

**Report to:** Cabinet

**Date:** 7 July 2022

**Title:** Revised Planning Pre-Application Charging Schedule

**Report of:** Ian Fitzpatrick, Deputy Chief Executive and Director of Regeneration and Planning

**Cabinet member:** Councillor Stephan Gauntlett, Cabinet Member for Planning, and Infrastructure

**Ward(s):** All wards in Lewes District that lie wholly or partially outside of the South Downs National Park

**Purpose of report:** To seek Cabinet approval to implement an updated Discretionary Fee Setting Regime.

**Decision type:** Non-key

**Officer recommendation(s):** That Cabinet authorise the use of the updated discretionary fee charging schedule.

**Reasons for recommendations:** The proposal to implement a suite of charges to support the staffing resource in connection with delivering the

1. pre-application process,
2. planning Performance Agreement (PPA),
3. Validation Process,
4. CIL Process
5. Local Plan Charges and
6. Additional charges.

**Contact Officer(s):** Name: Leigh Palmer  
Post title: Head of Planning  
E-mail: leigh.palmer@lewes-eastbourne.gov.uk  
Telephone number: 07939 578 235

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## **1 Introduction**

1.1 Section 93 of the Local Government Act 2003 contains powers for Local Authorities to charge for discretionary services including preapplication advice. The power to charge is limited to cost recovery and should not be a profit-making exercise. It is important therefore to keep these fees under review.

- 1.2 Officers withheld moving on this issue during the C19 period as the construction industry in its widest sense does play a significant part on the local, regional, and national economy and any additional financial burden may be impactful during that period. It is considered that as all C19 restrictions have been lifted and the construction industry is finding its feet that it is a prudent time to review this issue.
- 1.3 This report identifies that that there is an ongoing financial burden carried by the Council in terms of the delivery of the pre-application service on broadly a cost recovery basis. Therefore, it is considered that authorisation to invoke the revised charging regime would mean that the developer/applicant would pay for the preapplication process and thereby not rely on the wider taxpayer to cover this service.

There are three areas of 'discretionary charging' in this report and these relate to

- Planning Pre-Application Fees
- Planning Performance Agreement Fees
- Express Validation Service
- Community infrastructure Charges
- Local Plan Charges
- Additional Services

## **2 Proposed Methodology Pre-Application**

- 2.1 Officers have audited the charging schedules for all Councils in Sussex, and this is reported in Appendix 1 to this report.
- 2.2 It is evident from this analysis is that there is little consistency across Sussex and of more relevance in terms of Lewes is recognition where the disparities sit.
- 2.3 Whilst recognising that there is little consistency in the fees charged there are broad similarities in the charging categories. Outlined below are the categories for residential development and these are broadly mirrored for commercial floor space.
- Householder – Domestic Extensions
  - Listed Buildings – Works to Listed Buildings
  - Small residential – 1-5 Dwellings
  - Medium residential – 5-10 Dwellings
  - Major residential – 10 -30 Dwellings
  - Significant Major residential – 150+ dwellings
- 2.4 It is evident from the analysis contained in the appendix that the Council compared to its peers is significantly under charging for the smaller scale residential development, comparable for the mid-range and are high for the larger scale developments.
- 2.5 For 2021 Lewes received 186 pre application submissions across all types and looking specifically at the householder category 107 submissions were received. Using the current fee schedule this would equate to a fee income of  $107 \times £15 = £1605$ .

If the revised payment schedule had been utilised, then

107 X £100n= £ 10,700 (Basic Level)

2.6 It is clear therefore that there is the potential for an increase in fee income which would go some-way to meeting cost recovery.

Category	Basic Fee Desktop response only	Desktop Plus Teams/Phone Call	Full As Desktop Plus with single site visit	Cost per additional Teams Meeting or site visit
Householder	£100	None	None	NA
Other	£200	£260	£350	£90
Minor Development (non-residential)	£600	£750	£850	£90
Single new house	200	£260	£350	£90
Minor Development (Residential) 2 dwellings +£30 per additional dwelling up to 9 units	£500	£650	£750	£90
Major Development Small (10-30 units) 1000 sqm floorspace land 1-3 hectares	£1080	£1300	£2,000	£90
Major Development Small (30-149 units) 3000sqm floorspace land 3-9 hectares	£2160	£2880	£3600	£90
Major Development Small (150+ units) 10000sqm floorspace	£4320	£5760	£7200	£90

land 10 hectares or over				
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### 3 Planning Performance Agreements (PPA)

3.1 The Council have adopted a proforma PPA template and despite being in place for some time it has had limited uptake. Notwithstanding this each one has to be individually negotiated so it would be helpful if the broad parameters of the agreement in terms of charging could be established.

3.2	<b>LPA Advice Service</b>	<b>Fee (inc VAT @20%)</b>
	Arrangement Fee	£1900
	Pre-Application Fee dependant on scale of development	????
	Planning Case Officer (Single Point of contact) at pre application stage	£2705
	Planning Case Officer time in processing to determination stage	£2705
	Design Review Panel Meeting	£2288
	Historic Environment	£60PH
	Affordable Housing Enabling	£60PH
	Building Control	£60PH
	Green Consultancy (trees, biodiversity, landscape impact, open space)	£60PH
	Agricultural Appraisal Assessment	£1500
	Environmental Health (air quality, Contaminated Land, noise, order etc)	£60PH
	<b>East Sussex County Council Services</b>	
	Sustainable Drainage	Bespoke
	Education	Bespoke
	Highways	Bespoke

### 4 Validation Checking Service

4.1 It is considered that there are applicants who would want to prioritise the validation of their application and for the Council to meet this demand there could be a paid for service. The validation checking service fee as with other fees in this report are entirely discretionary and is in addition to the planning fee. It is recommended that the processing of the validation charging service are as follows:

Scale of Application	(Fee Inc VAT @20%)
Validation Checking Service with expedited validation service MAJOR	£250
Validation Checking Service with expedited validation service MINOR	£115
Validation Checking Service with expedited validation service OTHER	£50

4.2 If Cabinet agree to this element of the discretionary fee setting the Council could offer this service and guarantee to expedite validation within THREE working days of receipt for minor, householder, and other applications and FIVE working days for major applications.

## 5 Community Infrastructure Charges (CIL)

5.1 There is existing extensive governance around what can and cannot be charged for under the CIL regime, notwithstanding this there are a number of additional charges that could be required as set out below.

5.2

Additional Service	Fee	Description
CIL Query	£120	Such as confirmation that CIL has been paid on a property, or whether a property has a CIL charge on it.

## 6 Local Plan Development Site Charges

6.1 In the production of a new local plan and or supplementary planning documents there will be the need to explore the development potential of sites for certain uses and scale of development. Any such site should be submitted into the Councils Land Availability Assessment process which is permanently open to receive promoted sites.

If there is a requirement to discuss sites outside/in addition to the Land Availability Assessment process, then the following charges will be invoked.

Site promotion through the Local Plan Making	Meeting costs	Site Visit
Site research and written summary of meeting with actions arising	£600 per hour	£400 (unaccompanied)
Multiple meetings (strategic scale development)	Bespoke charge arranged	

## 7 Additional Services

7.1 This section looks at a number of actions/responses that the Council undertake in performing its daily duties.

Additional Service	Fee inc VAT @ 20%	Description
Confirmation of closure of an enforcement case	Householder £75 All other £170	Use this service if you require confirmation in writing that the enforcement case is closed
Confirmation of compliance with and enforcement notice	£360	Use this service if you require confirmation in writing that an Enforcement Notice served by the Local Planning Authority has been complied with
Confirmation of compliance with Listed Building Consent	£360	<p>Includes a site visit to compare the development against the plans and written confirmation of our findings. Only available within 12 months of completion.</p> <p>Use this service if you have completed a listed building project and you wish to sell the property. If the completion was over 12 months ago, use the 'help resolving conveyancing issues' service detailed below</p>
Confirmation of Compliance with planning conditions	£360 for first condition and £42 for each subsequent	<p>Available for 12 months following the date the planning decision is issued (anything received over the 12 months can be dealt with via the "Help conveyancing issues service"). Includes a full check of the Council's application files to confirm whether the conditions have been discharged, a site visit to confirm whether the details have subsequently been complied with on site in accordance with the discharged details and written confirmation of the outcome.</p> <p>Use this service if you require confirmation that the planning conditions on a site have been complied with</p>
Confirmation that Permitted Development rights have not been removed	Householder £150 All other development £240	Not all properties benefit from permitted development (PD) rights. PD rights may have been removed by condition either in the original permission or any subsequent permissions or due to a property being in a designated area for example covered by an Article 4 Direction

Confirmation on permitted use class	£150	Use this service to find the current permitted use class of a property.
Confirmation of any planning restrictions	£240	This service should be used to find out if there are planning restriction on a property for example occupancy/use restrictions
Conformation of designated area (conservation)	£60	In response to customer requests we can provide confirmation of designated areas– re: Conservation Area/AONB/TPO. A list of development constraints will be produced
Help resolving conveyancing issues	£600	Includes a full check of the planning and planning enforcement history, a site visit to view the development, 1 hour meeting if it is deemed necessary by the case officer, any necessary in house consultations, written confirmation of the outcome, a formal decision as to whether enforcement action will be taken and/ or confirmation of steps required to remedy the situation, if any. Response will be provided in 10 working days in most cases (can be extended by agreement if further consultation or investigation is required).  Use this quick service if you are buying or selling a property/land and a planning query arises through the conveyancing process. For example, unauthorised works have been discovered or planning conditions have not been complied with.
Confirmation of material start of a scheme/development	£60	Material starts can only be confirmed by submitting a Certificate of Lawfulness however we also offer an informal response from a case officer on what constitutes a material start i.e. how much work needs to be carried out before submitting the certificate?
Confirmation of compliance with S106 obligations	£240 Per Agreement If site visit is required and additional £410 would be charged	This is a desktop check of the Council's records. If the clause in the agreement requires something to be undertaken on site it would be necessary to undertake a site visit

		<p>for which there will be an additional charge.</p> <p>Use this service if you require confirmation that the clauses of the agreement have been complied with or if you have a query regarding a specific site section 106 agreement.</p>
<p>S106 eligibility Assessment for affordable and self-build and occupancy assessments (ownership transfers-changes to occupancy and First Homes Change of Tenancy)</p>	<p>£480</p>	<p>Affordable or local needs homes subject to a Section 106 agreement require the Council's consent when ownership is transferred or where the Council otherwise agree to a change in occupancy (i.e. when permission is given for a temporary letting). The fee covers the Council's eligibility assessment process and issuing of required consents for the purchasing household.</p> <p>Proposals for self-build affordable homes where a Section 106 agreement is required to make the proposal acceptable in planning terms. The fee covers the Council's assessment of the proposed occupiers' eligibility in line with the heads of terms set out in the draft agreement</p>
<p>Deed of variation administration fee</p>	<p>£480 This is in addition to any legal charges that the Council may need to levy</p>	<p>Section 106 Deeds of Modifications or Deeds of Revocation with a new Planning Obligation by Agreement are sometimes required to bring an agreement up to date with the Council of Mortgage Lenders lending criteria. The CML cover 95% of UK lenders. The fee covers the administration of this technical change and is in addition to the legal fees that the Council charges.</p> <p>Section 106. Deeds of Discharge are required when a Section 106 agreement no longer serves a useful planning purpose in the cases of shared ownership or shared equity staircasing to 100% ownership and acquisition of the freehold. The fee covers the administration of implementing this</p>



		deed and is in addition to the legal fees that the Council charges
Copy of S106 Agreement	£120	Retrieving record and passing on a digital copy
Copy of Tree Preservation Order	£120	Retrieving record and passing on a digital copy
Planning History Requests (simple list with no interpretation)	£120	Retrieving planning history list and providing a digital copy
Request to check the need for planning permission, listed building consent	£240 for householder requests £360 for all other type of request	Email confirmation for the need for Planning Permission

## **8 Corporate plan and council policies**

- 8.1 The adoption of these discretionary fees would enable to the Council to more fully engage with the aspirations of the Council's Corporate Plan in terms 'Creation of sustainable community wealth' and 'Building homes that people can afford to live in' as well as creating and positively supporting a good sense of place.

## **9 Business case and alternative option(s) considered**

- 9.1 It is considered that these discretionary fees would go some way to addressing the financial burden that the Council incurs in meeting these demands. The fees are considered to meaningful land realistic based on a Sussex wide comparison and based on an assessment of the hourly rate expended.
- 9.2 The Pre application charging does have incremental service charges these as with all charges referred to here are entirely discretionary meaning that the applicant development is not mandated to engage in this element of the service.

## **10 Financial appraisal**

- 10.1 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 addresses the requirements for a more corporate approach to the issue of fees and charges, providing a clear framework within which to conduct annual or other reviews of fees and charges.
- 10.2 Fundamentally, the aim is to increase the proportion of income contributed by users of services where appropriate, rather than the cost being met from the general Council Taxpayers. The application of this charging regime falls within the existing staffing establishment and the increase in this fee income would help to support the existing staffing budget.

## **11 Legal implications**

- 11.1 The charging power under section 93 Local Government Act 2003 provides that a relevant authority may charge for a discretionary service if the recipient of the service has agreed to its provision. The section 93 power works on the basis that, if it wishes, a local authority can charge for a discretionary service, but individuals cannot be required to pay for a service they do not wish to receive or use. The power does not apply where there is a power to charge for a particular service elsewhere in other legislation.

Legal Implications Provided 10.05.22 by JCS IKEN 11084

## **12 Risk management implications**

- 12.1 The Creation of this payment regime may have the potential to deter developers from investing into the area, although the for the reasons outlined above this is unlikely to be a consequence of this initiative. In addition, the charging regime is to be reviewed on an annual basis and if it was deemed to be an impediment to inward investment then the regime could be dropped or temporarily paused.

## **13 Equality analysis**

- 13.1 As this regime falls to be considered only if the applicant/developer engages with the process after the resolution to grant planning permission where the merits of a planning case have been debated it is considered that this imposition of this payment regime would disadvantage any person/body/organisation.

## **14 Commencement**

It is recommended that the proposed new charging regime should commence at the first opportunity post Cabinet approval and that they should reviewed annually in line with inflation.

## **15 Appendices**

- Appendix 1 – Charging Schedules for all Councils in Sussex