

**Subject: Charging for pre-application planning advice on development proposals**

**Meeting date: 23 October 2018**

**Report to: Planning Decisions Committee**

**Report of: Daniel Davies, Principal Planning Development Manager**

FOR DECISION

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**This report will be considered in public**

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## **1. EXECUTIVE SUMMARY**

- 1.1. It is good practice for pre-application discussions to be held between developers, the local planning authority, and other key stakeholders. The National Planning Policy Framework (2018) supports early engagement, recognising that it has significant potential to improve the efficiency and effectiveness of the planning system and improve outcomes for communities.
- 1.2. Local planning authorities are able to charge for providing pre-planning application advice using discretionary charging powers under Section 93 of the Local Government Act 2003 ('2003 Act'). These charges are separate from the planning application fee, which is set by regulation. The Host Borough's (London Borough of Newham, Tower Hamlets, Hackney, Waltham Forest) have all adopted pre-application fee schedules, which have been in place for a number of years; as have most, if not all, London Local Planning Authorities.
- 1.3. Planning Decisions Committee resolved to agree adopting a pre-application charging schedule in 2013 and 2015. However, the agreed charging schedules were not implemented, because, Mayoral Development Corporations are not local authorities for the purposes of the 2003 Act and do not automatically benefit from the discretionary powers under the 2003 Act. LLDC therefore had to await the introduction of further legislation to allow PPDT to set and charge formal pre-application fees. Following amendments to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 ('the Fee Regulations'), that came into effect on 17 January 2018, these powers are now available to Mayoral Development Corporations. A fee schedule was adopted by the Old Oak and Park Royal Development Corporation (OPDC) on 23<sup>rd</sup> July 2018.
- 1.4. It is proposed to adopt a pre-application fee charging schedule that is based on the nature and scale of development proposed. Six categories of fee are proposed which are set out in table 1 of the main report. The categories include strategic development,

large scale development, major development, an 'other' category and a householder category which involves extensions and alterations to residential dwellings. The categories all involve varying scales of mixed use, commercial and residential development.

- 1.5. The service provided under the proposed fees will include an initial meeting and a written response providing officer advice on the proposal. It is not proposed to charge a fee for advice relating to householder or other minor works as LLDC rarely receives requests for this type of pre-application advice. Where following an initial pre-application enquiry, an applicant enters into a Planning Performance Agreement ('PPA') with LLDC any fees paid under the proposed fee charging schedule will be taken into account in agreeing the additional cost to the developer of resourcing the PPA.
- 1.6. The proposed fee schedule shall only be adopted once it has been published on the LLDC website and in local newspapers for at least 21 days. Charging can then commence ten days after adoption.

## **2. RECOMMENDATIONS**

### **2.1. The Planning Committee is invited to:**

- a) Approve the proposed pre-application fee schedule set out in Table 1; and**
- b) Delegate Authority to the Director of Planning Policy and Decisions to adopt the proposed pre-application fee schedule following publication of the schedule for 21 days on the LLDC website and in local newspapers and make reasonable changes to the schedule if considered appropriate.**

## **3. FINANCIAL IMPLICATIONS**

- 3.1. The introduction of formal charges for pre-application planning advice is an opportunity to recover costs associated with the provision of the service, which is currently provided free of charge, unless a PPA fee is negotiated between Planning Policy and Decisions and the applicant. Whilst Planning Performance Agreements (PPAs) are currently in use, adoption of a formal pre-application charging schedule will lead to increased revenue to help cover the cost of providing the service, rather than on a negotiated basis as occurs currently with PPAs, whilst providing more certainty to developers on the costs of planning advice. As with other Local Planning Authorities, PPDT's annual budget is increasingly dependent on a significant level on non-planning fee income to off-set its revenue costs, in particular staffing.

## **4. LEGAL IMPLICATIONS**

- 4.1. The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 provides LLDC with legal power to charge for pre-application advice in the same way as other local planning authorities can do, as set out in the paragraphs above.

## 5. BACKGROUND

### The legislative context

- 5.1. Local authorities are able to charge a fee for providing pre-application advice using discretionary charging powers under the Section 93 of the Local Government Act 2003 ('2003 Act'). Mayoral Development Corporations are not local authorities for the purposes of the 2003 Act and do not automatically benefit from this power. However, following amendments to the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 ('the Amended Fee Regulations'), that came into effect on 17 January 2018, Mayoral Development Corporations can now charge for providing pre-application planning advice, by setting up a formal charging schedule.
- 5.2. The Amended Fee Regulations require that prior to adoption, a Mayoral Development Corporation must publish a copy of its proposed fee schedule in one or more newspapers, whose circulation or combined circulations cover the Corporation's area, and on its website, no less than 21 days before the fee schedule is adopted. The fee schedule should specify the date that it comes into effect, at which point charging can commence, and this date should not be earlier than ten days after the day on which it is adopted. Within 5 days of adopting the fee schedule, the Mayoral Development Corporation must publish a copy of it on its website and make hard copies of it available on request.
- 5.3. Primary legislation, set out in section 303 of the Town and Country Planning Act 1990 ('TCPA 1990') establishes that pre-application fees must be set at a level which ensures that, taking one financial year with another, the income from fees charged for pre-application advice does not exceed the cost of providing that service.

### The approach to implement pre-application charging

- 5.4. Prior to the Amended Fee Regulations coming into force, a pre-application charging schedule was approved by Planning Decisions Committee Members in January 2013 and again in December 2015. Details of these schedules are set out in Appendix 1. The charging schedules took account of the schedules published by the adjoining London Boroughs of Newham, Hackney, Waltham Forest, Tower Hamlets and the GLA, all of whom charge for pre-application advice. Charges across these authorities and the GLA vary. In any case, neither the 2013 or updated 2015 charging schedule was implemented as the necessary changes giving Development Corporations the relevant legal powers to charge did not come into force.
- 5.5. The delay by Government in introducing the Amended Fee Regulations has given officers time to reflect on the previously approved fee charging schedule, in light of the experience of providing pre-application advice over the past number of years. During this period, each of the host boroughs have increased their pre-application charging schedule to recover the costs of providing this service. Pre-application fees charged by the adjoining boroughs has informed the proposed fee schedule, which it is proposed is set at a level that would not discourage early engagement by applicants. Regard has been given to the pre-application fees charged by the GLA, Transport for London and the OPDC.

## 6. PROPOSED FEE CHARGING SCHEDULE

- 6.1. A tariff based approach is proposed that is based on the type and scale of proposed development. The proposed categories are similar to that previously approved, but have been updated to provide a clearer distinction between the types of development that may come forward and to capture the full range of advice that may be expected from the PPDT service. The approach proposed is consistent with that adopted by the London Boroughs of Newham, Tower Hamlets, Hackney and Waltham Forest where pre-application charging rates vary according to the scale and type of the proposed development. A summary table is provided at appendix 2.
- 6.2. In Newham, fees start at £2,400 for small scale development involving less than 3 residential units and £4,800 for schemes involving 4-9 dwellings or 100-1999 sq. m of commercial floorspace; £7,200 for schemes involving 10-49 residential units or between 2,000-4,999 sq. m of floorspace; £10,800 for schemes involving 50-149 residential units or between 5,000-15,000 of commercial floorspace and £14,400 for Strategic Scale Development involving 150 or more dwellings or 15,000 sq. of floorspace.
- 6.3. In Tower Hamlets fees start at £840 for a small scheme involving less than 5 dwellings, £1,475 involving 6-9 dwellings or 500- 999 sq. m of commercial space for a medium scale scheme, £7,500 for a scheme involving 10-149 dwellings or between 1,000 – 19,999 of commercial floor space and £15,000 for strategic schemes involving more than 150 dwellings or 10,000-20,000 sq. m of commercial floorspace.
- 6.4. In Hackney fees start at £360 for small scale development involving 1-4 residential units or between 100-499 sq. of commercial floorspace or £900 for minor scale development involving 5-9 dwellings or between 500-999 sq.m of commercial floorspace, £1,800 for development involving 10-24 dwellings or between 1000-1999 sq.m of commercial floorspace, £3,000 for a scheme involving 25-49 dwellings or between 2,000-4,999 sq.m of commercial floorspace, £3,600 for schemes involving 50 or more residential units or 5,000 or more of commercial floorspace.
- 6.5. In LB Waltham Forest, fees start at £700 (+VAT) for small scale schemes, £1,000 for minor scale development, £3,500 (+VAT) for major development, £6,5000 (+VAT) for large scale developments.

**Table 1 Proposed LLDC Pre-application Charging Fee Schedule**

| Category          | Development Type and Scale   | Fee           |
|-------------------|--|---------------|
| Householder       | <ul style="list-style-type: none"> <li>Extensions or alterations to single dwellings</li> </ul>  | None          |
| Other             | <ul style="list-style-type: none"> <li>1-3 new residential dwellings</li> <li>Extensions and alterations to commercial premises up to 99 sq. m including change of use</li> <li>Shopfronts</li> <li>Small scale adverts</li> </ul> | None          |
| Minor Development | <ul style="list-style-type: none"> <li>4 to 9 new residential dwellings</li> <li>New build or extensions from 100 sq.m. to 999 sq.m of non-residential floorspace, including change of use</li> </ul>                              | £3,500 (+VAT) |

|                               |   |   |
|-------------------------------|---|---|
|                               | <ul style="list-style-type: none"> <li>• Mixed use development from 100 sq.m. to 999 sq.m Telecommunications</li> <li>• Prior approvals for development within this category</li> <li>• Reserved matters pursuant to outline applications for development within this category</li> <li>• Conditions, minor material amendments and non-material amendments for development types within this category</li> </ul>   | <b>Follow up meetings:</b><br><br>£2,500 (+VAT)                       |
| Major Development             | <ul style="list-style-type: none"> <li>• 10-49 new residential dwellings</li> <li>• New build or extensions from 1,000 sq.m. to 4,999 sq.m of non-residential floorspace including change of use</li> <li>• Mixed use development from 1,000 sq.m. to 4,999 sq.m</li> <li>• Reserved matters pursuant to outline applications for development within this category</li> <li>• Conditions, minor material amendments and non-material amendments for development types within this category</li> </ul> | £5,500 (+VAT)<br><br><b>Follow up meetings:</b><br><br>£4,500, (+VAT) |
| Large Scale Major Development | <ul style="list-style-type: none"> <li>• 50-149 residential dwellings</li> <li>• New build or extensions from 5,000 sq.m. to 9,999 sq.m of non-residential floorspace including change of use</li> <li>• Mixed use development of 5,000 sq.m. to 9,999 sq.m</li> <li>• Reserved matters pursuant to outline applications for development within this category</li> <li>• Conditions, minor material amendments and non-material amendments for development types within this category</li> </ul>      | £7,500 (+VAT)<br><br><b>Follow up meetings:</b><br>£5,500 (+VAT)      |
| Strategic Development         | <ul style="list-style-type: none"> <li>• 150 new residential dwellings or more</li> <li>• New build or extensions of 10,000 sq. m or more of non-residential floorspace including change of use</li> <li>• Mixed use development of 10,000 sq. m or more</li> <li>• Reserved matters pursuant to outline applications within this category</li> <li>• Conditions, minor material amendments and non-material amendments for development types within this category</li> </ul>                         | £9,500 (+VAT)<br><br><b>Follow up meetings:</b><br>£6,500 (+VAT)      |

6.6. Officers remain of the view that it would be appropriate to charge an initial fee for a meeting and written advice and to apply reduced fees for subsequent follow up meetings. This approach to charging is common amongst other London Boroughs. Where pre-application advice is requested for proposals that would fall into the

'householder' or 'other' category it is proposed that no fee will be charged. PPDT rarely receive requests for this type of advice. The proposed charges set out in table 1 are subject to yearly review and are set at a level which Officers consider can be reasonably upwardly reviewed if required in future.

- 6.7. The proposed fees take account of PPDT's need to recover costs. They are also competitive, taking account of the other local pre-application charging regimes and have been pitched at a level that would enable applicants to incorporate additional service costs to cover specialist PPDT consultant costs where they are required. The fee service for householder applications and 'other' developments is offered for free and would not deter applications from local residents and small businesses coming forward.
- 6.8. The preapplication service offered will continue to be a high-quality, responsive and proficient service that provides professional planning advice to applicants. Officers are satisfied that an appropriate balance has been struck between matters of commerciality and local context that will enable PPDT to recover the cost of delivering this service in a way that will not undermine the deliverability of schemes in the LLDC area or discourage early engagement with the planning service.

#### Planning Performance Agreements

- 6.9. Whilst to date LLDC has been unable to set and charge a fee for providing pre-application advice, in the case of strategic or major development proposals, where it is apparent that pre-application discussions are likely to be protracted and require significant resource, LLDC have sought to agree bespoke Planning Performance Agreements ('PPA'). The PPA is a voluntary agreement that sets out timescales, actions and resourcing during the pre-application and planning application processes. It is common for a PPA to include a mechanism for the local planning authority to recover the reasonable costs of resourcing including off-setting the costs of any specialist advice required to advise the applicant e.g. viability testing, environmental/transport considerations.
- 6.10. Therefore, whilst it is considered necessary for LLDC to implement a pre-application advice fee charging schedule in order to recover costs where a PPA may not be appropriate, it is considered that PPAs will continue to be the preferred approach where pre-application discussions are expected to be particularly complex or protracted.
- 6.11. In order for the two processes to work together, it is proposed that for new pre-application advice requests, an initial pre-application fee, based on the adopted fee charging schedule, will be charged but that this fee will subsequently be taken into consideration when agreeing the additional cost of any future PPA entered into by the application in respect of the enquiry.

## **7. FINANCIAL MATTERS**

- 7.1. The LLDC have budgeted for £650,000 fee income from PPAs and pre-application advice during 2018/19. The overall income from planning fees, PPAs and CIL admin over this period is forecast at 1.8 million. PPDT costs for the same period are forecast at £2.8 million. The introduction of charges for pre-application planning advice is an opportunity to recover costs associated with the provision of this service, which is currently provided free of charge or under a PPA agreed on a case by case basis with the applicant. Under the Local Government Act 2003, income derived from charging fees cannot exceed the cost of providing the service and a profit cannot be made to subsidise

other services. Guidance published alongside the 2003 Act (General Power for Best Value Authorities to Charge for Discretionary Services – Guidance on the Power in the Local Government Act 2003) recognises that estimating costs and incomes can be difficult and therefore the Act allows for the budget to be balanced over a period of time (Section 93 (3) of the Act refers to taking one years with another for this purpose). The 2003 Act does not prescribe how long this period of time should be. Therefore, if actual pre-application income exceeds pre-application costs in any given financial year the surplus will be ringfenced and held in PPDT reserves to be utilised on pre-application expenditure in future years.

## **8. LEGAL MATTERS**

- 8.1. The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 amends the Town and Country Planning Deemed Applications, Requests and Site Visits) (England) Regulations 2012 to provide LLDC with legal power to charge for pre-application advice in the same way as other local planning authorities have been allowed to do since 2003 as set out in the paragraphs above.

### **Appendices**

Appendix 1 Pre-application charging schedules approved by Planning Decisions Committee in January 2013 and December 2015 compared with Host Boroughs

Appendix 2 Proposed LLDC 2018 pre-application charging schedule compared with Host Boroughs