

**TONBRIDGE & MALLING BOROUGH COUNCIL**  
**PLANNING and TRANSPORTATION ADVISORY BOARD**

**10 November 2021**

**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 ADVICE SERVICE**

**Summary: This report provides a review of the pre-application advice service offered by the Council and sets out proposed revisions to the service along with the proposed new charges for 2022-2023. It is necessary to review the service provided every year in order to ensure the Council continues to provide a comprehensive, high quality service and that we are effectively recovering all of the costs associated with service provision. In ensuring that the charging schedule is fairly applied and costs recovery continues to take place proportionately, an increase in fees is proposed for the 2022/23 financial year.**

**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 Since its inception, the service and fee structure has identified 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.

1.1.3 The charges for advice are predicated on 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.

1.1.4 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.

1.1.5 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 [since March 2020 the office meeting option has changed to a virtual meeting and this will remain the case going forward]
- A pre-application meeting on site, followed by a letter.

## **1.2 Review of current service**

1.2.1 The pre-application advice service continues to prove effective in delivering technical planning advice since it was introduced, having established a clear framework to all parties in how the Council will provide such advice. In previous years, the Council has incrementally increased fees in line with inflation to seek to recover costs in providing this discretionary service. Over the past year, the team has experienced increasing numbers of requests for advice, and we have taken the opportunity to undertake a wholesale review of the service offered to ensure that it is efficient, proportionate, and effective. This review has concluded that several wider changes to the service are now needed which better focus available officer resources, ensure costs recovery whilst still providing a high-quality customer focused service.

1.2.2 The proposed changes are summarised as follows and should be read in conjunction with the Annexes to this report.

1.2.3 Generally, it should be noted that in respect of fee charging, the review has focused on ensuring true costs recovery based on thorough consideration of the

officer time taken in fulfilling this function. **Annexes 1 and 2** set out the existing and proposed charging schedules and in some instances the fees are proposed to increase markedly. This is based on the fact that the existing schedule accounts for only 30 minutes of officer time to prepare, research and write a response to a householder enquiry. This is not a realistic estimate of the time taken to provide such advice and has therefore been accounted for in the latest revisions.

Householder and minor development

- 1.2.4 Presently, the service offers a three-tiered system which allows for prospective applicants and developers to choose whether they want a written response, a meeting followed by a letter or a site meeting followed by a letter.
- 1.2.5 Extensive experience of operating within this regime now has indicated that whilst some of the categories necessitate a meeting or site visit, some do not and place a significant burden on available resources in a manner that detracts from the team being able to focus on providing detailed advice on schemes that require such consideration.
- 1.2.6 In particular, the option to hold meetings (both virtually and on site) for householder and minor scale development (aside from listed buildings as discussed above) is disproportionate to the nature of the advice usually required, which most often relates to individual relationships between buildings, for example. Experience has demonstrated that provision of these services places a significant resource burden on the Council in a manner that cannot be truly recovered by the fee charging regime. Subject to sufficient details being provided by the customer, detailed advice can readily and more efficiently be provided in writing in such cases, thus enabling the customer to receive a timely response and the team to focus meetings on more complex development proposals. It is therefore proposed to remove these options from the fee charging schedule.

Works to listed buildings:

- 1.2.7 These are currently included within the “minor development” category but habitually involve far more detailed research and advice to be given than, for example, alterations to a shopfront which are also considered to fall within the same category. Officers regularly need to visit the sites to ensure they are cognisant of all relevant factors and in many instances alongside the Conservation Officers which are provided via a Service Level Agreement with Tunbridge Wells Borough Council, which involves a cost to the Council.
- 1.2.8 Given the statutory protection afforded to listed buildings, we recognise that it is crucial that we seek to offer detailed and informed advice on development proposals for listed buildings.
- 1.2.9 It is therefore proposed that a new category be included within the service, dealing specifically with all proposals to works and alterations to listed buildings, whatever

their use. Where a building is in residential use, this category option should be used rather than the householder category in all instances.

- 1.2.10 Furthermore, it is proposed that requests for confirmation as to whether listed building consent is required for any proposed works, customers will be directed to make a formal application seeking a lawful development certificate, for which a fee would be payable under the Fee Regulations. This would amount to a formal determination as to whether consent was required, giving the customer far more surety, which is important given the criminal sanctions in the event that unauthorised works take place.

Medium-scale development

- 1.2.11 Presently, this development category covers development ranging from a single new dwellinghouse, up to 9 new dwellinghouses and all new floor space created up to 999 sq.m. This category covers an extremely broad spectrum and as it currently stands the single fees required for providing the level of planning advice (and the associated time and resource implications for providing that advice) is not considered to be reflective. For example, proposals for between 1 – 4 new dwellinghouses would not trigger the need for any planning obligations and the associated likely need for the case officers to liaise with internal colleagues concerning the amount and nature of such obligations to ensure that they were providing full and detailed advice in this respect. Similarly, the range of issues to address as more houses are introduced to a scheme expand.

- 1.2.12 As such, it is proposed to separate this category as follows:

- Medium development – between 1 – 4 residential units and less than 499 sq.m of newly created non-residential floorspace; and
- Larger scale development – between 5 – 9 residential units, between 499 and 999 sq.m of newly created non-residential floorspace.

Discharge of planning conditions:

- 1.2.13 Presently, the service sets a standard fee for providing advice on the appropriate discharge of planning conditions imposed on a permission. The level of complexity and the associated resource taken to respond to such requests are wholly dependent on the nature and scale of the development in question. As such, it is appropriate to link the associated fee for advising on conditions discharge back to the development type for the parent planning permission.

Development types to be directed to formal submission process:

- 1.2.14 There are some enquiries that are most appropriately directed through the formal application regimes rather than via the pre-application advice service. These are as follows:

- Confirmation as to whether proposed works require listed building consent - in these cases, prospective applicants should be directed to submit a certificate of lawfulness (as discussed above)
- Determination as to whether amendments to approved schemes are “non-material” in nature – in these cases a s96A application should be submitted and a formal decision issued

1.2.15 This follows an already established principle for determining whether proposals for dropped kerbs require planning permission, where lawful development certificates are required for submission to allow the Council to make a formal decision, which is a requirement of the County Council in subsequently allowing those works to take place.

*Major and large-scale strategic development*

1.2.16 Historically, an option has been available for pre-application advice to be offered in writing only. Given that these are usually complex and controversial in nature, it is considered that they should be addressed through a combination of site visit and meetings. Therefore, the option for a written response only is proposed to be removed.

1.2.17 In these cases, the fees have been modified to ensure a true reflection in officer time and resource arising from the need for a preliminary site visit, internal officer engagement and contributions at meetings with external parties.

### **1.3 Exemptions**

1.3.1 As part of the review, we have also taken the opportunity to evaluate whether the exemptions applied until now remain appropriate. Presently, the exemptions applied are cited as being:

- Advice to third parties affected by current applications and
- Provision of disabled access.

1.3.2 Members will be aware that the Council does not provide advice to third parties affected by current planning applications, nor should it. Anyone who considers they could be adversely impacted by a development proposal should make representations to the Council setting out what those impacts are. The representations made, insofar as they raise material planning considerations, will always be considered in the formal assessment undertaken and referenced within the officer report where necessary to do so. Individuals can seek independent advice on such matters and instruct representations to be made on their behalf, but it is beyond the scope of the Council to provide advice to individuals in this way.

- 1.3.3 As the exemption is currently phrased, it could be interpreted to mean that such advice is offered by the Council but that we do not charge for it. As such, the notes contained within the 2022/23 charging schedule [**Annex 2**] makes clear that no such advice is provided.
- 1.3.4 The exemption applying in respect of disabled access should continue but presently the scope of the exemption is unclear. This should only apply in connection with making a building accessible. If, for example, the building is listed then separate advice should be sought in accordance with the fee charging schedule. Again, this has been made clearer at **Annex 2**.

## **1.4 Pre-application advice checklists**

- 1.4.1 Members will appreciate that a minimum level of information is required to be submitted with any request for pre-application advice to ensure detailed, informed responses can be provided by officers. Recently, we have noted that that the level of information habitually submitted with these requests for advice are not sufficient to provide an adequate level of advice. This can create issues if prospective applicants subsequently feel they have not been given a full response or where applications come forward which indicate a change in circumstances from that established from limited information garnered at the pre-application stage. Whilst it is appreciated that many prospective applicants will not wish to incur costs at the early stages of developing their proposals through the use of agents and/or architects, it is still crucial that a minimum level of information is provided to enable officers to provide advice. With this in mind, we have taken the opportunity to review the checklists published online, and the proposed checklists reflecting the proposed new categories of development type is included at **Annex 3** to this report.
- 1.4.2 Alongside this, we intend to expand upon existing internal practices and processes to ensure enquiries are checked at the initial stages of receipt, with a view to returning if sufficient detail is not provided to ensure resources are not used unnecessarily.

## **1.5 Interaction with Planning Performance Agreements**

- 1.5.1 Members will be aware that the Council has an adopted Planning Performance Agreement Protocol and associated fee charging schedule. This is closely linked to the pre-application advice service but on occasion there has been some confusion about how the two regimes operate in practice. To avoid any such confusion going forward, it will be made clear that an initial pre-application enquiry will always be dealt with via the pre-application advice service. If a PPA is subsequently agreed, that will be subject to the separate regime and fee charging schedule. The initial pre-application fee incurred will not be refundable or deductible for any reason. This is also addressed in the proposed amendments to the PPA protocol which is reported elsewhere on the agenda.

## 1.6 Service Provision

1.6.1 Whilst this is a discretionary service, it is appreciated that the fees charged must be relevant and proportionate to the service being offered. To ensure this remains a high-quality service, the Council will undertake the following:

- An initial check of the enquiry made to ensure the minimum level of detail has been provided, along with the relevant fee. If this is not the case, the enquiry will be returned, and the customer directed to the information contained on the website **[Annex 4]**.
- Where multiple “options” are submitted for comment under a single enquiry, these will be returned at the initial checking stage and the customer advised that each option should be subject to a separate enquiry.
- Once we are satisfied that the minimum level of information has been provided, the enquiry will be acknowledged and assigned to a suitable case officer.
- Where a site visit or meeting is required, the case officer will make the necessary arrangements in liaison with the enquirer.
- It will always be at the discretion of the assigned case officer as to whether specialist conservation officers need to attend meetings relating to the listed building development category and customers will be advised of this when arrangements are made.
- Monthly internal meetings will be scheduled to enable case officers to discuss major and strategic developments submitted at the pre-application stage with internal services across the Council. In these circumstances, the case officer will advise the customer of the date of the meeting their scheme will be discussed at and provide an indication of the subsequent timeframes for a response to be issued. This will very much be on a case-by-case basis and for the case officers to manage individually.
- 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 will always be viewed as new enquiries and are subject to a separate fee.

## 1.7 Future charging opportunities

1.7.1 As part of the review, we have taken the opportunity to scrutinise whether any additional services could be offered to customers on a chargeable basis. However, at this time such further options have been discounted because it would be unlikely that we would be able to realistically recover our costs and there would

be significant further demands placed on the team, which must be balanced against the benefits of offering such a service.

- 1.7.2 It is therefore suggested that we carefully review the wholesale revisions proposed over the next 12 months with a view to establishing whether any additional services could be integrated in the future.

## **1.8 Legal Implications**

- 1.8.1 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.
- 1.8.2 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.
- 1.8.3 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.
- 1.8.4 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.

## **1.9 Financial and Value for Money Considerations**

- 1.9.1 It is appropriate to review the protocol and charging schedule every year, to ensure we continue to effectively recover costs. This will ensure that we are responsive to the needs of the customer and that the charging schedule is fairly applied.

## **1.10 Risk Assessment**

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

## **1.11 Equality Impact Assessment**

- 1.11.1 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.

## 1.12 Recommendations

1.12.1 It is **RECOMMENDED TO CABINET** to **APPROVE** the following amendment with effect from 01 April 2022:

- Adopt the updated Pre-application Charging Schedule 2022/23 as attached at **Annex 2**.

Background papers:

contact: Emma Keefe

Annex 1: Existing Fee Charging Schedule

Annex 2: Proposed Fee Charging Schedule

Annex 3: Proposed Development Categories

Annex 4: Proposed Submission Requirements

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