

Princes Parade – Handling Arrangements for LPA functions (as at 17 November 2021)

Introduction and context

- 1 Folkestone & Hythe District Council (“FHDC”) submitted a hybrid application accompanied by an Environmental Statement for the development of land at Princes Parade, comprising an outline application (with all matters reserved) for up to 150 residential dwellings, up to 1,270sqm of commercial uses including hotel use, retail uses and / or restaurant/cafe uses, hard and soft landscaped open spaces, including children’s play facilities, surface parking for vehicles and bicycles, alterations to existing vehicular and pedestrian access and highway layout, site levelling and groundworks; and all necessary supporting infrastructure and services. A Full application for a 2,961sqm leisure centre (Use Class D2), including associated parking; open spaces; and children’s play facility. This was submitted under planning reference Y17/1042/SH.
- 2 In February 2019, Cabinet agreed for the scheme to progress. This was delayed due to a judicial review which was quashed in November 2020 and the project recommenced in January 2021. The land in question is owned by FHDC and the development is to be led by FHDC with FHDC having appointed a project team.
- 3 The Application falls to be determined by FHDC in its capacity as local planning authority (“LPA”). FHDC will therefore be exercising both:
 - its statutory functions as LPA and decision maker on the Application, and
 - its role as landowner and promoterin each case in respect of the Project.
- 4 By its nature, the Application is for a development likely to have significant effects on the environment; The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“Regulations”) will therefore apply.
- 5 Regulation 64(2) of the Regulations has effect where, as here, the relevant local planning authority is also the same legal person *“bringing forward the (relevant) proposal for development”*. In these circumstances, the authority is required to *“make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal”*.
- 6 The processes set out in these handling arrangements must be followed to ensure that a proper and fair decision under the relevant planning legislation can be taken. These arrangements are not guidance, but are necessary in order to meet legally enforceable requirements in the Regulations; it is vital the processes are followed.

Pre-Committee Consideration

- 7 Throughout pre and post Application submission stages the LPA has established a project team to process the Application. The team of officers who will handle the Application for the LPA and will advise the LPA on the Application include Llywelyn Lloyd, Rob Bailey, David Campbell and Lisette Patching

- 8 The team of officers and consultants who will handle the Application for the applicant and who will address the relevant committee on the Application from the promoter/applicant perspective include:

Tim Madden, (Director Transition and Transformation); Andy Blaszkowicz (Director Housing and Operations); Andrew Rush (Regulatory services and corporate contracts lead specialist); Hadron consultants (Project Manages); Faithfull and Gould (cost consultants); Lloyd Bore (Ecological Consultants); BAM (Construction); Tibbalds (Planning Matters); Sports Consultancy; Mark Hanton Studios (Landscape Architects) GT3 Architects.

- 9 The roles undertaken on behalf of the applicant in progressing the Application are entirely separate from the role of FHDC as LPA with responsibility for determining the Application, and where FHDC as LPA is engaging with FHDC it will do so in the same way as it would any other third party developer/applicant.

- 10 It is anticipated that this cross-working will include but not limited to tasks set out below and examples of how the planning team will interact in these areas include:

Table 1 Princes Parade Areas of Work

Area of Work	Role of FHDC as LPA
Housing, civic and employment development within the project	If officers from the Council are required to support the applicant side in these areas of work this should be identified and agreed at an early stage.. Where there is only one officer the LPA will seek independent external advice. Officers from the LPA side will only input into this work through the formal pre-application and planning application process. This is important to ensure FHDC as LPA does not fetter its ability to take an open, transparent and unbiased planning decision.
Technical input into a range of LLP activity including the preparation and submission of planning application material	If officers from the Council are required to support the applicant side in these areas of work or a particular project, this should be identified and agreed at an early stage. For these projects, the applicant should make the officer aware of the role in which advice is being sought and the officer would not be able to take part in any LPA side activities associated with that advice. Officers from the LPA side will only input into this work through the formal pre-application and planning application process. This is important to ensure FHDC as LPA does not fetter its ability to take an open, transparent and unbiased planning decision. Where necessary, the LPA will seek independent technical advice from external advisors in respect of material submitted as part of planning documentation.
Wider corporate activity: <ul style="list-style-type: none"> • Corporate plan activity including resourcing for the LPA; • Funding and financing (e.g. MHCLG grant funding arrangements; land remediation funds 	Officers from the LPA side will support these areas of work where necessary. This work is not directly about the land assembly and/or securing planning permissions and will not fetter the LPA’s discretion. Input from the LPA will support the Council in achieving its overarching Corporate objectives of securing comprehensive, well planned new homes and a new leisure facility.

Processing the Application

- 11 FHDC has put in place the following practical arrangements to maintain functional separation during its processing and consideration of the Application:

FHDC as LPA:

- Will consider and reach a recommendation on any planning application submitted by the applicant in line with the Development Plan and all relevant material considerations. The LPA will (as with all applications) disregard any financial or other benefits to FHDC;
- Will not be party to the work of FHDC as the developer. Significant decisions as to the terms of acquisitions, Business Case, disposal of land interests, development partnerships, or related land issues will all be the subject of separate reporting lines to the Cabinet/ Senior Officers;
- Where necessary, the LPA will liaise with the Council in respect of wider corporate activity and resourcing matters relating to the project where it will support the LPA in discharging its statutory functions and not fetter its discretion. The LPA will liaise with FHDC as applicant to guard against any perception or reality of relevant officers holding any 'hierarchical superiority' over another;
- Officers identified in section 7 will not engage in any discussion or communication in relation to the Application with other officers or Members in respect of the Application save:
 - those officers identified in section 9 shall be entitled to communicate with the officers identified in section 8 for the purposes of progressing the Applications and only in the same way as they would any other third party developer/applicant; and
 - when officers identified in section 9 are conducting formal consultation on the Applications
 - when officers identified in section 9 are engaging in pre or post application member briefings as they would any other third party developer/applicant.
- Will act in accordance with the required standards of practice and ethics set out in the RTPI Code of Professional Conduct;
- Communication with the applicant:
 - The LPA will communicate as would be the case with any other application and commensurate with the project's scale and nature;
 - The LPA and the applicant will not share the same office to maintain functional separation;
 - The LPA and the applicant will not share a 'post in/post out' box for written correspondence;
 - The LPA will store all documentation in separate filing systems and regard it as confidential – documentation will only be disclosed in the usual course of business between the respective teams;
 - The LPA will use separate consultant teams to advise it on its work;
 - The LPA will be clear at the outset of all meetings as to individual officer's roles in the meeting (i.e. as LPA or applicant);
 - Records will be kept of all meetings between the LPA and the applicant relating to the Application¹

¹ meeting records are disclosable under Freedom of Information Act/Environmental Information Regulations requirements unless statutory exemptions apply

- Officers should leave a meeting if discussions move on to matters that should not be shared between those acting for the LPA and those acting for the applicant.

FHDC as the applicant

- Will not seek to unduly influence FHDC as LPA - persons involved in promoting or assisting in the promotion of the Project or the Application must not give any instructions to, or put any pressure on, any person acting or assisting in the discharge of the functions of FHDC as LPA - or attempt to do so;
- Where necessary, the Council will liaise with the LPA in respect of wider corporate activity and resourcing matters relating to Princes Parade where it will support the LPA in discharging its statutory functions and not fetter its discretion. FHDC as applicant itself will liaise with the LPA in line with the activities described in Table 1 to guard against any perception or reality of relevant officers holding any 'hierarchical superiority' over another;
- Will not look to access confidential information submitted to the LPA by other applicants in the area;
- Will not share information (such as commercial agreements and other confidential bidder/developer information) with the LPA unless it is of a nature a third party applicant would normally expect to share with a local planning authority and it is clear any necessary third party agreement has been obtained.
- Communication with the LPA:
 - The applicant and the LPA will not share the same office to maintain functional separation;
 - The applicant and the LPA will not share a 'post in/post out' box for written correspondence;
 - The applicant will store all documentation in separate filing systems and regard it as confidential – documentation will only be disclosed in the usual course of business between the respective teams;
 - The applicant will use separate consultant teams to advise it on its work;
 - The applicant will be clear at the outset of all meetings as to individual officer's roles in the meeting (i.e. as LPA or applicant);
 - Officers should leave a meeting if discussions move on to matters that should not be shared between those acting for the applicant and those acting for the LPA.

12 Community and Member consultation exercises will be handled in the same way as they would for similarly sized development proposals and in line with best practice. Members of FHDC will be encouraged to engage openly and appropriately with the development of the project through Briefings, whilst ensuring that their decision making functions and other statutory functions are not compromised. Members will be reminded by officers that these topic based briefings are not to discuss or debate the merits of any planning applications. Proposals for community and/or Member consultation led by the applicant will be discussed and agreed with the LPA in advance as is normal practice.

12.1 Should an individual or organisation have any concerns regarding an actual or potential conflict relating to the separation of functions, they should raise it immediately to FHDC's Monitoring Officer.

Determining the Application

- 13 The Application will be determined in accordance with the Constitution, Code of Conduct, Planning Code and normal practice.
- 14 Cabinet and Senior Officers acting under delegated powers will be responsible for land matters and other issues relating to the function and operation of the applicant.
- 15 To maintain functional separation Cabinet Members will recuse themselves from participating in determining the Applications.
- 16 Officers and Members shall comply with the Planning Code. Regular staff and Member training will be provided to remind Members and officers of these handling arrangements and wider guidance. Copies of these Handling Arrangements will be circulated to all persons identified at sections 7 and 8 above and to relevant Members, and recirculated following any amendments.
- 17 The applicant will only be able to address the Planning and Licensing Committee in the same way as other third party/applicants would, in accordance with the FHDC's speaking scheme.
- 18 The drafting and finalisation of the officer's report will be the responsibility of the LPA (and its advisors). In accordance with normal practice for large scale developments a final draft of the report shall be shared with the applicant 48 hours prior to publication for fact check purposes only.
- 19 The drafting and finalisation of the planning conditions will be the responsibility of the LPA (and its advisors). Planning conditions will be prepared based on National Planning Practice Guidance to establish early in the process what may need to be the subject of conditions. The LPA will comply with the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 which provides that planning permission may not be granted subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition.
- 20 All section 106 matters will also be dealt with in the same way as would any other third party applicant with separate legal representation for the LPA and applicant.

Post Outline Planning Permission

- 21 All post application matters such as the discharge of conditions or reserved matters applications (Tier 3) will be dealt with in accordance with the published Scheme of Delegation.

Reviewing the arrangements

- 22 These handling arrangements will continue to be kept under review with an informal review by the Monitoring Officer every 3 months and a formal review every 6 months agreed by Corporate Leadership Team. Each 6 monthly review will be reviewed by an independent legal advisor to the LPA.

Publication

- 23 The handling arrangements will be published on FHDC's website and will be included within the publically available planning application documents in respect of the Application.