

DRAFT

PLANNING PERFORMANCE AGREEMENT

[INSERT SITE ADDRESS]

BETWEEN

[INSERT APPLICANT]

AND

London Borough of Hammersmith and Fulham

Date:

DEFINITIONS

For the purpose of this agreement, the words and phrases below shall be interpreted to have the following meanings and be construed accordingly.

the Applicant [INSERT]

the Council London Borough of Hammersmith and Fulham of the Town Hall, King Street, London, W6 9JU

the Site [INSERT SITE ADDRESS]

the Development [INSERT DEVELOPMENT DESCRIPTION]

1. INTRODUCTION AND SCOPE OF THIS AGREEMENT

- 1.1 This Agreement is made on the date on the front page of this document between the Council and the Applicant.
- 1.2 The Council is the Local Planning Authority (“LPA”) for the area in which the site is located.
- 1.3 The Applicant seeks to enter into formal pre-application discussions with the Council regarding the proposed development of the site. The Applicant intends in due course to submit a planning application and subordinate applications, (hereafter known as the ‘Planning Applications’) for the Development.
- 1.4 This Planning Performance Agreement is made pursuant to the powers contained within section 111 of the Local Government Act 1972, section 2 of the Local Government Act 2000, section 93 of the Local Government Act 2003 and section 1 of the Localism Act 2011.
- 1.5 The Parties have agreed to work together and this Planning Performance Agreement (PPA) provides a proposed programme for the pre-application process in order that the proposals are processed in a timely manner. It provides a project management framework and timetable to complete the various stages of the whole process.
- 1.6 The Applicant and LBHF recognise that the Development will be accompanied by a number of Application Documents and will give rise to a range of planning issues, and accordingly, they acknowledge that in order to properly assess those planning issues the PPA does not anticipate determination of the Planning Applications within the 13 week statutory target date or within any amendment thereto. An agreed list of documents required to validate the planning application is appended at Appendix 4.
- 1.7 The Applicant and LBHF have agreed to enter into this PPA to cover both the pre-application and planning application stages. The fees chargeable under the terms of this Agreement relate solely to that part of the work that relates to the pre-application work and the additional work that falls outside the scope of the normal work required for the processing of applications pursuant to the relevant statutory fees. This PPA will ensure that determination of the application is in accordance with a timeframe as agreed and acknowledged by both parties in advance, and would remove the application from the normal statutory target for determination. This PPA anticipates a timetable for determination not later than six months from the date of registration of the Planning Application(s). In the event that the applications are not determined within a period of 12 months, and no terms for extension of the timescale are agreed, then this Agreement shall cease. The Applicant shall not seek to reclaim the statutory planning application fees paid to LBHF in the event that

the planning application is not determined within a period of 12 months from the date of registration of the application.

- 1.8 Reasonable endeavours will be used to ensure that the parties meet the programme agreed. It is also acknowledged that it may be necessary to review the programme at not less than monthly intervals during the application process.
- 1.9 This agreement will not fetter the Local Authority in exercising its statutory duties as local planning authority. It will not prejudice the outcome of the Planning Applications or the impartiality of the Local Authority. All such rights powers obligations and duties shall in relation to the Land be enforceable and exercisable by LBHF as local planning authority as fully and freely as if this Agreement had not been entered into.
- 1.10 This agreement will not restrict or inhibit the Applicant from exercising the right of appeal under Section 78 of the Town and Country Planning Act 1990 (as amended) nor the right to request (pursuant to Article 7 (6) of the Mayor of London Order 2008) that the Mayor of London issues a Direction pursuant to Section 2A of the Town and Country Planning Act 1990 (as amended).
- 1.11 No provision within this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 1.12 The Council makes no representations nor any warranties in respect of the work undertaken pursuant to the terms of this Agreement and shall not be liable for any act of negligence, misrepresentation or any other form of tortious conduct carried out pursuant to the Agreement and shall not be liable for any failure to exercise skill and care under the terms of this Agreement or any other breach of the terms of this Agreement.
- 1.13 In the event that the Applicant is dissatisfied with any part of the service provided by LBHF the Applicant shall in the first instance raise the concerns in writing to the Council's Head of Development Services who shall seek to resolve the issues and if the issues cannot be resolved then the Applicant shall use the Council's internal complaints process.
- 1.14 If any dispute arises out of the interpretation and application of this Agreement then the dispute shall be referred to an arbitrator appointed jointly by both parties. If the parties cannot agree on the identity of the arbitrator the arbitrator shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors. The Arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator.

2. TERM

- 2.1 This agreement will come into force on the date of this Agreement and shall remain in force until the earlier of:

- 2.1.1 The date a planning decision is issued on the Planning Applications;
- 2.1.2 The date that the Applicant submits an appeal under Section 78 of the Town and Country Planning Act 1990 in relation to the applications (for whatever reason);
- 2.1.3 Any of the applications are called in by the Secretary of State, or taken over by the Mayor of London; or
- 2.1.4 The expiration of a period of 12 months from the date of registration of the Planning Applications. The term shall be subject to review as may be agreed between the Parties and set out below .

3. JOINT WORKING

- 3.1 All Parties shall act with the utmost fairness and good faith towards each other in respect of all matters during the handling of the Planning Applications and to work jointly with each other in complying with their respective obligations under this Agreement.
- 3.2 In particular the Parties shall work collaboratively to ensure that the pre application discussions and determination of the Planning Applications in accordance with the Project Programme.

4. OBJECTIVES

- 4.1 The objectives of this PPA are to:
 - 4.1.1 Agree requirements and timescales including pre-application meetings, proposed submission and determination deadlines in respect of the Planning Applications;
 - 4.1.2 Set out agreed timeframes for a response from the Applicant, the Applicant's consultancy team and LBHF when actions are raised during the project;
 - 4.1.3 To establish a regular review mechanism to enable the effective project management of the Planning Applications.

5. THE PROJECT TEAM

- 5.1 The names and contact details for the members of the project team for the Council are set out in Schedule 1 to this Agreement.
- 5.2 The names and contact details for the members of the project team for the Applicant are set out in Schedule 2 to this Agreement.
- 5.3 In the event that membership of either parties project team changes, the contact details shall be updated at the first possible meeting.

6. PROJECT PROGRAMME

- 6.1 The Project Programme is set out in Schedule 3 to this Agreement. The parties recognise that there are any number of issues that might arise that may have an impact on the project program. The parties shall use their reasonable endeavours to ensure that the Planning Applications are progressed in accordance with the Project Programme. However, should

any delays be incurred, then the parties shall meet and review the project program to identify what targets and timescales may need to be changed.

7. PRE-APPLICATION MEETINGS

7.1 The Parties agree that the pre-application meetings to be undertaken ahead of submitting the Planning Applications will take place as detailed in the table below and in accordance with the Applicant's Performance Standards and LBHF Performance Standards.

7.2 The Fee paid for the delivery of this Agreement shall cover the cost of 2 pre-application meetings. However, in the event that the parties agree that additional meetings are required, then additional meetings shall be held at the Applicant's cost charged in accordance with the Council's pre-application charges schedule applicable at that time.

8. FEES AND CHARGES

8.1 In consideration of the supply of the pre-application services referred to in this Agreement the Applicant agrees to pay to LBHF an initial payment of £25,000 upon completion of this agreement to assist the Local Authority in providing the level of service required to meet its obligations in respect of the pre-application work under this Planning Performance Agreement. This payment would cover the hourly costs (including overheads) of the Council's project team.

8.2 In the event that the Council require specialist advice from consultants or specialists, it shall submit the costs for agreement with the Applicant. The costs of the additional consultants shall then be met by the Application, payable within 10 working days of the date of demand.

8.3 This fee is in addition to the application fees payable under the Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2008.

8.4 In the event of failure to pay the fees to LBHF within a period of ten days from the date of demand the LBHF shall be entitled to apply interest at a rate of 5 per cent above the base rate applied by Lloyds Bank PLC and an administrative charge of £150 payable within ten working days from the date of the further demand. The LBHF shall be entitled to immediately cease work under this Agreement without notice if there is a failure by the Developer to meet any of the fees demanded by the LBHF.

9. LEGAL COSTS/SECTION 106 LEGAL AGREEMENT

9.1 Within the programme set out below, it is envisaged by both parties that reasonable endeavours will be used to agree the Heads of Terms for the

Section 106 in advance of submission of any report to the Planning Applications Committee so that Members are fully aware.

- 9.2 The Applicant agrees to pay all the Council's reasonable legal costs based on a minimum hourly chargeable rate of £200 per hour exclusive of VAT in preparation of the Section 106 Agreement or related agreements whether or not the Agreement is completed and without prejudice to, and irrespective of the outcome of the Planning Applications. The Applicant will submit a solicitor's undertaking to meet all of LBHF costs prior to the signing of this agreement in a sum of not less than £4000 and which said sum shall be subject to such increase as may be considered reasonable in all the circumstances by the Council. The legal costs are to be paid in cleared funds prior to completion of the S106 agreement and a receipt will be supplied to the Applicant.

10. BREACH AND TERMINATION

- 10.1 If any party shall commit any breach of its obligations under this agreement and shall not remedy the breach within 10 working days (or other time period) 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 the breach is within the control of the party that is in breach and is capable of being remedied.

11. AMENDMENT/REVIEW OF AGREEMENT

- 11.1 Amendment to the agreement and revision of timescales within the Project Programme shall be subject to review as may be agreed between the parties, acting reasonably to take account of any relevant unforeseen matters that might arise.
- 11.2 In the event of a delay in the Project Programme, members of the Project Team will meet and discuss whether the programme is still realistic or whether the Project Programme and the PPA determination timeframe need to be revised. Any revisions to the PPA determination timeframe shall be agreed in writing by the parties to this agreement and appended to this document.

SCHEDULE 1 - THE COUNCIL'S PROJECT TEAM

SCHEDULE 2 - THE APPLICANT'S PROJECT TEAM

SCHEDULE 3 - VALIDATION REQUIREMENTS

SCHEDULE 4 – PROJECT PLAN

AGREEMENT SIGNATORIES

IN WITNESS whereof the Parties have executed this Agreement in the presence of the persons mentioned respectively below this day and year first before written

.....

Name:

Signature:

Position:

On behalf of: London Borough of Hammersmith and Fulham

Date:

In the presence of

..... Authorised signatory

Name:

Signature:

In the presence of:

..... Authorised signatory