

REPORT TO: Cabinet

MEETING DATE: 12 March 2024

BY: Executive Director for Place

SUBJECT: Changes to the Discretionary Charging for the Planning Service

1 PURPOSE

- 1.1 To seek approval to alter the discretionary fees to be applied for services within the Planning Service of East Lothian Council that were approved by Cabinet at their meeting of 14 March 2023 and that were implemented on 1 April 2023.

2 RECOMMENDATIONS

- 2.1 It is recommended that the Cabinet approve:
- i) the introduction from the 1 April 2024 of the proposed changes to discretionary charges for providing pre-application services and written advice as set out in Appendix 2; and
 - ii) the introduction from the 1 April 2024 of a priority condition compliance service for major renewable energy related developments as set out in Appendix 2.

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. They also introduced some additional categories of payment enabling Planning Authorities to charge discretionary fees for some services, to reduce or waive fees in certain cases and to apply a surcharge for retrospective applications.
- 3.2 On 1 April 2023 the Planning Service introduced 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. It also introduced 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. This charging schedule is set out in Appendix 1.

- 3.3 The Planning Service has reviewed the way in which it provides pre-application services and written advice with a view to improving the quality of the service received by applicants, reflecting on customer feedback and the experiences of the service since implementation of the existing discretionary charges service on 1 April 2023. This review identified that whilst the pre-application service has generally been received well by customers, the amount of officer time used to provide them has been more than initially envisaged. This has meant the intended full cost recovery has not been realised.
- 3.4 This is particularly the case for pre-application services and written advice as well as requests for written confirmation of compliance/discharge of conditions for energy related development proposals in East Lothian.

Pre-application enquiries

- 3.5 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. It is proposed to change the pre-application enquiry charging structure to maintain the level of customer service, standardise the offer to customers, and ensure its long-term sustainability.
- 3.6 The charging structure for the pre-application enquiry service is based on the complexity and scale of development proposed, with fees increasing for larger developments that result in more complex enquiries to reflect the amount of work that goes into reviewing and responding to them. This ensures the charging structure aligns to cost recovery principles.
- 3.7 The revised fees proposed for pre-application enquiry charging and the level of service provided is set out in Appendix 2. This includes a new category for major renewable energy related developments including windfarms, solar farms, onshore infrastructure for both onshore and offshore wind and Battery Energy Storage Systems to reflect the challenges the Planning Service faces in seeking to process such a high number of energy related development proposals in East Lothian. It also includes an additional exception to pre-application charging for pre-application enquiries for the installation of renewable energy technologies and/or energy efficiency measures.
- 3.8 It is recommended that the revised charging scale in Appendix 2, which has been developed in accordance with the Regulations, is adopted.

Priority Condition Compliance Service - Major renewable energy related developments only

- 3.9 It is proposed to introduce a priority condition compliance service for major renewable energy related developments.
- 3.10 The priority condition compliance service is for major renewable energy related developments only including windfarms, solar farms, onshore infrastructure for both onshore and offshore wind and Battery Energy Storage Systems.
- 3.11 This priority service is not a statutory requirement and applicants may submit applications for condition compliance without using this priority service. The fees proposed for this service and the timescales for a response are set out in Appendix 2.
- 3.12 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.*
- 3.13 Therefore, services such as providing pre-application services and written advice and considering a priority request for written confirmation of compliance/discharge of conditions should not be paid for out of general service budgets.
- 3.14 The Planning Service spends a considerable amount of time processing pre-application enquiries and requests for written confirmation of compliance/discharge of conditions. Considering the financial context and current demand for this service there is a need to take a commercial approach for altering service charges for pre-application enquiries and introducing a priority condition compliance service for major renewable energy related developments.
- 3.15 If approved, the Council website will be updated to include information on the revised schedule of discretionary charging and updated customer guidance. Discretionary charging guidance documents will be altered and made available before implementation of these changes. A payment process will continue to be in place through the ELC customer portal for payment 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.

- 3.16 The Planning Service undertook consultation with prospective energy developers with regard to the proposed new pre-application advice category for major renewable energy related developments and priority condition compliance service for major renewable energy related developments. The feedback received was that prospective energy developers were in principle generally supportive of the introduction of these services, advising fees received should be used to fund extra resource within the Planning Service to deal with future pre-application and condition compliance requests.

4 POLICY IMPLICATIONS

- 4.1 The proposed approach to revisions to the 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 proposed revision to the discretionary charges will contribute to the cost of running the Planning Service.
- 6.2 Personnel – The Planning Service will undertake a review of income generated from the proposed new pre-application advice category for major renewable energy related developments and priority condition compliance service for major renewable energy related developments to support a business case to ring fence resource raised to potentially recruit additional staff.
- 6.3 Other - The Planning Service will keep full records of pre-application enquiries processed and priority condition compliance service requests 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-introduction.aspx)

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| DATE | 26/02/2024 |

APPENDIX 1

PRE-APPLICATION ENQUIRY EXISTING FEES INTRODUCED ON 1 APRIL 2023:

| 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 aimed 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 999m² 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 aimed 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 • 1000m² to 9999m² class 4/5/6 space • 1000m² to 4999m² 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 aimed 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 + |

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| | | | VAT (£120) for each service |
| <p>Major/national development including Section 42 applications</p> <ul style="list-style-type: none"> • 50+ residential units • 10,000m²+ class 4/5/6 space • 5000m²+ 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 £3500 + VAT (£4200) | <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 aimed 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 aimed to be provided within 20 working days of validation | <ul style="list-style-type: none"> • Site visit by case officer - £120 + VAT (£144) |

APPENDIX 2 - PRE-APPLICATION ENQUIRY PROPOSED 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) Two or more dwellings - £180 + VAT (£216) | <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 £1000 + VAT (£1200) | <ul style="list-style-type: none"> • Unaccompanied site visit by case officer within 14 days of validation at the Council's discretion • 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 - £200 + VAT (£240) 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 £2000 + VAT (£2400) | <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 - £200 + VAT (£240) 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 |

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| <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 | <p>£1200 + VAT (£1440)</p> | <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 | <p>N/A</p> |
| | <p>50% of the cost of the planning application fee, subject to a maximum of £8000 + VAT (£9600)</p> | <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) |
| <p>Major renewable energy related developments - energy, transmission and infrastructure developments including</p> <ul style="list-style-type: none"> • Windfarms • Solar Farms • Onshore infrastructure for both onshore and offshore wind • Battery Energy Storage Systems | <p>£10000 + VAT (£12000)</p> | <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, date to be agreed within 10 working days • Accompanied site visit by case officer | <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 - £500 + VAT (£600) for each meeting • Above meeting can include team |

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| <p>This category includes proposals for planning permission in principle, planning permission, approval of matters specified in conditions, Section 42 applications and Section 36 and Section 37 consents under the Electricity Act 1989</p> | | <ul style="list-style-type: none"> • Maximum 2 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 | <p>manager/service manager, in which case - £700 + VAT (£840)</p> |
| <p>Works to listed buildings</p> | <p>£90 + VAT (£108)</p> | <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.

Pre-application enquiries for the installation of renewable energy technologies and/or energy efficiency measures – it should be noted that this exemption does not apply to pre-application enquiries where the renewable energy technologies and/or energy efficiency measures only form a part of a development proposal.

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.

East Lothian Council - Pre-application enquiries from East Lothian Council are exempt from payment of a fee.

East Lothian Integration Joint Board - Pre-application enquiries from East Lothian Integration Joint Board are exempt from payment of a fee as the responsible body for health and social care services.

PRIORITY CONDITION COMPLIANCE SERVICE - MAJOR RENEWABLE ENERGY RELATED DEVELOPMENTS ONLY:

The priority condition compliance service is for major renewable energy related developments only - energy, transmission and infrastructure developments including windfarms, solar farms, onshore infrastructure for offshore wind and Battery Energy Storage Systems and provides an enhanced service for applicants of such developments.

This priority service is not a statutory requirement and applicants may submit applications for condition compliance without using the service.

A fee of £8000 to provide written confirmation that a condition has been complied with for the first request. An applicant may wish to seek written confirmation of compliance with more than one condition pertaining to the same application within the submitted request, which will result in a single fee of £8000 being payable. Each subsequent written confirmation request pertaining to the same application will attract a further fee of £4000.

For this priority service it is intended to provide a response within 6 weeks from the validation date of a condition compliance request application.