

PERTH AND KINROSS COUNCIL

19 February 2020

PERTH AND KINROSS COUNCIL'S PROPOSED RESPONSE ON THE SCOTTISH GOVERNMENT CONSULTATION PAPER: PLANNING PERFORMANCE AND FEES

**Report by Head of Planning & Development
(Report No. 20/50)**

This report sets out the Council's proposed response to the Scottish Government Consultation Paper: Planning Performance and Fees.

1. BACKGROUND / MAIN ISSUES

- 1.1 On 18 December 2019 the Scottish Government published a consultation paper proposing the revising the arrangements for: measuring the performance of Planning Authorities, and the fee regimes for planning applications. The consultation is part of an assessment of potential impacts on both planning authorities and applicants, such that no unforeseen consequences arise from the changes.

<https://www.gov.scot/publications/planning-performance-fees-consultation/>
- 1.2 This consultation forms part of the Scottish Government work programme "Transforming Planning in Practice", following on from the Planning (Scotland) Act 2019. The two areas covered by the consultation relate to: performance; and fees. The intention is to bring forward detailed proposals for substantial changes to both areas.
- 1.3 A new approach is promoted on how the performance of planning authorities is measured, including the creation of the role of a national 'planning improvement co-ordinator'.
- 1.4 Improvements in performance achieved since the introduction of the Planning Performance Framework (PPF) in 2011-12 are recognised although performance against some of the national markers remains variable, particularly in relation to decision making speed. As such an alternative approach to assessment is promoted.
- 1.5 The planning fees structure is proposed to be reviewed with the aim of having early clarity around costs and resources. This would include changes to existing fees, and the introduction of additional services which can be charged for, as well as the ability to waive or reduce planning fees in certain circumstances. The consultation is expected to be concluded to allow new fee arrangements to be in place by mid-2020.

- 1.6 The proposed changes aim to ensure that the planning system is valued, resilient and capable of providing the service that local people and planning applicants expect, whilst also delivering on the increasing challenges being placed upon it.
- 1.7 The Minister for Local Government, Housing and Planning states in the consultation, that *“Fundamental to this is ensuring that the planning system is appropriately resourced to deliver on those ambitions. Increases to planning fees must be matched by continuing improvements to performance, and this requires an effective reporting regime that ensures the priorities of all users are being delivered.”*
- 1.8 The consultation recognises that the resourcing of the planning system is a recurring issue, particularly since 2007/8. In the intervening years research has been undertaken to understand the issues and to improve performance. It notes that planning fees currently only account for on average 63% of the cost of determining an application. As such the Scottish Government expects that a fee regime which better reflects costs, ought to result in improved resources across the whole planning service. However, it is not intended that planning fees cover the cost of that wider planning service, including the various new duties identified in the 2019 Planning Act.
- 1.9 The consultation also recognises that additional fee income is not a solution in itself, but that smarter resourcing and improved use of digital opportunities is also essential. There are a significant number of questions, on which respondent views are sought, these can be accessed on the Scottish Government website via the following link:
- <https://consult.gov.scot/planning-architecture/planning-performance-and-fees/>
- 1.10 A brief summary of the most significant proposals are set out in section 2. of this report. Responses were invited by 14 February 2020 however, the Scottish Government is aware that Perth and Kinross Council will submit around 1 week later than this and that the Council’s submission will be taken into account.

2. PROPOSALS

Planning Performance

- 2.1 The Planning (Scotland) Act 2019 requires annual performance reporting by planning authorities, with the form and content to be provided for in regulations. The following approach to the context, structure and content of performance, and its reporting, is set out in the consultation.
- 2.2 A ‘vision’ of the planning system is promoted, this is stated as: *“The Planning System must provide certainty, consistency and clarity to all those who participate in it, through effective engagement, policy, decision making and communication.”* Comments on this vision are sought.

- 2.3 A refocus of the annual Planning Performance Framework is also promoted, so that it looks at the outcomes and impacts which planning delivers, rather than statistics. The 2019 Planning Act also allows a 'National Planning Improvement Co-ordinator' (NPIC) to monitor and provide advice to planning authorities and others on the performance of general or specific functions, reporting to Ministers. In addition the NPIC will also look at the roles of the Scottish Government's Planning and Architecture Division, the Department for Planning and Environmental Appeals, and Scottish Ministers.

Planning Fees

- 2.4 The resourcing of planning services has been a consistent Scottish Government priority throughout the review of the planning system and is seen as essential to the proper implementation of the 2019 Planning Act and other existing regulations.
- 2.5 The Planning Act also allows for additional charges to be set for a range of services, as well as the waiving or reducing of fees and making provision for an increased fee for retrospective applications. The consultation paper recognises that further work may be needed to model the likely change in income for each Planning Authority, given the caseload volume variations between them.
- 2.6 The potential impact on the development and business sectors are also recognised, in terms of viability and wider investment. A draft Business and Regulatory Impact Assessment has been prepared in this regard.
- 2.7 It is also recognised in the consultation document that the resourcing of the local planning service is the responsibility of local authorities. However, it also sets out that Scottish Ministers agree that any increase in fees must be linked to sustained impacts in performance, with increased fee income intended to provide additional resources to Planning Authorities to help support performance improvement.
- 2.8 Overall the consultation looks at how the fee regime could be revised as well as looking at the potential for discretionary charging, increased fees for retrospective applications, the removal of fees for advertising planning applications and reducing and waiving fees. There are also some practical issues on which views are sought.
- 2.9 Generally it is proposed that the fee regime better reflects the resource expended in terms of processing and advertisement costs. Some fees will increase significantly, although tapering up or down to reflect scale and resource implications. In some cases, reductions are promoted, such as removing potential barriers to economic development for small or medium sized enterprises. The fee regime is separated into various categories and the headline themes are set out below:

Residential proposals would see fees for development of between 1-10 dwellings increase by 50% to £600 per unit; 11-49 units at £450 per unit; and

thereafter any additional units would have a fee of £250. The maximum possible fee is also to be increased to £150,000 this being equal to 2,058 dwellings and an increase of 20% from the existing fee. For extensions and alterations to existing dwellings fees are to be separated. Extensions and buildings within gardens would see a fee of £300 applied whereas the replacement of windows, means of enclosure, garages and micro-generation equipment would see a fee of £150 apply.

Business and Commercial proposals would see an alternative approach taken, avoiding a deterrent in the expansion of small to medium size enterprises. Here, examples given indicate that applicable fees equivalent to 1,500m² and 5,000m² of floor space would reduce by 20% and 14%, before reaching a tipping point where fees would begin to increase from the current situation. Similar approaches are promoted in relation Agricultural Buildings, Glasshouses and Polytunnels. Windfarm related development is to be separated out from plant and machinery. Hydro Schemes fees are to be increased by roughly 20%. There are also questions relating to Other Energy Generation projects and whether there should be a separate category for Solar Farms.

Approval of Matters Specified in Conditions (AMSC), as set by Planning Permission in Principle approvals: the consultation recognises that there can be situations with larger developments where the maximum fee is reached early, and that only a named applicant can benefit from a cumulative calculation to reach that limit. This has seen confusion and disparity, dependant on the situation and approach taken. Various questions are posed on this issue.

Cross boundary Applications – Allocation of the fee: currently the relevant fee is passed to the authority which contains the majority of the development being proposed, the other authority receiving nothing. The consultation now asks if the fee should be split between the relevant authorities, or not, and on what basis.

Conservation Areas: It is proposed that a 50% fee would be applied to applications in conservation areas, where development would otherwise be permitted outwith these statutory designated areas.

Listed Building Consent: currently no fee is applicable to LBC applications and this is now to be reviewed, although the implications and unintended consequences require to be understood. Equally the long term viability of historic buildings should not be compromised through additional costs. Although recognising the considerable cost to authorities of processing such applications it is also recognised that the main impact is likely to be on smaller works where planning permission is not required or they are permitted development. Furthermore the consultation notes that more detailed guidance on when Listed Building Consent is required may be needed.

Hazardous Substances Consent: the relevant fees have not altered in 25 years and the consultation asks what fee level would be appropriate.

Other types of Applications: it is proposed to make various changes to the fees associated to applications for a Certificate of Lawful Use or Development (CLUD); Advertisement; Alternative Schemes; and under Section 42 (conditions).

Discretionary Charging: The Planning (Scotland) Act 2019 increases the scope of services planning authorities can charge for. An example includes pre-application discussions, which some authorities already charge for. However, Scottish Government do not intend to make it compulsory for authorities to charge for such services, leaving it discretionary. Various questions are posed on this issue.

Charging for Appeals: this area may be of particular interest, relating to whether an appeal to the Department of Planning and Environmental Appeals (DPEA) or Local Review Board (LRB) should see a cost attached. It is recognised that this would be a sea change in approach and as such a modest introduction rate, followed by moves towards full recovery, is suggested. Further consultation is to take place on this specific proposal..

Retrospective Applications – the consultation recognises that there can be issues associated to situations where applications are made after development has been undertaken. It is proposed that authorities would have discretion as to whether or not to apply any surcharge, above the standard planning fee. A surcharge of 100% is suggested.

Environmental Impact Assessments (EIA): the consultation recognises that applications associated to an EIA can have significant resource implications and asks if an EIA application should see a supplementary fee paid.

Charging for Scottish Government services: it is also suggested that a surcharge could be applied to applications made via the planning portal which would then be reinvested into the services provided by the Scottish Government.

3. CONCLUSION AND RECOMMENDATIONS

- 3.1 The consultation paper seeks to update how the performance of the planning system is measured, and to introduce the role of a National Planning Improvement Co-ordinator. It also seeks views on revising the Planning Fee regime, with a view to better reflecting the type of development now experienced, with revisions and additions to the categories of developments and how the fees are calculated. The consultation in some circumstances proposes increasing the maximum fee to £150,000 and, in general, the overall fee applied to most scales of development. The consultation paper also seeks views on the introduction of charges for discretionary services such as: pre-application discussions, enhanced project managed applications, increased fees for retrospective applications, and waiving or reducing planning fees.
- 3.2 In particular a significant change in approach is discussed in relation to: setting a vision for the planning system; a refocusing of Planning Performance

Frameworks toward outcomes and impacts; the creation of a National Planning Performance Co-ordinator; significant and almost wholesale change to the planning fee regime; introducing the ability of Planning Authorities to charge for other planning services, and also waive or reduce fees; pointing out that any increase in fees must see enhanced performance through the provision of additional resources; promoting that fee income for cross boundary applications is split between the relevant authorities; that applications for Listed Building Consent would incur a fee; that authorities could choose to charge for discretionary services, such as pre-application consultation; that appeals would incur a fee; that retrospective applications could see a surcharge applied; that there could be a level of refund of a fee if a decision was not issued in 26 weeks; that fees for advertising applications are incorporated into the overall application fee; that EIA development would see an additional fee; a review of fees for Planning Permission in Principle applications; the introduction of a 'Hybrid' application fee category; that there could be an additional fee for applications made in paper form; and that there would be a service charge for electronic submission via the eDevelopment portal.

- 3.3 The considered view of officers in relation to the large number of questions posed in the consultation is set out in the attached draft response.
- 3.4 It is recommended that the Council approve the draft consultation response prepared by officers, as set out in Appendix 1, for onward submission to the Scottish Government.

Author(s)

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Approved

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1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	Yes / None
Community Plan / Single Outcome Agreement	No
Corporate Plan	No
Resource Implications	
Financial	Yes
Workforce	No
Asset Management (land, property, IST)	No
Assessments	
Equality Impact Assessment	No
Strategic Environmental Assessment	No
Sustainability (community, economic, environmental)	No
Legal and Governance	No
Risk	No
Consultation	
Internal	No
External	No
Communication	
Communications Plan	No

1. Strategic Implications

Community Plan/Single Outcome Agreement

- 1.1 The impacts of this Scottish Government Consultation are unlikely to have significant impacts on the delivery of the Perth and Kinross Community Plan/Single Outcome Agreement, as they relate to performance reporting a fee structures. However there is an anticipation that there will be an increase in overall fee income, with a clear inference that this should be used to increase resources, such that performance is enhanced.

Corporate Plan

- 1.2 The Consultation outcomes are likely to support the ongoing achievement of our corporate priorities through facilitating resources to enhance performance of the planning function.

2. Resource Implications

Financial

- 2.1 The consultation makes it clear that there is an anticipation that there will be an increase in overall fee income, and that such monies should be used to increase resources, such that performance is enhanced.

- 2.2 However, until the outcomes of the consultation are known and a revised statutory fee regime put in place, impacts on fee income cannot be quantified. However, it is likely that any impacts are likely to be neutral from the present situation, as increased income could be balanced with investment in services.

Workforce

- 2.3 As indicated above, until the outcomes of the consultation are known and a revised statutory fee regime put in place, impacts on workforce cannot be quantified. However, it is likely that any impacts are likely to be neutral from the present situation, as increased income could be balanced with investment in resources.

Asset Management (land, property, IT)

- 2.4 Again, until there is certainty on the outcomes of the consultation are known, it is not possible to quantify or predict impacts on land and property, although these are unlikely.

3. Assessments

Asset Management (land, property, IT)

- 3.1 As a Scottish Government consultation in relation to areas which fall under their control, relevant assessments have been undertaken by that authority and are contained within the consultation documents. In relation to impacts associated to matters which may be discretionary to Perth and Kinross Council, relevant assessments could be undertaken when approaches on such matters are being considered.

Risk

- 3.2 There are no key risks associated with the contents of this report.

4. Consultation

Internal

- 4.1 None.

External

- 4.2 None.

5. Communication

- 5.1 None.

2. BACKGROUND PAPERS

Scottish Government Consultation on Planning Performance and Fees – 2019

<https://www.gov.scot/publications/planning-performance-fees-consultation/>

3. APPENDICES

Appendix 1 – Draft Response to Consultation