

Pre-application Advice and the Options for Charging
Report by Head of Development Management

Summary: This report set out the background and options for charging for pre-application planning advice.

Recommendation: That in the light of the comments from Members of the Planning Committee, the limited financial benefit and the impact it would have on the delivery of the service it is recommended that the charging for pre-application advice is not pursued.

1 Background

- 1.1 The planning function is a key responsibility for the Broads Authority as Local Planning Authority (LPA) for its area and is a statutory role. The planning function comprises the development of planning policy, the determination of planning applications and responding to appeals and the enforcement of planning control. The function is funded by the Authority's National Park Grant, although fees are charged for some planning applications and the discharge of planning conditions.
- 1.2 The fees for planning applications are set nationally by Government. They are set at such a rate as to recover some of the cost of processing those applications. A proposal by the Government in 2010, to allow Local Planning Authorities to set and charge fees locally resulted in a benchmarking exercise being co-ordinated by CIPFA and the Planning Advisory Service (PAS) in 2012 which demonstrated that the full costs of the planning service was not recovered by application fees, and planning applications were rarely self-financing. The benchmarking exercise also enabled participating LPAs to work out the actual cost of their planning service, which for the Broads Authority was £39.20 per hour. This was below the average of £42.20 per hour and put the Broads Authority in the 4th quartile in terms of cost. The proposal to introduce locally set fees has since been abandoned by the Government.
- 1.3 Section 93 of the Local Government Act 2003 introduced a discretionary provision which enables LPAs to charge for pre-application advice, although where charges are made they must seek only to recover the costs incurred and can only be levied on a 'not for profit' basis. This advice is reiterated in the Planning Practice Guidance published in March 2014. Subsequent to this provision, and also in response to other budgetary pressures, many LPAs nationally now charge for pre-application advice.

- 1.4 Guidance on Pre-application charging is provided in the Planning Officers Society publication “Guidance on Pre-applications Charging 2012”
- 1.5 As part of the process of looking at revenue generation in response to budgetary pressure and the objective to increase self-funding in public services more generally, it is appropriate to consider whether the Broads Authority should introduce fees for pre-application advice.

2 The Issues Around Pre-Application Charging

- 2.1 Government has long advocated the benefits of offering a pre-application service, in terms of improving the quality of applications (and development), enabling early local engagement and speeding up the process of determination by identifying and resolving contentious issues early. It is considered to be a key component of best practice and is consistently recommended in every review of the planning system at national and local levels.
- 2.2 The National Planning Policy Framework states at paragraphs 188 – 190:

“Early engagement has a significant potential to improve the effectiveness of the planning 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 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 state, the greater the benefits. This assists local planning authorities in issuing timely decisions, helping to ensure that applicants do not experience unnecessary delays and costs”.
- 2.3 Whilst pre-application advice can make a significant positive contribution, it is resource intensive, and it is generally the case that the more meaningful the response is for the potential applicant the longer this takes for the case officer to research and prepare. Where the pre-application service is provided free of charge the cost associated with this is therefore wholly borne by Authority’s general budget, rather than in part by the applicant as is the case for a planning application which is subject to a fee, or where pre-application work is chargeable. There is an argument that this cost can be justified where it results in the submission of a better quality application (and development), however this is not always the case as an applicant may disregard the advice, or make multiple changes over a long period or simply decide not to proceed.
- 2.4 It should also be noted that the making of a charge for pre-application can be a useful tool to manage workloads, partly because it reduces the number of enquiries received thus increasing capacity, but also because as it ensures

that case officers are only working on tasks for which a payment has been made.

- 2.5 It should be noted, however that there are issues around the effect that pre-application charging has on the behaviour of agents and applicants and whether it deters them from seeking advice, and/or results in poorer quality applications leading to more refusal of planning permissions and appeals (with the additional work that entails). It is also the case that having paid for the advice, an agent or applicant will not unreasonably be entitled to expect to receive a specified standard of service within a set timescale.
- 2.6 Addressing this, the Planning Practice Guidance 2014 advises that it is important that any charging does not discourage appropriate pre-application discussions and that, in considering the introduction of a charging regime, LPAs should consider whether charging is appropriate in all cases, given the potential for pre-application engagement to save time and improve outcomes later in the process. It advises that where possible, LPAs are strongly encouraged to provide at least a basic level of service without a charge.
- 2.7 It also advises that where LPAs do opt to charge for certain pre-application services, they are strongly encouraged to provide information online about the scale of charges for pre-application services, the level of service that will be provided for the charge, including the scope of work and what is included (e.g. duration and number of meetings or site visits), the amount of officer time (recognising that some proposed development requires input from officers from other authorities or other statutory and non statutory bodies), what it will provide in terms of the outputs (eg a letter or report) and guaranteed response times.
- 2.8 In considering the introduction of pre application charging, it is also useful to be mindful of the potential impact on the enforcement service. In cases where officers are trying to negotiate an acceptable solution and/or submission of an application, the making of a charge for advice would be likely to deter potential applicants. Were this to lead to a reduction in voluntary compliance and an increase in formal action the consequent costs could be significant. It is also the case that a significant percentage of enforcement cases arise from misunderstandings or ignorance over what does and does not constitute permitted development, so the withdrawal of the free 'Do I need planning permission?' service would be likely to exacerbate this.

3 Practice in other LPAs and NPAs

- 3.1 The Broads Authority has always provided a free pre-application service, and this is well used with around 350 – 400 enquiries received per annum. This service applies across the range of application-related work, from simple queries over whether or not a proposed householder development requires planning permission to detailed discussions on major schemes, which can continue for extended periods. Inevitably the workload associated with the different types of query varies considerably.

3.2 The practice of charging for pre-application advice is becoming more common. A review of the neighbouring LPAs in Norfolk shows the following:

- North Norfolk District Council – charge a flat rate which varies depending on the type and scale of the proposal (although they do give free advice to personal callers and over the phone)
- Kings Lynn and West Norfolk – charge 15 – 20% of the application fee
- Norwich City Council - charge a percentage of the application fee for large proposals and a flat rate for others

All of the above LPAs charge householders, with the fees being £50 – £60. This includes ‘Do I need planning permission?’ enquiries.

- Breckland District Council – no charge
- Broadland District Council – no charge
- Great Yarmouth Council – no charge.
- South Norfolk Council do not charge currently, but are considering introducing charging later in 2014.

3.3 A review of the other English National Park Authorities shows the following:

- Northumberland – charge a flat rate which varies depending on type and complexity of the proposal
- North Yorkshire Moors – set a development threshold above which they charge either a flat rate for non-major and an hourly rate for major developments
- South Downs - charge on an hourly basis
- Peak District – introduced charging in April 2014, with a flat rate or an hourly rate for major developments

None of the above LPAs charge for householder development, although North York Moors charge for ‘Do I need planning permission?’ enquiries at £10.

- Yorkshire Dales – no charge
- Lake District – no charge currently, but are considering introducing charging
- Dartmoor – no charge currently, but are considering introducing charging
- Exmoor – no charge currently, but are considering introducing charging
- New Forest – no charge currently, but are considering introducing charging

4 Consultation with Planning Agents on Pre-Application Charging

4.1 In addition to reviewing the practices of peer LPAs, consultation on the principle and mechanics of pre-application charging was undertaken by seeking the views of 74 of the planning agents with whom the LPA regularly

works. Surprisingly, only five responses were received but their comments were as follows.

- 4.2 Regarding the principle of pre-application charging, there was some acceptance of the inevitability of this, at least for larger scale schemes. Provided that the advice that was given was in a written form and was definitive, comprehensive and reliable – ie gave the developer certainty over the outcome should an application be submitted – this could be accepted; the costs would simply be passed to the client. There was, however, concern that with the increasing amount of regulation (and associated cost) around development, this would represent one more disincentive and would have a disproportionate impact on the smaller agent and developer. It was also noted that agents often provide free advice to their clients prior to formally contracted work particularly on smaller schemes and pre-application charging would impact on this. One respondent commented that as a protected wetland with the equivalent status of a National Park and where a high quality of design needs to be encouraged, this would be best secured through continued free pre-application advice.
- 4.3 In terms of the impact pre-application charging would have on the agents' relationship with the Broads Authority, no-one responded that this would be detrimental although a number said that they would simply submit an application and deal with any issues that arose during the determination process, rather than seek to resolve them through paid pre-application. This could result in lower quality submissions, which would in turn increase the processing costs to the LPA in terms of increased validation and negotiation work, as well as impacting adversely on the relationship with the service users and adding delay. Potentially effects could also have a reputational impact.
- 4.4 The agents were also asked what they would expect to receive from a paid-for service, particularly their expectations over and above the response they currently receive from the free service. The key requirement reported is that the advice should be provided in written form and should be capable of being relied upon. This was clearly an important point. It should also be provided within a reasonable timetable with clear guidance given at the outset as to the timescales for the process. A number of agents considered the current free service to be satisfactory.
- 4.5 Regarding the methodology of charging, the use of an hourly rate did not attract criticism provided that it is realistic. One agent cited fees of £500 per hour being charged elsewhere, which was not considered reasonable or feasible. Whether this approach, or a flat fee or a % of the application fee was charged there was a clear need for a published charging schedule to be provided so that agents could advise their clients in advance.
- 4.6 Finally, agents were asked for their experience of pre-application charging elsewhere. The responses reinforced comments previously made by agents on this topic – that they would prefer to submit the application and deal with any issues which arose through the application process or appeal. Their experience of paid pre-application service has not been particularly positive

and they have been disappointed by delays and inconsistency in the quality and certainty of the response. The overall view was that "...Too often, the cost of the application advice rarely justifies the fee".

- 4.7 Given the small response group these views cannot be taken as wholly representative of the planning agents in general, however they do give a useful summary of a charged pre-application service from the users' perspective and the comments are not inconsistent with comments made previously by other agents on this topic.

5 Consultation with Planning Committee on pre-application charging

- 5.1 A report on the principles and practice of pre-application charging was considered by the Planning Committee at its meeting on 20 June 2014. The draft Minutes to the debate record the following:

"Members recognised the value of pre-application advice but were concerned that this should not take a disproportionate amount of officers' time, particularly if this did not result in a successful outcome. Some members considered that by charging this could provide focus for the applicants/agents as well as enable officers to manage workload. Some members considered that nothing was "free" and the user should pay, at least some contribution towards the costs incurred of providing such a service. On this premise the simplest scheme for charging, either as a flat rate or on a sliding scale was advocated.

Others considered, given the special status of the Authority (equivalent to a national park), that the Authority's duties included encouraging economic wellbeing, emphasising high quality developments as well as engaging with the community at an early stage in the process. The introduction of charges for pre-application advice could deter those aims and applicants from using the service thereby jeopardising goodwill and the Authority's reputation. There was also a risk that in charging for such a service there could be an increase in costs in the future through an increase in the administration of appeals and enforcement where pre-application advice has not been sought. Members considered that the resultant costs of administering charges would be disproportionate to the forecasts of income generated given the scale and profile of the applications which the Authority deals with. Some Members had considerable concerns about the reputational damage to the Authority of introducing charges.

The Chairman concluded that there was a split of strong views being expressed on both sides of the argument, with a slight numerical balance among those present in favour of not introducing charges for pre-application advice and these views would be reported to the Financial Scrutiny and Audit Committee on 8 July 2014 and the full Authority on 11 July 2014."

6 The operation of a charged pre-application service

- 6.1 The advantages of a pre-application service are set out at 2.1 and 2.2 above, and these are not disputed (although it is noted that where no charge is made the greater benefits accrue to the applicant/agent as the LPA covers the cost). One of the challenges in setting up a charged pre-application service is devising this in such a way that the charges do not discourage applicants from discussing their proposals at the pre-application stage and in setting clear and timely service standards which can be met. These are the main risks to the service. If these requirements are not met, there is likely to be poor take-up of the service (and consequently more work at the validation and determination stages) as well as reputational damage. It is also essential to decide which types and scale of development will be chargeable. These three separate areas and the issues around them are set out below.

Determining the charging mechanism and setting the charge

- 6.2 Looking first at the question of charging, there are three main methods of charging – a flat rate, a % rate based on the applicable application fee and an hourly rate. A charging schedule could apply to any one or a combination of the charging methods. The advantages and disadvantages of each are detailed below.
- 6.3 A flat rate charge would set out how much the LPA would charge for all activities associated with the pre-application service, ranging, for example, from “Do I need planning permission?” queries, through providing advice on specific draft proposals through to checking planning applications against the validation criteria prior to submission. The charges might be levied per process, per letter or per meeting or according to any other discrete package of work; alternatively it would be possible to provide various ‘standard packages’ of processes. The advantages of this approach to the applicant are that the costs would be transparent at the outset, but the disadvantages include that any further discussions beyond the specified response would incur further cost. The advantages to the LPA are that the process would be simple to manage and charge for, however as many pre-application discussions involve a number of iterations of a scheme the LPA would need to be firm on second and subsequent round charging, particularly when discussing details which can appear minor on paper but have a significant impact on the success of a development.
- 6.4 A % rate based on the applicable application fee would be simple to calculate, but is unlikely to recover much of the cost of the pre-application discussion on the smaller applications unless set at a high rate – a householder application for an extension for example attracts a fee of £172, so any rate under approximately 70% would not cover the cost of an enquiry which took 3 hours to deal with (including travel, site visit and the preparation of a written response) which would cost approximately £112 to deal with. It would be likely to be more cost-effective for larger proposals. The advantages for an applicant of this method of charging would be, again, that the costs would be transparent at the outset, however if set at a level to realistically recover the

costs for the LPA they are likely to be expensive for an applicant relative to the cost of the submission of a speculative planning application. For the LPA this method of calculation would be simple to administer, however, the % at which the rate is set would be critical if cost recovery is to be achieved. In an area such as the Broads with dispersed settlements, an average % rate which is fair and attractive to all would be difficult to calculate.

- 6.5 The third approach would be to levy an hourly rate. Based on the results of the CIPFA/PAS benchmarking a rate of £39.20 would be justified. The advantages for the applicant would be that they would be paying only for the amount of time the proposal required, however there would be uncertainty over the ultimate cost. For the LPA, the advantages of this approach would be that it would represent full cost recovery, but careful time recording and management would be essential.
- 6.6 The above represent a summary of the various approaches to charging and each mechanism may be more or less appropriate to the various different application types. Were Members minded to support the introduction of pre-application charging it would be advisable to consider the various mechanisms in more detail prior to setting the final charges.

Setting the service standards

- 6.7 Were pre-application charging to be introduced it would be appropriate for the LPA to identify the standard of service which a developer could expect in return for their fee, and to publish this; it would also be appropriate to monitor performance against these standards and to report this regularly to Planning Committee. Clearly it would be appropriate to apply different standards across the various application types, where for example a major application would have a different timeline to a householder proposal, but there should be a consistent theme of timeliness and responsiveness. The importance of this was a clear theme coming out of the consultation responses from the agents.
- 6.8 In the case of larger applications it might be appropriate to consider the use of Planning Performance Agreements (PPAs), both for the pre-application and application stages. PPAs were formally introduced into the planning system in April 2008 and are about improving the quality of planning applications and the decision making process through collaboration. They bring together the LPA, developer and key stakeholders, preferably at an early stage, to work together in partnership throughout the planning process. They are essentially a collaborative project management process and tool to provide greater certainty and transparency to development of scheme proposals, the planning application assessment and the decision making process. The potential role of PPAs has been identified in the NPPF to help guide positive pre-application collaborative working.
- 6.9 The above represent a summary of the various issues that would need to be considered. Were Members minded to support the introduction of pre-application charging it would be advisable to consider the various processes in more detail prior to setting the final service standards. Members should be

aware that the service standard is currently for a written response to be provided within 3 weeks.

Determining the thresholds for charging

- 6.10 The final detailed area for consideration is around the threshold above which a charge would be levied. As can be seen from 3.2 and 3.3 above, the threshold for charging could be set at a number of different points and the decision as to where this threshold is set will be a political as well as a financial decision. If the objective is to maximise cost recovery, the threshold could be set low so all pre-application costs are recovered; conversely if an LPA wishes to positively support small business it might set the threshold to cover major applications only. Were Members minded to support the introduction of pre-application charging it would be advisable to consider the thresholds for the various application types in more detail prior to setting finalising these.

7 Financial implications

- 7.1 In addition to the issues above, it is necessary to make members aware of the other factors which would apply were pre-application charging to be introduced.
- 7.2 The introduction of charging would not be cost-neutral and there would be additional administrative costs. These would be associated with the processes of calculating and making the charge, as well as the invoicing, monitoring and handling of the payment. The latter costs would be borne by the existing Finance and administrative staff. These costs would be generated on a 'per-charge' basis and would be less cost-effective for a large number of small charges than for a small number of large charges. Unfortunately the former is more likely to be the pattern in the Broads, where there are few major applications.
- 7.3 It would also be necessary for the Authority to upgrade its insurance to cover professional indemnity if it is charging for pre-application advice as the risks of litigation are increased. It is estimated that this would cost approximately £3,000 per annum.
- 7.4 In determining whether or not to take forward pre-application charging it is useful to make an estimate of how much revenue this might generate per annum. This will be largely dependent on the level (cost) at which the charge is set, the application types to which it is applied and the willingness of applicants and agents to engage with in pre-application discussions if a charge is made. In the absence of details on any of these factors, which must necessarily be the subject of further detailed investigation it is useful to look at the experiences elsewhere as well as the patterns of planning applications in the Broads.
- 7.5 Experience elsewhere suggests that the introduction of pre-application charging results in a drop-off of enquiries by approximately 50%, with the

majority of these being householder and small developers for whom the charge is a disincentive. There has tended to be a corresponding increase in applications submitted with no formal pre-application advice and where there is a need for more amendment and negotiation as part of the determination process. The volume of housebuilders and commercial developers are less likely to be deterred by the cost, but prefer to see this based on a % of the application fee or a Planning Performance Agreement and require strict adherence to the published service standards.

- 7.6 The pattern of applications and pre-application enquiries in the Broads is for a high percentage of smaller and householder applications and a relatively low number of major applications (both minor major and major major). For the years 2008 to 2012 the numbers have been consistent at around 350-400 pre-application enquiries per annum, of which around 100 are householder applications and 150 are 'Do I need Planning permission?' enquiries.
- 7.7 North Norfolk District Council estimate that pre-application charging will generate approximately £10,000 per annum, handling 1,500 planning applications and 200 pre-application enquiries per annum. The Broads Authority deals with approximately 350 applications per annum, so the revenue from pre-application charging is likely to be less, particularly as, unlike North Norfolk District Council, the Broads area has few housing or commercial sites. Given the limited number of major applications in the Broads, it would be likely to be necessary to charge for at least some of the householder and/or 'Do I need Planning Permission?' enquiries in order to generate a useful revenue stream.
- 7.8 The Peak District aim to achieve a revenue of £20,000 per annum from pre-application charging and charge from £200 for a site visit and report on a single residential unit proposal to £500 for a development of 4 – 9 dwellings; their hourly rate is set at £45. No charge is made for householder development enquiries. Given that the total number of new houses constructed in the Broads is usually between 10- 20, which includes replacement dwellings, the Authority is unlikely to be able to achieve this sort of income, even were it to charge for all advice.
- 7.9 It is estimated that the introduction of pre-application charging for non-householder development could generate approximately £5,000 per annum, but this would depend on what schemes came forward in any particular year.

8 Other Approaches to the Pre-Application Service

- 8.1 The key driver for the introduction of pre-application charging is the objective to generate more revenue for the Authority, and to obtain this from the users of this particular service. Any other benefits, such as reduced workloads (at the pre-application stage) and better workload management would be secondary. It would be possible, however, to review and reconfigure the pre-application service to achieve some of these secondary benefits without introducing charging and this is set out below.

- 8.2 Currently the Authority provides a completely free and completely unrestricted pre-application service. In theory this means that landowners (or others) can continue to discuss any proposal ad infinitum, with endless rounds of iteration and reiteration; in practice of course this does not happen and the informal discussion of draft proposals usually reaches a natural conclusion with either the submission of a planning application or the close of negotiations on the non-starter. It is also useful to be mindful that a potential applicant has to resource pre-application discussion, whether it is in the production of drawings and background documents or simply with his/her time, and this tends to curtail discussions once they have ceased to be productive. Evidence from the PAS benchmarking exercise in 2011 indicates that pre-application discussions represent around 10% of the work of the planning department as a whole, i.e. when the whole range of planning work including, for example, application administration processes, policy development and enforcement is included. In terms of actual discussions on actual development proposals, either at pre-application or application stage, the PAS figures indicate that around 40% of discussions are on pre-applications.
- 8.3 A more structured and controlled approach to pre-application advice could include setting a limit on the amount of time spent on a particular case and a finite amount of correspondence. This could vary depending on the type of applicant or application and its complexity, but might be limited, for example, to a single site visit and appraisal letter (or email) for a householder proposal and a single site visit, one office-based meeting and two rounds of correspondence for up to three dwellings or a commercial development. The routine 'Do I need planning permission?' enquiries could remain un-charged. It would be possible to set a threshold for commercial developments above which a charge would be made, or the Authority could consider the introduction of Planning Performance Agreements for significant major developments. This approach would enable the Authority to reduce and better manage the workload associated with pre-application advice whilst retaining some flexibility and without compromising standards. The introduction of a structured framework, which would be published on the website, would moreover give agents and applicants certainty over what they can expect as well as setting out clearly what they are required to provide.

9 Conclusion

- 9.1 The introduction of pre-application charging would result in a further income stream for the Authority, although this is unlikely to exceed £10,000 per annum and is more likely to be in the region of £5,000. There will be additional costs associated with charging for pre-application advice. It would also be likely to reduce the number of enquiries, which would free up time for other work, but the introduction of formal service standards for pre-application enquiries would remove the flexibility that is currently enjoyed in dealing with these on a pro bono basis. Experience from elsewhere and comments from agents indicates that more speculative or poorer quality applications would be likely to be submitted, which is likely to increase the work required further down the process. Overall, there are both advantages and disadvantages to the introduction of pre-application charging.

- 9.2 The introduction of pre-application charging is primarily about revenue generation. In its consideration of the matter, members of the Planning Committee quite rightly observed that before deciding whether or not to take forward charging for pre-application advice the Authority should be clear on what it was seeking to achieve and determine whether pre-application charging would achieve this – and whether the risks associated with it, particularly in terms of reputational risk, were justified.
- 9.3 Given that the introduction of pre-application charging is unlikely to generate a significant sum, particularly after the additional costs are accounted for, and that there are real risks in terms of reputational damage and increasing workloads elsewhere in the planning process it is not considered that the introduction of charging is justified. There are alternative ways to look at managing workloads and achieving efficiencies and this can be achieved without compromising the high standards offered by the planning service. If members support this approach, officers will review the pre-application service and identify what it offers and set out some clear service standards.

Background papers: None

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Broads Plan Objectives: None

Appendices: None