

Chichester District Council

THE CABINET

6 December 2016

Report of the Planning Task and Finish Group

1. Contacts

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2. Executive Summary

The Task and Finish Group (TFG) has reviewed the current pre-application services provided by the Council and also the way in which conditions are used, discharged and enforced. It recommends a revised pre-application advice charging scheme incorporating a number of new services and a review of fees across all application types is approved by the Cabinet, to be implemented on 1 February 2017.

The TFG also recommends changes to the way conditions are used, discharged and monitored including:

- a change to the way conditions are presented on Planning Committee agendas
- a new format for decision notices, and
- a review of the standard conditions used by officers.

3. Recommendation

- 3.1. That the Cabinet agrees the adoption of the revised Pre Application Advice Charging Scheme with effect from 1 February 2017.
- 3.2. That the Cabinet agrees that the recommendations of the Task and Finish Group on the use and enforcement of planning conditions be adopted, including;
 - a) The full wording of conditions on Planning Committee agendas from 1 January 2017; and
 - b) That all decisions on planning applications issued from 1 February 2017 adopt the revised format recommended by the Task and Finish Group.

4. Background

- 4.1. On 31 March 2016 the Business Routing Panel resolved that a Task and Finish Group (TFG) should be set up to look at three areas within the Planning Services Service Plan; a review of the pre-application advice charging scheme, a review of planning conditions and their enforcement and the proposed Historic Environment Strategy and Action Plan (reported to Cabinet separately on 4 October 2016).
- 4.2. Accordingly the then Cabinet Member for Housing and Planning convened a members Task and Finish Group (TFG) in June 2016. The members of the TFG were: Susan Taylor (Chairman), Robert Hayes, Simon Oakley, Carol Purnell and Andrew Shaxon.

5. Outcomes to be Achieved

- 5.1. To review the existing Pre Application Advice Charging Scheme in order to;
 - Provide greater choice in the level of advice available
 - Ensure a faster turnaround of service
 - Manage expectations by applicants and agents in accordance with the service offered
 - Achieve a greater transparency of service
 - Take advantage of opportunities for greater cost recovery
 - Increase attractiveness of the service to applicants and agents of certain application types by rebalancing fees
- 5.2. To review the use and discharge of conditions in order that;
 - Conditions applied to planning permissions are clear, precise and enforceable
 - The procedure for the discharge of conditions is consistent
 - Effective monitoring can take place

6. Proposals

Pre Application Advice Charging Scheme

- 6.1. The TFG has considered the options for revising the Pre Application Service and recommends the revised Pre Application Advice Charging Scheme (appendix 1), the key changes to which are detailed in the following paragraphs.

Increased choice in advice offered & opportunities for greater cost recovery

- 6.2. The TFG considered the potential for introducing a charge for the existing Duty Planning Officer service. However there were concerns that this would leave no 'free' routes with which the public could engage with the Planning Service. The Duty Planning Officer offers a signposting service which is

valuable to the public in steering them through what can be a complex process. The TFG therefore concluded that the Duty Planning Officer should remain free of charge. It was also recognised however that on occasion, individuals had difficulty accessing the service as it operates only on a weekday morning. It was recognised that general enquiries can be submitted by e-mail, however this was not always a suitable substitute. The TFG therefore proposed that the service be expanded to include operation across one afternoon per week. This would allow for greater access by members of the public who are unable to visit the Council Offices on a weekday morning. Whilst this will require staffing by an officer within planning services it is unlikely to significantly impact on demands of officer time.

- 6.3. Amalgamation of the current Historic Environment Preliminary Enquiry (HEPE) scheme within the wider Development Management (DM) Pre Application Scheme was considered by the TFG. It was felt that having two related schemes (in addition to the SDNPA pre application advice scheme was confusing to use and that agents and applicants were not as aware of the existence of the CDC HEPE scheme. Recent engagement with agents through the Architects Forum had highlighted the desire by agents for greater on-site engagement with staff of the Council's Conservation and Design Team and their willingness to pay in order to resource such a service. The revised Pre Application Advice Scheme proposed by the TFG includes a Listed Building pre-application specific service centred around a site visit at a cost more reflective of the officer time required to fulfil those requests and the introduction of a formal minor works to listed buildings advice service, including a new fee to cover the work required by officers.
- 6.4. Also previously highlighted by agents has been the absence within the existing DM Pre Application Service Charging Scheme of an option to discuss sites at an early stage, to establish principles and options for development or to have access to a planning officer at short notice. The TFG discussed how this might best be achieved and recommends the introduction of a bookable 'surgery' style pre-application service two mornings a week – organised in 30 minute 'slots'. This new element of the service would be aimed at those prospective applicants who have not developed advanced proposals but want to discuss the general issues and opportunities around developing a site. It would provide advice in person within a short timescale; 48 hours' notice.
- 6.5. Within the existing Pre Application Advice Charging Scheme, permitted development queries (those enquiries as to whether planning permission is required for a proposal) are currently dealt with without charge but are limited to very minor works. More significant proposals such as rear extensions to dwellings are required to be the subject of an application for a lawful development certificate. Whilst this process has the benefit of a formal decision of the Council, the process is subject to an 8 week timescale and goes beyond what many customers require. Often customers are under pressure for a faster decision, even if this is limited to informal advice. The TFG has therefore concluded that there should be an expansion of permitted development enquiries available within the Pre Application Advice scheme to include greater works (in-line with the service provided by the South Downs National Park Authority (SDNPA) with a charge for this service. This will allow for a choice between a faster but informal opinion as to whether a proposal is

permitted development. The alternative of applying for a formal proposed lawful development certificate (a statutory application type) would remain as an option for those cases where added certainty is required or where the proposal is particularly complex.

- 6.6. The TFG also considered the introduction of chargeable pre-application advice for adverts and greater subdivision of the existing categories for written replies to requests for pre application advice, enabling fees to be more proportionate to the scale of the proposal. As part of the existing Pre Application Advice Charging Scheme some proposals are disproportionately expensive in comparison to the planning application fee. For example the fee for pre application advice for a single dwelling is £480, whereas the fee for the planning application for the same development would be £385. This encourages applicants to bypass the pre application advice service and to directly submit a planning application. The Council then does not benefit from a fee for a pre application service or the opportunity to influence the proposal prior to submission. A comparison of income generated by the existing and proposed Pre Application Advice Scheme based upon applications received for 2014/15 and 2015/16 is included as appendix 2.
- 6.7. In addition to proposing sub division of the existing categories of written advice offered by the Pre Application Advice Scheme, a full review of fees across all categories has been undertaken to ensure the Council is achieving the best possible cost recovery. With the introduction of additional areas for charging as outlined above, anticipated income is likely to be higher than existing and will further contribute toward cost recovery of the pre-application service as a whole.
- 6.8. A further analysis of the required resource for each category is provided in appendix 3.

A responsive service and expedient turnaround of advice

- 6.9. In addition to the introduction of the Pre Application Advice Surgery (see para 6.4 above), which will allow for a more responsive form of engagement with the public, the revised scheme proposes a reduction in response time to pre-application advice from 25 working days to 20 working days in most cases. As built into the current pre application advice scheme, the revised scheme would allow for an alternative bespoke timetable or extension of time to be agreed with the applicant where further time would be appropriate to assess complex cases or where further information is submitted by the applicant.

Transparency of service

- 6.10. Within the area for which CDC is the local planning authority, pre-application advice is treated confidentially outside of the Council, although in some circumstances the information may be released under the Freedom of Information Act. This is the way in which many Councils operate their pre application advice service, however within the SDNPA pre application information is available to view by the public, although no formal notification is issued as to the availability of this information

- 6.11. Councils have historically resisted making pre application information available to the public as it may be commercially sensitive or unnecessarily raise concerns from the public where proposals do not materialise as part of a subsequent planning application. However there is an increasing interest in the content of pre-application advice that has been imparted by the Council, particularly following the receipt of a planning application.
- 6.12. The TFG recommends that pre-application advice and associated documentation should be published but only once the resultant formal planning application has been submitted to the Council. This approach follows that taken by the Royal Borough of Kensington and Chelsea and deals with issues of commercial sensitivity as once the planning application is made, the public would be aware of the interest in the land for whatever purpose set out in the application. It also prevents premature concerns being raised with neighbouring property occupiers whilst providing transparency in the decision making process.

Managing expectations

- 6.13. The wording within the Pre Application Advice Scheme has been adjusted to clarify the advantages and limitations of each service. In addition the TFG proposed that an advice note is included as part of any application form in relation to the Pre Application Advice Service similarly setting out not only the benefits of each type of pre-app advice, but also the limitations.

Review of the Use and Discharge of Conditions

- 6.14. The TFG reviewed the three main functions in the use and enforcement of planning conditions (a) the use of conditions in the decision making process (i.e. to the granting of planning permission) (b) the discharge by the Council of details submitted pursuant to conditions and (c) the adherence to and enforcement of conditions during the construction process and beyond. Potential weaknesses in current procedures and opportunities for best practice were identified with regard to guidance, the use of standard conditions, the order and prominence of conditions on the decision notice, how conditions were discharged, and the information available to the Planning Committee when considering proposed conditions.

Guidance and Principles

- 6.15. Whilst the Planning Service currently utilise a set of standard conditions to achieve high quality development the TFG considered that the absence of any overarching guidance was found to have an adverse impact on the LPAs approach to the use and enforcement of conditions. Therefore 10 Principles relating to their use and enforcement are proposed by the TFG (appendix 4). The principles follow government guidance in the use of planning conditions but in a local context to take account of the particular challenges faced by Chichester District Council. The principles encourage open discussion with applicants/agents about the use of conditions to make a proposal acceptable and to discourage the use of conditions to impose control where the plans to be approved are clearly annotated in the same respect e.g. the use of materials or levels. The engagement of planning enforcement in the use of

phasing conditions on Major schemes is encouraged to identify any shortcomings or obstacles which may prevent a development being delivered in a timely and efficient manner.

Review of Standard Conditions

- 6.16. The TFG recommend that the standard conditions used in the drafting of decision notices be reviewed to reduce the number of conditions by removing duplication and the refinement of those that remain to ensure that their meaning is clear and precise. It is recognised that standard wording is not always appropriate and that some editing of condition(s) will continue to be required. However, the opportunity for 'free text' should, where possible, be minimised. It is proposed that the principles set out in the preceding paragraph are included within the revised Standard Conditions 'booklet' (to be issued to all members of the Planning Committee so that regard is had to them when drafting decision notices and conditions may be edited where necessary. This includes a revision to the standard condition relating to foul water drainage, which was raised by the Overview and Scrutiny Committee and commented upon by the TFG.

Revision of planning application decision notices

- 6.17. Currently, the setting out of conditions in planning decision notices does not distinguish between different types of conditions and so there is a risk that a pre commencement condition could be overlooked i.e. a condition that requires an action to be taken or further permission to be sought before development commences. In light of this, the TFG recommend that a revised decision notice template is introduced which includes headings beneath which conditions are imposed having regard to the timing and phasing of the development. It is considered that this reordering of planning conditions will make it clear on first reading of the LPA decision notice as to what actions are needed and when. In addition, the importance of discharging pre-commencement conditions will be set out in an emboldened informative at the end of the decision notice to underpin the objective of securing conditions compliance at an earlier stage and so reduce the need for formal enforcement action.

How conditions are discharged

- 6.18. Linked to the improved wording and use of conditions is the need to structure the process of discharging conditions. It was reported to the TFG that current practice lacked a robust link between applications to discharge conditions (which can be numerous) and the original planning permission to which the conditions relate. In addition, the recording of the information agreed and the decisions made in relation to discharging conditions was not readily identifiable within the Council's document management system. This situation is further compounded by multiple decisions being conveyed to the applicant via email during the Discharge of Condition (DOC) process and the omission of a single DOC decision notice being issued on completion of the process. The TFG recommended that in addition to discharging individual conditions within a DOC application at different times throughout the process, on

completion of the application (when all details are either approved or refused) that a single decision should be issued. This would then be registered against the full planning permission to which the conditions are attached and the data management system [UNIFORM] would be updated by officers to assist planning enforcement in assessing compliance with conditions and for greater accessibility by members of the public.

Condition monitoring and engagement with developers

- 6.19. It was considered by the TFG that the importance of discharging conditions was not sufficiently acknowledged in the decision making process or adhered to by applicants; and that condition monitoring was not sufficiently embedded into the enforcement process. For this reason it was agreed that planning enforcement will use the bespoke area of the UNIFORM data base to track compliance with controlling conditions.
- 6.20. In support of a renewed focus on the DOC process and procedures the TFG recommended that a notification slip be included in the decision notice template which applicants/agents are requested to return to planning enforcement. This alerts the service to the commencement of a development and prompts a desk top 'investigation' of related planning permissions to ascertain whether the requirements of pre commencement conditions have been adhered to..
- 6.21. The TFG accepted that planning enforcement cannot resource the monitoring of all decisions and conditions and considered that the team's efforts should be directed towards Major Development sites and those sites which attract complaints. The TFG group supported the principle that all interested parties be informed of matters arising from these investigations.

The reporting of proposed conditions to Planning Committee

- 6.22. The TFG considered that the Planning Committee decision making process would be strengthened if Members had the full wording of planning conditions when they considered development proposals at Committee meetings. The TFG group looked at the implications of using the full wording of a condition and thought that the increased text and expansion of the agenda as a whole was offset by Members having full knowledge of what was being agreed. It was therefore agreed that conditions would be set out in full within future Planning Committee agendas.
- 6.23. The TFG recommends that the new working practices and business improvements in Development Management procedures set out above are agreed.

7. Alternatives Considered

- 7.1. The TFG considered alternative options which included retaining current working practices. Various options have been set out in the paragraphs above.

8. Resource and Legal Implications

- 8.1. The TFG's proposals have no significant financial or staffing impacts and accord with legal requirements.

9. Consultation

- 9.1. Given that the majority of proposals had been formed as a result of feedback from customers; the TFG concluded that a short consultation with regular agents and architects was necessary. This will have been completed before the Cabinet meeting and summarised feedback will be provided.

10. Community Impact and Corporate Risks

- 10.1. The TFG believes its proposals maintain and enhance the existing opportunities for community participation in the work of the Planning Service and, therefore, should have a positive impact on people and places.

11. Other Implications

Crime and Disorder	None
Climate Change	None
Human Rights and Equality Impact	None
Safeguarding	None

12. Appendices

Appendix 1: Revised Pre Application Advice Charging Scheme

Appendix 2: Comparison of current scheme and proposed scheme based upon pre-apps received 2014/15 & 2015/16

Appendix 3: Analysis of resource implications of Pre Application Advice Scheme

Appendix 4: Principles of the LPA's approach to the use and enforcement of conditions

13. Background Papers

None