



## **REPORT OF THE INTERIM CORPORATE DIRECTOR FOR PLACE**

### **RESPONSE TO THE DEPARTMENT FOR LEVELLING UP, HOUSING AND COMMUNITIES ON THE TECHNICAL CONSULTATION ON INCREASING PLANNING FEES AND PERFORMANCE**

#### **Purpose of Report**

1. To seek Members approval for the Council's proposed response to the Department for Levelling Up, Housing and Communities (DLUHC) on the technical consultation paper entitled "Stronger performance of local planning authorities supported through an increase in planning fees".

#### **Background**

2. The consultation, which was published on 28 February 2023, seeks views on the proposals to increase planning application fees and to improve capacity, capability, and performance within local planning authorities. The consultation closes on 25 April 2023. This report summarises the main proposals set out in the consultation and the proposed response is set out in Appendix A to this report.

#### **Information and Advice**

##### Proposed changes to planning application fees

3. Planning application fees provide local planning authorities with an income that contributes to their costs of providing a planning service. However, most fees do not cover the costs to the local planning authority of processing the application. Planning fees are set nationally and were last increased in 2018 (and prior to that in 2012). The proposal set out in the consultation paper is to increase fees for major applications (which includes minerals and waste applications) by 35%, and planning fees for all other applications by 25%. The objective behind this is to ensure that the planning system is funded by the main beneficiaries of planning gain – developers and landowners – rather than the taxpayer. The consultation states that for all planning applications the proposed increased fee levels represent a small proportion, less than 1%, of overall development costs.
4. The consultation paper also proposes to introduce an annual adjustment of planning fees in line with inflation, so that they maintain their value year on year. This will be brought in following the introduction of new legislation when

Parliamentary time allows. Additionally, to discourage unauthorised development, the doubling of planning fees for retrospective applications is proposed.

5. Subject to the outcome of this consultation and Parliamentary approval, the proposed fee increase will come into effect in summer 2023. Fee levels will then be reviewed within three years to allow an assessment of the effectiveness and impact of the fees increase to be undertaken, and to ensure that a reliable and up-to-date evidence base for costs of the planning system is available that also considers the outcome of planning reform measures including greater digitisation of the planning system.
6. The consultation also states the intention to introduce a new fee structure for the variation of planning permissions to take account of the proposed new route to make minor variations to permissions in the Levelling Up and Regeneration Bill once the provisions come into force. A separate consultation on this detail will be made following the passage of the Bill.
7. The consultation also refers to the ability that local planning authorities have to charge for bespoke or additional services, so long as these charges do not exceed the cost of providing the service. Such services include pre-application advice and Planning Performance Agreements (which the Council already provides), and 'fast track' planning application services. These services are encouraged where it adds value and speed to the overall process and the experience of the applicant. The consultation welcomes the ability to retain the flexibility that local planning authorities have to set their own fees for these services. The Government want local planning authorities to be more transparent in the discretionary fees that they charge and the service that applicants can expect in return and are interested in expanding options around planning fees if these would facilitate a more expedited service.
8. To ensure that the proposed additional fee income directly supports increased resourcing of local authority planning departments, it is sometimes suggested that planning fees should be ring-fenced to planning services only. This would enable direct improvements in service delivery but does undermine the general flexibility afforded to local authorities on their wider financial management. The consultation seeks views on whether the additional income arising from the proposed fee increase should be ringfenced for spending within the local authority planning department. Past increases have required a written commitment from all local planning authorities in advance of implementation. Members should note that planning fees are ring-fenced to the planning services at Nottinghamshire, and it is anticipated that the same would apply to any increase in fee levels.
9. When development is undertaken either deliberately or inadvertently without first obtaining planning permission, applicants are able to submit a retrospective planning application. Currently, the fee for such an application is the same as it would have been if the application had been submitted before the development had taken place. However, local planning authorities may incur additional costs in respect of these types of application. This is because local planning authorities may have started down the route of investigating the

suspected breach of planning control and considering the need for enforcement action.

10. Where a local planning authority serves an enforcement notice in respect of unauthorised development a fee is charged if the notice is subsequently appealed on the ground that planning permission ought to be granted (known as a ground a) appeal). The fee is currently double that which would apply for a corresponding planning application. The consultation proposes to double the fee payable for **all** retrospective applications. This should discourage unauthorised development and would reflect the additional work carried out by local planning authorities.
11. Currently, where applicants reapply within 12 months of submitting an application, subject to certain conditions, they can do so without paying a fee. In some cases, the existence of the 'free go' is a useful quality driver as there is a greater incentive for the applicant to act on the authority's advice and resubmit an improved application. However, there remain instances where a "free go" is used as a substitute for pre-application discussions, as a first attempt to get an application through with limited information or as an attempt to test lower quality or larger proposals. This is a growing cost burden for local planning authorities who still incur costs for processing revised applications but receive no fee.
12. In order to encourage applicants to engage in pre-application discussions and support the submission of high-quality applications first time round, consideration is given to whether there would be any scope for increasing cost-recovery in this area by a partial or full removal of the 'free go' for repeat applications. This would have to carefully balance the costs and benefits of the 'free go' to applicants and local planning authorities as well as consider any potential adverse consequences, for example an increase in the number of applications that might go to appeal. The consultation considers a number of options including charging the full fee for all applications, regardless of when they are submitted, or charging a reduced fee for re-applications within 12 months.

#### Local Planning Authority performance

13. The proposals to increase planning fees will help local planning authorities to meet their costs and provide a better service for applicants. However, many bodies representing the planning profession have stated that increasing fees will not be enough to address the capacity and capability challenges faced by local planning authorities. Recent surveys undertaken with the planning profession have confirmed that there are significant challenges in recruiting and retaining planning professionals and other technical experts with the right skills and experience, most acutely at senior and principal planner level.
14. The consultation also states the need to consider how to create a more diverse and inclusive planning profession. The consultation seeks views and experience of the specific challenges in recruiting and retaining planning professionals with the right skills and experience and the best ways in which Government, working with professional bodies, can boost the capacity and capability of local planning authorities.

15. Increasing planning fees will bring additional resources to planning services and should bring with it continued improvements to the performance of local planning authorities. The consultation also includes proposals to amend the existing metrics that measure performance of local planning authorities for speed and quality of decision-making so that local planning authorities are primarily held to account for the number of applications that are determined within the statutory determination periods rather than through an extension of time agreement. Subject to the responses received to this consultation, further consideration will be given to the specific performance thresholds for each metric, appropriate assessment periods, the process for data collection and transitional arrangements from the current performance regime. Further consultation will be undertaken on these details.
16. Specific proposals include tightening the Planning Guarantee, which allows for an applicant to secure a refund of the planning fee where a planning decision has not been made within 26 weeks of submitting a valid application if an extension of time has not been agreed with an applicant. It is proposed that, where the statutory determination period is 8 weeks, the Planning Guarantee should be set at 16 weeks and where the statutory determination period is 13 weeks (or 16 weeks for Environmental Impact Assessment developments) the Planning Guarantee should be retained at 26 weeks.
17. The consultation acknowledges that extension of time agreements and Planning Performance Agreements can serve a valid purpose to support constructive negotiations between the local planning authority and an applicant. However, they are also sometimes used in a way that masks poor performance by a local planning authority. It is proposed that the performance of a local planning authority for speed of decision making should be primarily assessed on the percentage of applications that are determined within the statutory determination period, not an agreed extended period of time. It is proposed that the performance of local planning authorities for speed of decision-making should be assessed separately for the following application types: Major applications, non-Major applications, Householder applications, Discharge of conditions, and County matters applications.
18. When considering a local planning authority's performance, the consultation states that it would be better to base the assessment on a wider range of metrics beyond just the speed and quality of decision-making. This would provide a more comprehensive and balanced picture of the planning service being provided. Views are sought on the proposed quantitative metrics that could be used in a broader performance framework as follows.
  - Average speed of decision- making,
  - Quality of decision- making,
  - Extensions of time,
  - Backlog,
  - Planning enforcement,

- Planning committee decisions.
19. In order to provide a more holistic picture of a local planning authority's performance, proposals being considered are whether to include a qualitative measure as part of any new planning performance framework through a 'customer experience' metric. This could allow for satisfaction of recent users of an authority's planning service to be captured. A 'customer experience' measure could be based on a standardised customer satisfaction survey which focuses on the overall quality and timeliness of both the pre-application service and the decision-making service. It could also be used as a measure for community engagement, including the volume and diversity of people who participate in the planning application process.

### **The next stage**

20. Proposed responses to the questions as contained within the consultation paper are set out in the Appendix to this report and officers would be grateful for any Member input into those responses.
21. The period for responses to this technical consultation paper ends on 25 April 2023. It is expected that the DLUHC will review the responses and advise on the results and any changes to be adopted by local planning authorities as a consequence. The new fee levels are expected to come into effect in summer 2023. Members will be kept informed of any significant changes to the Council's planning processes as a consequence of this consultation.

### **Other Options Considered**

22. The Council could choose not to respond to this consultation but would so miss the opportunity of raising specific issues affecting it as the minerals, waste and county planning authority, so this option is discounted.

### **Statutory and Policy Implications**

23. 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.

#### Finance Implications

24. The implementation of the proposed planning application fee increases would result in additional fee income being received by the Council. This would help support the authority's planning function, for which existing fee income does not cover costs.

#### Public Sector Equality Duty Implications

25. Planning application fees are waived for a disabled person who is living or intending to live in a dwelling and who wishes to undertake certain types of development such as creating an access; and/or providing for their improved safety, health, or comfort. Similarly, there is no fee paid for applications seeking to provide a means of access for disabled persons to or within a building to which members of the public are admitted.
26. There is no reference in the consultation as to whether changes are proposed to these exemptions, but it is considered appropriate to keep them in place.

#### Implications for Service Users

27. In terms of service users, i.e., applicants, agents, consultees, and all other parties involved in the planning application process, the Council is continuously reviewing and adapting its working practices in order to provide a planning service that meets the Government's priorities whilst at the same time provides a fair and professional development management service.

#### Human Rights Implications

28. 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) and 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**

29. It is RECOMMENDED that the Committee considers the Council's response to be sent to the Department for Levelling Up, Housing and Communities, as set out in Appendix A to this report, on the technical consultation paper entitled "Stronger performance of local planning authorities supported through an increase in planning fees" and, subject to any amendments agreed by the Committee, that the submission of the response prior to the closing date of 25 April 2023 is approved.

**Derek Higton**

**Interim Corporate Director – Place**

#### **Constitutional Comments (JL 04/04/23)**

30. Planning & Rights of Way Committee is the appropriate body to consider the contents of this report by virtue of its terms of reference set out in the Constitution of Nottinghamshire County Council.

## **Financial Comments (SES 28/03/2023)**

31. The financial implications are set out in paragraph 24 of the report.
32. The implementation of the proposed planning application fee increases would result in additional fee income being received by the County Council. This would help support the authority's planning function, for which existing fee income does not cover costs.

## **Background Papers Available for Inspection**

*Stronger performance of local planning authorities supported through an increase in planning fees:* [www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation](http://www.gov.uk/government/consultations/increasing-planning-fees-and-performance-technical-consultation)

## **Electoral Divisions and Members Affected**

All

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For any enquiries about this report, please contact the report author.