



**REPORT OF CORPORATE DIRECTOR POLICY , PLANNING AND
CORPORATE SERVICES**

**ADOPTION OF A CHARGING REGIME FOR PRE-APPLICATION ADVICE ON
PLANNING APPLICATIONS**

Purpose of the Report

1. To advise Members of the results of the consultation exercise undertaken with a selection of relevant stakeholders and seek Committee approval for the introduction of a charging regime for providing pre-application advice to potential applicants.

Background

2. Members will recall that in March this year a committee report sought endorsement for the introduction of a charging regime for providing pre-application advice and approval to undertake a consultation exercise with a selection of relevant stakeholders in advance of its introduction.
3. 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.
4. The County Council's budget proposals included a figure of up to £18,000 as the amount that charging for pre-application advice could potentially 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.

Legislative context and policy framework

5. 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.

6. 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.
7. 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. The accompanying Guidance to the NPPF was published in March 2014 and in respect of pre-application advice states the following:

“Pre-application engagement by prospective applicants offers significant potential to improve both the efficiency and effectiveness of the planning application system and improve the quality of planning applications and their likelihood of success. This can be achieved by:

- *providing an understanding of the relevant planning policies and other material considerations associated with a proposed development,*
- *working collaboratively and openly with interested parties at an early stage to identify, understand and seek to resolve issues associated with a proposed development,*
- *discussing the possible mitigation of the impact of a proposed development, including any planning conditions,*
- *identifying the information required to accompany a formal planning application, thus reducing the likelihood of delays at the validation stage.*

The information requested must be reasonable. The approach to pre-application engagement needs to be tailored to the nature of the proposed development and the issues to be addressed.”

8. It is with this as a policy framework that it is considered timely to introduce a formalised process for providing pre-application advice. 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

9. Engagement prior to submitting any planning application can be extremely important and enables the applicant and local planning 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.

10. 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 more in-depth and formal 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.
11. 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.

Consultation response

12. The report to Planning and Licensing Committee on 25th March 2014 set out the charging experiences of other local authorities, as well as the benefits and risks of introducing charges, and sought Members’ endorsement of a pre-application charging regime following the undertaking of a consultation exercise with relevant stakeholders.
13. Following Members’ approval officers have undertaken a 21 day consultation period with stakeholders. This was restricted to previous “users” of the Development Management Team’s pre-application advice service and comprised both internal and external applicants and agents. The proposal to introduce the charging regime was also published on the County Council’s website to give any other interested parties the opportunity to respond.
14. Disappointingly, although not unexpectedly, response to the consultation was very low. Only two responses were received, these were both from internal consultees, with no comments from representatives of the minerals and waste industry. The reason for this is likely to be that most developers and their agents are increasingly becoming used to paying pre-application charges based on their experience at other local authorities.
15. A response was received from the County Council’s **Highways Safety Team** advising on the need to set up a simple and quick mechanism to recover the money. In response to this comment it is suggested that the fee for providing the pre-application advice would need to accompany the request for the advice and would therefore not require officers to “chase” overdue payments and, secondly,

it is envisaged that the money would be ring fenced to the Development Management Service's annual budget.

16. The second response came from the County Council's **Highways Development Control Team** asking whether Highways would receive any of the fees if the internal consultation on a pre-application enquiry involved Highways DC. However, they further confirmed that they are not able to charge for the advice they give as they have a statutory duty to respond to planning applications and pre-application consultations under Section 54 of the Planning and Compulsory Purchase Act. On this basis it is not envisaged that any of the fee received by the Development Management Team for providing pre-application advice would be passed onto Highways DC. In any event, to do so would introduce an additional administrative layer contrary to the advice received from the Highways Safety Team to employ a simple and quick mechanism.
17. As a consequence of the consultation exercise no changes are proposed to the pre-application charging regime or fee levels as set out below.

Charging regime and fee levels

18. 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.
19. 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 prospective applicants to be certain of the actual fee level involved unlike alternative schemes where an hourly rate applies.
20. The table below shows fee levels for pre-application advice based on the size and type of proposal, although it will be noted that no charge is proposed to be levied in relation to certain types of proposals.

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	£500, plus VAT

	<p>hectares.</p> <ul style="list-style-type: none"> Any waste management facility processing over 50,000 tpa. 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 may be required. Any proposal for which there is no planning fee. 	FREE

	<ul style="list-style-type: none"> Any proposal relating to the needs of people with disabilities. 	
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21. 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, clear and will enable the recoupment of much of the actual cost of providing the service without making a profit.

How the pre-application advice service will operate

22. It is necessary for the County Council to formalise its pre-application advice service and establish the minimum amount of information that will need to be submitted to enable comprehensive advice to be given. Anyone seeking pre-application advice would be required to complete a Pre-application Request Form which will be available on the County Council's website. This will need to be submitted to the Development Management Team and accompanied by the relevant fee based upon the approved scale of charges set out above.

The following information will also need to be submitted:

- a location plan at 1:1250 or 1:2500 identifying the site and means of access;
 - 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 land and/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.
23. 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 Environmental 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.

Response times

24. Responses to advice relating to significant and major proposals would be 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).
25. As is the case at present, all advice given will be in good faith and to the best of ability without prejudice to the consideration of any subsequent planning application which will be the subject of statutory consultation and will often be referred to this Committee to ultimately determine. All pre-application advice would need to be appropriately caveated.

Summary

26. This report explains the rationale behind the proposed introduction of charging for pre-application advice provided by officers within the County Council and details 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. Charging for pre-application advice will come into effect on 1st July 2014. The pre-application charging regime, once approved, will be monitored and periodically reviewed by the County Council. It is envisaged that any future proposed amendments to this scheme will be reported back to this Committee.

Statutory and Policy Implications

27. 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

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.

Equality Impact Assessment

29. 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.

RECOMMENDATIONS

- 1) It is RECOMMENDED that Members note the responses received following a period of consultation with relevant stakeholders on the proposal to charge for pre-application advice given to prospective applicants.
- 2) It is FURTHER RECOMMENDED that Members approve the introduction of the charging regime for pre-application advice as set out in this report to come into effect on 1st July 2014.

JAYNE FRANCIS-WARD

Corporate Director Policy, Planning and Corporate Services

Constitutional Comments

The Planning and Licensing Committee has authority to consider and approve the recommendations set out in this report by virtue of its terms of reference. [NAB 02.06.14]

Financial Comments

The financial implications are set out in the report. [02.06.14]

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 Member(s) Affected

All

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