MUNICIPAL YEAR 2010/2011 REPORT NO. 151

| Agenda – Part: 1 | Item: 16 |
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| **Subject: Communities and Local Government Consultation Document on Proposals to Change Planning Fees** | |

MEETING TITLE AND DATE:
PLANNING COMMITTEE
16th December 2010

REPORT OF:
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## 1. EXECUTIVE SUMMARY

1.1 This consultation document, invites views on the Government's proposals to allow local Authorities to set up their own planning fees to the cover the cost of determining planning applications.. The expiry date of the consultation exercise is the 7th January 2011.

## 2. RECOMMENDATIONS

2.1 That the response to the consultation document be agreed by Members and forwarded to the CLG

## 3. BACKGROUND

3.1 This consultation document proposes to

- Decentralise the setting of planning application fees, so that the responsibility is passed to local planning authorities (LPAs); and

- Widen the scope of planning application fees, so that LPAs can charge for more of their services.

3.2. Under these proposals, Local Planning Authoritiess would be able to:
- Set their own fees;
- Set higher fees for retrospective applications; and
- Charge for resubmitted applications following withdrawal or refusal.

3.3 Local Authorities, however, will not be able to make a profit on fees although they will be able to recover the actual cost of submitting a planning application.

3.4 The decision to consult on this issue stems from concerns that Local Authorities are unable to recover the true costs of planning applications because of the fixed fee charging system, which is set by the Government. This has meant that, in a number of cases, taxpayers' council tax bills have risen, as local authorities try to make up any shortfall. If the proposals are taken forward following the consultation, local authorities will be able to set their own fees from April 2011, with a six-month transition period until October 2011. During the transition period, local authorities will be able to use the current fees set by central Government, though these will be withdrawn in October 2011.

## 4. LEGAL BACKGROUND AND CURRENT PLANNING FRAMEWORK

4.1 The provisions for charging planning application fees are set out in section 303 of the Town and Country Planning Act 1990, as substituted by section 199 of the Planning Act 2008. These provisions:

• allow fees to be charged in relation to any function of a local planning authority and for matters ancillary to those functions

• allow the Secretary of State to prescribe fees or a means of calculating fees to be set by someone else (such as a local planning authority)

• allow the Secretary of State to prescribe when a service would be exempt from fees

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4.2 Section 303 (10) of the Town and Country Planning Act 1990 states that the income from a fee must not exceed the cost of performing the fee-related function (handling, processing and determining planning applications, in this instance). This means that fees cannot be used to make a profit.

4.3 It is an established principle that local authorities should pay for activities that are purely or largely for the wider public good. The consultation document makes it clear that the intention of development management is above all to promote the public good: since managing local development helps to secure the long-term benefits of sustainable, well-designed communities. Yet planning decisions often bring private benefit to the applicant as well; in particular, a property with planning permission may be much more valuable than it would be without. The power granted to authorities to charge planning application fees reflects the possible private benefit implicit in a

planning permission. The Government believes that an applicant should expect to pay a fee for an application that could bring a measure of gain. The fee payable reflects the overall cost of handling, administering and deciding the application, including related overheads.

4.4 In February 2009, the previous Government commissioned independent research from Arup1 to look at whether planning application fees were covering local authority costs, and to identify methods that authorities could use to set their own charges. Arup's report is available on our website. It shows:

• that authorities are recovering around 90 per cent of their costs, on average

• that between April 2006 and March 2010 (with projections used for 2009 -10) the average cost of handling and determining planning applications was £619, and the average fee received was £569

• that around 35 per cent of development management resources are being allocated to dealing with applications which do not currently incur a fee

## 5. CHANGES PROPOSED

5.1 Decentralising Planning Application fees

5.1.1 The Government believes that wherever possible, decisions should be taken at the local level, by people who are accountable to the public. The Government argues that there is no reason why charges for planning applications should be an exception. The Consultation document states that Local planning authorities should be able to set their own charges to recover their own costs and that applicants should be charged for the full cost of the application where they are paying a fee, rather than being subsidised by the general tax payer. The consultation document therefore propose to decentralise responsibility for planning application fee setting to local planning authorities.

5.1.2 In April 2008, planning application fees were increased by 23 per cent in order to help authorities recover more of their costs. However, as Arup's research has shown, some authorities are still not recouping costs. The government feel that letting local planning authorities set their own fees will enable them to recoup their costs but not exceed them. At the same time, the government feel that setting fees locally provides a stronger incentive for local planning authorities to run a more efficient service: since it will be a more transparent system, directly accountable to local residents. If the proposal is taken forward there will be a six month transition period to give authorities time to develop charges which accurately reflect their costs.

5.2 Extending the Scope of Planning Application Fees

5.2.1 Many applications at present, such as those for listed building consent or resubmissions following a refusal or withdrawal are not currently subject to fees. The Government feels that in some instances, applicants are receiving private benefits without having to pay a fee for their application. The government does not feel this is sustainable for authorities and is unfair for the general tax payer, who is subsidising the application. The consultation document proposes to widen the scope of planning application fees so that authorities can charge for more of their services. This, the government feels, would enable authorities to charge for resubmitted applications, and would allow authorities to charge higher fees for retrospective applications

## 6. OPTIONS FORWARDED

6.1 The consultation paper outlines 2 options for consultation. These are listed below:

6.2 **Option 1: would decentralise the responsibility for setting fees for planning applications to local planning authorities**

6.2.1 Under this option, it would give local planning authorities control over setting planning application fees. The Government would set out in regulations the principal requirements for local planning authorities (which would include establishing a charging schedule) and exemptions from fees. Local planning authorities would have to establish a charging scheme which reflects full cost recovery and the principle that the user should pay for the actual service they receive. Authorities should keep their costs to a minimum – helped by local democratic accountability – and should ensure that charges are based on efficient services which remain affordable

5.3 **Option 2: Maintain the current fee system**

## 7. DISCUSSION OF OPTIONS

7.1 Currently no fee is payable for applications that are resubmitted following withdrawal before determination or refusal (this is known as the “free go”). This was principally because it was considered unfair to charge applicants twice for similar applications, which should theoretically not require as much work to determine as two separate, unrelated applications. In practice, however, a resubmitted application

may be very different from the original application whilst still being entitled to a “free go”. Resubmitted applications, can represent substantial work, and therefore cost, for an authority. A comprehensive “free go” fails to reflect this cost. The Authority welcomes the proposal to allow authorities to make their own decisions about whether or not to allow a “free go”, depending on the local costs they expect to incur for resubmitted applications.

7.2 Currently no distinction is made between fees for routine applications and applications which are made retrospectively (after development has begun). Retrospective applications are sometimes made as a result of investigation by a local planning authority enforcement departments. In these instances, they impose a greater cost on authorities than routine applications. The principle behind planning application fees is that they should be set at a level that allows authorities to fully recover the associated costs. The Authority agrees with the Consultation document’s proposal that Local Authorities should be able to charge a higher fee for retrospective applications where the application has come about as a consequence of enforcement investigatory work by the authority, in order to recover all of the related costs. In addition applicants utilise this free go to delay enforcement action as a result of planning refusals, which can be very frustrating to local residents. Setting a planning fee for resubmissions would also allow local authorities to deter repeat applications for development which already exists (retrospective planning applications).

7.3 Applications for Listed Buildings, Conservation Area consent and for works to trees that are the subject of a tree preservation order (TPO consent) do not currently incur a fee. The Authority has sympathy with the government’s opinion on the unfairness of charging for such applications as these designations were effectively forced on local land owners.. It is recognised that the designation of Conservation Areas, Article 4 Directives and Tree Preservation Orders were imposed on property owners by the Authority and therefore it would appear unfair to set a planning fee for works on a TPO, or developments which would normally be permitted development for it not for an Article 4 Direction. However designations of listed buildings are not the decision of Local Authorities and whilst they have been predominantly imposed on house owners there has also been an additional burden placed on Local Authorities to determine Listed Building Consent applications. Such LBC applications generate significant work for planning departments and at the very least an administrative charge should be set. It also needs to be recognised that in most cases the designation of listed buildings have actually had the effect of increasing the property’s value to the owner.

7.4 Many major schemes involve considerable work and financial commitment to the Authority and whilst the 2008 fee regulation changes increased the planning fee payable it does not meet the overall costs of the determination process. There is an obligation on

Authorities to contract, in many cases, external expert consultants in order to competently evaluate of the numerous technical assessments submitted by the applicant. Local Authorities should be afforded the opportunity to customise fees which are fair taking into account the complexity of the proposal in order to cover all the costs associated with its determination.

## 8. CONCLUSION

8.1 In conclusion the Local Borough of Enfield welcomes option 1 which would afford the Local Authority to set its own planning fees to ensure that they cover the cost of the service rather than be subsidised by the tax payer.