

Introduction

1. Local planning authorities received more than 450,000 planning applications in 2009-10, including everything from house extensions to large developments. It is resource intensive for authorities to handle, check and publicise applications and give each one appropriate and careful consideration. Local planning authorities are able to charge fees in order to recover the costs of processing most types of planning applications.
2. Fees are currently set nationally, which means they do not take account of differing local circumstances and market conditions. 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.
3. The majority of local planning authorities are failing to recover costs from fee income. Since planning permission often adds significant value to land, this means 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.
4. 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.
5. This consultation paper proposes changes to the planning application fees regime which would decentralise responsibility for setting fees to local planning authorities. We also propose to allow authorities to charge for some of those applications which are currently free. Both proposals will help to reduce the subsidising of planning applications by local residents.
6. If accepted and approved by Parliament, the changes would be implemented from April 2011, with a six month transition period until October 2011.

The legal background

The Planning Act 2008

7. 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
8. Section 303 (10) of the Town and Country Planning Act 1990 states that the income from a fee must not exceed the cost of performing the fee-related function (handling, processing and determining planning applications, in this instance). This means that fees cannot be used to make a profit.

The basis for charging planning application fees

9. 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.

Resourcing the planning system

Research

10. In February 2009, the previous Government commissioned independent research from Arup¹ to look at whether planning application fees were covering local authority costs, and to identify methods that authorities could use to set their own charges. Arup's report is available on our website. It shows:
 - that authorities are recovering around 90 per cent of their costs, on average
 - that between April 2006 and March 2010 (with projections used for 2009-10) the average cost of handling and determining planning applications was £619, and the average fee received was £569
 - that around 35 per cent of development management resources are being allocated to dealing with applications which do not currently incur a fee

¹ *Planning Costs and Fees*, Ove Arup & Partners for the Department for Communities and Local Government, November 2010

The changes we propose

Decentralising planning application fees

11. 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. **We therefore propose to decentralise responsibility for planning application fee setting to local planning authorities.**
12. In April 2008, fees were increased by 23 per cent in order to help authorities recover more of their costs. However, some authorities are still not recouping costs – as Arup’s research showed – while others are recovering more than it cost them. This variation is inevitable when fees are set nationally and has been raised as an issue by respondents to the Government’s Spending Challenge². 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.
13. 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.

Extending the scope of planning application fees

14. 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.
15. 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.
16. **We 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. Specific proposals are outlined below.

² http://www.hm-treasury.gov.uk/press_23_10.htm

Options

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

17. This would give local planning authorities control over setting planning application fees. We would set out in regulations the principal requirements for local planning authorities (which would include establishing a charging schedule) and exemptions from fees.
18. 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.

Option 2 would maintain the current fee system

Preferred option

19. We 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.

Q1. Do you agree that each local planning authority should be able to set its own (non-profit-making) planning application fee charges?

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

20. 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).

Q2. Do you agree that local planning authorities should be allowed to decide whether to charge for applications that are resubmitted following withdrawal or refusal?

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

21. 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.

Q3. Do you agree that local planning authorities should be able to set higher fees for retrospective applications?

Any other comments

22. Applications for Listed Buildings, Conservation Area consent³ and for works to trees that are the subject of a tree preservation order (TPO consent) do not currently incur a fee. In developing our proposals we considered whether this position should change. We 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. However, we would welcome comments or 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. Annex A sets out the main types.

Q4. Are there any other development management services which are not currently charged for but should require a fee?

Q5. Are there any other development management services which currently require a fee but should be exempt from charging?

³ Conservation Area consent is required for the demolition of a building (within a Conservation Area) with a volume of greater than 115 cubic metres, although there are a few exceptions; and for the demolition of a wall, fence, gate or railing over 1 metre in height next to a highway (including a public footpath or bridleway) or public open space; or over 2 metres in height elsewhere.

Invitation to comment

23. We welcome your comments on this document. You might also want to look at *Planning Costs and Fees*, which outlines some of the evidence informing our proposals. It is on our website.
24. In summary, we propose:
- **to decentralise responsibilities for setting planning application fees to local planning authorities**
 - **to allow authorities to decide whether to provide applicants with a “free go” for applications that are resubmitted following withdrawal or refusal**
 - **to enable authorities to set higher fees for retrospective applications.**
25. The **options** and **proposals** are explained on pages 9–10. A summary of **questions** is below. If responding, please make clear which option, proposal, question or other element of the consultation paper each comment relates to. Ideally, comments should be supported with evidence or data, though anecdotal evidence can serve to illustrate a wider point or identify a risk.

- Q1** *Do you agree that each local planning authority should be able to set its own (non-profit-making) planning application fee charges?*
- Q2** *Do you agree that local planning authorities should be allowed to decide whether to charge for applications that are resubmitted following withdrawal or refusal?*
- Q3** *Do you agree that local planning authorities should be able to set higher fees for retrospective applications?*
- Q4** *Are there any development management services which are not currently charged for but should require a fee?*
- Q5** *Are there any other development management services which currently require a fee but should be exempt from charging?*
- Q6** *What are the likely effects of any of the changes on you, or the group or business or local authority you represent?*
- Q7** *Do you think there will be unintended consequences arising from these proposals?*
- Q8** *Do you have any comment on the outcomes predicted in the impact assessment, in particular the costs and benefits (see Annex B)?*

26. This consultation document is available on The Department for Communities and Local Government website. If necessary, paper copies can be obtained from Julian Wheeler (see below). A consultation response form is provided, and your representations, by e-mail or in writing, should be sent – for receipt by the closing date of 7 January 2011 – to:

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 The Department for Communities and Local Government
 Zone 1/J1, Eland House
 Bressenden Place
 London
 SW1E 5DU

e-mail: Julian.Wheeler@communities.gsi.gov.uk

27. Where possible this consultation follows the Government's Code of Practice on Consultation (see **Annex C** for further details). When commenting, please say if you represent an organisation or group, and in what capacity you are responding. A summary of responses will be published on the website following consultation. Hard copies of the summary can also be obtained thereafter, by contacting Julian Wheeler at the above address.

28. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA)).
29. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
30. The Department for Communities and Local Government will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. Individual responses will not be acknowledged unless specifically requested.
31. Your opinions are valuable to us. Thank you for taking the time to read this document and respond.