

Chichester District Council

OVERVIEW AND SCRUTINY COMMITTEE

13 June 2017

South Downs National Park Authority Development Management Agency Agreement

1. Contacts

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2. Recommendation

The Committee is requested to note and comment on:

- 2.1 The operation of the current S101 agreement and Service Level Agreement; and**
- 2.2 The position and progress that is being made in relation to the negotiations with the South Downs National Park Authority (SDNPA) in connection with potential new delegated arrangements from 1 September 2017 onwards.**

3. Background

- 3.1** The SDNPA originally entered into a legal agreement under S101 of the Local Government Act 1972 with 15 host authorities that have parts of their administrative areas within the national park to enable the delivery of development management services from 1 April 2011 to 31 March 2014. Individual agreements were supplemented with a number of other provisions including protocols relating to enforcement and the management of Section 106 agreements and a Service Level Agreement (SLA). This agreement was reviewed and extended for a further 3 years in April 2014 (to March 31 2017). Since the introduction of the host authority delegation arrangements in 2011, ten of the original host authorities have since opted out, with the administration of the development management service within those areas transferring back to the SDNPA. With the exception of the County Councils, this has been where the SDNP designation covers a very small area of each of these authorities.
- 3.2** The current agency agreement, under which the district council provides all development management services for the area of the national park that falls within Chichester district, was extended earlier this year beyond its originally agreed third and final year, until the end of September 2017, after which time the agreement between CDC and the SDNPA will expire. The District Council is paid for this work by the SDNPA annually, based on an estimate of the cost of delivering the service against an assumed level of planning applications and other activity dealt with by the Council in preceding financial years, and subject to a 5% 'tolerance'. Additional payments for non-routine matters (including workloads above the identified tolerance) have been subject to separate

bespoke negotiations. All S106 contributions are paid to and held by the SDNPA as the relevant local planning authority.

- 3.3 The previous S101 agreements have been drafted on the basis of a 3 year term, including a 12 month notice period in the event of termination by either CDC or the SDNPA. They set out the terms on which CDC would undertake all development management planning work pursuant to Parts III, VII, VIII and X of the Town and Country Planning Act 1990, and also the operation of the SDNPA pre-application advice service, within those parts of the SDNP in the administrative area of CDC. This includes planning enquiries, pre-application advice, the making of tree preservation orders, EIA screening/scoping and the administration and determination of planning related applications, appeals and enforcement matters. The SDNPA retains the ability to call in those applications, orders or consents which it considers may have a significant effect on the purposes for which the SDNP has been designated. During the Course of 2016/17 the SDNPA called in some 20 planning applications of varying degrees of complexity, the majority of which were smaller applications in relation to larger historic sites, such as King Edward VII Hospital. This represented approximately 2.4% of all planning applications submitted in relation to the SDNP covered by Chichester District. In addition some 30 cases submitted within the Chichester District area in relation to other work such as pre-applications, PD enquiries and discharge/compliance with condition were handled by the SDNPA.
- 3.4 An associated Service Level Agreement (SLA) set out the expected operation and performance of the S101 Agreement in greater detail. Within this, the SDNPA has sought to promote three key themes; customer focus and outcomes, quality of service and performance. The most notable key indicators have previously been:
- Pre-application advice to be provided within published SDNPA timescales
 - All applications that receive and follow pre application advice are determined within 30 ('Minor' and 'Others') and 60 ('Majors') working days from validation.
 - Validation within 3 ('Minors' and 'Others') and 5 ('Major') days where those applications are deemed to be valid
 - All site visits to be undertaken within 15 working days of validation.
 - Decisions on 65% of Minor and 80% of Other applications in 8 weeks.
 - Decisions on 60% of Other applications in 13 weeks (16 weeks for EIA development), unless an alternative timescale has been agreed through a PPA or PAA
 - Enforcement to be undertaken in accordance with an agreed Enforcement Strategy
 - A success rate of 70% on appeals

- 3.5 The Council's SDNP Team comprises 6.4 fte including; Team Manager, Principal Planning Officer, One part time planning officer (0.4 fte), 3 Planning Officers and a Technician. The work within the team is allocated to officers on the basis of the number of cases on hand and having regard to which officer is appropriately experienced. Complex application proposals are dealt with by the Principal Officer. The team manager has overall responsibility for the performance of the team and they report to the Development Management Service Manager.
- 3.6 The Planning Enforcement Team comprises an Enforcement Manager, Assistant Manager, 3 Planning Officers and a Technical and Administration Officer. The three planning officers have responsibility for specific parishes within the Park area; the Assistant Manager oversees this work and investigates complex cases. The Manager and Assistant Manager deal with the majority of the appeal work within the team. The Manager is responsible for the team's performance and reports directly to the Head of Planning Services.
- 3.7 Both Teams maintain a weekly liaison with the SDNPA Link Officer. The performance of the teams is measured in accordance with national targets and local performance indicators having regard to the time taken to process applications and enforcement investigations. Monitoring reports are produced on a monthly basis; the annual cumulative position is carefully monitored and managers monitor individual performance and workloads within the teams to ensure performance is met. In addition planning enforcement run weekly monitoring reports to progress cases in accordance with performance targets; both Development Management and Enforcement report to the Planning Committee on a quarterly basis with regard to performance over the preceding three months.
- 3.8 Parish Councils formally engage in the application process through consultation on planning applications and the submission of enforcement complaints where necessary. Parish Councils are encouraged to maintain an open dialogue with case officers on planning applications where there are significant concerns or the need for assistance in clarifying proposals. Periodically the SDNP Team Manager and/or the Development Management Service Manager will meet with Parish Councils, as necessary, in order provide assistance and foster good working relationships.
- 3.9 Information relating to planning enforcement cases is not in the public domain as investigations are carried out on a 'confidential' basis. However, Members have access to a list of open cases and a weekly update of newly opened and closed cases via the Council's intranet. For cases of individual interest, Members are able to obtain information from the investigating officer. Once a Member's interest is registered on the case record they will receive updates at key points in the enforcement process. The enforcement service also maintains contact with parish clerks in relation to cases in which they have expressed a specific interest.

4. Performance against key criteria of the SLA

- 4.1 CDC has enjoyed a good working relationship with the SDNPA since first entering into the agency agreement and officers maintain frequent and open communication through the SDNPA's designated Link Officer and as part of wider regular group meetings of the SDNPA and all host authorities, at various

levels. During the previous six years there have at times been difficulties in meeting some of the targets set out in the SLA (most notably as a result of issues with the SDNPA's IT systems during the early years of the original agreement and in 2014/15 when CDC suffered staff resourcing issues). However, the arrangements have over the last 3 years in particular settled down well and for the year 2016/17 planning application performance has been excellent (see table and figures below for details).

	Majors	Minors	Others
	% In Time	% In Time	% In Time
CHICHESTER	88%	90%	93%
EAST HANTS	100%	89%	94%
WINCHESTER	100%	89%	97%
LEWES	100%	89%	96%
HORSHAM	N/A	57%	90%
MID SUSSEX	N/A	71%	90%
ADUR & WORTH	N/A	40%	43%
SDNPA	85%	82%	92%

Table 1: Percentage of applications determined timescale (2016/17)

Fig 1: No. of Major applications determined 2016/17 and proportion of total across SDNP

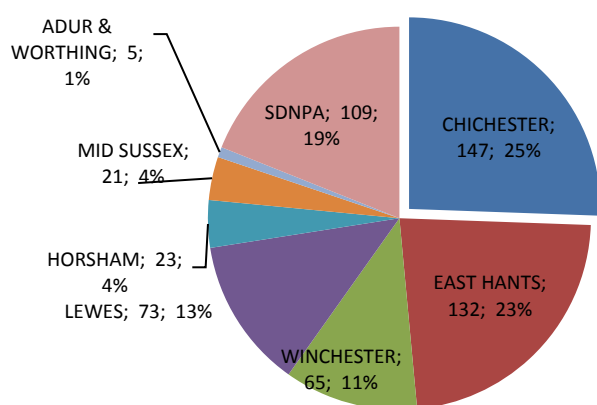


Fig 2: No. of Minor applications determined 2016/17 and proportion of total across SDNP

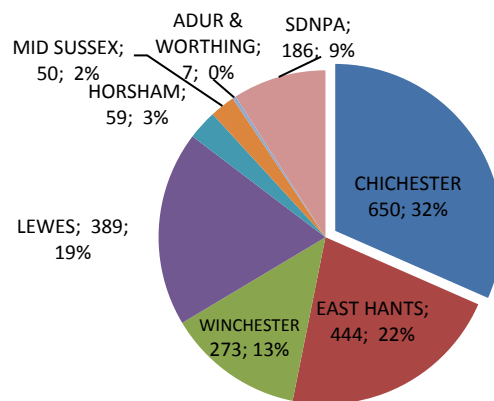


Fig 3: No. of Other applications determined 2016/17 and proportion of total across SDNP

- 4.2 Whilst the majority of planning applications have been determined within agreed timescales, it is acknowledged that there have been a limited number of applications which have taken a significant amount of time to determine, particularly those which are subject to complex heritage considerations. Proposed measures, to include a greater degree of training for officers in relevant specialist disciplines will seek to ensure that delays in the determination of these applications without reasonable justification are minimised going forward.

5. Emerging future agency/delegation agreements with the SDNPA

- 5.1 The SDNPA has advised that it remains committed to delivering its development management service through agency arrangements with the 5 remaining host

authorities and officers have been working with the SDNPA over recent months to review the current arrangements and determine how they might be taken forward. This work is ongoing with a view to presenting a final draft S101 and new Service Level Agreement to Cabinet in July with the introduction of any new delegation agreement with the SDNPA on 1 October 2017.

- 5.2 The agency arrangement with the SDNPA has enabled the District Council to maintain a far greater degree of influence over the determination of applications and enforcement matters since designation of the South Downs National Park than would have been the case had the planning function been administered from the outset entirely by the SDNPA and, as set out above, these arrangements have generally worked well over the past six years.
- 5.3 As a consequence, it is proposed by the SDNPA that much of the governance provided within the existing S101 and Service Level Agreements is to be transferred to the new draft agreements with updating provided as appropriate. There are currently some exceptions, the most notable of which are set out below:
 - 5.3 Proposal for a 5 year initial term - Whilst in previous years each agreement has covered a period of three years, the current proposal is to extend this to a five year term (up to 31 March 2022). This is considered positive as it will increase certainty in service delivery but would not affect the ability of either CDC or the SDNPA to terminate the agreement within this period if such a decision was warranted, giving a years' notice of intention to do so.
 - 5.4 New arrangements for determining payment levels – A key change proposed in the draft agreement is the way in which annual payment levels will be calculated. The SDNPA proposes to move away from a fixed fee payment per annum to a payment approach which reflects the work actually carried out by the Council on the SDNPA's behalf. To enable this approach to be introduced, an average cost per application has been assigned to the various application types, which would form the basis of the calculation for the payment level, based upon the number of each category of application received in any given year, multiplied by the average estimated cost for that application type. The Council's Planning Service has carried out a robust time recording exercise since July 2016 which has provided information to inform average costs per case, including overheads and on-costs. This data has been submitted to the SDNPA and negotiations are on-going regarding the payment level to be attributed to each application type and the approach to be taken in relation to settling costs associated with planning application, appeal and enforcement work that is carried out 'exceptionally'. For example; significant costs in defending an appeal or works in default to secure compliance with a notice when all other enforcement action has failed to do so.
 - 5.5 It is considered that the proposed move to payment by way of costed case types will likely result in a more accurate reflection of the cost of CDC delivering the service on behalf of the SDNPA and also allow for any rise in the number of future applications received per year to be accounted for in future payments. This approach may however also result in increased uncertainty regarding the level of income that can be expected annually via the agency arrangement and so result in potentially greater risk for the Council in respect of annual budget setting for this area of activity. This risk would however be similar to that

currently managed by the Planning Service in relation to the area for which Chichester is the local planning authority. It is expected that negotiations with the SDNPA will be required to minimise these risks.

- 5.6 Updating of criteria on which performance is measured – It is proposed that changes in national application performance criteria (including for the purposes of ‘designation’) and the use of agreed extensions of time to applications will be reflected in the new draft agreement. Where nationally set performance measures have not changed the majority of the criteria within the S101 and Service Level Agreements are unlikely to change.
- 5.7 Beyond the changes outlined above, it is not envisaged that the new draft agency agreement, associated SLA and protocols will be substantially different to those currently operated between the Council and the SDNPA.

6. Outcomes to be achieved

- 6.1 There are considered to be significant benefits to the Council in continued governance and influence of planning matters (in terms of development management) within the South Downs National Park area of Chichester district and in maintaining greater resilience in the Council’s Planning Service through the employ of a greater pool of resources.
- 6.2 However, it will be important to ensure that the proposed change to an alternative method for calculating payments is reflective of the cost to the Council in delivering the service on behalf of the SDNPA and that as far as possible, the risk to the Council is minimised should a significant drop in applications be experienced.
- 6.3 Once the terms of the new agency agreement have been concluded with the SDNPA, the proposal for future delivery of the Development Management Service within the South Downs National Park will be presented to Cabinet on 11 July 2017.

7. Proposal

- 7.1 That officers continue to negotiate the terms of a new agency agreement on the basis of the details provided in section 5, to cover the period up to 2022 including a new legal agreement, revised protocols and appropriate revisions to the existing SLA.

8. Alternatives that have been considered

- 8.1. The case for continuing with the agency agreement has been considered carefully by officers and the Council has previously resolved to confirm its interest in continuing the arrangement to the SDNPA. It is noted that the SDNPA considers that in general terms, a good quality service has been provided by the host authorities during the first six years. Few complaints have been received about service delivery and application performance within the park has improved significantly in the last year; significantly exceeding targets.
- 8.2. As indicated in paragraph 6.1 above, there is significant benefit for the Council in maintaining a larger core of experienced planning officers and being involved in planning decision making across the whole district. The alternative option, not to

extend the agency arrangements for a further period would mean that the Council would no longer handle planning and associated applications on behalf of the SDNPA. The financial implications to the Council would also need to be reassessed.

9. Resource and legal implications

- 9.1. As the operation of the existing S101 agency agreement has been relatively successful and the changes proposed are generally minimal, it is not anticipated that the continued operation of the delegated arrangements in this manner would result in any additional resource or legal implications. However, the implications of any revised payment proposals will need to be carefully assessed before negotiations with the SDNPA are concluded.

10. Consultation

- 10.1. Consultation has been undertaken with the Head of Finance and Governance and consultation will continue with the Legal and Democratic Services Manager throughout the course of negotiations and the drafting of new S101 agency agreement.

11. Community impact and corporate risks

- 11.1. Important considerations are that any agreed arrangement delivers a service that is respected by the community, meets the requirements of the SDNPA and ensures the Council is compensated for the agency work undertaken.

12. Other Implications

Crime & Disorder:	No
Climate Change:	No
Human Rights and Equality Impact:	No
Safeguarding:	No

13. Appendices

Appendix 1 - Current (2014) S101 Agreement

Appendix 2 – Current (2014) Service Level Agreement