

**RESPONSE TO CONSULTATION ON PLANNING PERFORMANCE AND FEES  
2019**

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**1.0 EXECUTIVE SUMMARY**

- 1.1 The main purpose of this report is to provide information on the Scottish Government's "Consultation on Planning Performance and Fees – 2019", identify the potential implications for the Council, and set out the intended response.
- 1.2 The consultation paper proposes "a new approach to how performance of planning authorities is measured, the role of the planning improvement co-ordinator, a new structure for the planning fee regime along with the introduction of additional services which can be charged for and the ability to waive planning fees in certain circumstances".
- 1.3 The consultation paper is split into four key elements, Planning Performance, Planning Fees, Discretionary Charging, and Other Issues. Detailed commentary and analysis on each of these measures, and details of the proposed Council response to each consultation question is set out against each section of the consultation paper attached as Appendix A to this report.
- 1.4 Based upon analysis of fee income/application type over the past 5 year period it is estimated that the proposals within the consultation paper would deliver additional planning fee income of £118.5k per annum on average. This would represent an 11% uplift on current planning fee income and would be in alignment with expectations set out for delivery of £125k savings from the Development Management service budget for 2020/21 which were based upon review of statutory planning fees. Dependent on the uptake of measures on conservation areas, listed buildings and prior notifications, the estimated overall benefit of the proposals could rise to an average of £165.5k additional planning fee income per annum which would be representative of a 15.5% increase in current receipts.
- 1.5 Scottish Government support for the extension of discretionary charging to include non-material variations and discharge of planning conditions, and the imposition of a 100% surcharge for retrospective applications could potentially provide opportunities for further additional income of around £30k per annum, which in a best case scenario, would bring the consultation proposals into general alignment with the position previously established by the Council which

was to lobby for the equivalent uplift of 17.2% to current planning fee income in any upcoming review of statutory planning fees.

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**2.0 INTRODUCTION / BACKGROUND**

- 2.1 The Scottish Government published a consultation on their proposals to revise the planning performance and fees regimes on 18<sup>th</sup> December 2019 seeking feedback by 14 February 2020. The purpose of this report is to consider the potential implications for the Council that these proposals will give rise to and set out details of the Council's response to the consultation paper.
- 2.2 The consultation paper proposes "a new approach to how performance of planning authorities is measured, the role of the planning improvement co-ordinator, a new structure for the planning fee regime along with the introduction of additional services which can be charged for and the ability to waive planning fees in certain circumstances".
- 2.3 The consultation is informed by a significant body of information including HOPS research projects which the Council has inputted to such as Costing the Planning Service February 2019, and Increases in Major Fees February 2019. Details of the relevant research publications are provided within the Introduction section on page 4 of the consultation paper.
- 2.4 The consultation paper identifies that "the resourcing of the planning system has been a recurring issue since the financial downturn" and that the Scottish Government "have worked with authorities and others since then to understand the issues involved and encouraged alternative ways of working such as shared services and sharing and learning from each other".
- 2.5 The paper also identifies that "the Independent Panel appointed to review the planning system in 2015 considered both performance and fees during their review and made the following recommendations:
- Timescales remain critical in providing certainty and should remain part of performance reporting framework;
  - Alternative mechanisms to support improvement should be found;
  - The penalty clause should be removed;
  - A fuller study of combined consents should be undertaken;
  - Planning fees for major applications should be increased substantially; and
  - Scope for further discretionary charging should be considered further."

- 2.6 The paper highlights that the Scottish Government have already taken substantial steps in response to the recommendations of the Independent Panel including increasing maximum fees on major applications, and making provision within the Planning (Scotland) Act 2019 to extend the range of services which authorities can charge for.
- 2.7 The consultation paper also seeks to clarify that the purpose of the consultation is to seek views on how planning fees cover the cost of determining an application and advises that whilst the Planning (Scotland) Act 2019 will place additional duties on planning authorities it is not the role of planning fees to cover these new duties unless they relate specifically to the determination of an application. The paper also notes that at present planning fees only account for on average 63% of the cost of determining an application and sets out that the Scottish Government expect that closing that funding gap should free up resources for the remainder of the planning service.
- 2.8 A previous paper put forward by the Head of Planning in June 2019 on the Costing the Planning Service in Scotland research project identified that the Development Management Service was operating at that time with a 17.2% shortfall in statutory planning fee income from full cost recovery. DMT, SMT and PPSL determined that it would be appropriate to lobby for increased planning fees which addressed this deficit and to seek to remove/reduce 'zero fee' application types through introduction of charges and/or appropriate amendment of regulations to reduce demand.
- 2.9 An extended period for response to the Scottish Government was sought in order that Member's views could be taken account of in this consultation. The Scottish Government has responded advising that a draft response can be submitted in advance of the committee. It was highlighted that due to tight timescales, it may be that a late response would not be included in the official analysis report, however, it was confirmed that all responses would be taken into consideration to help inform the way forward. Given the short timescale for response to this important consultation, officers will submit the response agreed by DMT and SMT to the Scottish Government by the deadline of the 14<sup>th</sup> February 2020 with a comment noting that the timing of the consultation period has precluded the opportunity for Member involvement in the drafting of the Council's response. Any subsequent comments emerging from the committee will be forwarded on to the Scottish Government for consideration as an addendum.

### **3.0 RECOMMENDATIONS**

- 3.1 It is recommended that the PPSL committee endorse the response to the consultation which was submitted on 14 February 2020 as per the commentary attached to Appendix A. This position sets out general support for the proposals on planning performance reporting, and seeks to maximise the potential financial benefits to the Council from planning fee reform.

## 4.0 DETAIL

4.1 The consultation paper is split into four key elements, Planning Performance, Planning Fees, Discretionary Charging, and Other Issues. Detailed commentary and analysis on each of these measures, and details of the proposed Council response to each consultation question is set out against each section of the consultation paper attached as Appendix A to this report.

## 4.2 PLANNING PERFORMANCE

The provisions of the consultation relating to planning performance seek:

- i) To propose a vision statement setting out that *“the Planning System must provide certainty, consistency and clarity to all those who participate in it, through effective engagement, policy, decision making and communication”*. It is considered that this vision statement is very much in alignment with the Council’s current expectations of its Planning Service and its Customer Service Excellence (CSE) accreditation, and accordingly should be supported.
- ii) To align annual Planning Performance Framework (PPF) reports more closely with the outcomes of the National Planning Framework document and to provide a greater focus on qualitative measures that demonstrate wider customer satisfaction levels and stakeholder views with the performance of planning authorities. These proposals appear to set out an intention to evolve rather than replace the format of existing PPF submissions; proposals to align local planning authority performance against national planning outcomes appears sensible, and the requirement to demonstrate customer satisfaction across all parties who engage with the planning system is very much in keeping with CSE.
- iii) To propose that the content of PPF reports will be structured to cover the following areas: Statistics, Customer Service, Engagement, Case Studies, Outcomes, Improvement, and Resources.
- iv) To seek views on the role and responsibilities of the National Planning Improvement Co-ordinator who will be appointed by Scottish Ministers to monitor and provide advice to planning authorities, and others involved in the planning process, on performance.

## 4.3 STATUTORY PLANNING FEES

The consultation sets out proposals for a new structure of planning fees and also seeks views on other aspects of the planning system where there is prospect for non-statutory charges to be applied.

4.4 Highlights of the proposals for review of statutory fees include:

- i) Fees for new housing development to be uplifted by 25% with the fee maximum increased to £150k.

- ii) Creation of a new fee category for householder development charging proposals for minor alterations, outbuildings, fences etc. at a lower rate than floorspace extensions to existing dwellings.
- iii) Creation of new fee classes for retail and business development. The business development class includes provision for a reduction of current fees by up to 20% for small scale development of up to 10,000sqm which is intended to encourage expansion for small/medium businesses. Fees have been uplifted by up to 26% for larger developments. It is however noted that some clarification of the consultation proposals will be required in respect of both of these classifications of development and, if they are not all encompassing, whether an additional fee class for 'other' buildings is necessary.
- iv) Reduction in current fees by 8% for agricultural buildings of up to 1,565sqm, fees uplifted by up to 25% for larger buildings.
- v) Revised fee structure for small scale wind energy development of up to 3 turbines under 50m and an increased maximum fee of £150k for larger scale wind energy development.
- vi) Modest uplift of fees for marine fin-fish aquaculture and maximum fee uplifted to £150k. It is however suggested that the Council note in its response that the technical complexity of this workload is still not adequately recognised and request the Scottish Government review this fee category.
- vii) Introduction of a new category for shellfish farming to remove the seabed component from fee calculations – this previously added significant cost to small scale developments that required a large seabed area for moorings such as mussel longlines.
- viii) Introduction of a new category that removes the flat fee for changes of use of land and replaces this with a site area based calculation. Whilst this is generally to be welcomed it is noted that fees calculated in this manner may be cost prohibitive for uses which require extensive land areas but have little or no commercial value to recoup such costs. It is therefore recommended that the Council seek clarification on whether an additional fee category for developments such as playing fields, amenity spaces and burial grounds may be appropriate.

4.5 The consultation sets out a proposal for a 50% reduction of householder fees within conservation areas in recognition that permitted development rights are restricted within these designations. It is noted with some concern that such applications make up between 6-8% of application caseload within Argyll and Bute and could give rise to reduction in the benefit of other consultation proposals by around £12k per annum. It is recommended that the Council object to this proposal and seek to highlight that the processing of householder developments within conservation areas is generally more challenging and

resource intensive than those outwith the historic built environment, and that proper resourcing is essential to ensure positive management of change in the historic built environment which will not only provide certainty of outcome to property owners but in many cases also have a positive impact upon their property value.

- 4.6 The consultation seeks views on whether fees should be introduced for the handling of listed building consent (LBC) applications. These are currently zero fee submissions but, on average, give rise to similar costs to the handling of householder planning applications. Argyll and Bute Council receive 135 applications for listed buildings consent on average per year and it is estimated that the cost of processing these is around £32k. In the Council's previous response to the Cost of Planning in Scotland research project concern was raised in relation to the impact of zero fee applications and an intention to lobby the Scottish Government to address this position was agreed. It is recommended that the Council support the introduction of fees for listed building consent noting that even a modest fee of £200 per application would generate around £27k income. In responding to the consultation it is also recommended that the Council advise that the Scottish Government give consideration to updating primary legislation to enable streamlining of consent processes as LBC is very often progressed alongside a planning application and there is considered to be good potential for aligning this as a single consent process which would reduce costs for both customers and planning authorities.
- 4.7 The consultation seeks views on uplift of fees for hazardous substances consent; whilst there are very few applications submitted within Argyll and Bute it is noted that this fee category has not been revised for 25 years. It is accordingly suggested that the fees be adjusted for inflation during this period – this would indicate that an increase of 95-100% would be appropriate.
- 4.8 The proposals set out to raise fees for telecommunication prior notifications by 66% and others by 28%. There is no clarification provided however on whether the proposals would remove existing zero fee categories for forestry tracks and electricity works. It is estimated that removal of zero fees could provide additional fee income of around £8k per annum from prior notifications. As noted in 4.6 above, the Council has previously agreed to lobby for removal/reduction of zero fee applications and it is accordingly recommended that this issue again be highlighted in the consultation response.
- 4.9 The potential impact of each of the proposals as set out in the consultation paper is set out in the table below. Benefits relating to the introduction of fees for listed building consent and removal of zero fee prior notifications are identified as additional components in the calculation of potential total benefits as the consultation paper does not set out a proposed fee value for LBC, or confirm that zero fee submissions will definitely be removed.

<b>Fee Category</b>	<b>Estimated Change to Current Fee Income Per Annum (based on previous 5 year period)</b>
1 Residential Development	+£60k
2 – 5 Extensions and Alterations to Existing Dwellings	+£15k
6 Retail and Leisure	+£2k
7 Business and Commercial	+£5k
8 Agricultural Buildings	+/- £1k
9 Glasshouses	-
10 Polytunnels	-
11 Windfarms	+£10k
12 Hydro Schemes	+£3k
13 Other Energy Generation	+£1k
14 Exploratory Drilling for Oil and Natural Gas	-
15 Fish Farming	+£5k
16 Shellfish Farming	+/- £1k
17 Plant and Machinery	+£1k
18 Access, Car Parks etc, for Existing Uses	-
19 Winning and Working of Minerals	+£1k
20 Peat	-
21 Other Operations	-
22 – 23 Waste Disposal, and Minerals Stocking	-
24 Change of Use to Flats and Houses	+£4k
25 Change of Use of Buildings	+£10k
26 Change of Use of Land	+£5k
<b>Other Fees</b>	
Approval of Matter Specified in Conditions (AMSC)	-
Cross Boundary Applications	-
***Conservation Areas (50% fee reduction for householder development)	-£12k
*Listed Building Consent (assumed £200 per application)	+£27k
Hazardous Substances Consent (assumed 100% uplift)	+£1k
Certificates for Lawful Use	+£1k
Advertisement Consent	+£4k
Prior Notifications (uplift on present chargeable)	+£2.5k
**Prior Notifications (uplift plus removal of zero fee categories in addition to present chargeable)	+£8k
Alternative Schemes	-
Section 42 Applications	+£2k
<b>CUMULATIVE POTENTIAL ANNUAL BENEFIT OF ALL PROPOSALS DETAILED IN THE CONSULTATION</b>	<b>+£118.5k</b>
* with fees introduced for Listed Building Consent at £200	+£145.5k



<i>per application (+£27k)</i>	
<i>** with removal of all zero fee prior notifications (+£8k)</i>	<i>+£153.5k</i>
<i>*** without 50% reduction of householder development in conservation areas (-£12k)</i>	<i>+£165.5k</i>

Based upon analysis of fee income/application type over the 5 year period to date it is estimated that the basic fee category proposals within the consultation paper could deliver additional planning fee income of £118.5k per annum on average. This would represent an 11% uplift on current planning fee income and would be in alignment with expectations set out for delivery of £125k savings from the Development Management service budget for 2020/21 which were based upon review of statutory planning fees. Dependent on the uptake of measures on conservation areas, listed buildings and prior notifications, the estimated overall benefit of the proposals this could rise to additional income of £165.5k on average which would be representative of a 15.5% increase in current statutory planning fee income.

#### 4.10 DISCRETIONARY CHARGING

The consultation notes that the Planning (Scotland) Act 2019 contains provisions which formally enable planning authorities to extend the scope of services which they can offer charges. The paper clearly sets out that the Scottish Government do not intend to make it compulsory for authorities to charge for such services but seeks views on where charges may be acceptable, and whether the Scottish Government should prescribe how charges are imposed, and their upper limits.

#### 4.11 The summary highlights of discretionary charging proposals include:

- i) The consultation seeks views on whether fees for pre-application advice should be prescribed nationally, and whether these should be subtracted from the full planning fee payable upon submission of an application. As is noted in the consultation, there is currently a disparity of views between local authorities on the desirability of charging for pre-application advice, the type of service which is provided, and how such services are charged/funded. It is noted that Argyll and Bute Council introduced a chargeable service on the basis that this was necessary to ensure its continuation with significant budget pressures upon the Council necessitating that service delivery be tailored toward statutory minimum requirements. It is recommended that the Council respond to the consultation with support for discretionary charging for provision of pre-application advice but that the requirement to impose charges, the level and type of service provided, the level of charge, and whether this should be subtracted from the planning fee upon submission of an application all being matters which should be left to the discretion of individual planning authorities to respond to local circumstances.
- ii) The consultation seeks views on whether charges could be implemented for non-material variations of planning permissions, and if so how such fees should be charged, and whether they should be subject to a

nationally prescribed upper limit. It is noted that Argyll and Bute Council receive between 100 and 150 requests from non-material amendments per annum which are currently processed without a fee; introduction of a modest admin fee could potentially deliver additional income of around £5-£10k per annum and accordingly a positive response to this element of the consultation would be appropriate.

- iii) The consultation seeks views on whether it would be appropriate to impose a charge on post-determination submissions seeking discharge of planning conditions. It is noted that this is currently known to be a significant yet unrecorded work stream within the Development Management caseload. It is recommended that the Council offer support for this element of the consultation and thereafter, if such charges are considered to be supported by the Scottish Government, take further steps to seek to quantify the potential fee income which might be generated and establish whether this could be harnessed to deliver additional resource to deliver a performance managed workflow process for this aspect of the Development Management Service.
- iv) The Planning (Scotland) Act 2019 introduces a new requirement upon planning authorities to maintain a register of persons interested in acquiring land for self-build. Whilst the exact duties to be imposed are as yet unspecified, the RTPI paper on the Financial Implications of Implementing the 2019 Act sets out that this may cost up to £10k per authority to set up and thereafter require a further £5k to maintain it. It is recommended that the Council respond to the consultation recommending that it would be appropriate to impose a discretionary charge for persons wishing to be included on the list with a view to recouping any costs incurred in the setting up and maintaining the register.
- v) The consultation seeks views on whether it would be appropriate to introduce charges for submission of appeals (and by extension LRBs managed by local authorities), the circumstances in which charging may be appropriate, and whether fees should be refunded if an appeal is successful. The consultation notes that it would be essential to ensure that the introduction of fees for appeals/LRBs are not a barrier to justice and on this basis it is recommended that the Council offer support for proposals to resource the appeal/LRB processes from fee income. It is also suggested that support be offered for fees to be refunded as per current process for awarding costs in a circumstance where an appeal is upheld but the initial decision maker is considered to have acted unreasonably or incompetently.
- vi) The consultation also sets out the Scottish Government's view that local authorities should be provided with discretion to waive or reduce fees instead of such matters being prescribed by regulation as per current arrangements (disabled access, community council development, repeat application within 12 months etc). It is noted that this proposal gives rise to concerns relating to competition, increased demand/political pressure

for exemptions to individuals/businesses, inconsistency of application, and requirement to publish personally sensitive information. It is recommended that the Council highlight these concerns in its response.

#### 4.12 OTHER ISSUES

The summary highlights of the matters addressed under the Other Issues section of the consultation are:

- i) It is proposed to introduce a surcharge of 100% on applications seeking retrospective planning permission although planning authorities will be provided discretion to waive/reduce this requirement where it considers appropriate. The consultation seeks views on whether the surcharge should be set at 100% of the payable application fee, and the process for exercising discretion on whether it should be applied. It is noted that Argyll and Bute Council receive around 100 submissions per annum seeking retrospective permission, accordingly a 100% surcharge would generate additional fee income of approximately £20k. The introduction of a surcharge is to be welcomed as a financial disincentive to developers who fail to follow due process and undertake unauthorised developments, or fail to comply with the terms of permissions previously granted. It is however noted that requiring planning authorities to exercise discretion in the application of the surcharge gives rise to similar concerns noted in relation to the potential to waive/reduce statutory fees as set out in 4.13 above.
- ii) The consultation seeks views on whether the performance of planning authorities could be further incentivised by a requirement to refund planning fees where excessive time periods for determination are taken. This aspect of the proposal gives rise to considerable concern as it is noted that the lengthy determination periods can arise from matters outwith the control of the planning authority and also as a result of negotiations entered into with the developer which seek to deliver a positive outcome and avoid refusal/resubmission. The threat of financial penalty for failure to determine an application within a fixed time period is considered to be counterproductive and would preclude extended determination periods which allow the developer to resolve matters of concern that would otherwise prevent a positive outcome. The requirement to refund a major application fee (potentially up to £150k) could give rise to considerable financial uncertainty with the Development Management budget.
- iii) The consultation seeks views on whether submission of hardcopy applications should be subject to a higher fee than e-submissions. It is recommended that the ability to impose an admin fee on hardcopy submission is supported as a means of incentivising online submission of applications.
- iv) The consultation seeks views on whether advertisement fees should be incorporated within application fees. It is noted that current procedures do

not require all applications to be advertised therefore it is recommended that concern be expressed that this would needlessly increase the costs for some applicants. It is also recommended that the response request that the Scottish Government give further consideration to the continued requirement for publication of application details in newspapers when it is arguable that similar provision, and a cost saving in the planning process as a whole, could be made through online publication on planning authority websites.

- v) The consultation seeks views on whether there should be an administration charge for submission of applications on the e-planning portal which payments being utilised to support Scottish Government e-planning services. It is recommended that such a move may be counter-productive as it would act as a disincentive to use the online submission portal; clarification of this measure is also required as local authorities currently make a pro-rata payment for maintenance and development costs based upon the volume of application submissions.

## **5.0 CONCLUSION**

- 5.1 Based upon analysis of fee income/application type over the past 5 year period it is estimated that the proposals within the consultation paper would deliver additional planning fee income of £118.5k per annum on average. This would represent an 11% uplift on current planning fee income and would be in alignment with expectations set out for delivery of £125k savings from the Development Management service budget for 2020/21 which were based upon review of statutory planning fees. Dependent on the uptake of measures on conservation areas, listed buildings and prior notifications, the estimated overall benefit of the proposals could rise to an average of £165.5k additional planning fee income per annum which would be representative of a 15.5% increase in current receipts.
- 5.2 Scottish Government support for the extension of discretionary charging to include non-material variations and discharge of planning conditions, and the imposition of a 100% surcharge for retrospective applications could potentially provide opportunities for further additional income of around £30k per annum, which in a best case scenario, would bring the consultation proposals into general alignment with the position previously established by the Council which was to lobby for the equivalent uplift of 17.2% to current planning fee income in any upcoming review of statutory planning fees.
- 5.3 It is evident that the Scottish Government expect planning authorities to be able to demonstrate that the provision of additional resources to support the delivery of planning services is being underpinned by improvement in performance and efficiency of service delivery. The introduction of a National Planning Performance Co-ordinator and the evolution of the Planning Performance Framework to align with national planning outcomes and to extend the scope of customer engagement should be viewed as an indication that the provision of additional resources will result in additional scrutiny requiring planning

authorities to demonstrate best value and continuous improvement.

## **6.0 IMPLICATIONS**

- 6.1 Policy – n/a
- 6.2 Financial – Proposals have potential to significantly increase receipts from statutory planning fees and provide additional opportunity to introduce charges for non-statutory services.
- 6.3 Legal – n/a
- 6.4 HR – n/a
- 6.5 Fairer Scotland Duty: - n/a
- 6.5.1 Equalities - protected characteristics – n/a
- 6.5.2 Socio-economic Duty – n/a
- 6.5.3 Islands – n/a
- 6.6. Risk – n/a
- 6.7 Customer Service – Proposals set out an intention to improve customer engagement and consideration in the monitoring of planning authority performance

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31 January 2020

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## **APPENDICES**

Appendix 1 – Scottish Government Consultation on Planning Performance and Fees 2019 (with officer commentary and proposed response details)