

**BABERGH DISTRICT COUNCIL**

**FROM:** Head of Natural and Built Environment

**REPORT NUMBER:** **K174**

**TO:** STRATEGY COMMITTEE

**DATE OF MEETING:** 13 January 2011

**CONSULTATION RESPONSE: PROPOSALS FOR CHANGES TO PLANNING APPLICATION FEES IN ENGLAND**

**1. PURPOSE OF REPORT**

- 1.1 To provide Members with an opportunity to comment and agree upon a response to the Coalition Government's proposals to change the way in which planning application fees are set in England.

**2. RECOMMENDATION**

- 2.1 That, subject to any amendments which the Strategy Committee may wish to make as a result of the consideration of this report, the proposed response to the Department of Communities and Local Government (DCLG) as given in Appendix A to this report be approved as the District Council's formal response to the consultation on proposals for changes to planning application fees in England.

The Strategy Committee is able to resolve this matter.

**3. FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications arising directly from the content of this report.

**4. RISK MANAGEMENT**

- 4.1 The District Council's Significant Business Risk Register No. 7 (Localism and Community Engagement) identifies the need to respond to DCLG consultations for the benefit of the community.

<b>Risk Description</b>	<b>Likelihood</b>	<b>Seriousness of impact</b>	<b>Mitigation Measures</b>
Not taking the opportunity to comment upon consultations for the benefit of Babergh residents	Significant	Critical	Respond to consultation

**5. EQUALITY AND DIVERSITY IMPACTS**

- 5.1 There are no Equality and Diversity implications arising directly from the content of this report.

## 6. **KEY INFORMATION**

- 6.1 Planning application fees were first introduced in 1989 and contain some 13 development categories and 46 sub-categories. Since their introduction the fee scales have been increased by Government 10 times in order to reflect the costs associated with the consideration of planning applications. They were last increased in 2008.
- 6.2 The majority of local authorities do not recover their costs associated with the consideration of applications. While it is an established principle that local authorities should pay for activities that are for the wider public good, planning permission can add significant value to land and property. As a result local taxpayers have been subsidising the consideration of applications which, on the whole, benefit the applicant.
- 6.3 The previous Government was moving towards self-financing arrangements for the consideration of applications and the Killian Pretty Review (2008) made several recommendations in this regard. At present planning application fees are set nationally and as a result they do not necessarily take into account local circumstances and market conditions.
- 6.4 In the opinion of the Coalition Government this is contrary to the spirit of localism, and the principle that decisions should be taken at the lowest possible level, by people who are accountable to the public. The intention is to make the fee regime more transparent by enabling local authorities to set their own fees which reflect local costs, with the view to encouraging them to run efficient services.
- 6.5 The consultation period closed on 7 January 2011 and a provisional response has been made to DCLG pending consideration of this paper by Strategy Committee. The response is contained in the Appendix to this paper.
- 6.6 Strategy Committee has an opportunity to make further comments if Members so wish. The Chairman and Vice Chairman of the Development Committee have been made aware.

### **What are the proposed changes?**

- 6.7 The first and most fundamental proposal outlined in the consultation paper is the intention to decentralise responsibility for the setting of planning application fees to local authorities so that they may recover their costs. At present it is estimated that local authorities are on average recovering 90% of their costs and that around 35% of resources are used to deal with applications which do not currently incur a fee. Nationally it is estimated that the average cost of determining an application in 2009/10 was £619, and the average fee received was £569.
- 6.8 The second proposal would involve widening the scope of planning application fees so that local authorities can charge for more of their services. This would enable (but not compel) authorities to charge for resubmitted applications following the refusal of planning permission or the withdrawal of a previous submission (the 'free go'). It would also enable local authorities to charge for retrospective applications.

- 6.9 When the fee regulations were first introduced it was considered unfair to charge applicants twice for similar applications which theoretically would not require as much work upon resubmission. In practice, however, a resubmitted application may be very different to the original proposal and require substantial work, and incur additional costs.
- 6.10 Retrospective applications are sometimes made after development has begun or as the result of a planning enforcement investigation. At present however no distinction is made in the fee that is payable. It is therefore proposed that local authorities should have the freedom to recover the cost of any investigatory work that has to be undertaken.
- 6.11 Finally the consultation paper outlines that the Coalition Government is not minded to change the current provisions relating to applications for Listed Building or Conservation Area Consent and works to trees that are the subject of a Tree Preservation Order. As the paper points out, land and property owners cannot opt out of having their building Listed or located in a Conservation Area. Such designations confer responsibilities which are in the wider public interest. Similarly the owners of protected trees are affected in the same way.

#### **How will it be possible for local authorities to set planning application fees?**

- 6.12 Section 303 of the Town and Country Planning Act, 1990, as substituted by Section 199 of the Planning Act, 2008 allows:
- fees to be charged in relation to any function of a local planning authority and for matters ancillary to those functions,
  - the Secretary of State to prescribe fees or a means of calculating fees to be set by someone else (such as a local authority), and,
  - the Secretary of State to prescribe when a service would be exempt from fees.
- 6.13 Section 303 of the Town and Country Planning Act, 1990 states, however, that the income received must not exceed the cost of performing the fee-related function. In other words the consideration of applications cannot be undertaken for profit.
- 6.14 It is therefore envisaged that the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (as amended) would be replaced. The new regulations would outline the principle requirements for authorities, the first of which will be the need for authorities to develop and publish a schedule that sets out the fees they intend to charge for various types of planning application, based upon the premise of full cost recovery. The new regulations would also outline universal exemptions from fees (i.e. for disabled people who need to improve access to their property).

#### **When will the proposed changes come into effect?**

- 6.15 Subject to draft regulations being placed before Parliament in January 2011 the intention is to implement the new charging regime from April 2011, with a six month transition period until October 2011. During the transition period authorities will be able to continue using the existing nationally set fees.

## **What are the implications for Babergh?**

- 6.16 The current proposals, if implemented, would enable Babergh to recover some of the costs associated with the consideration of planning applications but not all of the costs associated with the provision of its wider land-use planning service. The proposals to decentralise the setting of planning fees should therefore be fully supported as should the abandonment of the so called 'free go' provisions that currently exist.
- 6.17 The suggestion that there should be no change to the planning fee regime for Listed Building and Conservation Area Consent proposals is unacceptable. At present roughly one in every seven applications submitted to Babergh is for Listed Building or Conservation Area Consent. While some of these applications are submitted for repairs to properties, the majority relate to extensions or other improvements which are for the benefit of the owner. In line with the principles set out in the consultation paper, local authorities should be able to recover the costs associated with the consideration of Listed Building and Conservation Area Consent applications.
- 6.18 While it is proposed that there will be a transitional period between April and October 2011 to enable the new fee regime to become established, significant staff time and resources will be required. Appropriate support may therefore be necessary.

## **7. APPENDICES**

- (A) The proposed response to the Department of Communities and Local Government.
- (B) The consultation document, *Proposals for changes to planning application fees in England* can be viewed at:

<http://www.communities.gov.uk/publications/planningandbuilding/planningfeesconsultation>

## **8. BACKGROUND PAPERS**

None

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**CHANGES TO PLANNING APPLICATION FEES IN ENGLAND:  
CONSULTATION QUESTIONS AND RESPONSES**

***Q1. Do you agree that each local planning authority should be able to set its own (non-profit making) planning application fee charges?***

The opportunity for each local authority to set its own planning fees is fully supported and should be extended to include applications for Listed Building and Conservation Area Consent. Local authorities should also be given the power to determine whether they charge for the so called 'free go' applications and retrospective submissions.

It is accepted that the existing categorisation of development types requires review, and that planning fees should be directly related to the scale of the proposal. The adoption of individual fee regimes by each local authority could, however, give rise to considerable confusion for applicants and their advisors. Clear guidance and parameters must be provided to support any new fee regime to deal with the calculation and recovery of costs in the interests of service users. In respect it is noted that DCLG will be working with the Chartered Institute of Public Finance and Accountability (CIPFA) and the Planning Advisory Service (PAS) to develop a model and methodology for local authorities to refer to when developing their charging schedules.

***Q2. Do you agree that local planning authorities should be allowed to decide whether to charge for applications that are resubmitted following withdrawal or refusal?***

It is noted that it would be for each local authority to decide whether they wish to charge for the resubmission of applications or withdrawals. While this supports the spirit of localism, the adoption of different approaches by individual local authorities could prove to be very confusing for applicants and their advisors. Appropriate guidance is required to ensure that the arrangements are not misused. The former performance target regime gave rise to pressures to determine applications within an allotted time period because of the potential financial rewards that were available. In a similar way local authorities may see the facility as an opportunity to raise additional income.

The provisions that are currently available to applicants and their advisors to make a resubmission without the payment of a further fee often enables discussions to take place which lead to better quality development proposals. Without the incentive of a 'free go' they may be more disposed to pursue a planning appeal. Equally any invitation to withdraw an application may be less likely to be taken up because of penalty that would be incurred upon resubmission.

***Q3. Do you agree that local planning authorities should be able to set higher fees for retrospective applications?***

It is noted that it would be for each local authority to decide whether they wish to set higher fees for retrospective applications. While this supports the spirit of localism, the proposal needs to be accompanied by a review of planning enforcement regime. The current regime invites the submission of planning applications in certain circumstances. The suggestion that a land or property owner has to pay a higher fee could result in some animosity and lead to greater levels of enforcement activity to remedy breaches of planning control which might otherwise have been resolved amicably. Any additional financial burden in such circumstances would have to be borne by legitimate users of the service which appears to run contrary to the aims of the proposals.

Alternatively a land or property owner may opt to resolve the matter via the planning appeal process. Guidance would therefore be required on the collection of fees by the Planning Inspectorate in relation to certain planning enforcement cases

***Q4. Are there any development management services which are not currently charged for but should require a fee?***

It is noted that the consultation paper does not envisage that the fee regime will be amended to permit the introduction of fees for Listed Building and Conservation Area Consent applications. Such applications account for roughly one in every seven applications submitted to Babergh. While some of these applications are submitted for repairs to properties, the majority relate to extensions or other improvements which are for the sole benefit of the owner. As such they should attract a fee in line with the principles set out in the paper.

Although it is acknowledged that Listed Building owners are expected to be custodians of their properties in the public interest, many currently receive free repair advice and guidance from the local authority. This advice is ultimately for their benefit. As such any revisions to the fee regulations should include a facility to charge for this service and the processing of Listed Building applications in recognition of the administrative costs incurred.

In addition to the above, local authorities should be able to charge for applications that are submitted in areas that are the subject of an Article 4 Direction and where 'permitted development' provisions have been withdrawn by planning conditions.

Finally additional provisions are required to permit the recovery of costs associated with the procurement of specialist services to verify information submitted in connection with large-scale applications which might not be significant enough to warrant the completion of a Planning Performance Agreement (PPA) and the additional consultation activity that is often associated with such developments.

***Q5. Are there any development management services which currently require a fee but should be exempt from charging?***

No, however, the requirements for town and parish councils and non-profit making sporting or recreational organisations should be rationalised to reflect the true costs of service delivery.

***Q6. What are the likely effects of any of the changes on you, on the group or business or local authority your represent?***

Without the opportunity to recover some if not all of the costs associated with Listed Building and Conservation Area Consent applications a significant proportion of the costs associated with these submissions would have to be bourn elsewhere. This appears to be contrary to the principles set out in the consultation paper which aims to achieve greater self-sufficiency.

***Q7. Do you think there will be unintended consequences arising from these proposals?***

As already indicated there are potential issues associated with the proposed introduction of fees for the resubmission of applications and retrospective applications.

***Q8. Do you have any comment on the outcomes predicted in the impact assessment, in particular the costs and benefits?***

The assumptions made about future fee increases are understated and significantly greater increases may be necessary to recover costs.