

TONBRIDGE & MALLING BOROUGH COUNCIL
HOUSING AND PLANNING SCRUTINY SELECT COMMITTEE

19 March 2024

Report of the Director of Planning, Housing and Environmental Health

Part 1- Public

Matters for Information

1 NATIONAL PLANNING FEE INCREASE

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023 came into force on 6 December 2023 and laid legislation to increase planning fees.

1.1 Background

1.1.1 The regulations do the following:

- Have increased the planning application fees by 35% for applications for major development and 25% for all other applications.
- Have introduced an annual indexation for planning applications fees, capped at 10%, from 1 April 2025.
- Have removed the fee exemption for repeat applications (the 'free-go'). An applicant will still be able to benefit from a free-go if their application was withdrawn or refused in the preceding 12 months, subject to all other conditions for the free-go being met.
- Have reduced the Planning Guarantee for non-major planning applications from 26 to 16 weeks.
- Have introduced a new prior approval fee of £120 for applications for prior approval for development by the Crown on closed defence sites.

Increase in planning fees

1.1.2 The regulations also mean that fees will increase annually from April 1st, 2025. Previously fees didn't rise with inflation, fees rose only when the fee regulations were amended. The last time the fees were raised was on the 17th of January 2018.

Removal of the 'free-go'

- 1.1.3 Prior to the new fee regulations coming into force, applicants could resubmit an application for a similar development as long as they met a prescribed set of circumstances. This was called the free go. The removal of the free go means that a fee will be payable on applications which were previously exempt. However, this may increase the risk of applications being appealed. It should be noted that cases determined or withdrawn between the 5th December 2022 and 5th December 2023, will still benefit from the free-go so the full implications of this change may not immediately to be felt. Risks have been explored in more detail in the risk assessment section.

Planning Guarantee

- 1.1.4 Under the Planning Guarantee, planning application fees must be refunded to applicants where no decision has been made within a specified time, unless a longer period has been agreed in writing between the applicant and the local planning authority. For applications for non-major development, the Planning Guarantee has been reduced from 26 to 16 weeks.
- 1.1.5 Reducing the planning guarantee from 26 to 16 weeks for non-major applications, where the majority of cases sit will increase the risks of fees being paid back. Risks have been explored in more detail in the risk assessment section.

1.2 Legal Implications

- 1.2.1 A general increase to the planning fees was introduced by the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023. Local planning authorities use the 2012 Fees Regulations, as amended, to charge the correct fee for each application, based on the details of the application.

1.3 Financial and Value for Money Considerations

- 1.3.1 The impact of a 25% increase in minor planning application fees and 35% in major planning application fees is an expected revenue increase of approximately £440,000 in 2024/25, based on projected 23/24 application numbers. The £440k has being included within the estimates and have been approved by Council and that the MTFS has allowed for CPI increases over the medium term.

1.4 Risk Assessment

- 1.4.1 The main risks to the Council following the introduction of the new regulations are:
- A potentially higher number of appeals
 - A greater chance of the planning guarantee being used.

- 1.4.2 The loss of the free -go will potentially mean, more appeals to the Planning Inspectorate. Planning applications have previously been refused or withdrawn and resubmitted using the free go to address reasons for refusal. Applicants may potentially instead go straight to appeal as there will now be a financial cost to put in a further planning application. The main risk for the Council is if over 10% of appeals are overturned, the consequences for an authority with a high rate of overturned appeals is that they could be put in special measures.
- 1.4.3 Under the 'special measures' regime, local planning authorities can be designated as poorly performing if they fail to meet criteria for either speed or quality of decision-making, allowing developers to submit applications directly to the Planning Inspectorate.
- 1.4.4 Any authority that has more than ten per cent of either major or non-major applications overturned at appeal over a two-year period is at risk of designation.
- 1.4.5 It is important for the decision maker to ensure the decisions they make are reasonable and defensible. Advice and second opinions will be sought where required. Officers will also advise Councillors if they consider a reason for refusal, cannot be substantiated at planning committee, in line with the Constitution. Officers will encourage agents to use the pre application service and encourage early engagement to help get acceptable schemes on initial submission.
- 1.4.6 The risks regarding the planning guarantee are being mitigated by a new reporting tool which has been built to highlight when cases are 3, 2 and 1 week from fee payback to ensure Extensions of Time (EOT) are in place where possible. The reporting tool which has been built, can also focus in on newer cases which will help managers and staff better monitor the age of planning applications. Once an EOT has expired a non-determination appeal can still be lodged.
- 1.4.7 It is also worth noting that applicants do not have to agree to an extension of time. Where possible planning applications should be determined within the statutory time frame.

1.5 Equality Impact Assessment

- 1.5.1 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.

Background papers:

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Nil

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