

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

13 November 2019

Report of the Director of Planning, Housing & Environmental Health

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 REVIEW OF THE PLANNING APPLICATION CHARGING REGIME

Summary: This report provides a review of the pre-application charging regime and sets out the proposed new charges for 2020-2021. It is necessary to review the protocol every year in order to ensure the evidence base is up to date. The charging schedule is also considered annually and this year in ensuring that the charging schedule is fairly applied and costs recovery continues to take place proportionately, an increase in fees is proposed.

1.1 Introduction

1.1.1 The current Pre-Application Advice Protocol and Charging regime was introduced on 1 April 2016 and has since been updated annually following ongoing periods of monitoring and review.

1.1.2 As part of this, Officers continue to record the feedback received in connection with this service along with the time spent providing the advice sought.

1.2 The current pre-application process

1.2.1 The Pre-application Protocol and fee structure, introduced on 1 April 2016 and subsequently updated annually continues to identify five main categories:

- 1) **Householders:-** includes proposals relating to individual houses and flats for residential purposes where the building affected is not a listed building.
- 2) **Minor development:-** includes alterations to an existing building (not householder) where there is no increase in floor space, increase in floor space less than 499 sq.m., new or replacement shop fronts, new or replacement advertisements, alterations to a listed building, demolition of an unlisted building within a conservation area, proposals for Telecommunications Equipment, proposals for Air Conditioning / Ventilation Equipment, amendments to Previously Approved Schemes, discharge of conditions attached to permissions and 1 new residential unit.

- 3) Medium development:- includes advice on 2 to 9 new residential units or the creation/change of use of up to 999 sq.m. floor space.
- 4) Major development:- includes advice on 10 to 99 new residential units or the creation/change of use of 1,000 to 9,999 sq.m.
- 5) Large/Strategic development:- includes advice on 100 or more new residential units or the creation/change of use of 10,000 sq.m. or more floor space.

1.2.2 The charges for advice continue to relate to the submission of one query only. Submissions that include multiple options, amended drawings submitted following a meeting/site visit and any additional matters not included with the original submission are viewed as new enquiries and are subject to a separate fee.

1.2.3 The Protocol identifies two categories where fees will not apply:

- Advice to third parties affected by the development and/or change of use
- Disabled access improvements.

1.2.4 The Protocol offers a three option system as follows:

- A pre-application written response
- A pre-application meeting at the Council offices, followed by a letter
- A pre-application meeting on site, followed by a letter.

1.2.5 This system allows the prospective applicant to choose what level best suits their needs and budget. All three options have been used by prospective applicants during the monitoring period.

1.3 Proposed amendments

1.3.1 The Pre-Application Protocol continues to prove effective in delivering technical planning advice in a timely way since it was introduced, having established a clear framework to all parties in how the Council will provide such advice.

1.3.2 Ongoing review has indicated that in some instances applicants and developers have been frustrated that planning permissions have not been forthcoming subsequent to pre-application advice having been sought and paid for. In this respect, it is important to recognise that all pre-application advice is given on a “without prejudice” basis. As such, advice offered by the Planning Officers is in no way binding on the Council’s eventual decision, which must be borne out of a careful and thorough assessment against relevant policies and other material considerations, and within the context of representations made by statutory and other consultees which can only happen once a formal planning application is made.

- 1.3.3 Nevertheless, when such circumstances do arise it is recognised that a small number of applicants and developers may consequently question the value of engaging with the Council early on which may undermine the process. With this in mind, it is recommended that the Protocol be made clearer in this respect along with a standard paragraph to be inserted into all written advice explaining this more clearly for the avoidance of any doubt.
- 1.3.4 Furthermore, going forward it will be particularly important to ensure that the advice given suitably joins up with the Planning Performance Protocol which is to be developed (reported in full elsewhere on this agenda). The Pre-Application Protocol will therefore need to provide clear links to this document going forward and this will be facilitated through the development of the relevant pages on the Council website and through careful cross referencing.
- 1.3.5 It is also necessary to ensure that the fees charged for providing such advice enable the Council to continue to recover the full costs incurred. Trends have proved to be similar to those monitored last year and as such it is proposed that the fees should be increased in line with inflation and that the Pre-Application Charging Schedule be amended to reflect this **[Annex 1]**. For reference purposes, the existing Pre-Application Schedule is attached as **Annex 2**.
- 1.3.6 Should the proposed changes to charging schedule be considered acceptable, then they could be introduced on 1 April 2020.

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 It is appropriate to review the protocol and charging schedule every year, to ensure the evidence base is up to date. This will ensure that we are responsive to the needs of the customer and that the charging schedule is fairly applied.

1.6 Risk Assessment

1.6.1 Robust monitoring should be carried out every year to ensure the protocol and charging schedule in place is based on up to date evidence.

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 amendment with effect from 1 April 2020:

- Adopt the updated Pre-application Charging Schedule 2020/21 as attached at **Annex 1**.

Background papers:

Nil

contact: Emma Keefe
Louise Reid

Eleanor Hoyle
Director of Planning, Housing & Environmental Health