

DELEGATED

AGENDA No.

**REPORT TO
PLANNING
COMMITTEE**

12 JANUARY 2011

**REPORT OF THE
CORPORATE
DIRECTOR OF
DEVELOPMENT AND
NEIGHBOURHOOD
SERVICES**

Proposed Changes to Planning Fees Consultation Summary

Following a period of research and contemplation, of which Stockton was one of the original pilot authorities involved, the Government has decided to make funding an individual Local Planning Authority responsibility. LPA's will be able to set their own planning fees with some restrictions imposed, although full details have not as yet been published.

The consultation paper proposes changes to the planning application fees regime which would decentralise responsibility for setting fees to local planning authorities. The Government also propose to widen the scope of planning application fees so that authorities can charge for more of their services. This would enable (but not compel) authorities to charge for resubmitted applications, and would allow authorities to charge higher fees for retrospective applications. Both proposals are intended to reduce taxpayer subsidy of planning applications.

This report outlines the proposals with regards to planning fees, as well as outlining a number of issues which have emerged or are not particularly clear. A response has been sent by Stockton to the consultation but it is not anticipated that the Government will change its position on the contents of the document.

Recommendation:

That the report be noted.

1 Proposed Change

1.1 The consultation paper proposes changes to the planning application fees regime which would decentralise responsibility for setting fees to local planning authorities. The Government also propose to widen the scope of planning application fees so that authorities can charge for more of their services. This would enable (but not compel) authorities to charge for resubmitted applications, and would allow authorities to charge higher fees for retrospective applications. Both proposals are intended to reduce taxpayer subsidy of planning applications

2 The Planning Act 2008

2.1 The provisions for charging planning application fees are set out in section 303 of the Town and Country Planning Act 1990, as substituted by section 199 of the Planning Act 2008. These provisions:

- allow fees to be charged in relation to any function of a local planning authority and for matters ancillary to those functions
 - allow the Secretary of State to prescribe fees or a means of calculating fees to be set by someone else (such as a local planning authority)
 - allow the Secretary of State to prescribe when a service would be exempt from fees
- Research on planning application fees was undertaken by the previous Government (see next section). It informs our proposals.

2.2 The District Councils Network has published a paper on local authority fees and charges, which includes proposals to decentralise responsibility for setting planning application fees. The Local Government Association is in favour of these proposals. Around 35 per cent of development management resources are being allocated to dealing with applications which do not currently incur a fee

2.3 Fees are currently set nationally and do not take account of differing local circumstances and market conditions. The Government believes this is contrary to the spirit of localism, and the principle that decisions should be taken at the lowest possible level, by people who are accountable to the public.

2.4 The Government does acknowledge that the majority of local planning authorities are failing to recover costs from fee income. On the basis planning permission often adds significant value to land, the Government considers that local tax payers are subsidising applications which may make the applicant a considerable profit. On the other hand, some authorities are actually generating more income through charging fees than it costs to process applications, because the national charges exceed their local costs. It does not address the market conditions such as in the North East where there depressed land values

2.5 The Government consider the only way to overcome this is to enable authorities to set their own fees which reflect local costs, and encourage them to run a fair and efficient system. What the paper does not address is all the difficulties over covering costs to operate and efficient and effective service

2.6 The consultation paper proposes changes to the planning application fees regime which would decentralise responsibility for setting fees to local planning authorities. The Government also propose to allow authorities to charge for some of those applications which are currently free. While both proposals are intended to reduce the subsidising of planning applications by local residents, the paper avoids the implications that this may still not provide sufficient income

2.7 If accepted and approved by Parliament, the changes would be implemented from April 2011, with a six month transition period until October 2011.

3 The basis for charging planning application fees

3.1 It is an established principle that local authorities should pay for activities that are purely or largely for the wider public good. The intention of development

management is above all to promote the public good: since managing local development helps to secure the long-term benefits of sustainable, well-designed communities. Yet planning decisions often bring private benefit to the applicant as well; in particular, a property with planning permission may be much more valuable than it would be without. The power granted to authorities to charge planning application fees reflects the possible private benefit implicit in a planning permission. An applicant should expect to pay a fee for an application that could bring a measure of gain. The fee payable reflects the overall cost of handling, administering and deciding the application, including related overheads. What this fails to reflect is the additional requirement that the charge is minimal and affordable

4. The changes the Government propose

4.1 Wherever possible, decisions should be taken at the local level, by people who are accountable to the public. There is no reason why charges for planning applications should be an exception. Local planning authorities should be able to set their own charges to recover their own costs. Applicants should be charged for the full cost of the application where they are paying a fee, rather than being subsidised by the general tax payer. The Government therefore propose to decentralise responsibility for planning application fee setting to local planning authorities.

4.2 Letting local planning authorities set their own fees will enable them to recoup their costs but not exceed them. At the same time, setting fees locally provides a stronger incentive for local planning authorities to run a more efficient service: since it will be a more transparent system, directly accountable to local residents. If the proposal is taken forward there will be a six month transition period to give authorities time to develop charges which accurately reflect their costs.

5 Extending the scope of planning application fees

5.1 Some applications, such as those for listed building consent, are not currently subject to fees, because they provide significant public benefit. Annex A outlines the development management services for which a fee is and is not payable.

5.2 In some instances, applicants are receiving private benefits without having to pay a fee for their application. This isn't sustainable for authorities and is unfair for the general tax payer, who is subsidising the application.

5.3 The Government propose to widen the scope of planning application fees so that authorities can charge for more of their services. This would enable (but not compel) authorities to charge for resubmitted applications, and would allow authorities to charge higher fees for retrospective applications. Again it ignores the requirement to reflect market conditions, minimal and affordable charges.

6 Specific proposals Options

Option 1 would decentralise the responsibility for setting fees for planning applications to local planning authorities

6.1 This would give local planning authorities control over setting planning application fees. The Government would set out in regulations the principal requirements for

local planning authorities (which would include establishing a charging schedule) and exemptions from fees.

6.2 Local planning authorities would have to establish a charging scheme which reflects full cost recovery and the principle that the user should pay for the actual service they receive. Authorities should keep their costs to a minimum – helped by local democratic accountability – and should ensure that charges are based on efficient services which remain affordable.

6.3 Option 2 would maintain the current fee system

Preferred option

6.4 The Government believe that option 1 is the appropriate way forward. It would give local planning authorities the flexibility to charge fees that properly recover the costs they incur in determining planning applications. It is the option that is most consistent with the Government's commitment to localise and decentralise power. It will also introduce greater accountability and transparency into the planning fees system, as local planning authorities will need to be able to demonstrate that their charges are justifiable and based on cost.

6.5 Other proposals

Proposal (a) would allow local planning authorities to decide whether to give applicants a "free go" when resubmitting applications that have been withdrawn or refused

Currently no fee is payable for applications that are resubmitted following withdrawal before determination or refusal (this is known as the "free go"). This is principally because it was considered unfair to charge applicants twice for similar applications, which should theoretically not require as much work to determine as two separate, unrelated applications. However, in practice, a resubmitted application may be very different from the original application whilst still being entitled to a "free go". Resubmitted applications, can represent substantial work, and therefore cost, for an authority. A comprehensive "free go" fails to reflect this cost. A better approach would be to allow authorities to make their own decisions about whether or not to allow a "free go", depending on the local costs they expect to incur for resubmitted applications. This would also allow local authorities to deter repeat applications for development which already exists (retrospective planning applications).

Proposal (b) would allow local planning authorities to charge a higher fee for retrospective planning applications

6.6 Currently no distinction is made between fees for routine applications and applications which are made retrospectively (after development has begun). Retrospective applications are sometimes made as a result of investigation by a local planning authority. In these instances, they impose a greater cost on authorities than routine applications. The principle behind planning application fees is that they should be set at a level that allows authorities to fully recover the associated costs. Authorities should therefore be able to charge a higher fee for retrospective applications where the application has come about as a consequence of investigatory work by the authority, in order to recover all of the related costs.

6.7 This again will not be easy to implement as a test of fairness would be whether increased costs are incurred otherwise it would not satisfy the criteria of only recovering the cost of processing as a minimal and affordable charge.

6.8 Applications for Listed Buildings, Conservation Area consent and for works to trees that are the subject of a tree preservation order (TPO consent) do not currently incur a fee. In developing their proposals the Government considered whether this position should change. The Government are not minded to make a change principally because owners cannot opt-out of having their building Listed or located within a Conservation Area designation, and because such designations confer burdens with regard to preservation and maintenance that are clearly in the public interest. Similarly residents cannot opt-out of the tree preservation order designation, it is a burden on those affected, and tree maintenance (which requires consent) is of public environmental benefit.

6.9 The Government have asked for suggestions about whether this is the appropriate approach, or about fees and concessions on fees for development management services that have not been discussed in this consultation paper. Given the statement above it will be used to challenge any LPA which tries to invoke charges.

What are the likely effects of any of the changes?

6.10 The Planning fees system to work effectively is dependent on the required application types/fees to be submitted to cover the real costs of an efficient and effective service. What it doesn't provide for is if insufficient application types and fees are submitted and do not cover the real costs of an efficient and effective service. This makes it particularly difficult to retain the level of staff required to operate a minimal service or fund capital expenditure such as improving ICT.

Will there be unintended consequences arising from these proposals?

6.11 While on the surface it would appear LPA's are being freed from Central Government control, the devil will be in the detail and the outcome is likely to be anything but simple to resolve.

- What the document does not make clear is that if full recovery of cost is being sought then it could follow the existing element of Rate Support Grant for planning services will be removed.
- The period over which the LPA can balance its books. Killian Pretty's recommendation was only over a single year. Severe difficulties in calculating appropriate fee levels to cover costs due difficulty in being able to predict future application numbers or how changes to PD rights might affect it.
- It ignores the problem of insufficient applications/payments during the relevant periods to fund the necessary level of resources-staff/IT etc which will affect those Local Planning Authorities who economy is particularly badly hit by the recession
- It avoids issues such as merging services which are still likely to be underfunded as much as an individual service

- Likely to encourage outsourcing if can be achieved at no cost to the individual Council. (may also mean Government can double count such as loss of Local Government Jobs and creation of “new private” sector jobs
- Likely to be significant increased costs to LPA’s in managing payments/disputes and pressure from developers for discretionary fee level as Building Control .ie. will take the development elsewhere if fee not waived or reduced.
- “Letting local planning authorities set their own fees will enable them to recoup their costs but not exceed them” This will remove any ability to carry forward any potential profit to subsidise less profitable periods
- “Authorities should keep their costs to a minimum – helped by local democratic accountability – and should ensure that charges are based on efficient services which remain affordable”. Minimum cost and affordability will clearly constrain charges and lead to challenges and complaints from the Householder through to the residential developer on market conditions adding further barriers to the process working effectively

Comments on the outcomes predicted in the impact assessment, in particular the costs and benefits

6.12 The assessment is based on the proportion of costs to business and individuals remaining consistent, and that fee increases will be comparable across different fee categories. While that is a desirable model for consistency- the status quo, given the potential impact of the recession particularly where market conditions are depressed the model would not be a realistic reflection of the real world and not comparable.

6.13 The Local Government Association has formally asked for the right to increase its charges for a range of services to make up for cuts in central Government funding. In response to the Government’s announcement to enable Local Planning authorities to set fees, in a letter to Local Government secretary Eric Pickles, Baroness Eaton, the association’s chairman, said the Government should go further. Fees for property searches, building control fees as well as planning applications, should increase substantially. She said: “Other fees set centrally, such as licensing fees, have been shown to be inadequate to cover the full costs of the related services. “Councils should be entitled to levy charges at a level that allows them to recover fully the costs of providing the service, subject to transparency about how fees are derived. “Where councils offer a service in a competitive market, the market should determine the fee level, not the Government.” Currently a planning application for an extension to a home costs a flat rate £150, while outline planning permission for a new house costs £335 for a small plot.

6.14 In response ministers are reported to have reacted angrily and attacked the association for “encouraging councils to use residents as cash cows”. Local Government Minister Grant Shapps is reported to have said: “It would be much more constructive for them to set out ways councils can protect frontline services. “We have been quite clear that if local authorities cut out excessive chief executive pay, share back offices, join forces to procure, and root out wild overspends they can safeguard key frontline services. “Only lazy councils will attempt to use residents to boost their bank balances. I am sure given the new levels of transparency in local government the public won’t stand for it.”

7 Conclusions

7.1 As indicated above it would appear that it may be difficult to produce a national planning fee system which ensures the provision of a properly resourced service. Many of the important issues and details have not been properly considered or addressed in this document. Members will be kept informed of the situation and a further report will be presented to Planning Committee when the draft fee regulations are published.

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FINANCIAL AND LEGAL IMPLICATIONS

FINANCIAL

It is considered that there will be a significant impact on the planning service in terms of financial planning, ensuring the service is adequately funded and resourced and able to function efficiently and effectively.

RISK ASSESSMENT

High Risk of impacting on service delivery and resourcing

COMMUNITY STRATEGY IMPLICATIONS

It is considered that there will be a significant impact on the planning service in ensuring the service is able to function efficiently and effectively to deliver the policies and vision of the strategy.

COMMUNITY SAFETY

The proposal has no direct impact upon community safety.

EQUALITIES IMPACT ASSESSMENT

This report is not subject to an Equality Impact Assessment because it is a procedure which is universally applied regarding processes within Planning Services.

WARD AND WARD COUNCILLORS: ALL

Annex A

Fees for development management services

A fee is currently payable for:

1) Applications for:

- full or outline planning permission
- non-material changes to planning permission
- approval of reserved matters
- certificates of lawfulness of existing or proposed use or development
- consent to display advertisements
- determination as to whether prior approval will be required for permitted development

2) Requests for confirmation that conditions attached to a grant of planning permission have been complied with

3) Site visits to a mining or landfill site

A fee is currently not payable for:

1) Applications for Listed Building consent

2) Applications for Conservation Area consent

3) Applications for works to trees covered by a tree preservation order

4) Applications that are resubmitted following withdrawal or refusal

5) Applications for development to dwellinghouses, or buildings to which members of the public are admitted, for the purpose of providing means of access for disabled people (or securing the safety, health or comfort of disabled people, in the case of dwellinghouses)

6) Applications for development which is allowed under permitted development rights where those rights have been removed by an Article 4 direction or a condition

7) Second applications (made following the granting of planning permission) relating to development of the same character or description on the same site

8) Applications relating to the same use class which are made necessary because of a condition

9) Applications to consolidate subsisting minerals planning permissions

Fees for town and parish councils

Parish and town councils enjoy various rights under Schedule 2 Part 12 of the General Permitted Development Order to carry out works without the need to make a planning application. Where they do need to apply, they pay a 50 per cent fee.

Fees for playing fields

There is currently a flat-rate fee of £335 for applications made by non-profit making clubs or other non-profit-making sporting or recreational organisations, relating to playing fields for their own use. The term 'playing field' includes football, cricket, hockey or hurling pitches, but not enclosed courts for games such as tennis or squash, and not golf courses or golf driving ranges.