

Agenda Item 17

Executive Board

6 June 2007

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Charges for major pre-application advice, tree advice & Member involvement in pre-app activity

Summary

This report deals with the principal of charging applicants for pre-application advice in connection with major planning applications, and a charging regime for the Council's Arboricultural Officers giving tree advice to members of the public. It also considers the question of Member Involvement in pre-application activity and suggests a Protocol that might overcome any concerns regarding probity.

Recommendations

1. That a charging system for major planning application pre-application work be considered as proposed.
2. That a charging system for Arboricultural advice be set up.
3. A Protocol for Member involvement in major pre-application activity be set up and implemented.

a) Reasons for Recommendation

The opportunity now exists to charge for pre-application work which can be quite extensive with regard to significant proposals involving a number of officers and a great deal of time in various meetings together with research and writing up advice. It is appropriate that the Council consider recovering the cost of this work which is provided for under the Local Government Act 2003.

The introduction of Members into pre-application work is now encouraged by the Department of Communities and Local Government in its paper "Councillor Involvement in Planning Decisions" published in January 2007. It is important however to set up clear rules to control this activity in order to prevent Members prejudicing their position should the matter become a planning application and subsequently come to Development Control Committee.

b) Alternative Options

The proposed suggestions could be rejected and this would make no significant difference to the activities of the planning service.

c) Risk Considerations

There are issues regarding the quality of the advice given once it becomes a formal process and the resource implications associated with running such a system with deadlines. The pressure that might accrue from doing this may prove at the end of 12 months that additional staff were necessary to run the system successfully.

The role of Members in pre-application activity has to be handled sensitively in order to prevent the Council being challenged on the issue of probity in the planning process.

d) Policy and Budgetary Considerations

There are no policy issues and the budgetary considerations are firstly that there will be a new income stream but conversely may result in having to take on additional staff to run the service (which will need administering).

e) Date for Review of Decision

12 months.

1.0 **Introduction**

1.1 In the past the question of whether local planning authorities may make a charge for consultations through use of sec.111 of the Local Government Act 1972 was resolved after a House of Lords judgement that no such power existed (R. V Richmond-upon-Thames LB, ex parte. McCarthy & Stone Ltd 14/11/91). However, the Local Government Act 2003 sec. 93 has now superseded sec. 111 of the 1972 Act and makes it clear that "best value" authorities may charge at cost for services which they are not statutorily required to provide provided that the recipient is prepared to agree to the arrangement. This power has subsequently been used by a few local authorities to charge applicants for pre-application consultations, particularly where major proposals are involved. The Local Government Act 2003 states that it is discretionary whether local authorities charge any fee, and no scale is laid down save for the stricture that the costs of any service should not exceed the costs of provision year on year. As a result the level of charging is varied up and down the country and it is reported that Westminster City Council charges a flat fee of £2000 for pre-application advice on "major" proposals only, while Purbeck DC charges £50 per half hour per officer for meetings plus travelling expenses. Hart DC bases its charge on 25% of the planning fee, with no charge for domestic applications, and Hammersmith & Fulham LB has a complex charging schedule with a flat rate fee of £650 for medium scale developments and £1300 for larger scale schemes plus an hourly rate for "project work" undertaken scaled according to the grade of planning officer involved. Advice is free relating to small scale developments. Torbay District Council allows one free approach and thereafter charges £47.00 per hour for a Planning Officer, £58.75 for a Senior Officer, £70.50 for a Team Leader, £82.25 for the Office Manager and £94.00 for the Assistant Director.

2.0 **Benefits of Pre-Application Advice**

- Provides guidance to an applicant on the way an application will be judged against the policies in the Development Plan and other material considerations.
- Can identify early when there is a need to draw in specialist officers for example contaminated land, trees, conservation etc.
- Allows the proposal to be modified before being converted into a formal planning application which should assist in the timetabling for the processing of the application to meet Government targets.
- Should prevent completely unacceptable applications being submitted saving applicant's fees and time.
- Ensuring that when applications are received they are complete with all the supporting documentation now required.

3.0 **Disadvantages of Pre-Application Advice**

- A formal system could be more vulnerable to Freedom to Information requests from other interested parties reducing the level of confidentiality.
- Would engender a level of expectation in applicants that may not result in an approval if the application encounters difficulties unforeseen at pre-application stage.
- Requires a level of commitment by officers to running a system and meeting additional timetables above and beyond those already in place – this has resource implications.

4.0 **Matters Suitable for Pre-Application Discussion**

- Pre-application advice can be given either in writing or by means of a meeting and a follow-up letter and different charges will need to apply to whichever course of action is selected.
- At this stage it is suggested that the system be applied only to major applications and to tree advice where the public are generally using the Council's Arboricultural Service as a free tree service in lieu of employing external Arboriculturalists or Tree Surgeons.

- The charging system should not apply to incidental or informal advice concerning minor household development or alterations, repairs and maintenance of listed buildings.
- The charging system should not apply to matters to do with enforcement.
- The system will not apply to discussions with local residents potentially affected by development proposals.

5.0 The Scope of Advice & Discussions

The advice service provided could include the following:-

- Where it is appropriate to meet the planning officers, written confirmation of the appointment will be required, meetings may take place either in the office or on site as appropriate. Applicants will be asked to confirm agreement to pay the Council's charges prior to any meeting.
- Information regarding the pre-application proposals should be submitted to the Council seven days prior to any meeting.
- The information provided will deal with all planning constraints on a site, such as TPOs, Conservation Areas, public rights of way, flood protection areas, other statutory designations and with the relevant Development Plan Policies.
- If there is a planning history this will also be investigated although depending on the complexity of this there may be an additional investigation charge levied. See below.
- Provision of information about the Council's requirements for contribution to infrastructure provision such as affordable housing, highway network improvements, open space contributions etc.
- Advice will be available about the Council's Development Control process including the consultation processes, likely timetables for processing and estimation of a decision date on any submitted application.
- The advice will be without prejudice to the ultimate decision of the Council.
- Details can also be provided over appropriate contacts necessary for any pre-application consultation although it is expected that the major application protocol will apply – this draws all the relevant officers in to a development team approach.
- Copies of relevant documents can be provided subject to the Council's standard copying charges.
- Advice could be given on the most appropriate work for the management and maintenance of trees but without liability.
- On request a written summary of the views expressed by the Planning Officer will be provided.
- The use of the Service should reduce the incidence of the free second applications which do have an administrative cost associated with them.

6.0 Charging

- 6.1 There is no specific information available here on which to base the charges and consequently a variation of the Purbeck District Council system has been selected as being fairest and more directly related to expected actual costs. There should be no additional charge for the presence of any Members in the Pre-Application process – see below.

Written Inquiries:-

- There should be a flat rate fee for written enquiries about major proposals at the sum of £60. If more than one site or project is the subject of an inquiry each site or project will be charged at the standard rate.

Meetings with Officers:-

- A standard charge per hour could be set at £50 per officer present. The Development Control or Policy & Conservation Manager's presence would be charged at £75 per hour.
- Chargeable time could be broken down in the following elements:-

- Meeting time
 - Pre/Post meeting administration or research
 - Travelling time to and from the site charged at a flat fee of £25
 - If more than one site or project is dealt with at a single meeting, each site or project will be charged at the standard rate.
- If a Director or Head of Service is requested to attend the hourly rate for their attendance will be £100 per hour.
 - Tree consultations will be charged at a flat rate fee of £75
 - These charges should be increased in line with inflation annually.

Site Research/Investigation:-

- For those sites with a complex or extensive site history or which are subject to special designations or controls an additional charge will be made for research at £25 (plus vat).

Payment of Charges:-

- A new admin system will need to be set up.
- All invoices should be settled within 10 days of the meeting.
- If a meeting is cancelled charges could still be made for any pre-meeting inquiry or site investigation that has been carried out.

7.0 Standards of Service

- Advice will be given accurately to reflect the planning policies and standards of the Council.
- Any advice given in relation to the planning history of the site, planning constraints or statutory designations does not constitute a formal response of the Council under the provisions of the Land Charges Act 1975.
- Any views or opinions expressed are given in good faith without prejudice to the formal consideration of any planning application or any application to carry out works to protected trees by either the Head of Planning & Countryside Services or the Development Control Committee.
- Appointments for meetings will be made with appropriately qualified and experienced planning officers and will normally be arranged within 4 weeks of request. Where a written response is required following a meeting, this will be supplied within 10 working days of the meeting, providing no further research or site investigation is required.
- A priority service may be available on request, providing an appointment within 10 working days of a request and a written response if required within 5 working days of the meeting. The charge for this priority service would be twice the standard charge.
- If a meeting has to be postponed due to the absence of the relevant staff through illness it will normally be re-arranged within 10 working days.

8.0 Matters Raised by Scrutiny Committee

1. The Scrutiny Committee favoured charging for major pre application meetings.
2. In order to overcome issues relating to coping with this additional burden i.e. meeting new deadlines and providing sufficient capacity to resource the service, consideration should be given to ring-fencing the income to support the Service.
3. Where Officers from other Authorities are involved in the meeting for example Devon County Council, the Environment Agency, there may be requests for a share of the income. If this is accepted, and it is suggested that this is not encouraged, it is suggested that this Council be billed annually to reduce the administrative burden.
4. Those applicants/agents who are known to be 'bad payers' should not be able to access the service until all outstanding invoices are paid.

5. This system should be trialled for 12 months and then reviewed. If successful it could be rolled out to other categories of planning application.

9.0 Member Involvement in Pre-Application Advice

- 9.1 There is a wide variety approaches to Member involvement in pre-application activity across the country, from none at all to positive encouragement. A considerable volume of good practice guidance is available on this subject and much of it encourages engagement but also advises caution. It is the message of caution that has been heeded to such an extent that some Authorities are now reluctant to get involved in discussions prior to the planning committee meeting. This issue has been the subject of discussions between the South West Key Areas Group (of which we attend) and major house builders. A note summarising Swindon's approach to this matter is attached. This was considered by the Key Areas Group to constitute best practice. In the Department of Communities and Local Government paper "Councillor Involvement in Planning Decisions" published January 2007 it is suggested that where Authorities set out clear lines of engagement, pre-application involvement is beneficial for applicants and for the Authority in reaching a better quality of planning decision. Further benefits can accrue where clear guide lines are accompanied by Member training initiatives. The report suggests introducing a Strategic Planning Liaison Group or similar body to reinforce the links between policy and decision making.
- 9.2 At present in this Authority pre-application discussions take place with no Member involvement. However, where there are major projects the relevant Ward Members are briefed on the proposals but not with the developers present. The recent Task and Finish Forum (TaFF) on Member Involvement in the political, advisory and decision making arrangements of the Council considered this proposal and recommended that there was merit in the principle of a Strategic Planning Liaison Group.
- 9.3 If the decision is to pursue this option it will be necessary to set up some form of protocol enshrined in the Planning Code of Conduct which could allow presentations by developers direct to Members and Officers which does not prejudice the decision of the Development Control Committee at a later date. There is a clear distinction to be drawn between the role of the Ward Member and the role of the Development Control Committee Member, the former having far more freedom to be involved in such a process without fettering their role when the application comes up for determination. There is also a role for a Policy Champion Member in the process together with Senior Members of the Council who would have a more strategic overview of large scale developments.
- 9.4 Should the view be that Members be involved in pre-application activity following the suggested as a way forward:-

Member's Planning Advisory Group to be comprised of:-

- The Chairman of the Development Control Committee.
- The Chairman of a possible Policy sub-committee or Policy Champion.
- Strategic Planning Portfolio Holder.
- Environment Portfolio Holder.
- Economy Portfolio Holder – as appropriate
- Communities Portfolio Holder as appropriate.
- Ward Members.

- 9.5 The system suggested for running this group would be as follows:-
- (i) Developers to make presentation to Member's Planning Advisory Group with Officers present.
 - (ii) Members to have previously acquainted themselves with the site in question by a site visit with Officers.
 - (iii) Members to ask questions of the Developers, seek clarification, test arguments but not to give any form of view in support or against the proposals.

- (iv) Advice on the way forward or changes to be made to the proposal would be provided by the Officers to the Developers in writing following advice from Members in a debate once the developers have left the meeting.
- (v) Any Member of the Planning Advisory Group who has a personal or prejudicial interest in the proposal should not form part of the group for that particular site.

9.6 The major developers have also indicated that they would wish to have a steer from Members during the processing of an application, particularly when the initial consultation responses have been received. Their frustration is the time and cost of arriving at Committee with a recommendation for refusal or for an application to be deferred because Members raise questions at the Committee meeting that only the developer can answer. They would generally welcome an opportunity during the processing of an application where they could have a dialogue with Members to clarify issues and answer questions. Whilst this clearly raises concerns it should be possible to hold a session (possibly in public) where during an appropriate stage Members could speak directly to the developer without any decisions being made. We are informed that North Somerset Council operates something similar and other authorities are looking at this issue with interest. We have indicated our willingness to share our procedure with the Key Areas Group. At this stage Members are not being asked to introduce this aspect of developer/Member dialogue; Members attention is being drawn to the issue and Officers will continue to explore this issue further before inviting Members to consider this as a firm proposal.

10.0 Conclusions

- 10.1 It is considered that it is appropriate at this time to consider setting up a charging system for major planning application pre-application work for a trial period of 12 months, after which a review of performance should be undertaken.
- 10.2 There is merit in setting up an Arboricultural advice charging system as the present free service is being abused.
- 10.3 A Protocol for Member Involvement in major pre-application activities is appropriate and the suggested scheme be worked up and implemented.

Legal Implications

The statutory basis for charging for major pre-application advice is explained in the report. Any formal regime should be clearly documented, setting out a protocol for the scope of advice and standards of service which could be expected; it will also detail the different levels of charges.

The report alludes to resource implications which could stretch beyond just the Planning Service. Major planning applications can be contentious and there is a real likelihood of increased requests for information under the Freedom of Information Act and/or the Environmental Information Regulations (exemptions from disclosure are more restrictive under EIR than under FOI, with the result that more requests may be acceded to, depending on the circumstances). Matters such as confidentiality, non-disclosure of commercial information, and the application of the 'public interest' test will need to be determined on a case-by-case basis, with input from Legal Services where appropriate.

Any protocol on member involvement in pre-application activity should be carefully incorporated into the Planning Code of Conduct, and must also be read against the background of the new Member Code of Conduct.

Financial Implications

The financial implications are detailed in the report.