

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

11 November 2020

Report of the Director of Planning, Housing and 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 2021-2022. It is necessary to review the protocol every year in order to ensure the Council continues to provide a comprehensive, high quality service and that the evidence base remains 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 01 April 2016 and has since been updated annually following ongoing periods of monitoring and review. 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.

1.1.2 Moreover, as Members will appreciate, our ways of working have changed fundamentally since March of this year and as a result some immediate changes were brought into effect in terms of the service we provide. We have used this as a learning opportunity to consider how the protocol and associated charging schedule should be modified to accommodate some of these experiences on a longer term basis.

1.1.3 For further context, Members will also be aware of the recent and ongoing promotion of the use of Planning Performance Agreements as part of our engagement with applicants and developers. This item is reported elsewhere on the agenda but it is important to remember that the two should run concurrently in order to achieve the best positive outcomes for developer across the Borough.

1.2 The current pre-application process

1.2.1 The Pre-application Protocol and fee structure, introduced on 01 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. Since March, the option of an office meeting has been replaced by virtual meetings and this is discussed in detail at Section 1.3 of the report.

1.3 Review of current service

- 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 Officers continue to be mindful 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, we will continue to make clear that all pre-application advice is given on a “without prejudice” basis and have adapted our letter templates to ensure this is made very clear to all customers.
- 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, particularly when we have made changes to our wider ways of working and as part of this have sought to promote the use of the service as the most appropriate way to engage with the Council to achieve positive outcomes. As part of this, officers have set up a Developer Forum inviting a number of local and regular agents and developers to meet with officers to discuss key issues and share experiences and information. The inaugural meeting is scheduled to take place on 12 November with an expectation that these would then take place 2 – 3 times a year.
- 1.3.4 Since March, officers have not been undertaking face to face meetings in the Council offices but have instead held pre-application meetings via virtual platforms, charged at the same rate as for an office meeting. Feedback has indicated that these have worked well and that overall customers have come to expect this option and have made good use of it. In fact, in many circumstances we have been able to arrange meetings in a shorter space of time than via traditional means. As part of this however there have been a need to manage expectations as to the speed at which meetings can take place after a request has been made, not least because the case officer needs adequate time to prepare and research and bring in any internal colleagues that need to be involved in providing a comprehensive, proactive response. It is therefore recommended that the fee charging schedule is amended to reference virtual, rather than face to face meetings on the same fee charging basis given that the work involved is no different in practical terms.
- 1.3.5 Furthermore, with a view to ensuring the advice service is a comprehensive and attractive route for developers to obtain detailed advice on proposed schemes before submission, it is often necessary to seek the input of other officers of the Council, in particular housing, leisure and technical services along with the advice of the Conservation Officers which provide advice via a Service Level Agreement we have with Tunbridge Wells. It is recognised that this is most commonly necessary for major and strategic sites and it is therefore recommended that a greater uplift in fees for these categories be incorporated to reflect this in order to

ensure all costs are recovered in providing the service. Furthermore, in respect of major and strategic sites, officer experience has shown that these are requiring more intensive resourcing overall and in previous years the fees charged were not reflective of the amount of work involved or the complexity of that work. The fees are recommended to be increased in a manner proportionate to that work.

- 1.3.6 Officers have also explored additional services that could be provided and where cost recovery could be adequately ensured as part of this review, including whether it would be possible to:
- Provide planning history records;
 - Provide a validation check before submission service;
 - Confirm that planning conditions have been discharged;
 - Confirm whether permitted development rights exist.
- 1.3.7 Whilst we will continue to review whether it is appropriate to incorporate these into our current service, at this time it is considered that online records and information provide sufficient detail to enable customers to find this information out for themselves and given the time and resources that might be required depending on the scale and complexity of a site/scheme it would not be possible to robustly ensure all costs arising from officer time could be adequately recovered.
- 1.3.8 In order to further improve the service provided to customers, we will be making clear on the website that fees are non-refundable in the event that they chose to disperse with the service part way through. This is because of the administrative and professional time and resource that could have been incurred up until that point.
- 1.3.9 In terms of reviewing the fees overall, trends have otherwise 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, along with the amendments set out in this report **[Annex 1]**. For reference purposes, the existing Pre-Application Schedule is attached as **Annex 2**.
- 1.3.10 Should the proposed changes to charging schedule be considered acceptable, then they could be introduced on 01 April 2021.

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 01 April 2021:
- Adopt the updated Pre-application Charging Schedule 2021/22 as attached at **Annex 1**.

Background papers:

contact: Emma Keefe

Annex 1: Proposed Charging Schedule 2021/22

Annex 2: Existing Charging Schedule 2020/21

Eleanor Hoyle
Director of Planning, Housing & Environmental Health