



Open Report on behalf of Andy Gutherson, Executive Director - Place

Report to:	Executive
Date:	02 February 2021
Subject:	Introducing a Charging Policy for Pre-application Planning Advice
Decision Reference:	I021125
Key decision?	Yes

Summary:

This report seeks Executive approval for introducing a charging policy for the Planning Services team when providing pre-application advice to prospective applicants or developers.

Recommendation(s):

The Executive:-

- (1) Approves the adoption of a formal charging regime for giving pre-application planning advice for minerals, waste and the County Council's own applications in the form of the Charging Schedule and Exemptions as set out in Appendix A, to take effect from 1 April 2021; and
- (2) Delegates authority to the Executive Director - Place to review the Charging Schedule after a minimum of twelve months from its implementation and to make any changes that are felt necessary following this initial period.

Alternatives Considered:

1. Not to introduce a charging regime for pre-application planning advice.

Reasons for Recommendation:

There is no statutory obligation on the County Council to provide pre-application planning advice. However it is encouraged by government and is widespread across the country and as result has become a recognised feature of the planning system. There is therefore an expectation from developers that such an advice service exists and it has clear advantages for the county council in that it can

improve the quality of planning Applications received. At the same time it is a matter for the developers whether they engage with that service or not.

The introduction of a charging regime backed by clear definitions of the service to be provided helps both developers and the Council to realise these benefits. In particular it helps to manage the risk that pre-application advice is squeezed out by the demands of the statutory element and also helps to ensure a consistent quality of pre-application advice.

It is therefore proposed to introduce a charging scheme as this would not only reflect the service offered by other authorities, but also present an opportunity to improve the quality and consistency of the advice given to developers, which in turn will help to ensure the submission of better quality applications and planning decisions.

1. Background

- 1.1 The Council receives a wide range and number of pre-application enquiries from developers each year and currently pre-application advice is provided by officers free of charge. The time spent by officers and the information provided to developers when responding to these requests varies depending on the size and type of development proposed and the complexity and planning issues that might need to be considered. For example, for simple proposals the advice given might be limited to advising whether or not planning permission is required whereas for larger scale development, officers could provide more detailed and specialist written advice and attend site meetings.
- 1.2 Under Section 93 of the Local Government Act 2003, the Council has the power to charge for providing discretionary services such as pre-application advice provided it is on a not-for-profit basis. A similar power is contained in section 1 of the Localism Act 2011 (the terms of both powers being the same). Fees charged for providing pre-application advice can therefore be set at a scale that covers the costs incurred in providing that service but should not be so excessive that they discourage prospective applicants from seeking such advice. Most mineral and waste planning authorities within the East Midlands region have already adopted and operate a chargeable pre-application advice service and so Lincolnshire County Council is one of the last remaining authorities to have such a scheme in place.
- 1.3 There is no statutory obligation on the County Council to provide pre-application planning advice. However, it is encouraged by government and is widespread across the country and as result has become a recognised feature of the planning system. There is therefore an expectation from developers that such an advice service exists and it has clear advantages for the county council in that it can improve the quality of planning applications received. At the same time it is a matter for the developers whether they engage with that service or not.

- 1.4 The introduction of a charging regime, backed by clear definitions of the service to be provided, helps both developers and the Council to realise these benefits. In particular it helps to manage the risk that pre-application advice is squeezed out by the demands of the statutory element and also helps to ensure a consistent quality of pre-application advice.
- 1.5 It is therefore proposed to introduce a charging scheme as this would not only reflect the service offered by other authorities but also present an opportunity to improve the quality and consistency of the advice given to developers which in turn will help to ensure the submission of better quality applications and planning decisions.
- 1.6 In introducing a charging scheme the Council must have regard to guidance issued in relation to the use of the charging power. Such guidance has existed from 2006, which is somewhat outdated now, but it has been taken into account. Key elements of the guidance are as follows:-
- The Council has discretion in the methodology it adopts to determine the charges.
 - The Council is under a duty to ensure that taking one year with another the income from charges do not exceed the cost of provision. This allows the Council to assess over a number of years where the balance of income and cost lies and the Council will not be in breach of the requirement just because in one year income exceeds expenditure. The review and delegation referred to in the second recommendation enables this to be assessed and adjusted.
 - Where a surplus is made in any year it should be taken into account in setting the next year's charges.
 - There is no obligation to consult, but the guidance suggests the Council may wish to consult businesses on the impact of charges and on overall levels of regulatory compliance. This has been considered but the widespread existence of charging regimes in other areas of the country gives the Council a strong evidence base on levels of charging and impacts on regulation and there is not therefore considered to be a need for consultation.
 - It is a requirement of section 93 of the 2003 Act that in order to charge for a service the person being charged must agree to it. The guidance makes it clear that the power operates on the basis that the service is offered at a charge and anyone who takes up the service does so on those terms.
- 1.7 In developing a pre-application charging scheme for Lincolnshire, consideration has been given to a number of sources including:
- Research and reference to pre-application best practice guidelines (including charging) produced by Central Government and the Planning Advisory Service.

- Reviewing the pre-application offer and fee charging arrangements of other Councils including other mineral and waste planning authorities within the East Midlands region (for example, Derbyshire County Council, Nottinghamshire County Council and Rutland County Council).
- A consideration of the different types of request received and duration of the tasks performed by officers when giving pre-application advice in order to determine the amount of officer time spent.
- Taking into account the charging policy and agreed fee rate recently adopted by Planning Services for carrying out work associated with Planning Performance Agreements.

1.8 After a review of various schemes, it is clear there is no one-size fits all approach or model for establishing a chargeable pre-application service. Local planning authorities are encouraged to take a flexible, tailored and timely approach to the service they offer, which is appropriate to the nature and scale of a development proposed. Various different approaches and charging models have therefore been adopted by other authorities, which have been tailored to the type of service they wish to offer. For example, some authorities have set fees based on a percentage of the statutory planning application fee or by using different rates per hour depending on the level or seniority of the officer giving the pre-application advice. In other cases, different packages or levels of service might be offered depending upon the type or size of development and the form of advice provided (for example, a written note or a meeting).

1.9 For Lincolnshire it is suggested that any charging scheme introduced should be structured, clear and easy to understand whilst also allowing some scope for extension or amendment if additional advice is required. The preferred charging scheme is therefore suggested to be based on four main categories reflecting the different type and scale of developments typically dealt with by Planning Services (ie significant, large, medium and small). The scheme would however also make clear that certain forms of development and advice would be exempt from the charge such as those simply seeking confirmation that planning permission is required or where a proposal relates to the need of people with disabilities.

1.10 Prospective applicants would receive pre-application advice in the form of either a site meeting and written advice or written advice only dependant on the development category. This advice would (where required) include officers from other service areas and specialisms within the Place Directorate including minerals and waste policy, archaeology and the historical environment and the highways and floods teams. The recommended applicable fee for each development category is calculated based on a rate of £55 per hour reflecting the amount of time required for the officers to attend and provide the level of advice offered (for example, to cover any planning background review, constraints checks, travel time to attend meetings and production of final written advice). This rate is the same as

that which has recently been adopted for work associated with Planning Performance Agreements.

1.11 Where additional advice or subsequent meetings are requested outside the normal offer, this would be charged at the same hourly rate. This approach would not only aid the calculation of fees, but also make it easier for prospective applicants to understand the costs involved and what they can expect from the service.

1.12 A copy of the proposed charging scheme, the fee chargeable for each category and list of exemptions can be found at Appendix A.

2. Legal Issues:

Equality Act 2010

Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:

- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic.
- Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it.
- Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding.

Compliance with the duties in section 149 may involve treating some persons more favourably than others.

The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process.

An Equality Impact Analysis has been carried out and is attached to the report as Appendix B. No positive or adverse impacts have been identified.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision.

Regard has been had to the JSNA and the JHWS and the implementation of a more consistent and focused pre-application advice service will enable better quality planning applications to be made including applications which better assess and respond to environmental issues that may impact on people's wellbeing.

Crime and Disorder

Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area.

The obligation has been considered but is not thought to be directly affected by the proposals in this report.

3. Conclusion

- 3.1 The Executive is asked to approve the adoption of a formal charging regime for giving pre-application planning advice in the form of the proposed fee schedule set out in Appendix A. The Council cannot make a profit from the introduction of the proposed charging regime but rather only cover costs of the advice being provided. The proposed level of fees are therefore calculated on the basis of comparing the costs charged by other mineral and waste planning authorities operating within the East Midlands region and takes into account the cost of Officer's time in undertaking such work.

- 3.2 There is no statutory requirement to provide a public consultation period prior to the introduction of any charges, nevertheless, it is recommended that a notice be placed on the Council's website at least four weeks prior to the start date. It is proposed that the fee charging takes effect from 1 April 2021.

4. Legal Comments:

The Council has the power to introduce charging for pre-application planning advice. The law and the legal considerations are dealt with in detail in the Report.

The decision is consistent with the Policy Framework and within the remit of the Executive.

5. Resource Comments:

The level of income generated by the proposed charging scheme is expected to be very modest, at around £5,000 per annum and the resources to deliver the advice will continue to be the existing Place Directorate staff.

Approval of the recommendation therefore has no material impact on budgets with the more tangible benefits being improvements in the quality and consistency of the advice given to developers.

6. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

The proposals in this report were considered by the Environment and Economy Scrutiny Committee on 20 October 2020. The Committee acknowledged that proposed charges were in line with how other local authorities operated and on this basis supported the recommendations for the development of a charging policy for pre-application advice and for a delegation to a chief officer to review the charging schedule after a minimum of twelve months.

As part of the clarification to the Committee, it was stated that it was unlikely that there would be charges levied between the County Council and District Councils; and several approaches for advice about the same application would likely result in multiple charges being applied.

d) Risks and Impact Analysis

An Equality Impact Analysis has been carried out and is attached to the report as Appendix B. No positive or adverse impacts have been identified.

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Proposed Charging Schedule
Appendix B	Equality Impact Assessment

8. Background Papers

No background papers as defined in s100D of the Local Government Act 1972 were relied upon in the writing of this report.

This report was written by Neil McBride, who can be contacted on 01522 554814 or neil.mcbride@lincolnshire.gov.uk .