

BUSINESS AND REGULATORY IMPACT ASSESSMENT

Title of Policy – Planning Performance and Fees

Lead Minister – Minister for Local Government, Housing and Planning

Lead Official – Chris Sinclair

Directorate – Local Government and Communities

Division – Planning and Architecture Division

Team – Development Delivery

Brief Summary

The Independent Panel appointed to review the planning system in Scotland highlighted in their report “Empowering Planning to deliver great places” (published in 2016) that:

- Planning fees in Scotland have increased 16 times since 1981, with the most recent increases of 20% in 2013 and 5% in 2014.
- Fees cover 26.5% of cost of full planning service.
- Fees cover 63% of cost of decision making.
- 20% reduction in planning authority staff since 2010.
- £40 million drop in gross expenditure between 2010-11 and 2015-16.
- 0.63% of local authority budget allocated to planning.
- £1.9 million average cost of planning authority service to tax payer.

The Independent Panel recommended that:

- Planning fees on major applications should be increased substantially, so that the service moves towards full cost recovery.
- Scope for further discretionary charging, for example for pre-application processes, should be considered further.
- Fees for retrospective applications should be substantially increased to provide a more effective deterrent.
- Higher fees could be payable where combined consents are offered.

SG Response

- In 2017 the maximum planning fee was increased from £20,055 to £125,000
- Reviewing the planning performance and fee regimes was identified as a key action in our work programme published in September 2019.
- We published a consultation seeking views on updating the planning performance and fee regimes between 18 December 2019 and 14 February 2020.
- Implementation of the new fee regime was postponed during the Covid Pandemic.

Purpose and Intended Effect

Background

The Town and Country Planning (Scotland) Act 1997 (as amended) provides that Scottish Ministers may make provisions for the payment of a charge or fee to a planning authority in respect of the performance of the authority of their function or anything which is done by the authority to facilitate the performance of those functions. The Planning (Scotland) Act 2019 introduced new provisions which allow

for the planning fee to be waived or reduced in certain circumstances, a higher fee to be charged for retrospective applications and to extend the range of services which an authority can charge for. In late 2019 a consultation paper was published which sought the views of stakeholders on the new provisions as well as general increases to planning fees.

Objective

Local authorities across the country are under financial pressure and planning departments have felt the effects of this with reductions in budgets and ultimately staff numbers. Although the overall resourcing of the planning service is a matter for local authorities, planning fees have an important role in ensuring that applicants rather than the tax payer help to cover the cost of determining applications.

This increase in fees is intended to move fees closer towards covering the cost of determining applications, to provide additional resource to all authorities and to help deliver service improvement.

Rationale for Government Intervention

Reviewing the planning performance and fee regime was identified as a key action in our work programme published in September 2019. In December of that year we published a consultation seeking views on updating the planning performance and fee regimes with responses due by 14 February 2020.

Over 100 responses were received with the majority of respondents supporting our proposals. Implementation of the new fee regime was postponed during the Covid Pandemic however, that work was recommenced in the Summer of 2021.

The current planning fee regime is similar to that of the other devolved administrations in the UK. The other administrations take a similar approach to setting fees centrally and that these are intended to cover cost of determining applications. Although the maximum fee is significantly higher in the other administrations, at smaller scales the planning fee for certain forms of development is actually higher in Scotland than it is for an equivalent sized development in other UK administrations; in such cases it is only at larger scales where the fee is lower in Scotland.

The Planning System in Scotland contributes to all of our National Outcomes. Planning fees can have a demonstrable impact on the service provided by an authority and in particular contributes to the following indicators under the Human Rights and International outcomes:

Outcome	Indicator
Human Rights	Public services which treat people with dignity and respect
	Influence over local decisions
	Quality public services
International	Trust in public organisations
	Scotland's reputation

Consultation

Within Government

Following the independent review of planning in 2016 and the consultation *Places, People and Planning* on the future of the Scottish planning system in 2017, the Scottish Government has worked with key stakeholders through a series of working groups to consider a wide range of planning issues including resourcing and fees. Ongoing engagement has continued since then, notably through the preparation of the Fourth National Planning Framework. Scottish Government colleagues in other policy areas such as housing, energy and marine fish farming have been consulted on the proposed changes to planning fees.

Public Consultation

In 2017 we published the Places, People and Planning Consultation which included some initial thoughts about planning fees and performance which influenced our approach to the provisions within the Planning (Scotland) Act 2019.

In October 2019 a number of workshops were held with over 50 attendees, representing a wide range of sectors, to discuss the topics of planning performance and planning fees. This early engagement has assisted in the preparation of the 2019 consultation paper. Specifically, it helped with the identification of current issues which should be consulted on and provided helpful insight into how planning fees are currently implemented.

A formal consultation was held over 2 months from December 2019 to February 2020 in which stakeholders were invited to make their views known on our proposals. Over 100 responses were received from a wide range of stakeholders and an independent analysis of the responses was undertaken and published in July 2021¹. The majority of respondents supported our proposals for change with only the fee for Peat extraction not being supported.

Business

As indicated above, extensive consultation was undertaken with applicant/developer groups in order to help shape our consultation proposals.

As to the responses to the public consultation: generally businesses/their representatives did not support increases in fees, but this was generally framed in terms of being opposed unless there is a demonstrable improvement in performance.

Scottish Ministers remain clear that any increases in fees needs to be matched by improvements in performance. To this end we will shortly be commencing

¹ <http://www.gov.scot/isbn/9781800041325>

recruitment of the National Planning Improvement Coordinator in order to drive improvements alongside the development of a new Performance Monitoring Regime.

Options

Do nothing

The planning fee structure is no longer considered to reflect the nature and scale of developments which are now being brought forward in Scotland. The Independent Panel recommended that planning fees should be substantially increased towards full cost recovery. In 2017 we increased the maximum planning fee to £125,000. Although some authorities saw a significant increase in their income this was not universal across the country with 2 authorities identifying no increased income.

Doing nothing would result in a continuing increasing gap in resources between the income received from planning applications and the costs of processing and making decisions.

Proposed Approach

Our proposed approach would result in the basic planning fee increasing by 50% in many cases, with the maximum fee increased further to £150,000. We also propose bringing into line the unit of calculation for area based developments to either sqm or per 0.1 hectare.

Sectors and Groups Affected

The sectors most likely to be affected by the proposals are:

- Planning authorities that are required to resource their development management service.
 - Given the nature and scale of developments which are brought forward the impact of the fee increases will have different impacts for urban, rural and island authorities.
 - We will continue to work with Heads of Planning Scotland to assess the impact of the changes to the fee structure and levels.
- All those who submit planning applications.

Benefits

The fee increase proposed is intended to provide increased resources to planning authorities. As well as being of direct benefit to authorities, insofar as these additional resources help support ongoing performance improvement, the proposed changes stand to also benefit applicants by providing improved customer service.

Costs

The proposed changes involve in most cases an increase in the fee payable for applying for planning permission. Because the proposals involve the creation of new categories and methods of calculation, there is a variation in the increases across different types of development. The variations include reductions in some levels and substantial increases in percentage terms in others.

Research² has shown that on average, planning fees only cover 63% of the cost of processing an application which indicates that Local Authorities and ultimately tax payers are subsidising the planning application process. The increases will move authorities further towards fully recovering these costs. But, because the structure of fees is changing, it has not been possible to model the potential impact of these increases with regards to cost recovery. Due to the pre-existing gap between fee income and cost of processing applications, it is not considered that the increase will result in authorities profiting from application income. The regulations also provide for the introduction of fees for additional services provided by the planning authority, some of which authorities will be responsible for setting depending on the level of service they intend to provide. These fees are also intended to be based on the principle of cost recovery and should not be pitched at a level which would lead to authorities profiting from their collection and ultimately subsidising other authority services.

To provide an indication of the scale of increase, Annex B includes a table which demonstrates the impact that the increase in fees for proposed householder developments would have for authorities. It is assumed that all applications relate to a single dwellinghouse and therefore are subject to the fee of £201. It shows that the increase in fee to £300 would generate an additional £1.2m across Scotland. It is not possible to predict the additional income which the increases to other categories will generate as they are dependent on the size of the proposed development.

The regulations cannot account for every eventuality and there will be circumstances, as at present, where the planning fee is considered excessive compared to the intended use, consideration and overall development costs. The regulations include the ability for authorities to waive or reduce fees in certain circumstances. This could be used in mitigation for these types of occurrences.

Scottish Firms Impact Test

In developing the proposals, we have consulted with a range of businesses to understand the direct impacts of this change to legislation. Although the changes will lead to increased costs, it should be noted that the standard planning application fee has not increased since 2014.

Competition Assessment

The proposals are not expected to impact significantly more on some firms than others nor restrict new entrants to the market. The need to produce detailed plans is not impacted by these changes.

We consider that the freedom of firms to choose the price, quality range or location of their products will be unaffected.

² <https://hopscotland.files.wordpress.com/2019/03/hops-costing-the-planning-service-action-report-220219.pdf>

Consumer Assessment

The proposals are not intended to impact on one set of consumers over another. Although there may be circumstances whereby an authority in one area charges for a service which may be free in another, we would expect that both services should meet the needs and expectations of the customer. It will be up to the authorities in question to decide whether they implement some particular charges to support the delivery of their planning service. They will also be required to set out the fees which are to be charged, how they have calculated that fee and the service which is to be provided.

We consider that the increased resources arising from the proposals will support the delivery of improved services to applicants.

Digital Impact Test

The consultation sought views on the introduction of charges for applications submitted both digitally and in the more traditional paper method.

Following the consultation it was decided that this proposal should not be implemented as there are instances where it is not possible for all applicants to submit their application electronically due to document file size or complexity.

Legal Aid Impact Test

As far as we are aware these proposals have no impact in relation to Legal Aid, as the policy does not introduce any new procedures or right of appeal to a court or tribunal.

Enforcement, Sanctions and Monitoring

An application for planning permission is not valid unless the appropriate fee has been paid. Where the fee is incorrect or missing the planning authority can turn the application away.

Where a developer considers they have paid the correct fee but this is disputed by the planning authority, they can appeal on the basis of non-determination to either the local review body or Scottish Ministers.

Planning application fee income and planning authority performance are inextricably linked. With an increase in resources through additional fee income, Ministers expect to see an improvement in performance and service delivery. As part of this, planning authorities will be monitored and assessed against the Annual Reports which they will be due to prepare on a statutory basis³. The content of these reports was part of the December 2019 consultation. Work will commence shortly on replacing the Planning Performance Framework Reports which were introduced in 2011-12 and are completed on a voluntary basis.

³ <https://www.legislation.gov.uk/asp/2019/13/section/46/enacted>

Implementation and Delivery Plan

It is anticipated that the amendments to fees will be laid before the Scottish Parliament in February 2022 and will come into force in April 2022.

Summary and Recommendation

It is recommended that these regulations are implemented to help ensure that the planning fees regime becomes more proportionate, fit for purpose and accurately reflects the developments coming forward in a modern Scotland. We expect all planning authorities will see an increase in resources regardless of the different profile of developments which are brought forward in their areas. There will be an impact on developers' costs with such an increase, but there is an expectation that any increase in resources will see an increase in performance level from authorities and the service they provide to people and businesses.

Sign off for Impact Assessments

I have read the consolidated impact assessment and I am satisfied that, given the available evidence, it represents, a reasonable view of the likely costs, benefits and impacts of the of the leading options I am satisfied that the impacts have been assessed with the support of businesses and other stakeholders in Scotland.

Signed: Tom Arthur

Date: 09 February 2022

Minister's name: Tom Arthur

Minister's title: Minister for Public Finance, Planning & Community Wealth

Annex A

Fee Table of Scotland Current vs Proposed Fee (not all categories are included)

Category	Units/Area		Scotland Current	Scotland Proposed	% change
Residential – New Dwellings	1	House	£401	£600	50%
	10	Houses	£4,010	£6,000	50%
	49	Houses	£19,649	£23,550	20%
	100	Houses	£29,849	£36,300	22%
	200	Houses	£49,849	£61,300	23%
	500	Houses	£109,849	£136,300	24%
	574	Houses	£125,000	£150,000	20%
Non-Residential Buildings	40	Sqm	£202	£300	49%
	75	Sqm	£401	£600	50%
	3750	Sqm	£20,050	£24,000	20%
	5000	Sqm	£23,383	£27,000	15%
	10000	sqm	£36,717	£57,000	55%
	20000	sqm	£63,383	£87,000	37%
	42000	sqm	£122,050	£150,000	23%
Agricultural Buildings	540	Sqm	£401	£500	25%
	1000	Sqm	£2,860	£3,000	5%
	2000	Sqm	£8,207	£8,000	-3%
	4200	Sqm	£19,970	£20,100	1%
	4215	Sqm	£20,050	£20,600	3%
	10000	Sqm	£20,055	£25,000	25%
	150000	Sqm	£20,055	£25,000	25%
Glasshouses & Polytunnels	465	sqm			
	5000	sqm	£2,321	£5,000	115%
Plant or Machinery	0.1	Hectare	£401	£500	25%
	5	Hectares	£20,050	£25,000	25%
	10	Hectares	£30,050	£37,500	25%
	20	Hectares	£50,050	£62,500	25%
	35	Hectares	£80,050	£100,000	25%
	55	Hectares	£120,050	£150,000	25%
	200	Hectares	£125,000	£150,000	20%
Oil & Gas	0.1	Hectare	£401	£1,000	149%
	7.6	Hectares	£30,240	£38,500	27%
	10	Hectares	£35,040	£50,500	44%
	20	Hectares	£55,040	£100,500	83%
	30	Hectares	£75,040	£150,000	100%
	50	Hectares	£115,040	£150,000	30%
	55	Hectares	£125,000	£150,000	20%
Minerals	0.1	Hectare	£202	£1,000	395%
	1	Hectares	£2,020	£5,500	172%
	5	Hectares	£10,100	£25,500	152%
	15	Hectares	£30,300	£75,500	149%
	20	Hectares	£35,240	£100,500	185%
	25	Hectares	£60,240	£125,500	108%

	110	Hectares	£125,240	£150,000	20%
Peat	0.1	Hectare	£202	£500	148%
	1	Hectares	£2,020	£5,000	148%
	1.5	Hectares	£3,024	£6,000	98%
	18	Hectares	£3,024	£6,000	98%
Other	0.1	Hectare	£202	£500	148%
	1	Hectares	£2,016	£5,000	148%
	130	Hectares			
Change of Use - Housing	1	House	£401	£600	50%
	10	Houses	£4,010	£6,000	50%
	49	Houses	£19,649	£23,550	20%
	100	Houses	£29,849	£36,300	22%
	200	Houses	£49,849	£61,300	23%
	500	Houses	£109,849	£136,300	24%
	750	Houses	£125,000	£150,000	20%
Disposal of refuse or waste	0.1	Hectare	£202	£1,000	395%
	1	Hectares	£2,020	£5,500	172%
	15	Hectares	£30,240	£75,500	150%
	30	Hectares	£45,240	£113,000	150%
	40	Hectares	£55,240	£138,000	150%
	45	Hectares	£60,240	£150,000	149%
	108	Hectares	£123,240	£150,000	22%
Change of use of Buildings	75	Sqm	£401		
	3750	Sqm	401		
Change of use of Land			£401		
Other Fees					
Approval of a Condition				100	
Discharge of Conditions - Householder				100	
Discharge of Conditions - All others				100	
Prior Approval				100	
Prior Approval - Communications				500	
Prior Approval - Agriculture to Residential				500	
Conservation Areas				225	
AMSC - Standard Fee				300	
Advertising - on site				300	
Advertising - visible from site				300	
Advertising - other				300	
hazardous substances				600	
				1200	
Section 42				300	
Non-material Variations				200	

* Fish/Shellfish Farming not included due to complexity of calculation.

Annex B

Current Fee income vs Proposed fee income for Householder Applications – 2020-21 Planning Statistics

Caveats

- Applications are those determined during reporting period (could include those which were submitted and paid for in the previous reporting period)
- Assumed that all applications attract a fee
- Assumed that all applications relate to a single dwellinghouse

Applications not subject to processing agreements			
Planning Authority	Number of applications	Current Fee Income	New Fee Income
Aberdeen City	271	£54,471	£81,300
Aberdeenshire	602	£121,002	£180,600
Angus	242	£48,642	£72,600
Argyll and Bute	287	£57,687	£86,100
Cairngorms National Park ¹	0	£0	£0
Clackmannanshire	123	£24,723	£36,900
Dumfries and Galloway	340	£68,340	£102,000
Dundee City	235	£47,235	£70,500
East Ayrshire	139	£27,939	£41,700
East Dunbartonshire	603	£121,203	£180,900
East Lothian	585	£117,585	£175,500
East Renfrewshire	498	£100,098	£149,400
City of Edinburgh	1,453	£292,053	£435,900
Falkirk	201	£40,401	£60,300
Fife	738	£148,338	£221,400
Glasgow City	754	£151,554	£226,200
Highland	690	£138,690	£207,000
Inverclyde	175	£35,175	£52,500
LLTNP	45	£9,045	£13,500
Midlothian	193	£38,793	£57,900
Moray	204	£41,004	£61,200
Na h-Eileanan Siar	62	£12,462	£18,600
North Ayrshire	194	£38,994	£58,200
North Lanarkshire	395	£79,395	£118,500
Orkney Islands	93	£18,693	£27,900
Perth and Kinross	471	£94,671	£141,300
Renfrewshire	309	£62,109	£92,700
Scottish Borders	285	£57,285	£85,500
Shetland Islands	31	£6,231	£9,300
South Ayrshire	306	£61,506	£91,800
South Lanarkshire	781	£156,981	£234,300
Stirling	356	£71,556	£106,800
West Dunbartonshire	135	£27,135	£40,500
West Lothian	363	£72,963	£108,900
SCOTLAND	12,159	£2,443,959	£3,647,700