

REPORT TO: Cabinet

MEETING DATE: 14 March 2023

BY: Executive Director for Place

SUBJECT: Discretionary Charging for the Planning Service

1 PURPOSE

- 1.1 To inform Cabinet of The Town and Country Planning (Fees for Applications (Scotland) Regulations 2022 that came into force on 1 April 2022 and to seek approval for new discretionary fees to be applied for services, and surcharges to be applied to retrospective planning applications within the Planning Service of East Lothian Council.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Cabinet approve:
- i) the introduction from the 01 April 2023 of discretionary charges for (i) providing pre-application services and written advice, (ii) considering a request to vary a planning permission, as a non-material variation, and (iii) considering a request for written confirmation of compliance/discharge of conditions, all as set out in Appendix 1; and
 - ii) the introduction from the 01 April 2023 of a surcharge of 25% of the planning application fee to be imposed on all planning applications made after the carrying out of part or all of the development, as set out in Appendix 1.

3 BACKGROUND

- 3.1 The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022 (the Regulations) set out the level of fees required as part of the submission of planning applications and other associated applications. These Regulations replace the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004. They also introduce some additional categories of payment enabling Planning Authorities to charge discretionary fees for some services, and to apply a surcharge for retrospective applications.

- 3.2 The increase in planning fees came into effect on 1 April 2022 and are welcomed in supporting a well-resourced and efficient planning service.
- 3.3 The Regulations for the first time include new sections on discretion to charge fees, waiving or reducing of fees, and surcharges on retrospective planning applications. Since the Regulations were published, the majority of planning authorities across Scotland have been considering their position in terms of charging and we have compared our charging programme to that already introduced in some areas. The Regulations requires the Council, as Planning Authority, to set out what the charge will be for these services, when and by how much fees will be reduced and clarify the level of surcharges applied. It is proposed that the Planning Service introduce fees for dealing with pre-application enquiries, non-material variations, compliance with conditions and will also apply a surcharge to the fees for retrospective applications.

Pre-application enquiries

- 3.4 The provision of a pre-application enquiry advice is a valuable service allowing planners to identify the appropriate supporting information to front load a planning application and assist in reducing determination timescales. The fees proposed for pre-application enquiry charging and the level of service provided is set out in Appendix 1. This also includes certain exceptions to pre-application charging which includes planning applications made by disabled people for alterations to their principal residence, applications made by community councils, and applications made by not for profit clubs, or other not for profit sporting or recreational organisations, relating to playing fields for their own use.
- 3.5 It is recommended that the charging scale in Appendix 1, which has been developed in accordance with the Regulations, is adopted.

Non-material Variations

- 3.6 The Regulations provide that an authority may introduce a charge of £200 for each request for a non-material variation to a planning permission under Section 64 of the Town and Country Planning (Scotland) Act 1997. It is recommended that a charge of £200 is applied for requests for non-material variations as set in the Regulations.

Written confirmation of compliance with condition and discharge of a Condition

- 3.7 The Regulations state that an authority may introduce a fee of £100 to provide written confirmation that a condition or conditions within the same application have been complied with. It is therefore recommended that this fee of £100 is levied for requests to provide written confirmation that a condition has been complied with, as set in the Regulations. The fee would apply to each request made and can cover more than one planning

condition on the same planning consent. Each separate request will attract a new fee.

Retrospective applications Surcharges

- 3.8 The Regulations allow the introduction of a surcharge for applications for planning permission where the application relates to development carried out without permission. This allows for a surcharge of up to 25% over and above the normal fee that would have been required for the development concerned.
- 3.9 It is recommended that a surcharge of 25% is applied to the fee for such applications submitted. This will be applied where the development has been completed and also where it has been started without the appropriate planning permission, but is not yet complete. It is hoped that the introduction of a surcharge will reduce the number of unauthorised developments that are carried out without the necessary planning permission.
- 3.10 The above approach is supported by the established ELC Charging Policy which is predicated on the Best Value principles of:
- *The users of a service should pay for the delivery of the service, unless it is fully universally accessed.*
 - *A service provided to commercial organisations should operate on a cost recovery basis as a minimum.*
 - *A service that is not universally accessed by all residents or delivered to support residents facing disadvantage, should not be subsidised through local and general tax contributions.*
- 3.11 Therefore services such as providing pre-application services and written advice, non-material variations and considering a request for written confirmation of compliance/discharge of conditions should not be paid for out of general service budgets.
- 3.12 The Planning Service spends a considerable amount of time processing pre-application enquiries, non-material variations and requests for written confirmation of compliance/discharge of conditions at no additional charge. Considering the financial context and current demand for this service there is a need to take a commercial approach for introducing service charges for pre-application enquiries, non-material variations and requests for written confirmation of compliance/discharge of conditions.
- 3.13 If approved, the Council website will be updated to include information on discretionary charging and customer guidance. Discretionary charging guidance documents will be developed and made available before implementation of these charges. A payment process will be set up through the ELC customer portal which will include how to pay for the

service and invoicing for the applicant. The process will also generate a unique reference for Planning and the applicant, and will allow the applicant to attach drawings, specifications and other information relevant to their required service.

4 POLICY IMPLICATIONS

- 4.1 The proposed approach to Discretionary Charging for the Planning Service recommended above follows the guidance in East Lothian Council's Charging Policy.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – The services outlined in the report above are not charged for, and the proposed discretionary charges will assist with the cost of running the Planning Service.
- 6.2 Personnel – It is considered that at present there is sufficient capacity within the Planning Service to deal with the additional workload generated by the introduction of the recommended discretionary charges. This will be kept under review.
- 6.3 Other - The Planning Service will keep full records of pre-application enquiries processed, non-material variations submissions and requests for written confirmation of compliance/discharge of conditions processed and income generated. Charges will be kept under yearly review as part of the annual budget setting process.

7 BACKGROUND PAPERS

- 7.1 Planning Circular 2/2022 The Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022:
[Planning Circular 2/2022 The Town and Country Planning \(Fees for Applications\) \(Scotland\) Regulations 2022 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/planning-circular-2-2022-the-town-and-country-planning-fees-for-applications-scotland-regulations-2022/pages/1-1-introduction.aspx)

Appendix 1 – pre-application enquiry fees (attached to this document).

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APPENDIX 1

PRE-APPLICATION ENQUIRY FEES

Category	Charge	Standard Service	Optional Additional Services
Householder developments (including change of use of land for domestic purposes only) / advertising and signage	£90 + VAT (£108)	<ul style="list-style-type: none"> • Desktop review by case officer based solely on the information submitted by the enquirer • Advice letter intended to be provided within 20 working days of validation 	None
Local developments (small) including Section 42 applications <ul style="list-style-type: none"> • Up to 10 residential units • Up to 999 sq m. class 4/5/6/other/mixed space 	50% of the cost of the planning application fee, subject to a maximum of £600 + VAT (£720)	<ul style="list-style-type: none"> • Unaccompanied site visit by case officer within 14 days of validation • Review by case officer based solely on the information submitted by the enquirer • Advice letter intended to be provided within 20 working days of unaccompanied site visit 	Maximum 1 hour meeting with case officer either on site/virtual/in person at the Council's discretion - £120 + VAT (£144) for each meeting – at the request of the enquirer and with the agreement of the case officer specialist service advice (i.e. Road Services attendance) – additional £100 + VAT (£120) for each service
Local developments (medium) including Section 42 applications <ul style="list-style-type: none"> • 11 – 49 residential units • 1000 sq.m. to 9999 sq.m. class 4/5/6 space • 1000 sq.m. to 4999 sq.m other/mixed space • Development proposals where the fee is calculated by site area 	50% of the cost of the planning application fee, subject to a maximum of £1200 + VAT (£1440)	<ul style="list-style-type: none"> • Accompanied site visit by case officer if requested (max 1 hour), unaccompanied if not, within 14 days of validation • Review by case officer of the information submitted by the enquirer • Advice letter intended to be provided within 20 working days of site visit 	Maximum 1 hour meeting with case officer either virtual/in person at the Council's discretion - £120 + VAT (£144) for each meeting – at the request of the enquirer and with the agreement of the case officer specialist service advice (i.e. Road Services attendance) – additional £100 +

			VAT (£120) for each service
<p>Major/national development including Section 42 applications</p> <ul style="list-style-type: none"> • 50+ residential units • 10,000 sq.m,+ class 4/5/6 space • 5000 sq.m+ other/mixed space • 2 hectares+ site size • Development proposals dictated by site area • Other criteria per The Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 	£900 + VAT (£1080)	<ul style="list-style-type: none"> • Maximum 2 hour discussion meeting with case officer, Road Services and other relevant Council officers at the Council's discretion – verbal advice only, no advice letter provided 	N/A
	50% of the cost of the planning application fee, subject to a maximum of £3900 + VAT (£4680)	<ul style="list-style-type: none"> • Maximum 1 hour discussion meeting with case officer, Road Services and other relevant Council officers at the Council's discretion, date to be agreed within 10 working days • Unaccompanied site visit by case officer • Maximum 1 hour follow up meeting with case officer, Road Services and other relevant Council officers at the Council's discretion • Advice letter intended to be provided within 15 working days of follow up meeting 	<ul style="list-style-type: none"> • Maximum 1 hour meeting with case officer, Road Services and other relevant Council officers at the Council's discretion either virtual/in person at the Council's discretion - £300 + VAT (£360) for each meeting • Above meeting can include team manager/service manager, in which case - £500 + VAT (£600)
Works to listed buildings	£90 + VAT (£108)	<ul style="list-style-type: none"> • Desktop review by case officer based solely on the information submitted by the enquirer • Advice letter intended to be provided within 20 working days of validation 	<ul style="list-style-type: none"> • Site visit by case officer - £120 + VAT (£144)

Exemptions to pre-application charging:

Pre-application enquiries to alter or extend an existing dwellinghouse, or to carry out operations within the curtilage of an existing dwellinghouse, are exempt from payment of a fee if the planning authority is satisfied that the proposed development is intended solely to improve access, safety, health or comfort for a disabled person who is living in the house as their principal residence.

Community Councils - Pre-application enquiries from a community council are exempt from payment of a fee if the planning authority is satisfied that the proposed development is intended solely for community benefit.

Playing fields – Pre-application enquiries by not for profit clubs, or other not for profit sporting or recreational organisations, relating to playing fields for their own use are exempt from payment of a fee. This exemption applies to applications including for the change of use to use as playing fields together with associated operations (such as earth-moving, draining or levelling) but does not extend to the erection of buildings containing floor space. Playing fields would include football, hockey or cricket pitches, but not squash courts, tennis courts or golf courses.

NON-MATERIAL VARIATIONS FEE:

A fee of £200 for each request for a non-material variation to a planning permission under Section 64 of the Town and Country Planning (Scotland) Act 1997.

CONDITION COMPLIANCE FEE (excludes AMSC applications relating to planning permission in principle):

A fee of £100 to provide written confirmation that a condition has been complied with. An applicant may wish to seek written confirmation of compliance with more than one condition pertaining to the same application within a submitted request, which will result in a single fee of £100 being payable. Each subsequent written confirmation request pertaining to the same application will attract a further fee of £100.

RETROSPECTIVE APPLICATIONS SURCHARGE:

A surcharge will be applied to applications for planning permission, where the application relates to development carried out without permission (Section 33 of the Town and Country Planning (Scotland) Act 1997). The surcharge will be applied both where development is complete or where development has commenced but has not yet been completed. The fee shall be calculated for the development in accordance with the Regulations and then a surcharge of 25% will be added in addition.