



ARTICLE NO: 1C

MEMBERS UPDATE 2011/12

**CORPORATE OVERVIEW AND
SCRUTINY COMMITTEE**

Article of:	Borough Planner
Issue	June 2011
Relevant Portfolio Holder	Councillor M. Forshaw
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SUBJECT: INTRODUCTION OF PLANNING CHARGES FOR PRE-APPLICATION ADVICE, SPECIALIST ADVICE AND FOR THE DRAFTING, NEGOTIATING AND MONITORING OF LEGAL AGREEMENTS

Borough-wide Interest

1.0 PURPOSE OF REPORT

- 1.1 To inform Members of the response to a public consultation exercise on the proposed introduction of planning charges for pre-application advice, specialist advice and for the drafting, negotiating and monitoring of legal agreements.

2.0 BACKGROUND

- 2.1 The Planning Control team has historically not charged for pre-application advice, specialist advice regarding trees, Listed Buildings, conservation or sustainability, or for the drafting, negotiating and monitoring of associated legal agreements under Section 106 of the Town and Country Planning Act 1990. It has always been a free service for professional agents, architects and for members of the public. The current system allows potential applicants to submit plans to Planning Control Officers for informal advice on their proposals. Some face to face pre-application advice also occurs in the Derby Street reception, either by appointment or by virtue of our duty planner rota system. This allows members of the public to come into reception and ask questions directly of an officer. This system tends to deal with more general planning advice. For specific schemes, customers are encouraged to write in with further details.
- 2.2 The Local Government Act 2003 and specifically Section 93 gives Local Planning Authorities discretionary power to charge for services such as pre-

application advice. Where a fee is charged, it must be on a not for profit basis and over the course of each year, the income from charges for such services must not exceed the cost of providing them.

- 2.3 In the current economic climate, charging for pre-application advice could be seen as a further burden on the applicant/developer. However, recent Government suggests that pre-application engagement is important and charging for that advice is appropriate. What is important to developers is that they are receiving timely, responsive, constructive and reliable advice. In turn, this can save developers significant resources by not pursuing schemes which are unacceptable or have to be modified once submitted. The resources needed to give such advice can be significant and that cost is borne by the local authority and ultimately a cost to its citizens. Charging for pre application advice will ensure the resource is used to provide a well managed and constructive process that will add value at all levels and that the beneficiary of that service pays for it.
- 2.4 It is evident from benchmarking that many authorities now charge for pre-planning advice. Locally, the Merseyside Authorities do not yet charge for pre-application advice although a number are actively researching the possibility. In Lancashire, Chorley, Hyndburn, Preston, Ribble Valley and Wyre and South Ribble charge.
- 2.5 This principle also applies to the negotiating, drafting and monitoring of legal agreements under Section 106 of the Town and Country Planning Act, which take a significant amount of officer time. Such legal agreements (also known as planning obligations) often involve complex negotiations with several interested parties over a number of weeks. At present this is ultimately at a cost to the citizens of the area as no costs are currently recovered from the applicant. It is considered that the beneficiary of this service should be the one to pay for it. A number of other local authorities also charge for this service.
- 2.6 In March 2011, cabinet agreed that the charging regime set out in Appendix 1 be consulted upon and that the Borough Planner, in consultation with the relevant Portfolio Holder, adopt a finalised charging regime taking account of any consultation responses, and to make subsequent modifications in the future.

3.0 CURRENT POSITION

- 3.1 The consultation process ran from 23rd March 2011 and 4th May 2011 with local house builders, local planning agents, Councillors, Parish Councils and members of the public. The proposal drew a small number of comments, which are summarised in the schedule below. A number of minor revisions will be undertaken as set out in the schedule below to reflect the comments made following consultation.

4.0 CONSULTATION RESPONSE AND PROPOSED REVISIONS

RESPONDENT	COMMENT	RESPONSE
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<p>Newburgh Parish Council</p>	<p>It is crucial that charges do not deter people from seeking pre-application advice. In accordance with Appendix 1, other Councils in Lancashire, apart from one, do not charge for householders. West Lancs is proposing a £50 charge (Hyndburn £35) and this seems out of line with the others.</p> <p>It is not clear whether a householder in a Conservation area or residing in a Listed Building would have to pay extra for advice about these subjects, or if advice about trees was also required.</p>	<p>Most other Councils set their fees over a year ago and are now reviewing charges for householders. The £50 fee is a small proportion of the overall development cost of most householder proposals.</p> <p>Householders would only pay for specialist advice if it was not directly related to a potential planning application.</p>
<p>Parbold Parish Council</p>	<p>Very concerned that this proposal will put ordinary householders off seeking advice regarding conservation issues, TPO's, Listed Buildings etc. and before making alteration to their own property.</p> <p>The level of charges are not clear, in that no hourly rate is specified; nor are they fair, as they are higher than those of other local authorities.</p> <p>This Council feel that there should always be free access to proper advice for all householders. Therefore, it is crucial that helpline questions should be answered for free (or rather, covered by the amount paid by householders in council tax) and any visit or in-depth enquiry be charged at a reasonable rate.</p>	<p>It is strongly recommended that specialist advice is sought prior to making changes to buildings or trees in the conservation area, to a listed building, or to a tree covered by a TPO in order to avoid potential prosecution and to gain proper advice on the sensitive treatment of historic assets.</p> <p>The hourly rate varies depending upon who is providing the advice, it is typically around £50. Please see response above regarding charges for householders and other local authorities.</p> <p>General advice such as how to submit a planning application, what the process involves etc. will still be provided for free and a duty planning officer will always be available to assist in general enquiries.</p>
<p>North Meols Parish Council</p>	<p>Require more details of the charges before making any comments, e.g. how much time does a customer get for his money and what the hourly rates thereafter, and how do these compare with other authorities?</p>	<p>Any advice provided is not time limited in the first instance. Please see response above regarding hourly rates and the comparison with other authorities has been provided at Appendix 1 of the original consultation document.</p>
<p>Wrightington Parish Council</p>	<p>It is fair to charge professionals and professional organisations however, ordinary residents with no knowledge or expertise in this field should not be charged.</p>	<p>Please see response above regarding charges for householders.</p>
<p>Federation of Small</p>	<p>Introducing charges for these services will impact upon the recovery and growth of</p>	<p>In the current economic climate, charging for pre-application</p>

Businesses	<p>small businesses following the recession. The construction industry is vital to return to growth in the economy. Many small businesses work directly in this sector whilst many more provide indirect support via all manner of services and products, from catering to equipment hire, from temporary accommodation to local retail. Furthermore, the construction industry itself has always been a major employer, and allowing the industry to get back to business will kick-start job opportunities once more, a vital need in the current climate. Recent increases in VAT, the increasing cost of fuel and the overall lack of confidence in the small business sector are all issues which are delaying any return to growth and the FSB feels strongly that business costs and bureaucracy need to be kept in check and reduced to assist businesses to move forward.</p> <p>Many local authorities provide these charges without fees and the FSB urges the Council to work in the wider interest of the small business community and not add these additional barriers and charges at a time when business can least afford it.</p>	<p>advice could be seen as a further burden on small businesses. However, the PAS paper, the recent Government response to Killian Pretty (made in the full knowledge of the current economic climate) and draft PPS on Development Management suggest that pre application engagement is important and charging for that advice is appropriate. What is important to businesses is that they are receiving timely, responsive, constructive and reliable advice. In turn, this can save businesses significant resources by not pursuing schemes which are unacceptable or have to be modified once submitted.</p>
Andrew Cunningham (architectural technician and agent)	<p>Pre-app responses with fees attached will also require time scales. Clients will not be prepared to pay and wait the length of time they do at present for pre-app comment.</p> <p>Fees need to be proportionate to the application. A full app for a single dwelling is £335 so there will be little saving if the pre-app is a further, say £250. Ideally, pre-app fees need to be offset against full application fees.</p> <p>Pre-app responses need to be clear – not “the proposal will be acceptable it is complies with policy”.</p>	<p>The Guidance Note issued with the fee charging proposal explains how the scheme will be implemented. It indicates the timescales involved – eg. a written reply or meeting will be arranged within 28 days and a written reply following a meeting would be made within 14 days. The pre-app fee for a single dwelling would be £100 (£150 were a meeting requested) and not £250. The fee schedule will be amended to make this clearer.</p> <p>The Guidance Note explains what type of response can be expected from the Council.</p>
Peter Dickinson (architect and agent)	<p>What will be the cost of a written pre-app and will there be a standard form for the application?</p> <p>Will there be a statutory timescale for the response? Anything longer than 5 days is a waste of time.</p>	<p>Please refer to proposed fee schedule. Yes there will be a standard form – see Guidance Note.</p> <p>Please see response above regarding timescales. In most cases it is not possible to</p>

	<p>Are meetings with planners at an early stage to be considered as pre-application and therefore charged on a time basis, and if so at what rate?</p> <p>Will Planners be prepared to undertake site visits to assess a potential scheme prior to a planning submission and if so, would this incur a charge and at what rate?</p> <p>Will the advice given be checked by the Team Leader?</p> <p>Will pre-app advice apply to policy as well as development control?</p> <p>I assume that meetings with Planners following validation of a scheme will not be charge.</p> <p>What is specialist advice?</p> <p>Charges for drafting and negotiating legal agreements up to signing stage are commonplace and providing the charges are fair and reasonable and consistent I have no objection.</p>	<p>provide detailed responses within 5 days as other consultees may be required to comment (eg. highways).</p> <p>Yes- please refer to fee schedule.</p> <p>Yes- please refer to fee schedule.</p> <p>Yes – in order to achieve consistency.</p> <p>Yes, if it relates specifically to the submission of a planning application.</p> <p>Once a planning application is valid, the case officer will only negotiate minor issues of concern as part of dealing with the application and this will not incur a charge.</p> <p>Advice regarding development within a conservation area, relating to a listed building, trees and landscaping and sustainability issues.</p>
<p>Mrs Liptrott (resident)</p>	<p>Strongly objects to the proposal. Planning officers have always offered an initial consultation to assess the potential for a planning application at no charge. This valuable practice should continue as part of the job description for planning officers who are salaried to provide a service. Failure to maintain this service may result in an increased workload for the planning department as unrealistic submissions are entered and then withdrawn, rather than being informally assessed prior to the application.</p>	

	<p>Will planning applications not reviewed prior to submission be refused? This could lead to the planning department being brought into disrepute by acquiring the reputation for placing money above service.</p> <p>Who monitors the quality of the advice? If a planning officer advises one course of action and the planning committee disagree, will the charge be refunded?</p> <p>These are just examples of potential problems, there are many more. If the Borough Council wishes to follow this course of action, it should consider establishing an independent planning consultancy rather than charging for a service that the ratepayers already fund. Even the most prestigious law practices grant an initial consultation without charge. Charging for planning advice is “the thin end of the wedge”. Where does it stop? Will we have to pay to see our local councillor or housing officer, as I am sure they would argue that their time is valuable?</p> <p>This proposal should be revisited to comply with Annex B of the letter to Chief Planning Officers (March 31st, 2011) that</p>	<p>Only proposals which do not comply with the development plan will be refused.</p> <p>The Planning Control Manager and Principal planning Officers will monitor advice, which is always made on a “without prejudice” basis, based upon professional opinion. Planning Committee Members may not always agree but no charge will be refunded.</p> <p>The Local Government Act 2003 and specifically Section 93 gives Local Planning Authorities discretionary power to charge for services such as pre-application advice. Where a fee is charged, it must be on a not for profit basis and over the course of each year, the income from charges for such services must not exceed the cost of providing them. Pre-application discussions are seen as a significant and important part of the development management process, and an opportunity to further enhance services to our customers. They can save time and money for developers as a result of early engagement and result in better schemes and a smoother passage through the planning process. The resources needed to give such advice can be significant and that cost is borne by the local authority and ultimately a cost to its citizens. Charging for pre application advice will ensure the resource is used to provide a well managed and constructive process that will add value at all levels and that the beneficiary of that service pays for it.</p> <p>The Local Government Act 2003 and specifically Section 93 gives Local Planning</p>
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	local planning authorities should ensure that they do not impose unnecessary burdens on development.	Authorities discretionary power to charge for services such as pre-application advice. What is important to businesses is that they are receiving timely, responsive, constructive and reliable advice. In turn, this can save businesses significant resources by not pursuing schemes which are unacceptable or have to be modified once submitted.
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5.0 CONCLUSIONS

- 5.1 It is clear that many authorities charge for pre-application advice and whilst some do not include a charge for householders, the small fee involved is generally a minor proportion of the overall benefit of the proposed development and is made on a not for profit basis and over the course of each year, the income from charges for such services would not exceed the cost of providing them.
- 5.2 Government advice suggests that pre-application engagement is important and charging for that advice is appropriate. What is important to developers (including householders) is that they are receiving timely, responsive, constructive and reliable advice. In turn, this can save applicants significant resources by not pursuing schemes which are unacceptable or have to be modified once submitted. The resources needed to give such advice can be significant and that cost is borne by the local authority and ultimately a cost to its citizens. Charging for pre application advice will ensure the resource is used to provide a well managed and constructive process that will add value at all levels and that the beneficiary of that service pays for it.
- 5.3 It will be necessary to review the scheme when the Government proposals for planning Authorities to set their own fees come into effect later this year. Until that date, it is concluded pre-application charging is introduced in accordance with fee schedule set out at Appendix A from 1st July 2011.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 Further process work will need to be undertaken to identify possible efficiencies, whilst maintaining and improving services to the customer by raising additional income, which will enable these services to be funded but given the extent of pre-application advice the Council currently gives out for free, the possibility of charging will assist the Council's revenue position over the medium term. It is anticipated that the recommended charging for pre-application advice will create an additional projected income generation in the region of £10,000-15,000 per annum with charging for Section 106 planning obligations generating around £10,000 per annum.

7.0 COMMUNITY STRATEGY/SUSTAINABILITY IMPLICATIONS

7.1 The introduction of pre-application charging will provide clarity for all those involved in the planning process.

8.0 RISK ASSESSMENT

8.1 There may be an increased risk or perception that a planning approval will automatically be forthcoming in respect of a scheme which has been subject of full pre-application discussions. However, it will be made clear to applicants that advice given cannot guarantee success and will not fetter the decision making powers of the Local Planning Authority in respect of the subsequent planning application. There may also be an increased risk of complaints that the advice given was not of an acceptable standard. However, protection against claims can be afforded by the appropriate use of exemption clauses to exclude or restrict liability (subject to the Unfair Contract Terms Act 1977 and/or Unfair Terms in Customer Contract regulations).

Background Documents

<u>Date</u>	<u>Document</u>
15 th March 2011	Cabinet report

Equality Impact Assessment

There is no evidence from an initial assessment of an adverse impact on equality in relation to the quality target groups.

Appendices

Appendix A Fee Schedule