on, which shortens the process</li> <li>• where there is a charge for a PPA, the applicant can be more assured that the resources needed to achieve the agreed timetable will be in place to do it</li> <li>• if other parties such as the statutory consultees agree to be signatories of the PPA, the applicant is assured of their buy-in to achieving the timetable, which increases the chances of a smooth integrated process.</li> </ul>
<p><b>What happens if the council doesn't satisfy the timetable of a PPA?</b></p>	<p>Because of the planning guarantee and the performance management system for councils set up under the Growth and Infrastructure Act 2012, LPAs have a real incentive to meet the determination date set out in a PPA. Moreover, because the PPA is an agreement, the milestones of the PPA should be realistic in the context of each application.</p> <p>If the LPA does not determine an application within the time set out in the PPA, the applicant still has the right under S78(2) of the Town &amp; Country Planning Act 1990 to submit an appeal against non-determination. An appeal cannot be made until that extended period has elapsed, but the applicant does have six months from the expiry of the extended period in which to give notice of an appeal.</p> <p>Under the planning guarantee applicants can claim a refund for the planning application fee if the application is not determined within 26 weeks or by the date agreed under a PPA if that is longer than 26 weeks.</p>
<p><b>What happens if the applicant doesn't do their part to satisfy the timetable for a PPA?</b></p>	<p>Just as for the council, the applicant should sign up to a PPA in the expectation that he/she will do their part to ensure the timetable is met and take their share of responsibility for any slippage. Commercial interests and the embedded costs of developing a proposal through planning should provide a good incentive for the applicant. Although circumstances may sometimes change and a developer may lose urgency or be unable to complete the process, the collaborative understanding reached through the PPA will help to ensure that matters are not left hanging. Just as the applicant has the right to appeal if the council fails to meet the agreed determination date, it is reasonable to expect that the LPA can step aside from the agreed process if the applicant is not prepared to meet their obligations.</p>

<p><b>Can a PPA be renegotiated?</b></p>	<p>All parties to the PPA should regularly review progress against the agreed timetable. It is intended as a working project management tool, so as unforeseen matters arise during the course of pre-application discussions or through the formal planning application process the PPA deadlines can be reviewed and a new determination date agreed between the parties.</p>
<p><b>Can a PPA pass on to a new applicant if the development is sold?</b></p>	<p>With the agreement of all the parties, a new owner of a development proposal may be able to take over an existing PPA part way through the process. Alternatively, if the character of a development changes significantly during the course of pre-application discussions, the parties might agree an amendment to the existing PPA or make a new agreement. The circumstances will determine which option makes most sense, especially taking account of the need to retain transparency and confidence in the process for local people and community groups.</p>