

## **CHARGING FOR PRE-APPLICATION PLANNING ADVICE**

**Submitted by:** Executive Director - Regeneration & Development

**Portfolio:** Planning, Regeneration and Town Centres

**Ward(s) affected:** All

### **Purpose of the Report**

To give Cabinet the opportunity to decide whether or not the Council should agree to introduce charging for planning advice, and the means by which this could be done.

### **Recommendations**

- (a) That Cabinet agree that the Council will no longer provide “free” informal written advice as to whether or not planning permission is required for development proposals;**
- (b)- That Cabinet agree to the introduction of charging of fees for pre-application advice, as set out in the report and;**
- (c) That the Head of Planning and Development report back after 6 months on the implementation of these changes, the feedback received and the impact of them.**

### **Reasons for Recommendations**

The introduction of charges for pre-application advice is permitted under Section 93 of Local Government Act and a number of local authorities have already introduced charges for this purpose. Introduction of charges for pre application planning advice presents an opportunity to recoup some of the costs associated with undertaking pre-application discussions with potential applicants for planning permission, and to offset some of the costs of the planning process. This report has been prepared in the context of a significant reduction in planning fee income, and a study, financed by the West Midlands Improvement and Efficiency Project, commissioned from the accountancy firm Deloitte, comparing the Council’s fees and charges with those made by a range of other local authorities. This work identified some activities where no charge is made but could be charged for, and the report to Cabinet on 16 January 2013 on Scale of Fees and Charges identified charging for pre-application advice as feasible for implementation in 2013/14, and advised that a report on this would be submitted to 6 February 2013 meeting.

### **1. Background**

- 1.1 Many local authorities offer pre-planning application guidance, seeing it as a key part of delivering a good planning service.
- 1.2 The National Planning Policy Framework states:-

*“Early engagement has a significant potential to improve the effectiveness of the planning system for all parties. Good quality pre-application discussion enables better coordination between public and private resources and improved outcomes for the community.*

*Local Planning Authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take of any pre-application services they do offer. They should also, where they think this would*

*be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community before submitting their applications.*

*The more issues that can be resolved at pre-application state, the greater the benefits.....This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs”*

- 1.3 In addition to giving such guidance, local planning authorities are also regularly asked to confirm in writing whether proposals require permission – particularly, but not exclusively, with respect to householder developments. For the purposes of this report these are called consent enquiries. With recent and anticipated changes in the scope of both commercial and domestic permitted development rights an increase in such enquiries can be anticipated.
- 1.4 An increasing number of Councils now charge for pre-application advice. The Secretary of State has gone on record to say that Councils should consider charging for services as a way of helping to deliver quality services in a climate of budgetary restraint. Some also charge for consent enquiries, or alternatively they decline to provide a written opinion in those situation where there is a formal alternative available – the submission of a formal application under Section 192 of the Town and Country Planning Act 1990 (as amended) for a Certificate of lawfulness of a proposed development.

## 2. **Issues**

- 2.1 Many local authorities, including this Council, devote considerable time and effort to offering pre-application planning advice, and see it as a key part of delivering a good planning service.
- 2.2 Pre-application planning advice is where prospective applicants (or their agents) seek advice and guidance before submitting a planning application. As already indicated the practice is strongly encouraged so that issues that would arise during the application process are identified and dealt with and the application is submitted in the “best” form possible.
- 2.3 Pre-application advice is advantageous both to applicants and to the Council in that it:
  - provides an opportunity to suggest that an application should not be submitted if the proposal is wholly unacceptable;
  - enables officers to influence the proposal to provide a better development – particularly in terms of design and layout;
  - allows discussion regarding the information required to accompany an application and draft legal requirements and;
  - allows liaison with other departments to bring out any conflicting views and issues.
- 2.4 The Council’s own Statement of Community Involvement (adopted in August 2006) refers to the importance of pre-application consultations, including with both statutory and non-statutory consultees and community and voluntary groups in the identification of issues early in the process “to avoid rushing the application into a forced decision which may later languish in an overburdened appeals procedure”.
- 2.5 Some forms of pre-application guidance are essentially non-interactive – for example the provision of leaflets at the Service Centres and content on the Council’s website. Providing ready access to Supplementary Planning Documents and Local Development Documents can be viewed as a form of pre-application advice. This is not the subject of this report, but it is important to consider any charging proposals in the context of the full extent of guidance which is available, including for example content of the Planning Portal website.

- 2.6 It is the more interactive aspect of pre-application guidance which is the consideration here – the holdings of meetings both within the Civic Offices and on site, the giving of advice over the telephone, and all written forms of communication.
- 2.7 The Table below gives an indication of the volume of enquiries being received by the Planning Service each year over the last 6 years. Although the Service has changed its procedures during this period and improved the “capturing” and recording of such enquiries it would appear that the recent trend is one of a gradually increasing number of enquiries.

<b>Year</b>	<b>Number of Enquiries Received</b>
2007/08	1061
2008/09	948
2009/10	786
2010/11	895
2011/12	944
2012/13 (predicted outturn)	1153

- 2.8 These enquiries concern a very wide range of matters, ranging from relatively simple enquiries to enquiries concerning significant development proposals.
- 2.9 Enquiries are classified according to their development type. In brief proposals for Major development are, in the case of residential proposals, proposals for 10 or more units or, where numbers are not known a site area of 0.5 hectares (1.23 acres) or more. With respect to all other uses Major developments are those with a floorspace of more than 1,000 m<sup>2</sup> (10,764 ft<sup>2</sup>), or where the site area is 1 hectare (2.47 acres) or more. Minor developments are those which are neither Major development nor householder developments nor changes of use. The category Other development includes ‘Changes of Use’, ‘Householder developments’ and other types of applications such as advertisement consent and listed building consent.
- 2.10 The Council operates a Development Team approach which involves those enquiries that are concerned with Major development being brought before a Development Team of officers from both within the Authority and from the Highway Authority. Developers can make presentations to the Development Team. A parallel approach is taken to member involvement with pre-application enquiries for Major development being brought before the Strategic Planning Consultative Group.
- 2.11 Of the 860 enquiries received in 2011/12 where information on the development type of the enquiry was obtained, 29 (3.3%) concerned ‘Major development’, 272 (31.6%) concerned ‘Minor development’ and 559 (65%) concerned ‘Other development’. Householder developments, which fall within the ‘Other development’ category, accounted for 403 (47% of the enquiries).
- 2.12 In terms of performance the % of pre-application enquiries answered by the Service within 15 working days has been 72.2% (09/10), 70.2% (10/11) & 70.5% (11/12) against a current local target of 85% within the Service Plan. Performance against this indicator is reported on a half yearly basis to the Planning Committee. The most recent report provided on 4 December 2012 indicated that performance for the first half of 2012/13 had been 69% and that it was not anticipated that the local target would be met. Members commented that it might be inappropriate to have a single target given the range of types of enquiries considered under this single indicator.

- 2.13 The Council's records do not expressly distinguish between the giving of officer opinion on the prospects of planning permission and the giving of an opinion on whether consent (normally planning permission but including listed building consent, conservation area consent and advertisement consent) would be required. However it has been estimated that in 2011/12 for those 927 for which this information has been kept, 367 (39.6%) were enquiries about whether consent was required for a particular proposal, 463 (49.6%) sought officer's opinions on the merit of proposals, whilst the remainder 97 (10.5%) sought information on both aspects. In practice because the existence of permitted development rights is such an important consideration in negotiations concerning householder developments, a greater proportion than 10% in practice deal with both issues of merit and whether consent is required.
- 2.14 There is limited information as to the costs of the provision of such guidance. The Service has participated in two recent Benchmarking exercises. In 2011 this exercise, based on time sheeting within the Authority suggested that the staff costs alone within the Planning Service of the provision of "pre-application" advice was of the order of £46,000, and a more recent similar exercise in November/ December 2012 has indicated that the annual staff costs alone, again within the Planning Service, of the provision of "pre-application guidance" is £45,700 and for the provision to customers of "permitted development opinion" £2,300.

#### **Responding to enquiries about consent is required**

- 2.15 The greatest proportion of these types of enquires are concerned with householder development, although this is likely to change as a result of the increased availability of permitted development rights in other areas. If the Council were to take the position that it would no longer provide free written advice and instead require persons seeking a formal view to submit applications for a certificate of lawfulness (where they can), these applications attract a fee which is half that of a planning application for the same proposal. In the case of householder developments such applications (for certificates of lawfulness) currently require a fee of £86. In other cases it could be considerably more.
- 2.16 However dealing with a formal application for a certificate does, almost certainly, "cost" more than dealing with an informal enquiry; how much more is very difficult to estimate. In the case of informal enquiries the tasks are the logging of the enquiry, appropriate research, and the preparation of a response. In the case of applications for certificates of lawfulness the tasks include logging and validating the application, appropriate research, consultation with Legal Services, the preparation by the case officer of a report, its clearance by a more senior officer and the dispatch of the decision. Information obtained from the 2011 PAS benchmarking exercises undertaken within the Planning Service suggests that to achieve cost recovery the average fee for an application for a certificate of lawfulness would have to have been of the order of £369, based upon an estimate that each would require 8 hours of work. This figure was confirmed by a subsequent limited time recording exercise. However it needs to be remembered that such applications almost certainly were concerned with more marginal, problematic and thus time consuming cases

2.17 The following Table indicates the number of applications received for each of the last 6 years

<b>Year</b>	<b>No of Valid Application for Certificates of Lawfulness Received</b>
2007/08	3
2008/09	7
2009/10	8
2010/11	7
2011/12	4
2012/13 (predicted outturn)	20

2.18 Whilst the recent increase in the number of applications for Certificates of lawfulness of proposed development is of note, those authorities which decline to provide “free” informal written opinion on whether planning permission is required for a proposed development generally receive greater numbers of applications (for certificates of lawfulness of proposed development). Lichfield for example received 61 applications, whilst South Staffordshire received approximately 80. However this is not always the case – Stafford Borough for example only received 21 such applications in 2011/12 and they are expecting to reach a similar total in 2012/13.

2.19 There are other considerations here. An informal opinion contained within a letter from an officer of the Council whilst it carries significant weight is not the same as a certificate of lawfulness. In a recent case where an owner had proceeded to undertake work on the basis of an incorrect view contained within such an opinion, the Council paid compensation of several thousands of pounds to the party concerned. There is accordingly a risk associated with the provision of informal opinion.

2.20 Although not the equivalent in law to a planning permission, a certificate of lawfulness does indicate that, unless any relevant factor has changed since the application date specified, in the application, it would be lawful to proceed with the proposals. It follows that it is therefore that it is vital to ensure that the terms of a certificate are precise and there is no room for doubt about what is lawful at a particular date. The only basis upon which such Certificates may be revoked is where on the application a statement was made, or document used, which was false in any material particular; or any material information was withheld from the Local Planning Authority. An error of judgement by the Local Planning Authority is not a cause for revocation of a certificate – hence the different internal procedures involved in the determination of applications for certificates of lawfulness.

2.21 In terms of additional income generation it is extremely difficult to predict the number of additional certificate applications that might be received. Working on the assumption (informed by the experience of other local planning authorities) that only 15% of the previous enquiries for informal opinions would translate into additional applications for certificates of lawfulness, such a measure might lead to additional fee income of the order of £5,500. There would be the additional work involved (of dealing with certificate applications as opposed to informal enquiries) but there would also be likely to be a corresponding reduction in the number of enquiries, once the Council’s position became known.

### **Responding to requests for officer opinion**

2.22 As already stated the provision of pre-application guidance is well recognised as one aspect of a quality planning service, is strongly encouraged in national guidance, and is of benefit both to applicants and to the Local Planning Authority.

- 2.23 Whilst there are no figures available for this Council, it is apparent that a not insignificant proportion of the requests for advice are of a speculative nature. For example when a property is on the market, particularly when it is for auction, it is not uncommon for the Service to receive a number of requests for advice, most of which, by reason of the circumstance will not lead to the submission of a planning application. However it would be wrong to treat all enquiries which do not lead to applications as “speculative” - no application may be subsequently submitted as a direct result of the discouraging advice given. That must be to the advantage of the Local Planning Authority. Most importantly when an application is submitted, the fee for the application is for considering the application itself, rather than the cost of any pre-application discussions. Indeed national research indicates that planning application fees still fall well short of achieving cost recovery.
- 2.24 Under Section 93 of the Local Government Act 2003, a general power was introduced for local authorities to charge for discretionary activities – those services that a local authority has the power to provide, but is not obliged to do so. In the case of planning services, this could include charging for tasks outside the scope of nationally –set fees, such as offering pre-application advice. Local authorities are therefore allowed to recover at least some of the costs incurred before an application is submitted, although the income must not exceed the cost of providing the service, as set out in government guidance. With the passing of the Localism Act in 2011 the additional general power of competence has been introduced.
- 2.25 This Council’s Charging Policy includes its Charging Principles – a copy of which was provided as Appendix B to the report of the Executive Director – Resource and Support Service to Cabinet on 16 January on Scale of Fees and Charges. The principles include that charges should be made for services whenever the Council has a power or duty to do, and that there will be an initial presumption that charges to be made for the provision of a service will be set at a level intended to recover the cost of providing the service.
- 2.26 The introduction of pre-application fees potentially means greater income for the Authority and also means that the charges for these services is put onto the customer directly, rather than Council tax payers. However despite these arguments in favour of introducing fees, a number of questions also need to be considered:-
- Would the introduction of charges in this area deter potential applicants from seeking that advice?
  - Would less pre-application discussions result in un-discussed and unacceptable proposals, leading to more refusals and appeals as a result?
  - Would the proposal result in a drop in customer satisfaction levels in the service overall?
  - Would an applicant, having paid for pre-application discussion, be inclined to expect greater certainty and a quicker decision, and would they, therefore, be more aggrieved if their application is refused and ;
  - How does the introduction of pre-application charging “fit” with the decision of Cabinet to seek to aspire to obtain the Local Enterprise Planning Charter Mark?
- 2.28 An indication of the impact of charging can be obtained from the experience of other Local Planning Authorities.

### **The experience of other Local Planning Authorities**

- 2.29 The experience of other Authorities who have brought in charging for pre-application advice is documented in a report published in June 2009 by the Planning Advisory Service entitled ‘A material world – charging for pre-application planning advice’. A copy of this report is

available within the Members room and via the following link <http://www.newcastle-staffs.gov.uk/planning/ppa> .

- 2.30 The findings of that report include that
- only a few authorities at that time charged for pre-application advice but more were considering it;
  - the main reasons given for charging were to help improve service delivery and ensure better quality application submissions;
  - most authorities that charged claimed that it helped filter out speculative and poorly thought out development proposals;
  - no authority interviewed charged for householder development and most also exempted development affecting small business premises and;
  - those that charged said that the principle was broadly accepted by developers and their agents, albeit often with some initial opposition.
- 2.31 Most authorities that have introduced the charge have indicated that as a consequence they have seen a significant reduction in the number of enquiries, most particularly those of a “speculative” nature.
- 2.32 Some authorities charge for pre application planning advice, others do not. There is no national list of those Councils who charge and those who do not. In Stoke on Trent and Staffordshire officers can confirm that South Staffordshire District Council and Staffordshire Moorlands District Council charge, the other Councils do not. The neighbouring unitary authorities of Cheshire East and Shropshire charge. A Table has been produced as an Appendix to this report which provides members with an appreciation of the comparative scale of charges in the said Authorities.
- 2.33 If charging were to be introduced it is important that the charge is easy to calculate and to collect and that it reflects the different levels of complexity and time taken to give the advice. Most authorities adopt a practice where developers submit a written request for a meeting or advice and the fee for such is paid in advance of the meeting taking place or the response being given. There would be some additional administrative costs associated with the collection of such fees – the more complicated the charging structure the greater the costs would be likely to be.
- 2.34 There are numerous alternative ways of structuring charging proposals.
- 2.35 Key decisions include the following:-
- (a) Should all types of enquiries attract a charge or is it appropriate to exempt certain types of enquiries?**
- 2.36 The group of enquiries most commonly exempted from charging regimes are householder developments. However there is no particular logic to this and enquiries have confirmed that a number of those authorities who charge do now charge for advice on householder development, whilst others do not. In the case of South Staffordshire they originally exempted enquiries from residents of the District for householder developments, but this led to significant problems including less use of agents and poorer quality submissions, and they have now decided to charge for all groups.
- (b) Could and should the charges reflect the objective of full cost recovery?**

- 2.37 Whilst the Charging Principles advocate such an approach, there are significant difficulties in identifying the true cost of the provision of the service concerned, despite the Service's participation in a number of benchmarking and fee setting exercises. Even within broad types of enquiries there will be significant variations in the actual time spent.
- 2.38 More importantly there is a real concern that if the charges were to be set at full cost recovery levels their adverse impact would be very considerable. It is suggested that the Council should rather, at least for the present, be seeking what would be a reasonable contribution towards the costs of the provision of this service.

### 3. Options Considered

- 3.1 Option A – that Cabinet agrees (1) that the Council should cease providing free informal written opinion as to whether or not proposals require planning permission and (2) to the introduction of charging for pre-application advice.
- 3.2 Option B – that Cabinet agrees to one of the proposals, but not both.
- 3.3 Option C – that Cabinet agrees to neither of the proposals.

### 4. Proposal/Preferred Option

#### 4.1 It is proposed as follows

- (1) That the Council ceases as from 1 April 2013 to respond to requests for “free” written advice as to whether proposals require planning permission.
- (2) That the following fees are introduced (per case) as from 1 April 2013:-
  - **£400 for ‘large scale Major developments’** (for residential developments of over 200 dwellings or, when the number of dwellings is not known, a site area of 4 ha. or more; and for non-residential developments of over 10,000 m<sup>2</sup> of floorspace or, when the floorspace is not known, a site area of 2 ha. or more)
  - **£200 for ‘small scale Major developments’** (for residential developments of between 10 and 200 dwellings, or when the number of dwellings is not known, a site area of between 0.5 ha. and 4 ha; and for non-residential developments of between 1,000 and 10,000 m<sup>2</sup> floorspace or, when the floorspace is not known, a site area between 1 ha. and 2 ha.)
  - **£60 for ‘Minor’ developments** (for residential developments of between 1 and 9 dwellings or, when the number of dwellings is not known, a site area of less than 0.5 ha., and for non- residential developments of under 1,000m<sup>2</sup> floorspace or, when the floorspace is not known, a site area of less than 1 ha)
  - **£20 for ‘householder development’**
  - **£30 for all ‘Other development’**, excluding householder developments but including changes of use, advertisements, prior approval proposals, and listed building proposals

- 4.2 One option that Members may wish to consider as a variation to the suggested charging schedule set out above is whether such charges should be levied in the case of all meetings and written correspondence, or whether it might be appropriate, perhaps solely in relation to householder development, to allow without charge the provision of say one half hour meeting per case, but to charge in the event of any further meeting or if written confirmation of the advice given is sought. However it should be acknowledged that there are clear benefits to both parties in the provision of written advice. Additionally, such an arrangement



would not recognise that costs are incurred by the Council not only in the holding of the meeting but equally in the preparation for it. Whilst they are difficult to quantify there would be income consequences from such an exemption – it could be expected that the majority of householder development enquiries would not be the subject of a charge if this option was proceeded with. In this context Members may wish to consider how the proposals outlined above compare with the charging regimes within the nearby / neighbouring authorities (set out in the Appendix).

4.3 In terms of estimating the potential income that may result from the proposals as already indicated it is envisaged that proposal (1) above would be likely to result in an increased planning fee income of the order of £5,500.

4.3 If the above charges were to be introduced, on the basis that the number of enquiries for pre-application advice will reduce significantly – to say 250 and assuming the development types of these enquiries are of the same proportions as they are at present, this gives the following figures

'Large scale Major development'	1 x £400 = £400
'Small scale Major development'	12 x £200 = £2,400
'Minor development'	100 x £60 = £6,000
'Householder Development'	84 x £20 = £1,680
'All Other development'	51 x £30 = £1350

4.4 It is in practice more likely that the number of enquiries for Major development would be unlikely to be significantly affected by the decision to charge but the above calculation gives an indication of the scale of the additional fee income which might be forthcoming were the fees to be set at the above rates. Recognising the width of the band of proposals that fall within the 'small scale Major development' category (it ranges from 10 dwellings up to 199) it might well be appropriate to add in an additional fee category, and further consideration is being given to this aspect.

4.5 On the basis of the above calculation an additional fee income of £12,010 per annum might be generated from the introduction of such proposals.

4.6 Combined the two proposals it is estimated would bring an additional fee income of £17,510 in 2013/14. For budget planning purposes it might be prudent to assume an income level of say £15,000.

4.7 The comments of the Planning Committee on these proposals are being sought and will be reported to the meeting of Cabinet on 6 February.

## 5. **Reasons for Preferred Solution**

5.1 The proposals are modest measures which are expressly designed only to achieve a contribution towards the costs of service provision. On the basis of the experience of other Local Planning Authorities they are considered to be practical

## 6. **Links to Corporate Priorities**

6.1 By the provision of additional resources the proposal will assist the Council with its corporate priority of Transforming our council to achieve excellence. Were the charges to be set at too high a level they could conflict with the corporate priority of 'creating a borough of opportunity' but it is not considered that they have been.

7. **Legal and Statutory Implications**

- 7.1 The introduction of a charging system for pre application advice should not be profit making, and payment for these services would need to be made in advance, as per usual practice.

8. **Equality Impact Assessment**

- 8.1 By reason of a charge being levied it would impact upon individuals including residents of the Borough. No Equality Impact Assessment has however been undertaken.

9. **Financial and Resource Implications**

- 9.1 The proposal should improve the financial position albeit to the limited degree indicated in the report.

10. **Major Risks**

- 10.1 That potential developers may be deterred, and there be an adverse impact upon customer satisfaction with the service, and the perception that the Council is no longer seeking to offer an excellent planning service.

11. **Key Decision Information**

Key decision.

12. **Earlier Cabinet Resolutions**

There are none.

13. **Background Papers**

ODPM publication; "General Power for Best Value Authorities to Charge for discretionary Services – Guidance on the power to in the Local Government Act "  
Newcastle Borough Council Charging Policy  
Planning Advisory Service Publication – "A material world – charging for pre-application planning advice"