

# **CARMARTHENSHIRE COUNTY COUNCIL DEVELOPMENT MANAGEMENT GUIDANCE AND SERVICE LEVEL AGREEMENT ON CHARGEABLE PRE-APPLICATION AND POST CONSENT ADVICE IN RELATION TO DEVELOPMENTS OF NATIONAL SIGNIFICANCE (DNS) (PLANNING (WALES) ACT 2015) AND NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS (NSIP) (PLANNING ACT 2008)**

## **1.0 Introduction**

1.1 This guidance forms the basis of a service level agreement between the Council and developers wishing to submit applications for Nationally Significant Infrastructure Projects (NSIP) and Developments of National Significance (DNS). The guidance sets out the arrangements for the Council to provide pre-application and advice to the Developer on all planning matters. The advice service will also apply to information and observations sought by the Developer in respect of the formal discharge of planning conditions and requirements associated with approval notices issues by the relevant Secretary of State and Welsh Ministers , in addition to consent monitoring. The service does not relate to advice which is statutorily required under the terms of the Planning Act 2008 or the Planning (Wales) Act 2015 and is a discretionary charging service offered by the Council.

## **2.0 The Duties**

### **Pre-application Advice**

2.1 The Developer will liaise with the Council over requests for pre-application advice relating to schemes seeking a Development Consent Order for an NSIP under the terms of the Planning Act 2008 and formal decision from Welsh Ministers relating to DNS applications. The pre-application advice service will also apply to information and observations the Council provides prior to the formal discharge of planning conditions relating to any subsequent consent the Secretary of State of and Welsh Ministers issue. The responsibility for determining the appropriate level of advice required will remain with the Developer.

2.2 The Developer will provide an initial brief for the Council on the level of pre-application advice required, through a meeting at the Council's offices, or alternatively by correspondence, video-conference or teleconference, supplemented by a briefing note, reports or any other information deemed necessary.

2.3 A target date(s) for a response to the Developer's brief shall be agreed in writing between the Council and Developer within 1 week following the date of submission of initial brief, confirming the service to be provided by the Council and an estimated fee for the work. Depending on the nature and level of work

## Appendix 2

- required, the Council will coordinate an individual or multi-disciplinary team to provide the pre-application advice.
- 2.4 The Council shall be expected to maintain contact with a nominated member of the Developer's project team where further information/clarification is needed on any matter.
- 2.5 The Council shall be expected to submit a formal written response to the Developer to meet the agreed target date, unless a later date has been agreed with the Developer.
- 2.6 The Council's Officers shall be expected to:
- Visit the site and surrounding land at least once, and expect the Developer to provide the necessary permissions for Council officers to enter onto land relating to the proposed development site. A summary of the site visit will be provided in the Council's formal response highlighting any characteristics and/or issues of importance.
  - Appraise planning policy and how it relates to the proposed development and other material planning considerations.
  - Highlight concerns and negotiate amendments to the submitted scheme if necessary to make it acceptable in planning terms.
  - Carry out thorough research of planning issues relating to the proposed development and respond to questions and matters which require clarification by the developer.
  - Keep files notes of all telephone calls, site visits and meetings relevant to the processing of the pre-application advice request.
  - Where relevant the Council's response will be supplemented with photos, maps, drawings and other illustrative material it deems necessary.

### **3.0 GENERAL**

- 3.1 The Council's Officers shall exercise reasonable professional expertise, care and diligence in the performance of the obligations under this Agreement.
- 3.2 The Council shall not assign or transfer any obligation under this Agreement without the prior written agreement of the Developer.
- 3.3 The Council's pre-application advice will be given in good faith and will be based on information that is supplied by the Developer or held by the Council. Although every effort will be made to ensure the accuracy of response, it should be understood that neither the Council nor any of its Officers should be held legally responsible for any advice given. Furthermore, it should not be construed that this advice will be considered binding in the event of a subsequent planning application.

### **4.0 CHARGES, INVOICING AND PAYMENT**

- 4.1 The scale of fees payable to the Council for undertaking the work is set out in Appendix 1 to this Agreement, and shall be subject to annual review to take account of inflation and NJC salary increases for local government staff. The Council will give the Developer written notice of the revised scale of fees to be introduced.

## Appendix 2

- 4.2 Invoicing should be undertaken quarterly, and cover the work undertaken.
- 4.3 Normal payment terms are 30 days from invoice, and payment will normally be expected to be made by BACS.
- 4.4 A 5% administration and management fee will be added to the cost of the Council's pre-application advice service.
- 4.5 Where necessary the LPA will involve the Council's Legal Department before responding to the Developer's pre-application advice request and legal fees will be charged accordingly. Details of the Council's legal fees are included in Appendix 1.

### **5.0 CONFIDENTIALITY**

- 5.1 Subject to Clause 5.2 and 5.3 below, each Party shall keep confidential all Commercially Sensitive Information disclosed to it. Each Party shall procure that its employees shall not make any disclosure to any person of any Commercially Sensitive Information. "Commercially Sensitive Information" means all information designated as such by either party in writing and all other information which relates to the proceedings, planning applications, business, affairs, products, trade secrets, developments, know-how, personnel, customers and suppliers of either party and information which may reasonably be regarded as the confidential information of the disclosing party
- 5.2 The Developer acknowledges the commitment of the Council to open government and public access to information. Accordingly, the Parties agree that: where the Council is managing a request for disclosure of recorded information and whether any exemption applies under the Freedom of Information Acts then it will consult with the Developer in relation to any request for disclosure of recorded information to which this Clause applies and in accordance with the guidance referred to in the Code of Practice on the Discharge of Public Authorities' Obligations issued under section 45 of the FOIA. The Developer shall co-operate with the Council making the request and respond within 5 Working Days to any request by it for assistance in determining how to respond to a request for disclosure; and
- 5.3 The Parties shall each nominate a representative for considering and agreeing matters relating to this Clause 5.1
- 5.4 Clause 5 shall not apply to:
  - 5.4.1 Any disclosure of information to each of the Parties' professional advisors;
  - 5.4.2 Any disclosure of information which is required to ensure the compliance with the FOIA as set out in Clause 5.2.
  - 5.4.3 Any disclosure required by any law or any information not subject to an obligation of confidentiality

## **6.0 AGREEMENT**

It is hereby agreed and declared that:

- 6.1 This Agreement shall commence on **XXXXXXX** and shall be for a minimum period of one year, unless terminated by either party giving not less than 1 month notice in writing.
- 6.2 In the event of any breach of this Agreement by the Council the Developer will be entitled to terminate the Agreement forthwith.
- 6.3 If any dispute or difference arises between the parties in connection with this Agreement it shall be referred to an independent Chartered Town Planner ('the planner') appointed jointly by the parties, or in the absence of agreement to a Chartered Town Planner appointed by the President of the Royal Town Planning Institute.
- 6.4 The appointed person under paragraph 6.3 above shall be entitled to seek and rely upon such other professional advice and assistance as he/she shall in his/her absolute discretion deem desirable, and the decision of the appointed person shall in the absence of manifest error be final and binding on the parties.
- 6.5 The fees payable to the person appointed under paragraph 6.3 above shall be borne and paid by the Developer and the Council in such shares and manner as the appointed person determines, and failing his/her determination in equal shares.

### **Signatures**

**On behalf of the Developer:**

**On behalf of the Council: Carmarthenshire County Council**

Llinos Quelch: