



Department for
Communities and
Local Government

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Post Implementation Review of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

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Majesty

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POST IMPLEMENTATION REVIEW OF THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) REGULATIONS 2012

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Introduction

1. This document provides a Post Implementation Review (PIR) of the *Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012* (the Regulations), as required by regulation 19 of the Regulations. The Regulations are made by the Secretary of State for Communities and Local Government in exercise of the powers conferred by section 303 and 333(2A) of the *Town and Country Planning Act 1990* (the Act). Section 303(8) (a) of the Act requires the draft instrument to be laid before and approved by resolution of each House of Parliament.

Background

2. Planning application fees are currently set by central Government. The Regulations prescribe fees based on the type of application and the nature of the development. The Regulations consolidated the *Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989*, with the subsequent amending instruments.
3. The Regulations build on an established approach to setting the fees that a local planning authority can charge for the consideration of planning applications.

Objectives of the Regulations

4. The key principles and objectives adopted in ensuring an effective planning application fee regime, and set out in the Impact Assessment for the Regulations, are:
 - to help local planning authorities to achieve cost recovery for fee chargeable services;
 - that the user should pay for the actual service that they receive;
 - that fees cannot be used to make a profit;

- that fees are to be set by means of a fee schedule; and
 - for fees to be set through a fair, consistent and transparent charging methodology.
5. The fee amount payable is intended to reflect the overall cost of handling, administering and determining the various types of fee-chargeable planning applications. The amount chargeable is designed to include recovery of direct costs and an apportionment of overheads directly related to the cost of staff time involved in processing an application in the relevant fee category. Fees are not intended to be used to make a profit. They are intended to be set at a level that allows for full recovery of costs.
6. Fees have been increased over time to take account of inflation with a view to seeking to achieve full cost recovery. Since fee regulations were first introduced in 1989, fees have been increased 11 times on the following occasions:
- January 1991 - (S.I.1990/2743) - 20% increase
 - January 1992 - (S.I.1991/2735) - 20% increase
 - January 1993 - (S.I.1992/3052) - 10% increase
 - January 1994 - (S.I.1993/3170) - 15% increase
 - January 1995 - (S.I.1993/3170) - 15% increase
 - February 1997 - (S.I.1997/37) - 10% increase
 - October 1997 - (S.I.1997/37) - 5% increase
 - April 2002 - (S.I. 2002/768) - 14% increase
 - April 2005 - (S.I. 2005/843) - 23% increase
 - April 2008 - (S.I. 2008/958) - 23% increase
 - November 2012 (SI 2012/2920) – 15% increase

Have the Regulations achieved their Objectives?

7. To assess the extent to which the planning fees regime were achieving the Objectives, the Department for Communities and Local Government consulted widely as part of the Technical Consultation on implementation of planning changes, February 2016 (the 2016 Consultation). Chapter 1 set out proposals for amending fees to reflect changes since 2012, in ways which link more effectively to the service provided.
8. The 2016 Consultation recognised that since 2013, a regime for the designation of under-performing local planning authorities in the processing of planning applications has been operational. It acknowledged the role the regime has played in measuring and improving the performance in local

planning authorities. Therefore in proposing that the national fees be revised in line with the rate of inflation, the 2016 Consultation also set out proposals for targeting the increase of fees on those demonstrating good performance, and included options for greater flexibility in the operation of the planning fee regime where high performance and innovation can be demonstrated.

9. In particular the 2016 Consultation asked the questions set out below:

- Do you agree with our proposal to adjust planning fees in line with inflation, but only in areas where the local planning authority is performing well? If not what alternative would you suggest?
- Do you agree that national fee changes should not apply where a local planning authority is designated as under-performing, or would you propose an alternative means of linking fees to performance? And should there be a delay before any change of this type is applied?
- Do you agree that additional flexibility over planning application fees should be allowed through deals, in return for higher standards of service or radical proposals for reform?
- Do you have a view on how any fast-track services could best operate, or on other options for radical service improvement?
- Do you have any other comments on these proposals, including the impact on business and other users of the system?

10. The Government response to the 2016 Consultation, published on 7 February 2017, recognised cross-sector concerns that local authority planning departments may not have sufficient resources to provide an effective service and that developers would be prepared to pay higher planning application fees if it meant a better service and performance. Details of the responses received and the Government response can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589744/Summary_of_responses_to_the_technical_planning_consultation.pdf

11. The majority of respondents, from all sectors, supported increasing planning fees, often citing concerns about resourcing in local authority planning departments. Many suggested that planning fees should be increased above inflation, and a number of local authorities called for localised fee setting. A much broader range of views were expressed about whether any increase in

fees should be linked to performance, the more support for linking any proposal to actual designation rather than a relative threshold that was arbitrary and could be unfair.

12. Local planning authorities were generally supportive of being able to achieve more flexibility over planning fees while house builders also supported this providing any additional flexibility would lead to a better service. There was not a clear consensus on options for localised fee setting or a fast track alternative and the associated fee regime. The Government confirmed it would continue to engage with local planning authorities interested in reforming their planning service and committing to performance improvements in the context of fee flexibility. A small number of respondents called for changes to fees, in particular introducing fees for non-funded planning work, such as enforcement.
13. Separately the Local Government Association's Housing Commission report "Building our homes, communities and future", published in December 2016 had set out evidence it collected over the previous three years. This report suggested authorities had been required to meet a shortfall of £450 million over three years to cover the cost of planning services over and above the income received from planning fees.
14. While the 2016 Consultation was also used to propose further planning changes, rather than strictly being a review of the Regulations, the Government has interpreted the responses from 2016 Consultation to mean that at the time of implementation and thereafter, the Regulations were fulfilling the Objectives. However through the passage of time, further amendments to the planning fees regime are required to ensure that the Objectives continue to be met. The Government considers that the Local Government Association's Housing Commission report supports this view.

Way forward

15. As a result of considering the responses to the 2016 Consultation, the Housing White Paper, published on 7 February 2017 (the White Paper), set out the Government's way forward in respect of the planning application fees regime to secure the financial sustainability of planning departments. It committed to increase nationally set planning fees by 20%. It also set out a proposal to consult on allowing an increase of a further 20% in planning application fees for those authorities who are delivering the homes their communities need. This proposal was included in "Planning for the right homes in the right places: consultation proposal" published on 14 September 2017, and which closed on 9 November 2017 (the 2017 Consultation). The 2017 Consultation can be found at:

<https://www.gov.uk/government/consultations/planning-for-the-right-homes-in-the-right-places-consultation-proposals>

and the responses are presently being analysed.

16. For local planning authorities to be able to charge the initial 20% increased rate, they were required to commit to investing the additional fee income into their planning departments. This recognised the concerns expressed about the lack of capacity and capability in planning departments, and difficulties in recruiting and retaining planners and others with specialist skills.
17. This commitment was given by all local planning authorities in England and therefore this is reflected in the draft *Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017* (The 2017 Regulations).
18. The White Paper also undertook to keep under review the resourcing of local authority planning departments, and where fees can be charged. As such the current draft 2017 Regulations also contains amendments to introduce fees for:
 - Applications for Permission in Principle: Under the existing Regulations, local planning authorities are able to charge for an application for permission in principle technical details consent because it is classed as an application for planning permission. However they would be unable to charge a fee to cover the costs of processing permission in principle applications. The 2017 Amendment Regulations introduce a fee for permission in principle applications. The fee level is modelled on the approach set out in the existing Regulations for outline planning applications.
 - Pre-application advice: Mayoral development corporations and other development corporations have planning functions, including the determination of planning applications. However unlike other local planning authorities they cannot charge for pre-application advice. The draft 2017 Regulations make a change to align Mayoral and urban development corporations with local authorities to enable them to charge for pre application advice.
 - Fees in relation to permitted development rights: The 2017 Regulations allow local planning authorities to charge an application fee where

permitted development rights have been withdrawn. The 2017 Regulations also apply a fee which local planning authorities can charge for additional prior approval applications for permitted development rights introduced on 15 April 2015 by the *Town and Country Planning (General Permitted Development) (England) Order 2015*, and introduced through the *Town and Country Planning (General Permitted Development)(England)(Amendment) Order 2017*.

Do the Objectives of the Regulations remain appropriate and to what extent could they be achieved within a system that imposes less regulation?

19. The Government considers that in light of the evidence gathered from the 2016 Consultation and the 2017 Consultation, the Objectives of the Regulations remain appropriate as they benefit both applicant and local planning authority in providing for the proper consideration of planning applications.
20. The Government also considers that in light of the evidence gathered from the 2016 Consultation and 2017 Consultation, these objectives are best delivered within a framework of a national fee regime. It considers this approach imposes the least regulation to achieve transparency for applicants across all local planning authorities in England. The Government considers that the proposed amendments in the draft 2017 Regulations, as set out in paragraph 18 above, demonstrate that amendments to the planning fees regime are required to reflect changes to policy and procedure.
21. The Government acknowledges that the Regulations and draft 2017 Regulation are detailed, but consider that they are necessary in order to reflect the wide variety of planning applications than a local planning authority must consider and therefore to achieve a fee system that is fair. The Government considers that the 2017 Regulations will ensure that local planning authorities are better able to adequately resource the consideration of planning applications into the future.