

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

12 January 2016

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 REVIEW OF PRE-APPLICATION PLANNING PROCEDURES AND CHARGING REGIME

Summary

This report provides a review of the procedures and practice adopted in providing advice and guidance in respect of planning matters, in particular assistance provided to those intending to submit planning applications. Importantly, the report also reviews the charges made for their service and recommends a new regime to reflect the costs and value of the advice provided.

1.1 Introduction

- 1.1.1 The Local Government Act 2003 gives Local Planning Authorities powers to recover the costs of pre-application advice in recognition of the time officers spend researching information in order to provide professional and procedural advice to prospective developers or applicants.
- 1.1.2 As Members will appreciate, the provision of planning advice on behalf of the Local Planning Authority is an important component of the planning process that is designed to assist applicants and developers in framing their proposals. It is also helpful to the Council and our communities because it provides an opportunity to shape proposals at an early stage. It is now timely for our approach to be reviewed in the context of the changing planning process and the need to recover a greater proportion of our costs in providing the service.
- 1.1.3 In undertaking this review and in drafting the proposed updated pre-application procedure and setting a new charging structure, regard has been given to current legislation, guidance and budgetary considerations.
- 1.1.4 National guidance relating to pre-application advice has been in place for a number of years and the importance of providing it has been further emphasised within the National Planning Policy Framework (NPPF), published March 2012, which states in paragraphs 188-190:

“Early engagement has significant potential to improve the efficiency and effectiveness of the planning application system for all parties. Good quality pre-

application discussion enables better coordination between public and private resources and improved outcomes for the community.

Local planning authorities have a key role to play in encouraging other parties to take maximum advantage of the pre-application stage. They cannot require that a developer engages with them before submitting a planning application, but they should encourage take-up of any pre-application services they do offer. They should also, where they think this would be beneficial, encourage any applicants who are not already required to do so by law to engage with the local community before submitting their applications.

The more issues that can be resolved at pre-application stage, the greater the benefits. For their role in the planning system to be effective and positive, statutory planning consultees will need to take the same early, proactive approach, and provide advice in a timely manner throughout the development process. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs.”

- 1.1.5 It is recognised that good quality pre-application advice is highly beneficial to the planning application process, but there is a significant cost in providing this. The use of a charging regime for pre-application advice is supported at a national level and is established practice with the majority of local planning authorities in England. The use of a charging regime means that some of the cost of such advice is borne by the person/organisation that is likely to benefit from a development rather than falling as a general cost to the council tax payer. It should also be remembered that the consequence of following sound advice and ultimately obtaining planning permission is often a significant increase in the value of land or property and the relatively modest costs associated with the advisory service should be seen in that context.

1.2 Review of the current pre-application process

- 1.2.1 In Tonbridge and Malling, the Development Control Service has operated a fee-paying planning advice service since 2008. Guidance on the current services is available on the Council’s website and identifies circumstances where advice is available free of charge as follows:

- Householder proposals;
- Works to a listed building or in relation to conservation area consents;
- Works to trees;
- How to apply for a Lawful Development Certificate (LDC) to decide if planning permission is required;
- Planning matters relating to a planning enforcement investigation; and
- Issues related to the implementation of a planning permission.

1.2.2 Advice on any proposal that falls outside the criteria set out above is subject to a charge. Currently two types of charge are levied which do not reflect any varying level of complexity between cases, as follows:

- Written responses - £120 (including VAT)
- Meeting - £300 (including VAT)

1.2.3 In total, between 130 and 180 pre-application enquiries are received each month. The total number of pre-application enquiries responded to by the Development Control Service over the last three years, is as follows:

2015 – 1,603 (to the end of November 2015)

2014 – 2,067

2013 – 1,863

2012 – 1,752

1.2.4 An evidence gathering exercise was carried out in October and November 2015. This comprised detailed recording of the type of query, together with time spent by planning officers on assessment and providing a response. The percentage of officer time spent on different types of enquiries were as follows:

Householder: includes proposals to alter and extend individual houses and flats for residential purposes (includes listed buildings)	69%
--	-----

All Other: includes shop fronts, advertisements, change of use (not operational development), demolition in a conservation area, certificates of lawfulness	4%
---	----

Minor: includes 1-9 new dwellings, up to 999 sq.m. of office/industrial/retail floor space	17%
--	-----

Major: 10 and over new dwellings, 1,000 sq.m. and over of office/industrial/retail floor space	10%
--	-----

1.2.5 The above figure indicates that in the region of 70 per cent of officer time on pre-application advice is spent on householder enquiries, which are currently free of charge. The above figures do not show applicants returning with further questions or different options, as these are currently recorded under the original reference. Therefore, the actual number of enquiries overall is higher than the figures given above.

Turning to staff resources and costs, it is estimated that responding to pre-application enquiries amounts to the approximately the equivalent of two full time planning officer posts each year. The overall cost of providing the current pre-

application advice service, including officer time, management time and other expert officer time is estimated to be in the order of £100,000 per year. Although it is not good practice to single out this activity as entirely separate to the overall planning process, it does give an indication of the level of costs attached.

1.2.6 The pre-application fee income received over the last three years is as follows:

2014/15	£11,492
2013/14	£11,050
2012/13	£8,333

1.2.7 It will be appreciated, therefore, that on this outline analysis the income received by the Development Control Service for paid, pre-application advice has, over the last three years, been significantly below the actual cost of providing it. This provides one starting point for considering how we now move forward in setting future practice and charging.

1.3 Proposed pre-application protocol

- 1.3.1 It is important to note that when a potential applicant is considering whether to carry out new development and/or a new use, they will generate a number of costs along the way. These costs can include agent fees, architect fees, fees for surveys and specialist advice and so forth. These costs are considered to be a normal and acceptable part of the development process.
- 1.3.2 It is also important to appreciate that the planning application process and, by definition, pre-application advice, normally generates an increased value of the site or property. This increase in value benefits the landowner, but not necessarily the wider community. With this in mind, it seems fair and appropriate that the landowner should pay at least part of the initial cost for pre-application advice, rather than the cost being wholly borne by public funds.
- 1.3.3 In considering these matters previously, the Council has set charges at a relatively modest level in recognition that there is a degree of 'public' benefit in the overall pre-application process. However, with all these matters now in mind and the context of increasing focussing on service efficiency, it seems appropriate to critically review our charges.
- 1.3.4 Should the pre-application charging regime be extended to cover a wider range of proposals, it should also be noted that the potential applicant does not have to use this service as there are other options available, such as private professional planning experts, specialist publications or information on various websites.
- 1.3.5 **[Annex 1]** provides a summary of the different charging regimes for all the local planning authorities (LPAs) in Kent. It does not include Kent County Council, although they do also charge for pre-application advice on certain matters. A number of the LPAs use an hourly charging rate. However, this is, in itself, costly and time consuming to manage. Furthermore, it does not provide the certainty on

cost that the customer is normally seeking. The remaining LPAs used an average rate to provide the cost for a particular service. On large scale/strategic proposals the charging rates are more commonly on an hourly basis, with some LPAs offering the opportunity to negotiate the charges.

- 1.3.6 The majority of current pre-application enquiries are from householders. Some others relate to heritage matters and currently both categories are responded to free of charge. These enquiries are often time consuming and reflect a significant cost to the Development Control Service, but in general are highly valued by the prospective applicants. Consequently, it is proposed that charging at a relatively modest level is introduced.
- 1.3.7 Overall the approach now proposed is that the provision of pre-application advice should not normally be free and that the charging regime is extended across enquiries about all types of development. Free advice would only be given where the development relates to proposals for disabled access or to third parties affected by development proposals.
- 1.3.8 It is proposed that a new, comprehensive charging regime be introduced on a partial cost recovery basis. The details of the new pre-application protocol, together with the fee structure and pre-application form are set out in the attached documents, which would be published on the website:
- Protocol for providing pre-application advice **[Annex 2]**
 - Pre-application charging schedule 2016/17 **[Annex 3]**
- 1.3.9 In summary, the features of the new pre-application charging regime would comprise:
- A three option system which would allow a potential applicant to decide what level best suits their needs and budget. The options for the potential applicant would be to request written advice, request a meeting at the Council offices followed by written advice or to have a site meeting followed by written advice. The fees for each of these options are set out in the Pre-application charging schedule 2016/17. It should be noted that only one option would be available for large scale/strategic site pre-application enquiries due to their complex nature.
 - Five main categories are identified, which cover all the main types of pre-application enquiries; household development; minor development; medium development, major development and large scale/strategic development. The cost of pre-application advice in each category generally reflects the level of complexity and time involved in generating a response. The first two categories generate the same charges for each of the three options. However, householder applications have been separated due to the large volume and different submission requirements for information.

- The two exceptions, where pre-application fees would not be charged, have been identified; advice on proposals to provide or improve disabled access and advice to third parties affected by a development proposal.
- All enquiries would need to be submitted on a Pre-Application Advice Request Form. This is to ensure that all the correct information is available for the Planning Officer to do an assessment and respond quickly to the enquirer. The payment of the pre-application fee would be made on submission of the request. The objective is to provide high quality pre-application advice to the customer as quickly as possible.

1.3.10 The individual charges, set out in the Pre-Application Charging Schedule 2016/17 document, have been calculated based upon information contained within the planning database, service budget information (including salaries) and evidence from the study carried out in October/November 2015. The average hourly rate of £40 includes all costs relating to providing advice. It should be noted that pre-application advice is VAT chargeable and that this has been added to the total for each category. It is estimated that pre-application income would increase from the current 2015/16 projection of £12,000 to between £35,000 and £40,000 for 2016/17.

1.3.11 It is proposed that the new pre-application protocol and charging regime be introduced on 1 April 2016. Mindful that the change in practice and charging is quite significant, we will make efforts to give wide circulation of all the changes. The Development Control pages of the Council's website would be updated to reflect the changes summarised above. The updated website pages would provide clear guidance on how the pre-application advice service works at the Council. The website could also signpost useful links, in particular to the 'interactive houses' on the Planning Portal website, which helps customers to see whether they need planning permission or not. We would also draw the attention of regular agents and applicants to the changes.

1.3.12 Lastly, I would wish to reassure Members about an aspect of the planning service that I believe is held in high regard. That is, by and large, the service is seen as approachable and that importance is given to communication and generally working with others to achieve good standards of development. Nothing in these proposals should change that essential culture within the service. Importantly, what the new regime does do is to help us to sustain the level of service we have traditionally provided.

1.4 Legal Implications

1.4.1 The Local Government Act 2003 provides the power for local authorities to charge for discretionary services (as defined in the Local Government Act 1999). Discretionary services are those services that an authority has the power but not a duty to provide. An authority may charge where the person who receives the service has agreed to its provision. The power to charge under this provision does

not apply where the power to provide the service in question already benefits from a charging power or is subject to an express prohibition from charging.

- 1.4.2 The Local Government Act 2003 places a duty on authorities to ensure that, taken one year with another, the income from charges for each kind of discretionary service does not exceed the costs of provision. An authority may set charges as it thinks fit, and may, in particular, charge only certain people for a service or charge different people different amounts.
- 1.4.3 Local authorities are required to have regard for any guidance that may be issued by the Secretary of State in terms of carrying out their functions under the 2003 Act. Section 93(7) of the Act provides that certain prohibitions in other legislation preventing authorities from raising money are specifically dis-applied in relation to the exercise of the charging power.
- 1.4.4 Local Planning Authorities therefore have powers to recover the costs of pre-application advice in recognition of the time officers have to spend researching information in order to provide answers to prospective developers or applicants.

1.5 Financial and Value for Money Considerations

- 1.5.1 This review has assessed the current pre-application process and charging regime for TMBC and also the type and level of service provided by other LPA's in Kent.
- 1.5.2 The current level of cost recovery for providing pre-application advice, projected to be £12,000 for 2015/16, is considerably below the in excess of £100,000 estimated cost for delivering this service. The proposed pre-application protocol and charging regime is likely to result in a drop overall in the number of enquiries received by the service. However, to introduce a more comprehensive level of cost recovery, in the region of £35,000-£40,000 in the first year, would ensure that this service could continue to be provided without compromising the statutory duties of Development Control.
- 1.5.3 A review of the new pre-application protocol and charging regime should be carried out after it has been in operation for a year. This will allow further evidence to be collected over the period to ensure the service provided is high quality and timely and to ensure that the fees charged are appropriate.

1.6 Risk Assessment

- 1.6.1 The estimated additional income is modelled on current information held in the Planning Database, together with the findings of the study carried out in October/November. Therefore, the charges proposed are the best estimates for cost recovery based on the information we have to date. A review after one year of implementation will allow this to be refined, if necessary.

1.7 Equality Impact Assessment

1.7.1 The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Recommendations

1.8.1 It is recommended to Cabinet to **APPROVE** the following proposals with effect from 1 April 2016:

- 1) Adopt the Protocol for providing Pre-application advice as attached at **[Annex 2]**;
- 2) Introduce the Pre-application Charging Schedule 2016/17 as attached at **[Annex 3]**; and

Background papers:

contact: Louise Reid

Nil

Steve Humphrey

Director of Planning, Housing and Environmental Health