

Explanatory Memorandum to the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020.

This Explanatory Memorandum has been prepared by the Welsh Government's Economy, Skills and Natural Resources Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020.

Julie James
Minister for Housing and Local Government
24 June 2020

Part 1 - EXPLANATORY MEMORANDUM

1. Description

- 1.1 The primary source of funding for local planning authorities (“LPAs”) is generated from fee income received for determining applications. The fees are intended to recover the costs for providing this service.
- 1.2 However, for a considerable period, LPAs have been faced with a number of issues which have affected how the development management system in Wales operates, such as reductions in service funding and diminishing specialist resources. The Welsh Local Government Association submitted evidence to the then named National Assembly for Wales Finance Committee in October 2016, demonstrating a 53% budget cut to planning services between 2009/10 and 2016/17 financial years. This can not only affect the quality of decisions being made, but also have a profound effect on whether these decisions can be made in a timely manner.
- 1.3 In addition to this, the Wales Audit Office *‘The Effectiveness of Local Planning Authorities in Wales’* (June 2019) stated that income for development management services within LPAs has remained static in recent years¹ and recommended the Welsh Government review fees for providing development management services, to ensure their levels are set to better reflect the actual cost of providing these services.
- 1.4 Since fees were last updated in the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (“the 2015 Regulations”), LPAs have been subject to additional requirements through policy and legislation changes when determining applications. In addition to other factors, such as inflation, an uplift in administration costs and the effects of public sector austerity, this has had a profound impact on LPAs’ ability to recover their costs. This has the potential to have a detrimental impact of how the development and management of land in Wales is delivered by the planning system, which is one of the main levers for economic, social and environmental progress.
- 1.5 The novel coronavirus pandemic has also exposed growing financial pressures to deliver public services with minimal resource and it is even clearer fee planning application fee income does not sufficiently cover the operating costs. There is an increased possibility LPA development

¹ Paragraph 2.7 of the ‘Effectiveness of Local Planning Authorities in Wales’ Report (Wales Audit Office, June 2019)

management services will be under-resourced and be unable to deliver planning decisions in a timely manner or on a limited basis only both during the pandemic and the recovery phase.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

2.1 None.

3. Legislative Background

3.1 The powers necessary for the purpose of making the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2020 (“the 2020 Regulations”) are those contained in sections 303 and 333(2A) of the Town and Country Planning Act 1990. These powers enable the Welsh Ministers to make certain provision in connection with fees for planning and related applications. This is subject to section 333(3E)-(3F) of the same Act, which requires a draft of the Regulations to be laid before and approved by resolution of the Senedd.

4. Purpose and intended effect of the provisions

4.1 The aim of application fees is to recover the costs of LPAs in providing a development management service. However, it has become increasingly clear fee levels do not cover these costs. Consequently LPAs are moving further away from cost recovery. This could lead to a detrimental impact on how the development and management of land in Wales is delivered by the planning system, which is one of the main levers for social, economic and environmental progress.

4.2 The purpose of the legislation is to address the existing deficit between the cost of determining applications and the income received for providing this service. The effect of the legislation will be to retain the current and established fee structure set out in the 2015 Regulations, however, those fees will be increased by approximately 20%, excluding fees for pre-application services, which will remain at current levels. For this proposal to yield any direct benefit to LPA services, we expect the additional income generated from fees to remain within the service provision budgets of LPAs and not be offset by an equivalent reduction in corporate funding for the service.

5. Consultation

5.1 Proposals to increase fees for planning and related applications, as well introduce a fee for applications relating to Certificates of Appropriate Alternative Development, were put forward in the ‘*Changes to planning and related applications fees*’ consultation paper. The consultation paper was

published on 16 December 2019 and was open for responses until 13 March 2020. The consultation generated 59 responses.

- 5.2 In considering those stakeholders most likely to be impacted by the proposals (both individuals and organisations), a list was drawn up which included all LPAs in Wales, public bodies, businesses/planning consultants and special interest groups. Consultees were asked to assign themselves to one of six broad categories indicated in the table below and shows the breakdown of responses by category.

Table 1 – Breakdown of Respondents		
Category	Number	% of total
Business / Planning Consultants	6	10%
Local Authorities (including National Park Authorities)	16	28%
Government Agency / Other Public Sector	25	42%
Professional Bodies / Interest Groups	8	13%
Voluntary Sector	0	0%
Others (other groups not listed)	4	7%
Total	59	

- 5.3 A summary of the consultation and government response has been published on the Welsh Government website. A link to this document is provided below:

[insert link]

- 5.4 Overall, there was support to increase fees for planning and related applications by approximately 20%, with certain exceptions, although respondents were clear that any increase in fees must be met by improved service levels from LPAs and the increase in revenue must be ring-fenced within planning departments, rather than being absorbed centrally, if there are to be any benefits to the proposed increase.
- 5.5 There was also support to introduce a flat fee for applications relating to Certificates of Appropriate Alternative Development.

Part 2 - REGULATORY IMPACT ASSESSMENT

Changes to planning and related applications fees

6.1 Two options have been considered:

- Option 1 – Do nothing (i.e. retain the existing fee levels as prescribed in the 2015 Regulations and do not introduce a fee for determining applications for a Certificate of Appropriate Alternative Development).
- Option 2 – Increase fees currently prescribed in the 2015 Regulations for planning and related applications by 20% and introduce a fee for Certificates of Appropriate Alternative Development.

Option 1 – Do nothing (i.e. retain the existing fee levels as prescribed in the 2015 Regulations and do not introduce a fee for determining applications for a Certificate of Appropriate Alternative Development).

Description

- 6.2 Fees for planning and related applications are currently prescribed in the 2015 Regulations and have not been subject to any increases since they came into force.
- 6.3 Data from the Planning Advisory Service in 2018 estimated the total cost of determining applications across all local planning authorities (“LPA”) in Wales each year is £14 million. Income generated from applications each year is estimated at £9 million, which represents cost recovery at approximately 60%.
- 6.4 Furthermore, applications for a Certificate of Appropriate Alternative Development submitted under section 17 of the Land Compensation Act 1961 do not currently command a fee in Wales. Although, like other applications submitted to LPAs, these applications require a certain level of input in terms of time and resource, in order for them to be determined.
- 6.5 This option would retain the current fee structure and fee amounts, as set out in the 2015 Regulations.

Costs:

This is the baseline option and as such there are no additional costs or benefits associated with this option. The following provides a summary of the current situation.

Businesses and Householders:

- 6.6 There is a variety of different applications which may be submitted and there is significant variation in fees, which can range from £25 for householder pre-application advice up to £287,500 for large scale developments. While it isn't possible to quantify every planning application fee from 25 LPAs on an annual basis, our research suggests businesses and householders pay, in total, approximately £9,000,000 in planning fees on average per year (this figure does not include pre-application services, which will not change). As cost recovery for LPAs is currently estimated to be 60%, this means businesses and householders are only contributing towards 60% of the costs of determining the applications they submit. Anecdotal evidence received to date has indicated a decrease in the number of planning applications during the Coronavirus outbreak, however, this cannot be accurately quantified at this time.
- 6.7 Businesses and householders would also not be required to submit a fee with an application for a Certificate of Appropriate Alternative Development. It is estimated the work involved in determining these applications would be similar to Certificates of Lawful Use of Development, which currently command a fee of £190 per application. However, the true cost of determining these applications is anticipated to be higher, given fees have not increased in 5 years.
- 6.8 Although it is not known how many applications for a Certificate of Appropriate Alternative Development are submitted each year in Wales, any business which does submit one for determination will benefit from a cost saving of approximately £230, which is the estimated cost of determining the application. We estimate there are no more than 10 such applications per year resulting in a cost saving of £2,300.
- 6.9 Businesses and householders may also incur indirect costs. As LPAs may have fewer resources to determine applications, the time taken to determine these applications could increase. As a consequence, there may be higher numbers of decisions being challenged by way of an appeal, either due to the quality of the decision or non-determination of the application.
- 6.10 It is a possibility businesses and householders would therefore also incur the costs of participating in the appeal process. However, it is not possible to quantify the exact numbers of appeals an underfunded service would generate. While appellants may recover costs from the LPA in the case of unreasonable behaviour causing unnecessary expenditure, costs are only awarded in the minority of cases.

Local Planning Authorities:

- 6.11 As this option proposes no changes to the current fee levels, LPAs would only be receiving approximately 60% of the costs required to determine planning and related applications. Their level of income would be approximately £9 million. This level of income is likely to be lower, based on the same cost-

base, with a decrease in planning applications as a consequence of the coronavirus outbreak.

- 6.12 They would also be required to determine applications for Certificates of Appropriate Alternative Development without receiving a fee for recovering the costs associated with such determinations. As discussed in paragraph 6.8 it is likely no more than 10 such applications are submitted in Wales each year, although it is estimated LPAs lose approximately £230 for each application which is determined, £2,300 per year.
- 6.13 Similar to businesses, LPAs may find this option also has indirect costs, should the number of determinations they make, be challenged by applicants at appeal. LPAs would have to spend more time and resource in participating in the appeal process which will subsequently have a detrimental impact on their finances. While the LPA may recover costs from the appellant in the case of unreasonable behaviour causing unnecessary expenditure, costs are only awarded in the minority of cases.

General Public:

- 6.14 The general public and third parties, as a consequence of this option, will continue to engage with the planning process through the making of representations on applications of interest. Aside from the time taken to write a letter or email, there would be no or negligible financial cost to third parties. Option 1 does not alter their role.

Benefits:

Businesses and householders:

- 6.15 Businesses will benefit from no increases in fees for submitting planning and related applications, which have not been updated since 2015. However, this will be offset by decreases in the level of funding for the service, relative to inflation, which may lead to a decreased quality of service leading to potential delays in receiving planning decisions or the decrease in quality of decisions.

Local Planning Authorities:

- 6.16 There are no identifiable benefits for LPAs. As planning fees will continue to increase relative to inflation, the pressure to deliver a service with less resource will be increased, leading to a decreased quality of service, and potential reputational harm.

General Public / Third Parties:

- 6.17 There are no identifiable benefits for the general public and third parties, as they may continue to engage with the planning process as they would have previously.

Option 2 - Increase fees currently prescribed in the 2015 Regulations for planning and related applications by 20% and introduce a fee for Certificates of Appropriate Alternative Development.

Description:

- 6.18 This option would provide an increase of approximately 20% across the board for planning and related application fees. However, this would not apply to fees for pre-application services, which would remain the same as currently prescribed in the 2015 Regulations and fees for the upper limits / thresholds would increase by approximately 4%. While increasing fees by 20% will not result in full cost recovery, the rationale for increasing fees by this amount is that we believe it strikes an appropriate balance between LPAs generating additional fee revenue and not increasing fees by an amount which will deter applicants from using the service. Examples of how these changes would affect fees are included in Annex A.
- 6.19 This option would also introduce a flat fee of £230 for an application seeking a Certificate of Appropriate Alternative Development, with the fee being payable to the LPA upon submission of an application. This figure is based on the existing fee for the determination of an application for a Certificate of Lawful Use of Development. We estimate the time / cost between these types of applications to be comparable.

Costs:

Businesses and Householders:

- 6.20 Generally, businesses and householders would be required to pay an additional 20% of the relevant fee under this option. This will result in an increase in total fees per year from £9,000,000 to approximately £10,800,000 (an additional cost of £1,800,000). While it is acknowledged the fee cap will only increase by 3-4% as a consequence of the proposals, only a small number of applications hit this cap per year. Accordingly, this is unlikely to impact on the approximate total of fees.
- 6.21 Furthermore, under this option, there will be a requirement to pay a fee for an application for a Certificate of Appropriate Alternative Development. Based on approximately 10 such applications in Wales each year, it is estimated there will be an additional cost of £2,300 to businesses.
- 6.22 In terms of unquantifiable indirect costs, businesses may receive a better service, in terms of timeliness and quality of decisions made. This may ultimately reduce the number of appeals made against the non-determination of planning applications or lower quality decisions.

Local Planning Authorities:

- 6.23 LPAs would receive a 20% increase in fee revenue from the majority of applications, with the exception of pre-application service fees and the fees

associated with the upper limits and thresholds of certain fee categories. This will result in additional fee revenue per year from £9,000,000 to approximately £10,800,000 (additional revenue of £1,800,000). However, it is expected this revenue will be reinvested in delivering a quality planning service or to cover any further losses in income during the coronavirus outbreak. Therefore, there would be no overall cost or saving to LPAs.

- 6.24 Similar to businesses and householders, LPAs would be better resourced financially, which should help improve service delivery in terms of timely, good quality decisions. As a consequence, this may lead to a reduction in the number of appeals brought forward on the basis of non-determination or a decision. This would result in an indirect cost saving.

General Public / Third Parties:

- 6.25 There are no identifiable benefits for the general public and third parties, as they may continue to engage with the planning process as they would have previously.

Benefits:

Businesses and Householders:

- 6.26 Increasing fees by approximately 20% will more accurately reflect the work and time involved in processing and determining applications and therefore, it is expected such an increase will allow LPAs to ensure their resources are appropriately allocated as part of delivering a development management service. This should help the speed and quality of decisions made by LPAs which are of particular benefit to businesses and householders as delays in the process can lead to frustration, unnecessary expense and the loss of investment and jobs. This option will increase confidence in the planning system. Furthermore, although this option would result in a rise in fees, this cost may still only represent a small portion of the overall development, particularly for major developments. The increase in fees is not therefore expected to discourage development activity in Wales.

Local Planning Authorities

- 6.27 In being able to deliver a better quality planning service through utilising improved fee income, LPAs would be better equipped to deal with the range of planning applications. As a consequence, performance and reputation will improve.

General Public / Third Parties

- 6.28 There are no identifiable benefits for the general public and third parties, as they may continue to engage with the planning process as they would have previously.

Justification for two options:

- 6.29 The overall aim for changes to fees for planning and related applications is to move LPAs closer to cost recovery for providing a development management service, particularly as fees submitted with applications provide the majority of their income.
- 6.30 The only third option which may be considered is to increase fees by a different amount to what has been proposed (a 20% increase). However, to ensure LPAs can recover their costs for providing a development management service, whilst not deterring individuals or businesses from participating in the planning process by setting fees too high, a balance must be struck which is fair and which benefits all those parties involved in the process. We consider an increase of approximately 20% strikes this balance.
- 6.31 Reducing fee levels is also not an option as this would move LPAs further away from cost recovery and would have a severe and detrimental impact on the level of service LPAs would be able to provide. This would be against public finance principles.

Summary and preferred option

- 6.32 The fees currently prescribed in 2015 Regulations are not meeting cost recovery for LPAs and the disparity between fees and costs of running a development management service are increasing each year.
- 6.33 This has put a significant strain on LPAs, both in terms of resourcing and in delivering timely, good quality decisions, but also has negative impacts on applicants who expect a certain level of service for their fee.
- 6.34 Option 2 is therefore the preferred option as it will allow LPAs to move closer to recovering their costs for providing a development management service, which will aid improved resourcing, timelier decisions and better quality decisions. This will not only be to benefit of LPAs, but also applicants who rely on this service. We consider this option to strike the right balance between assisting LPAs, whilst ensuring applicants are not deterred from using the service by high levels.

ANNEX A – Examples of existing and proposed fees

Application Type	Existing Fee	Proposed Fee
Application to discharge conditions in respect of householder developments	£30	£35
Application to discharge conditions in respect of other developments	£95	£115
Alterations and extensions to a single dwelling	£190	£230
New dwellings (up to and including 50)	£380 per dwelling	£460 per dwelling
New dwellings (more than 50)	£19,000 base fee	£23,000 base fee
	£100 per additional dwelling (up to a maximum fee of £287,500)	£120 per additional dwelling (up to a maximum fee of £300,000)
Outline applications for sites not exceeding 2.5 hectares	£380 per 0.1 hectares	£460 per 0.1 hectares
Outline applications exceeding 2.5 hectares	£9,500 base fee	£11,500 base fee
	£100 per additional 0.1 hectares (up to a maximum fee of £143,750)	£120 per additional 0.1 hectares (up to a maximum fee of £150,000)
Advertisements relating to the business on the premises or advance signs which are not situated or visible from the site, directing the public to a business	£100	£120
Any other advertisement	£380	£460