

 Nottinghamshire County Council	Report to Planning and Licensing Committee
	25th March 2014
	Agenda Item:6
REPORT OF CORPORATE DIRECTOR POLICY , PLANNING AND CORPORATE SERVICES	
PROPOSAL TO INTRODUCE A SYSTEM OF CHARGING FEES FOR PRE- APPLICATION ADVICE	

Purpose of the Report

1. The purpose of this report is to seek Members' endorsement for the introduction of a charging regime for providing pre-application advice to potential applicants and to undertake a consultation exercise with a selection of relevant stakeholders.

Background

2. Planning officers within the County Council's Development Management Team currently provide pre-application advice to all potential applicants upon request. The purpose of pre-application advice is to improve the quality of planning applications and provide relevant guidance and engagement which, in turn, increases the efficiency of the subsequent planning application process. Currently this pre-application advice service is provided free of charge.
3. Late last year the Department for Communities and Local Government announced a further reduction in local authority budgets for the next financial year. As a consequence of the proposed cuts many local authorities, at both District and County level, are proposing to either introduce, or in some cases increase, fees for pre-application advice. In this authority too it is considered appropriate to introduce charges for pre-application advice in order to make a modest contribution towards the budget shortfall. In the County Council's budget proposals a figure of up to £18,000 was included as the amount that charging for pre-application advice could generate by 2016/17. The introduction of a charging regime is considered to be justified in the light of the County Council's current financial situation in an attempt to recoup some of the costs associated with providing this service and to bring this authority in line with similar authorities.
4. The proposal to introduce fees for pre-application advice was originally reported to Planning and Licensing Committee in February 2011. This report set out various options and a proposed schedule of charges and sought Members' approval to undertake a consultation exercise to engage with relevant stakeholders. A

further report went back to Planning and Licensing Committee in May 2011 to provide feedback on the consultation outcomes. However, this proposal for introducing charges for pre-application advice was put on hold as it coincided with the Government's announcement on allowing local authorities to set their own levels of planning application fees. At the time it was felt appropriate to defer the introduction of a pre-application charging regime with a view to incorporating it within a single comprehensive scheme of planning fees. However, the idea of local fee setting has since been shelved by the Government and it is therefore considered timely to reconsider the introduction of fees for pre-application advice.

5. Given that three years has elapsed since the last consultation a brief (21 day) consultation exercise with a small selection of relevant stakeholders is considered to be appropriate. However, this will seek views on the draft proposals rather than the principle of introducing charges which has already been established by its inclusion in the County Council's budget proposals.

Legislative context and policy framework

7. Section 93 of the Local Government Act 2003 gave powers to Local Authorities to charge for "discretionary activities" i.e. those which they do not have a mandatory duty to provide. This provision enabled Local Planning Authorities to charge for, inter alia, providing pre-application advice. The Act stipulated that fees should not, however, exceed the cost of providing the service.
8. The effectiveness and importance of the pre-application process was endorsed by the Planning Act 2008. This Act introduced a statutory requirement for applicants to engage in consultation with local communities, local authorities and other parties who would be directly affected by proposals in relation to nationally significant infrastructure projects. This requirement was further consolidated in 2011 by the Localism Act which introduced a requirement for applicants to engage with local communities in advance of submitting planning applications for certain developments. The details of this requirement, including which applications this will apply to and what the "engagement" will need to consist of, is still awaited and is yet to come into force. It is likely that this will apply to the larger scale and more controversial applications and the ones most likely to be seeking pre-application advice from the County Council.
9. Underpinning the whole Development Management approach is the need for good communication and collaboration between relevant parties and front-loading the process. The National Planning Policy Framework published in 2012 also encourages pre-application discussions; it states early engagement has the potential to improve the efficiency and effectiveness of the planning application system. The Framework further states that local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. It is with this as a policy framework that it is considered timely to introduce a formalised process for providing pre-application advice.

10. The County Council's recently updated Policy on the Validation Requirements for Planning Applications (Local List) also encourages applicants and their agents to seek pre-application advice.

The need for charges

11. Engagement prior to submitting any planning application can be extremely important and enables the applicant and local authority to gain a clear understanding of the objectives and constraints associated with a particular development. It also provides an opportunity for wider engagement with other stakeholders, where appropriate. This can in turn deliver better outcomes for all parties.
12. The scope of the current pre-application service provided by the Development Management Team is extremely diverse. It ranges from ad hoc emails/telephone calls about new boundary treatment around a school, for instance, to protracted meetings about a proposed open cast mine involving prospective developers and other interested parties. Providing this comprehensive service is expensive in terms of resources and officer time. An approximate estimate would suggest the Development Management Team deal with hundreds of straight forward enquiries and at least a hundred more significant ones over a typical year.
13. Justification for introducing a charging regime arises from the need to recover at least some of the costs incurred by the County Council for this service. The proposal needs to be considered in the light of the significant financial constraints and budget cuts currently being experienced by the County Council. Costs for this service would be transferred from the "public purse" to those using, and therefore benefiting from, the service.
14. Charging developers for pre-application advice on minerals and waste proposals will bring in new income for the County Council however, charging for the Council's own developments (Regulation 3) applications will in most cases involve transferring money from one department's budget to another. Notwithstanding this, there are logical reasons for including Reg. 3 applications (or some of them) in the proposed charging regime, these include:
 - To ensure consistency and transparency in the applications process i.e. it would seem fairer to treat internal and external applicants alike and the Local Government Ombudsman often cites the need to treat internal applicants no differently from external applicants.
 - For larger scale Reg. 3 developments it is likely there will be some element of external, i.e. private sector, funding e.g. PFI schools.
 - Reg. 3 applications are not exempt from nationally set planning fees.
 - There is already the precedent for cross-charging between departments, for example, funding routinely comes from the Planning Group's budget to pay for advice provided by the County Council's noise engineer, landscape architects and Contaminated Land officers.

- Most small scale Reg. 3 developments, such as modest extensions to schools or boundary treatment, are likely to fall within the proposed "other development" category for which no fee is payable.

Experience at other local authorities and national guidance

15. Research has shown that an increasing number of local authorities are introducing charges for pre-application advice at both County Council and District Council level, as well as within Unitary Authorities and in London boroughs. In terms of similar authorities, i.e. those dealing with 'County Matter', and Regulation 3 applications, numerous county councils now charge for pre-application advice, including Derbyshire, Hampshire, Kent as well as many others. Bradford Metropolitan District Council, a Unitary Authority, has been successfully operating a system of pre-application charges for over three years. Other counties, like ourselves, are considering the introduction of charges, including Norfolk and North Yorkshire. There are also many examples of district councils who charge for this service. Within Nottinghamshire, all of the district and borough councils, as well as Nottingham City Council, have introduced charges for providing pre-application advice in the last few years. There is, however, considerable variation in the pre-application protocols, procedures and fee levels introduced at the authorities.
16. In January this year the Local Government Association and the British Property Federation published a document entitled "10 commitments for effective pre-application engagement". This was developed by a cross-sector working group including representatives from, amongst others, the Royal Town Planning Institute, Planning Officers Society, the House Builders Federation, two local authorities and the five principal statutory consultees, including the Environment Agency and English Heritage. All parties stated commitment to effective pre-application and have established ten key commitments to deliver effective pre-application services to achieve better, more sustainable development. The ten commitments are as follows;
 - Pre-application engagement should enable sustainable development to proceed quickly and smoothly from proposal to completion. This is a co-operative process that requires a positive, proactive commitment from all participants to achieve this goal.
 - Those providing pre-application services should offer a range of timely, effective services proportionate to the scale and complexity of proposed development. The process, timescales, costs and outputs should all be clearly set out.
 - Prospective applicants should select the level of pre-application engagement necessary to adequately deal with the issues raised by the scale and complexity of the proposed development. Failure to engage at the right time or at the right level could have an adverse impact on the timely consideration of the subsequent application.
 - Pre-application services should be delivered in a timely manner and demonstrate good value for money, irrespective of whether the provider of pre-application services makes a charge for them.

- Pre-application discussions should bring together the right people to address all of the development issues. All parties should have processes in place to ensure that advice given and commitments made are carried through to application and permitting stages.
- Pre-application engagement should be based on an open exchange of the information needed to allow all the relevant matters, including all obligations and viability, to be considered prior to the submission of a planning application.
- Collaborative working to find deliverable solutions will necessitate that, whilst the development plan must be the starting point for discussion, the requirements of all parties should be given consideration. Planning Performance Agreements (PPA) are recommended to deal with timing issues and constraints.
- LPAs should ensure that their pre-application offer provides an opportunity for councillors to be actively involved in pre-application discussions as part of a transparent process.
- All parties should consider engaging with local communities at the pre-application stage about development proposals in their area. This early engagement should be proportionate to the impact on the wider community and enable community representatives to inform and influence the proposals.
- All those involved in the pre-application engagement should maintain an agreed record of information submitted, advice given and, where appropriate, agreements reached during pre-applications discussions.

17. It is considered appropriate that these commitments should underpin the pre-application service offered by this authority.

Benefits

18. Undoubtedly pre-application discussions, and the early involvement of local communities and consultees, can bring about significant benefits to all parties. Some of these benefits are set out below:

- It can enable applicants to submit better quality and valid applications that take account of relevant policies and guidance ensuring that relevant information is submitted leading to an improved determination time.
- It can enable local communities to become involved and influence proposals at an early stage and help local people understand the background to developments and dispel misunderstandings. This can enable concerns to be addressed in the application and thus remove potential public objections to a scheme.
- It can enable all parties to understand the decision making process and the likely timeframes involved.

- It can help develop a shared understanding of constraints and opportunities of proposals.
- It can identify problems and filter out speculative applications that are unlikely to succeed and avoid wasted time and resources.
- It can give relevant consultees an opportunity to become involved and provide guidance at an early stage instead of raising matters during the formal consultation stage and potentially causing delays.
- It can enable mitigation measures to be built into a proposed scheme and reduce the number of planning conditions to be attached to planning permissions.
- It can improve working relationships between the various parties involved in the application process and enable them to understand each other's viewpoint.

Disbenefits /risks

19. However, there are also a number of significant risks associated with introducing charges for pre-application advice, these include the following:

- Charging for advice may be a major disincentive for applicants to seek advice and some may proceed directly to the submission of a planning application. This, in some cases, may adversely affect the quality and validity of applications and ultimately lead to a longer determination times.
- Applicants may be aggrieved that a proposal on which pre-application advice has been sought is then refused at the planning application stage. This may be as a consequence of unforeseen issues which arise during the course of the application or in relation to consultee responses. Pre-application advice is given "without prejudice" to the formal decision and is not binding on the Council. This is the case whether the advice has been paid for or not.
- Charging may be seen as being not customer friendly and could constitute a significant amount of money for a small business or school for instance.
- Objectors may perceive that officers have colluded with developers and "agreed" to a proposal in advance of the planning application being submitted. As above, the fact that advice given is guidance only and is not binding needs to be made clear to consultees and developers alike.
- If charges are introduced, prospective applicants should rightly expect a level of quality and timely response. This in itself creates a resource issue for officers already engaged in dealing with submitted planning applications.

Charging regime and recommended fee levels

20. Experience indicates that charging for pre-application advice is becoming broadly accepted by developers and their agents providing this leads to a timely and professional service and the provision of carefully considered written advice. However, it is important that the fees are set at a level appropriate to the scale of the development and that it does not act as a disincentive to prospective developers engaging at the pre-application stage. Moreover, the charges must not exceed the cost of providing the service.
21. There is considerable variation in the fee levels set by the authorities who already charge for their pre-application advice service. Charging regimes include fee levels set according to the type/scale of proposal, as an hourly charge, the grade of the officer providing the service and even charging a fee based on a percentage of the planning application fee. The principal objectives for establishing a charging regime must be that it is fair and easily understood by customers and that it is straight forward for the Authority to administer. Having examined examples from other authorities it is considered that a flat fee based on the scale of the proposal would be most likely to meet these objectives. This system would also enable perspective applicants to be certain of the actual fee level unlike where an hourly rate applies. The following charges are suggested:

Proposed fee levels and response times

22. The table below shows suggested fee levels for pre-application advice based on the size and type of proposal.

Category	Definition	Fee level
Significant	Major minerals and waste schemes: <ul style="list-style-type: none">• All new and extensions to opencast coal sites.• All new quarries or landfill sites.• Any extensions to existing quarries or landfill sites where extraction or deposit exceeds 30,000 tpa or 5 hectares.• Any waste management facility processing over 50,000 tpa.	£500, plus VAT

	<ul style="list-style-type: none"> Any development involving creation or change of use of 2,000 sq.m or more floorspace or on sites over 5 hectares. Major energy or infrastructure proposals. 	
Major	<ul style="list-style-type: none"> All minerals and waste proposals except those listed in significant or minor categories. Any waste management facility processing between 5,000 and 50,000 tpa. Any development involving the creation or change of use of between 1,000 and 2,000 sq.m floorspace or on sites over 1 hectare (but less than 5 hectares). 	£300 plus VAT
Minor	<ul style="list-style-type: none"> Minor minerals and waste proposals, e.g. minor variations / non-compliance to existing schemes. Any development involving the creation or change of use are of floorspace less than 1,000 sq.m (but more than 500 sq.m) or on sites of less than 1 hectare. 	£150 plus VAT
Other development	<ul style="list-style-type: none"> Any development involving less than 500 sq.m or no floorspace, such as boundary treatment. Requests for confirmation as to whether planning permission required. Any proposal for which there is no planning fee. Any proposal relating to the needs of people with disabilities. 	FREE

23. Fees set at this level would be "mid-range" i.e. less than some authorities but higher than others. They are considered to be fair and will enable the recoupment of much of the actual cost of providing the service without making a profit. This aspect will form part of the consultation exercise outlined below, as will the proposed timescales for responding to requests for pre-application advice. It is suggested that responses to advice relating to significant and major

proposals are provided within 20 working days of receiving all relevant information. Although where specialist advice needs to be sought, such as from an ecological officer or an external consultee, or a site or office based meeting is deemed necessary then the timeframe is to be separately agreed between the Authority and the prospective applicant. Responses to requests for pre-application advice on minor proposals and any other development will be made within 15 working days (subject to the same provisos outlined above).

How the pre-application advice service will operate

24. It will be necessary for the County Council to formalise its pre-application advice service and set out in detail the minimum amount of information that will need to be submitted to enable the comprehensive advice to be given. This is likely to consist of the following:
 - a location plan at 1:1250 or 1:2500;
 - details, with photos where relevant of the existing site including topography, site ownership, and details of what is considered to be the lawful use of the site or buildings;
 - a full description of the proposals including a schedule of all proposed uses. Where new buildings are proposed drawings and illustrative material should accompany the request;
 - for minerals and waste proposals information about quantities to be extracted or processed per annum and likely timescales should be submitted;
 - any additional information that can help demonstrate the impact of the proposal on its surroundings;
 - the relevant fee.
25. In return the County Council will provide a written response by letter or email setting out the following:
 - a summary of planning policies or guidance relevant to the proposal and details of the site's planning history;
 - details or any likely relevant planning constraints such as ecological designations, heritage assets or flood risk potential;
 - details of any consultation undertaken and responses from those parties;
 - the requirements for a formal planning application submission, including potential Legal Agreements and Environment Statements;

- advice on which other bodies should be contacted and community engagement to be undertaken prior to making a formal submission;
- any other information deemed to be relevant.

The need for a meeting to discuss the proposal, either site or office based, will be agreed by all parties involved.

Consultation exercise

26. It will be necessary to undertake consultation on the proposal to introduce charging for pre-application advice. It is suggested that a 21 day consultation exercise be undertaken with relevant stakeholders, this will include a selection of internal and external applicants / agents and consultees. Details will also be published on our website inviting comments from the wider public. The results of this exercise will be reported back to Members with further confirmation about timescales, fee levels and more details of the pre-application advice service.

Equality Impact Assessment

27. An Equality Impact Assessment was undertaken and approved for this proposal in September 2013. It concluded that the proposal would impact on all sectors of the community equally with no disproportionate impact on people with protected characteristics.

Summary

28. This report explains the rationale behind the proposed introduction of charging for pre-application advice provided by officers within the County Council and brief details of how the service would operate. Justification for this proposal relates to the Council's current financial situation and the need to recoup some of the costs associated with providing this service and to ensure that the service is paid for by those most likely to benefit from it. The precedent set elsewhere by similar and neighbouring authorities is also considered to be relevant. The pre-application charging regime, once approved, will be periodically reviewed by the County Council.

Statutory and Policy Implications

29. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Human Rights Act Implications

30. Relevant issues arising out of consideration of the Human Rights Act have been assessed. Rights under Article 8 (Right to Respect for Private and Family Life)/Article 1 of the First Protocol (Protection of Property)/Article 6 (Right to a Fair Trial) are those to be considered. In this case, however, there are no impacts of any substance on individuals and therefore no interference with rights safeguarded under these articles.

RECOMMENDATIONS

31. It is RECOMMENDED that Members endorse the introduction of pre-application charging and approve the holding of a 21 day consultation period with relevant stakeholders, consultees and the public and welcome back a report on the findings.

JAYNE FRANCIS-WARD

Corporate Director Policy, Planning and Corporate Services

Constitutional Comments (NAB 10.03.14)

The Planning and Licencing Committee has authority to approve the recommendation set out in this report by virtue of its terms of reference.

Financial Comments (SEM 10/03/14)

The financial implications are set out in the report.

**For any enquiries about this report please contact: Jane Marsden-Dale
Tel. 0115 969 6505**

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

Electoral Divisions and Members Affected

All