



DERBY CITY COUNCIL

PLANNING CONTROL COMMITTEE

9 April 2009

ITEM 9

Report of the Assistant Director - Regeneration

Development Control Charging For Giving Pre- Application Advice

RECOMMENDATION

1. To endorse the adoption of a charging regime for giving pre-application advice.

SUPPORTING INFORMATION

- 2.1 We devote a considerable amount of time and effort to offering free pre-application advice, seeing it as a key part of delivering a good planning service. This is the stage where we set out our expectations leaving developers in no doubt what to anticipate when a planning application is submitted. The discussions are an opportunity to steer projects into a form that will be attractive to the community and more acceptable to the local planning authority. Many requests for advice are of a speculative nature and do not lead to the submission of an application. If an application is eventually submitted the application fee is for considering the application rather than for the cost of the pre-application discussions. We have in the past been overloaded by requests from speculative developers that were using our service as a 'free' private consultancy.
- 2.2 Section 93 of the Local Government Act 2003 ("LGA") introduced a general power for best value authorities to charge for services that an authority has a power to, but is not obliged to provide. In the case of planning, this may apply to areas of activity outside the scope of the existing fee structure, such as pre-application discussion and advice. A number of planning authorities already use this power to charge for such services. The level of charges, however must relate to the purposes for which they are set. Further taking one year with another, the income from those charges must not exceed the costs of providing the service and the charging regime cannot be go beyond cost recovery, into profit.
- 2.3 More recently the provisions for charging for planning fees under section 303 Town and Country Planning Act 1990 were significantly widened in their the scope by section 53 of The Planning and Compulsory Purchase Act 2004. This section now allows fees to be charged in relation to any function of a local planning authority and for matters ancillary to those functions; however the regulations for setting those fees or enabling the planning authority to set those fees have yet to be made. So in practice charges cannot yet be made for such services under these provisions, however once these powers fully come into force these powers will supersede the charging powers under section 93 of the LGA.

2.4 The ODMP have provided guidance on the introduction of charges under Section 93 of the LGA in their publication 'General Power for Best Value Authorities to Charge for Discretionary Service – Guidance on the Power in the Local Government Act 2003'. This advises that authorities are free to decide what methodology for assessing the costs of providing each discretionary service they wish to adopt but that it needs to be robust. The guidance however recognises that in setting charges for services for the first time the authority will have limited information and therefore a degree of flexibility has to be adopted. The guidance suggests setting the charge by way of an assessment of costs over a specific period. It also emphasises the duty to comply with section 93(3) LGA taking one year with another, the income from those charges must not exceed the costs of provision. The setting of the year for this comparison is for the authority to determine.

2.5 Experience of those authorities currently charging:

- the main reasons for charging is to help improve the delivery of an essential but time consuming service, and to help ensure better quality application submissions
- doing so helps filter out speculative and poorly thought out development proposals
- the main reason for not charging is that to do so might discourage development or risk harming a good working relationship with local agents
- householder development and small business premises should be exempt
- the principle soon gets broadly accepted by developers and their agents. Major developers are generally happy to pay if they have timely access to a planning officer and carefully written advice at the end of the process
- written responses should be as constructive as possible going beyond just listing policy constraints and other obstacles; an iterative process is needed
- charges need to be easy to understand and to administer. A standard fee rather than an hourly rate is therefore preferable
- results in a more business like culture.

3. **To charge or not to charge**

3.1 Budgetary pressures and services becoming as self financing as possible naturally lead to consideration of charging. A large amount of officer time is spent dealing with requests for pre-application advice and I would wish to recover at least some of the cost of providing this service.

3.2 By charging I would hope to focus the thoughts of potential applicants, making it less likely that planning officers would be presented with poorly thought out or speculative proposals. There is also the objective of improving the quality of actual planning applications, thereby reducing the number of invalid applications and hence delay.

- 3.3 By providing a more structured approach to pre-application enquiries we could gain important benefits in terms of service delivery. Adoption of specific service standards can ensure better managed enquiries and significantly improve on previous response times offering, for instance, a written response within a certain time period following the meeting. This is an opportunity to raise the standing and profile of the planning service without impacting on our residents. This is clearly an area where there would be no impact on our tax payers – but of course the other choice is to stop doing these free discussions altogether. By charging we would continue to provide a service that developers clearly need and value and charging ensures that we have the resources and capacity to provide professional and responsible advice at the level required.
- 3.4 The contrary view could be that to charge would risk discouraging developer interest and inward investment. But Derby's economy remains buoyant with some significant development pressures. A recent study found little anecdotal evidence that the cost is putting developers off making major applications.
- 3.5 Careful liaison with local agents to explain a more structured approach to pre-application discussions and to discuss how best to operate the new system will be needed. Our customer forums could be used for this liaison and for refining any charging regime over time.

4.0 What to charge for

- 4.1 The majority of our requests for pre-application discussions relate to “major” development – those proposals in excess of nine dwellings or sites over 1,000 square metre floorspace. I understand that authorities that do charge have lowered this threshold to five or more houses or the creation or change of use of 500 square metres or more of floorspace, although there are others with a different structure based on the “major”, “minor” and “other” classification. What is clear is that I would **not** wish to charge for householder developments, such as extensions, and certain small scale works affecting small businesses, works to listed buildings and trees.
- 4.2 It should be noted that not all development enquiries will necessitate a meeting and we could offer the option of a response based on an exchange of correspondence. I would expect to deal with a majority of enquiries in this way but would charge for this also, but at a lesser rate.
- 4.3 When I raised the issue of pre-application charging at one of our regular agents forums the principle was generally well received as the architects and agents could see the benefits of a formalised structured approach with a constructive end result.

5.0 How the charges are set

- 5.1 The charging regime needs to be easily understood by the customer – and straight forward for us to administer. There can be two approaches, both used by other authorities – that of either a fixed fee relating to the type of application or as an hourly charge. A common formula is to charge a proportion of the fee for submitting a planning application. This could be between 25 and 50%. Hourly rates can be difficult to administer with the added disadvantage that they cannot be easily estimated and paid in advance of the meeting.

- 5.2 We could analyse officer time spent in dealing with pre-application enquiries, to reflect the hourly costs of those officers at different levels who might be expected to contribute to the final response. This is, I feel, over complicating the matter.
- 5.3 With those authorities that currently charge there is considerable variation in the fees with large urban authorities charging more. The smallest charge is £110 but this does rise if specialist staff needs to be involved. Charges of between £500 and £2000 plus VAT are more typical. One London borough charges up to £4,000.
- 5.4 Follow-up meetings are rare as one of the perceived advantages of a structured approach is that it should be possible to deal with all the issues in one go. Follow up meetings are one of our main time consuming issues where a second, third and even fourth meeting is often requested. If a further meeting is agreed then I would suggest a charge at the same rate is applied.
- 5.5 In terms of a meeting following refusal of planning permission I would not expect to charge for the **first hour** on the basis that the second planning application would not attract a fee, this is provided the applicant had paid originally for pre-application advice.

6.0 Charging for written advice

- 6.1 I would continue to offer the option of written advice only, without a meeting. But this would be charged for at a reduced rate. Across the country this is typically one half to three quarters of the charge for a meeting.

7.0 Ensuring payment

- 7.1 The attraction of setting a fixed charge is that payment can be insisted upon before the advice is given – for both meetings and written advice.

8.0 Explaining the service

- 8.1 It will be very important to present charging as an integral part of a more structured approach to pre-application advice that will offer the customer a timely, comprehensive and better quality advice. The OPDM guidance advises that when introducing charges for existing services that appropriate administrative arrangements are put in place. I would expect to offer target timescales within which we would process the request and offer an appointment if a meeting is appropriate. Typical service standards would be:

1. to provide the name of the case officer and confirm that sufficient information has been received to proceed to a meeting within 14 days
2. to have organised a meeting (or offered a written response if a meeting is not necessary) within a further 7 days
3. to provide a written response setting out the authority's considered opinions on the development within 14 days of the meeting including reference to any Section 106 payments that are likely to be required and the preferred mechanism for securing the payments.

9.0 Quality control

- 9.1 All letters sent out would be checked by a group leader or other senior officer to ensure accurate advice is given.

10.0 Managing the process

- 10.1 Each request for pre-application discussions could be recorded electronically in the same way as a formal application. This allows response times to be monitored and advice retrieved and placed on the case file should a formal application be received. We have started doing this already and as many Members may know we used the Hippodrome pre-application documents to extend this process still further to include a pre-application consultation.

11. Outcomes from experience of others

- better quality submissions, better built development, improved BVPI 109 performance
- fewer speculative enquiries (deterred the frivolous and improved the marginal)
- more structured approach helping the customer with response times
- filtering out of unsatisfactory schemes therefore fewer refusals, and fewer appeals
- a direct enhancement of the service as a result.

For the customer

- some initial resistance
- value the promise of assured and structured access to officers followed by a positive and constructive written response giving certainty assisting with funding decisions of investors.

12.0 Conclusions

- 12.1 If we are to embark on a charging regime, and I firmly believe that we should do so, if only to provide structured access to officers followed by a written response, we would have to consider the level to pitch the charges.
- 12.2 An hourly rate can be difficult to administer and an up front payment is not possible to calculate. A flat fee per proposal type would seem the most accountable.
- 12.3 A major application could easily account for £1000 of planning officer time and a minor proposal £500. I would anticipate that for the first year specialist advice such as Conservation, Urban Design and Highways would continue to be provided as it is now with an assessment undertaken during the year of actual officer time used. After the first year we would be able to assess our charges against actual costs and report to Members accordingly.
- 12.4 A reduced rate is required for written only advice which reasonably should be £500 and £250 respectively.

12.5 What ever fee we decide to charge we would still be providing a service that is cheaper than using a private consultant. I should also point out that these figures are excluding VAT which will be payable and therefore my recommendation is as follows.

12.6 The guidance suggests that setting a start date for the charging regime is quite important in setting the year for comparison with subsequent years for meeting the duties under 93(3) – this also means we will need to do an annual assessment and review of charging to ensure that we can justify that we are meeting the duty and alter as necessary. I would therefore suggest that **1 May** be the appropriate date.

13. Recommendation

13.1 To endorse the introduction of a charging structure for pre-application advice based on the following charges from 1 May and to review the charges every twelve months:

Very Large (+200 dwellings) £	Major (10-199 dwgs) £	Minor (1-9 dwgs) £	Domestic extensions £	Inc 15% VAT
1150	1150	575	0	Meeting and written response
575	575	288	0	Written response only

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 - Typical Charging Regimes

IMPLICATIONS

Financial

1. Adopting this process will assist in recovering our costs from a service that we currently provide free of charge.

Legal

2. Section 93 of the Local Government Act 2003 introduced a general power for best value authorities to charge for services that an authority has a power to, but is not obliged to provide. In considering introducing such charges the authority should have regard to the ODPM guidance in 'General Power for Best Value Authorities to Charge for Discretionary Service – Guidance on the Power in the Local Government Act 2003' and in any event taking one year with another, the income from those charges must not exceed the costs of provision

Personnel

3. None.

Corporate objectives and priorities for change

4. Our performance levels in dealing with planning applications have implications for delivering excellent services, performance and value for money (priority). Charging for pre-application advice will assist in achieving these objectives allowing appropriate allocation of resources.

Typical Charging Regimes

	Very Large £	Major £	Minor £	
Barnet	2,935	2,935	646	
Bournemouth	1,380	1,380	345	
Westminster	2,937	2,937	1,468	
East Hampshire	110	110	55	for ½ hour meeting
Bromley	1,175	1,175	0	
Croydon	1,175	1,175	587	
Havering	1,292	1,292	646	
Hammersmith and Fulham	2,415	2,415	1,207	
Reading	2,000	600	400	
Haringey	4,000	2,000	600	
Hillingdon	3,000	1,800	900	
Leeds	2,300	2,300	0	
Watford	1,000	500	250	
Ashfield	1,725	1150	115	
Nottingham				Do not charge yet
Leicester				Do not charge yet
Stoke				Do not charge yet
Reigate and Banstead	1 hour £200 1-3 hours £500			
Tendering	1 hour £42 2 hours £99			
Hart	25% of application fee plus VAT			
Wokingham	50% of application fee			
Poole	10% of application fee plus £65 per half hour of officer time			