

## **Report to Cabinet**

**Report reference:** C-067-2012/13  
**Date of meeting:** 11 March 2013



**Epping Forest  
District Council**

**Portfolio:** Planning and Economic Development  
**Subject:** Extending the Range of Pre-planning Application Charging  
**Responsible Officer:** Nigel Richardson (01992 564110).  
**Democratic Services Officer:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) To expand the current pre-application charging to include advice on Minor type applications; and**
- (2) That Members note the approach and fees taken by other Authorities as set out in Appendix 1 and agree the fees as follows:**
  - (a) Major\* Developments (creation of 100 and over new residential units, creation of commercial development or changes of use of 10,000 square metres and over) = £3000.00 plus VAT;**
  - (b) Major\* Developments (creation of 10 – 99 new residential units, creation of commercial development or changes of use between 1000-9,999 square metres) = £1500.00 plus VAT;**
  - (c) Minor\* Developments (creation of 2-9 new residential units, creation of commercial development or changes of use between 100-999 square metres) = £700.00 plus VAT; and**
  - (d) Minor\* Developments (creation of 1 new or replacement residential unit, creation of commercial development or changes of use up to 100 square metres) = £250.00 plus VAT.**

### **Executive Summary:**

The purpose of this report is to recommend to Members that, as some 25 to 30 informal requests for planning advice are received each week, further charges be introduced for “Minor” category new dwellings and commercial developments as well as increase the charge on “Major” category applications of 100 residential units and over/ commercial development 10,000 square metres and over by the Council to cover the cost of these services, given this kind of advice draws significantly on officers’ time. Although it is not a statutory duty it is often seen as an integral part of the planning process for which a reasonable charge can be made. The current planning duty officer system will still provide free initial in principle advice and for extensions to houses.

A number of requests are often of a ‘frivolous’ nature in that there is no serious intention to proceed with a proposal, but it still takes officer time to respond. Experience elsewhere suggests these types of request will reduce in number once charges are introduced. The

expansion of the current charging to include a range of pre application charges will also help Development Control to sustain and improve its current levels of service as well as bring in additional income for this service.

The charging level recommended above in (2) follows the recommendation by Planning Services Scrutiny Standing Panel at their meeting on 11 December 2012. A suggested addition of pre-application charging for retrospective applications by Overview and Scrutiny Committee at their meeting on 29 January 2013 is not recommended following advice from the Council's Senior Lawyer that this would be ultra-vires and open to challenge. Furthermore, research of other council's pre-application charging schemes does not reveal retrospective charging.

### **Reasons for Proposed Decision:**

Because of the legislative position, and because some other Authorities nearby are charging, it is right that Members should consider the facts and issues. There is a range of different schemes being operated. A scheme focused on minor and major developments is recommended since developers will be able to assimilate these costs into their overall costs most readily and it would not penalise householders unnecessarily nor dissuade them from seeking advice.

It is difficult to predict what such charges are likely to bring in a full year, but a modest income in the order of £40,000 is expected. There will be some internal costs associated with administering the scheme.

### **Other Options for Action:**

To continue with the current scheme of pre application charges just for major type applications.

To introduce a more wide ranging scheme of pre application charges for all prospective applicants, i.e. to charge pre-application advice on householder extension.

To have all pre application advice as a service without specific charge.

### **Report:**

1. The Local Government Act 2003 allows Local Authorities to charge customers for holding discussions prior to the submission of planning applications. This report seeks to consider briefly the issues, what similar authorities are doing and thus to enable Members to consider expanding the existing scheme that currently charges for pre-application advice on major category planning applications, introduced in 2007.

2. Originally all services offered in connection with the control of development in Planning were free to users. Planning fees were introduced in the 1980s for those making planning applications with the intention of them paying a contribution to the costs of providing the service. However, fee-generating applications make up only about half the overall costs of development control. Of course, the system acts in the public interest, not just in the interests of those submitting applications.

3. The application fees are compulsory and set nationally. For the first time in 4 years, they have just increased by 15% and few issues of nonpayment arise. This Council's fee income is estimated to be £510,000 in this financial year. However, coincidentally, the Government has just gone out to consultation on extending permitted development rights which among other suggestions, could allow single storey rear extensions on houses to

extend out between 6 and 8 metres before requiring planning permission. As this accounts for a large portion of this Council's planning application, this could have a significant impact on income.

4. The charging for pre application discussions could produce a further income stream for the Council. Pre-application discussions have always been encouraged by this authority and, so long as charging does not reduce the take up of the offer to discuss a proposal before submitting an application, a charging scheme can have the benefit of dissuading some ill-conceived proposals, highlighting the cost of officer time in the process and recouping some of this cost.

5. However it must be remembered that the power to charge for discretionary services is to enable the Council to cover its costs of providing the service. The charges for one service cannot be used to subsidise another service. It is not intended that the Council should make a profit or use the power as a revenue raising scheme. When setting the charge regard must be had to the Guidance issued by the government. Guidance was issued by the ODPM back in 2003 and is the current guidance to which regard must be had.

#### Other Authority Schemes

6. In preparing this report attention has been given to what is being done by other Essex authorities and neighbouring London boroughs.

7. The charges by Essex Authorities are appended to this report. As can be seen, most are now charging across most development types.

8. Of the adjacent London boroughs, Redbridge charges the same and Havering similar, with Waltham Forest just less on major application type. The figures roughly half for less number of units.

9. Plainly there is plenty of variety in the charging regimes that others have adopted.

#### The Current Scheme

10. We currently have a scheme of charging on major planning applications and use the DCLG definition of major as being proposals for 10 houses or more, or a residential scheme on a site of 0.5 hectares or more, or 1,000 sqm of commercial floorspace or a commercial scheme on a site of 1 hectare or more. A flat charge of £1,500 is charged. A copy of the current charging schedule on the Council's website is attached. As you can see, this is higher than many of the other Essex authorities, but so far for 2012-13, the income we have received on pre-application advice on major applications is at £20,100. Admittedly, this is higher than previous years and the proposed expansion to include other categories would only a contribution to the full costs and so follows the spirit of the existing charging regime but is considered to be proportionate to the fee that has to be submitted ultimately to accompany the application.

#### Revising the Scheme

11. Consultation with agents who regularly submit applications both in this district and elsewhere have previously emphasised that charging for smaller schemes, particularly for householder applications, gives rise to considerable ill-feeling and a significant disinclination to seek pre-application advice at all. Hence, the previous decision that it applied to major schemes only. However, despite officer's initial reservations, charging pre-application advice on major applications has worked reasonably well over the last 5 years, bringing in a total so far of about £60,000. The Council has a duty officer system whereby advice is provided at the

planning reception area. Officers also reply to written requests for advice and take numerous telephone calls on development proposals. This does not take priority over more pressing needs of dealing with planning applications and appeals, unless it is paid pre-application.

12. Development Control therefore encourages and welcomes the opportunity to provide advice before an application is made. There are also benefits with expanding the charging:

- it gives the prospective applicants an opportunity to understand how our planning policies will be applied to a development;
- it can identify at an early stage where there is a need for specialist input, for example about listed buildings, trees, landscape, noise, highway issues, contaminated land, ecology or archaeology;
- it will assist the applicants in preparing proposals for formal submission which, providing the officers' advice has been taken fully into account, can be handled more quickly;
- it may lead to a reduction in time spent by the applicants' professional advisors in working up proposals; and
- it may indicate that a proposal is completely unacceptable, saving the applicants the cost of pursuing a formal application.

13. The details of the scheme will need to address:

- (a) any unwarranted raising of expectations that officer advice, especially when paid for, commits the Council to an ultimate decision;
- (b) any discouragement from entering pre-application discussions;
- (c) that it is the Council who determines who best to deal with an enquiry rather than a developer insisting on meeting a senior officer;
- (d) that a considerable amount of advice is already available free-of-charge through the Council's website;
- (e) that not all advice needs to include a meeting – a written report on a preliminary scheme will be produced in any event; and
- (f) the arrangements for the payment of the fees themselves, which must not put additional responsibilities onto professional case workers.

#### Proposed Revised Charges

14. Not all inquiries would attract a fee as, for example, simple householder requests could be answered without undue demand on officer time. It is also suggested that free advice will continue to be provided only for advice prior to an application for:

- proposed alterations or extensions to single dwellings and other householder applications;
- proposed works to a Listed Building or works of demolition within a Conservation Area;

- works to Trees covered by Tree Preservation Orders or located in Conservation Areas;
- advice to establish whether planning permission is required, although any formal response currently given is required through the submission of an application for a proposed certificate of lawful development;
- advice to Parish Councils, community groups and other local authorities.

15. Telephone and some initial in principle advice would continue to be provided free of charge. Planning Services Scrutiny Standing Panel at their meeting on 11 December 2012 took into consideration the current charging of £1500.00 plus VAT for Major type applications, and recommend revising this along with the introduction of further charging (Other local London and Essex planning authority's charges were used as a comparison and these are set out in appendix 1 to this report). The charging recommended by officers was as follows:

**(a) Major\* Developments (creation of 100 and over new residential units, creation of commercial development or changes of use of 10,000 square metres and over) = £3000.00 plus VAT;**

**(b) Major\* Developments (creation of 10 – 99 new residential units, creation of commercial development or changes of use between 1000-9,999 square metres) = £1500.00 plus VAT;**

**(c) Minor\* Developments (creation of 2-9 new residential units, creation of commercial development or changes of use between 100-999 square metres) = £700.00 plus VAT; and**

**(d) Minor\* Developments (creation of 1 new or replacement residential unit, creation of commercial development or changes of use up to 100 square metres) = £250.00 plus VAT.**

*(\*These definitions are based on the Department for Communities and Local Government's classification of types of development.)*

16. Officers would decide whether a meeting is necessary as in some cases their knowledge of the site, background history or the nature of the proposal will avoid the need for a meeting. If further meetings are sought then a further fee will be levied at the above rates. These fees will cover administration costs and officers' time for research, assessment, a meeting as necessary and a written response.

17. Overview and Scrutiny Committee on 29 January 2013, agreed to the above but also felt that pre-application charging should be introduced for retrospective "Other" category planning applications and the fee should be double that of submitting a planning application and requested the following charge to be added:

**(a) 'Retrospective Other\* Developments (Householder developments, advertisements, changes of use, listed building consents to alter/extend or to demolish and conservation area consents) = Double the respective planning application fee plus VAT'.**

18. The advice from the Council's Senior Lawyer is that such charging for retrospective applications would be ultra vires and open to challenge. Retrospective charging could firstly be seen as a penalty charging for carrying out work in advance of planning permission and secondly, doubling the fee as an actual cost of providing the service would not be justified. A

check of other planning authorities has revealed similar concerns and none have a similar charge in this respect. The likelihood though of this charging method being used is very low given the development would have already been carried out. It therefore is not part of the recommendation to Cabinet.

**Resource Implications:**

Additional income in the region of £40,000 a year.

**Legal and Governance Implications:**

The Local Government Act 2003. Failure to set a discretionary charge in accordance with the legislation may result in the charge being ultra vires and open to legal challenge. A misuse of the power could result in the power under S93(1) of the Act being removed by order of the Secretary of State under S94.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

Essex Development Management Forum, Planning Services Scrutiny Standing Panel, Overview & Scrutiny Committee, Portfolio Holder for Planning, and Senior Lawyer - Director of Corporate Support Services.

**Background Papers:**

None.

**Impact Assessments:**

Risk Management

The Council reputation in terms of good decision making and availability for pre-application discussions.

Equality and Diversity

*Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?* No

*Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken?* No

*What equality implications were identified through the Equality Impact Assessment process?*  
Not applicable.

*How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?*  
Not applicable.