

Appendix A Scottish Government Consultation on Planning Fees

Response to Consultation Questions

Question 1: Are there any costs or benefits not identified in the draft Business and Regulatory Impact Assessment (BRIA)?

The BRIA refers to anecdotal evidence pointing to a likely increase in the number of Certificates of Lawful Use or Development (CLUD) for proposed householder development if these are made free, but suggests that in most cases these will involve little work for the planning authority. There is no question that making such applications free will result in a significant increase in the number of such applications. Once applicants and agents come to realise that a legal document of equivalent status to a planning permission can be obtained free of charge for householder Permitted Development (PD) proposals, it will become commonplace for this to be used for even the most minor works where the developer is well aware that a planning application will not be needed. At present this authority receives very few CLUD applications for proposed householder development, so this proposal is certain to lead to a very significant increase in such applications, along with their associated costs.

The reform of householder PD rights have resulted in a higher proportion of these enquiries now requiring a site visit and/or extended correspondence with applicants before it can be confirmed whether or not the proposal is PD. This is part of the reason that some planning authorities have stopped dealing with PD enquiries and started requiring CLUDs. Therefore, the BRIA's statement that "in most cases (CLUDs) would involve a simple judgement" is incorrect, and also overlooks why the problem of authorities charging for PD advice has arisen in the first place. Even where a CLUD is simple to determine, the CLUD process requires more administration than simple PD enquiries and is consequently more expensive to administer.

If the Scottish Government wishes to encourage the use of CLUDs for proposed householder development, it is suggested that these should be subject to a modest fee – perhaps £40. This would be less than the current fee of £80 charged by some planning authorities, and would discourage the use of CLUDs for very minor works whilst contributing towards the cost of dealing with CLUD applications.

Question 2: Do you have any information or can you suggest sources of relevant information on the costs and/or benefits detailed in the BRIA at Section C?

A list of all applications validated by West Dunbartonshire in the fourth quarter of 2011-12 is attached. This shows the fees which were charged and the fees which would have been charged under the proposed new fee scale. The fee for most applications would have increased by a median of £140. Total fee income from applications for planning permission and advertisement consent would have risen from £53,559 to £146,380. However, it is not suggested that this would be a typical quarter as it was a particularly quiet period for new

applications, and the vast majority of the increased fee income would have been accounted for by a single atypical 'maximum fee' windfarm proposal.

These figures do not take account of increases in fees for hazardous substance consent or prior approval, which would also have provided a modest increase. There were no applications for certificates of lawfulness during the period in question, although that will of course change if these are made free.

Question 3: We would appreciate your assessment of the potential equalities impact our proposals may have on different sectors of the population. A partial Equalities Impact Assessment (EQIA) is attached to this consultation at Section D, for your comment and feedback.

It is considered unlikely that any equalities issues will arise from the proposals. The retention of existing exemptions for disability adaptations is welcomed.

Question 4: Do you consider that linking fees to stages within processing agreements is a good or bad idea? What should the second trigger payment be?

This is considered to be a bad idea. There is an obvious logic to allowing very large fees to be staged in some way, subject to there being adequate means of enforcing payment of later instalments. However, processing agreements have not yet been widely adopted. It is likely that applicants would be more willing to seek processing agreements if they enabled the fee to be partially deferred, but the other side of that coin is that planning authorities will be less supportive of them if their use resulted in delays or complications in fee collection. The incentive of a staged fee should not be used to force the increased use of processing agreements.

There would also have to be adequate provisions for collection of outstanding fees in the event that an applicant decided to withdraw or abandon an application, which they are quite likely to do if they become aware that their application is not being viewed favourably and another fee instalment is due. Staged fees may also give some applicants an incentive to cause delays to their own applications if they are not ready or willing to pay the next instalment.

If a staged fee payment is introduced, it is suggested that this should only be applications with particularly large fees. A large proportion of the fee should still be paid at the start of the process – at least 50%. Full payment must be made before the application can be determined, or before the applicant can appeal against non-determination.

Question 5: Do you agree or disagree with the proposal that where applications are required because permitted development rights for dwellings in conservation are restricted, then a reduced fee should be payable?

Agree ☒ Disagree ☐

Question 6: Do you agree or disagree with the proposal that there should be a separate fee for renewals of planning permission?

Agree ☒ Disagree ☐

Question 7: Do you agree or disagree that the new fee is set at an appropriate level?

Agree ☒ Disagree ☐

Question 8: Do you agree or disagree with the proposal that the fee should increase on an annual basis?

Agree ☒ Disagree ☐

Question 9: Is using site area the best method of calculating fees for windfarms of more than 2 turbines? If not, could you suggest an alternative? In your response please provide any evidence that supports your view.

Yes ☐ No ☒

The site area is of limited relevance as it does not actually relate to the scale of development proposed. Why should a development with a small number of small turbines spread over a wide area have a much higher fee than one with a large number of large turbines which would be more tightly grouped? In any event, basing the fee on site area when the maximum fee is so high would encourage applicants to draw red lines tightly around the turbines thereby artificially minimising the site area and complicating the handling of the applications.

It would be more relevant to link the fee to the number and size (or generating capacity) of the turbines, which is easily calculated and clearly related to the scale of the proposal. Associated works such as service tracks and borrow pits are usually of a scale which relates in some way to the size/number of turbines.

Question 10: Please list any types of developments not included within the proposed categories that you consider should be.

No suggestions.

Question 11: We would welcome any other views or comments you may have on the contents and provisions on the new regulations.

The recent Audit Scotland report on Modernising the Planning System which concluded that the planning system funding arrangements were becoming unsustainable based that assertion on the fact that fee income has declined substantially over the last few years. That conclusion failed to recognise that the starting point for these statistics was the height of an unsustainable development boom, when fee income was at an all time high.

Historically, fees for planning applications were not introduced until 1981 and initially were kept relatively low. By seeking to make fees high enough to cover the full cost of the development management system represents a considerable increase in the burden which the planning system imposes on developers. Therefore, whilst the Council supports the proposed increase in

fees from a resources perspective, there is a danger that some worthwhile developments may not happen if applicants are unable or unwilling to pay the increased fees.