

BRIEFING



Changes to the Planning Fees Introduced on 6th April 2008

10th April 2008

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Statutory Instrument 2008/958, which came into force on the 6th April, amends the fees required for various types of planning application. Circular 04/2008 (C04/08), published on 9th April, describes the scope of the planning fee regime and offers general advice about how the fees will be applied and charged. These new provisions apply only to England.

The increases in planning application fees have been well publicised with the most concerning change being the raising of the maximum fees by 500% from £25,000 for outline and £50,000 for full applications to £125,000 and £250,000 respectively.

However, the introduction of a fee for confirmation of compliance with condition attached to planning permission is causing considerable concern and confusion.

Paragraphs 123 – 131 of C04/08 sets out to explain what the government intended to introduce through the new Regulation 11D. It is clear that the intention was to enable local planning authorities to charge a set fee (£25 for householder applications, £85 for all other applications) for consent, agreement or approval required by condition attached to a planning permission under Article 21 of the General Development Procedure Order 1995. In effect this would require a fee of £85 to be submitted with every application for discharging of a condition or conditions on a planning permission. The Regulations require only one fee regardless of how many conditions are to be considered within each application. Thus, if a planning permission requires the written agreement of the LPA for 4 different details (materials, landscaping, flood risk and highways for example) 4 separate submissions will attract fees of £340 (4 x £85) while one single submission of all 4 details will require the payment of just one fee of £85. If the authority fails to respond within 12 weeks of the request the fee must be refunded.

However the Regulations, as written in the Statutory Instrument, refer specifically to a fee being payable where "... a request is made to a local planning authority for written confirmation of compliance with a condition or conditions attached to the grant of planning permission". The Regulations make no reference to "an application", Article 21 of the GDPO, or to the "discharge of a condition" (although it should be noted that footnote 27 of C04/08 states that "for the avoidance of doubt the term "complied with" includes any written confirmation of discharge of a condition).

Members will be aware that it is possible to formally request confirmation from a local authority that a condition or conditions have been complied with, most often as part of the legal proceedings associated with the sale of the completed development. Thus, this is a very discrete process and very different from making an application under Article 21 of the GDPO to discharge a condition.

This discrepancy between the wording in Regulation 11D and the notes in Circular 04/08 is both confusing and of concern.

Nevertheless, given that the intention of the government was to charge for applications to discharge conditions it will, no doubt, be merely a matter of time before the Regulations reflect this meaning. Such a move introduces a number of concerns that were raised with CLG as part of the consultation process regarding fee increases back in 2006.

The most obvious concern is the trend of LPAs imposition of a greater number of conditions precedent, requiring submission of details for LPA agreement even when such details have already been submitted as part of the planning application. It is expected that this concern will be heightened, given the move towards 1APP and the new local lists of information required to validate applications.

Members' attention is drawn to the good practice of seeking to agree conditions with LPAs prior to the issuing of planning permission and the existing ability within the legislation to both appeal any conditions imposed on a permission and the ability to make an application to vary or not comply with a condition.

Members are also invited to monitor the out turn of this new measure and report on the behaviour of LPAs across the Country, given the confusion within the Regulations and the obvious ability for LPAs to either abuse the process or, in a more positive view, their ability to confirm compliance without the need for a fee.

HBF continues to discuss the confusion surrounding the new Regulations with both CLG and legal advisers and will report the outcomes of these discussions to members through our usual communication channels.

Statutory Instrument 2008/958 is available to download from:
<http://www.opsi.gov.uk/si/sis04-04>

Circular 04/2008 is available to download from:
<http://www.communities.gov.uk/publications/planningandbuilding/743603>

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