THE HOME BUILDERS FEDERATION

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Dear Mr Wheeler

PROPOSALS FOR CHANGES TO PLANNING APPLICATION FEES IN ENGLAND

Thank you for consulting the Home Builders Federation (HBF) with regard to the proposed changes to planning application fees in England. As the major representative body of the housebuilding industry in England and Wales our representations reflect the views of our membership of multinational plc's, through regional developers to small, local builders. Our members account for over 80% of all new housing built in England and Wales in any one year and thus, we also account for a very large proportion of all of the planning applications made, and paid for, every year.

The HBF considers that there are a number of fundamental issues that the proposals either do not address or, from the industry's perspective, appear to misrepresent. Furthermore, it would seem inappropriate to consider this matter in advance of the development management system being introduced under the provisions of the Localism Bill. The introduction of the new system presents a clear opportunity to enter into a whole new discussion over how to properly resource the development process.

It is to be expected that local authorities that respond to the consultation will be generally supportive of the government's preferred option to devolve planning application fees, understandably wishing to reduce or offset the costs of the public services they provide whether this is through efficiency savings or cost

recuperation. This driver should not mask the deficiencies of the proposals or be used as justification to avoid a more meaningful review that could comprehensively address the fundamental changes taking place to the planning system. Indeed, it is debateable as to whether or not local authorities, faced with the many changes and challenges of the current economic situation, are in a position to do the considerable work necessary to justify their own planning application fees at the present time.

Planning as a Public Service

The most fundamental of our concerns regarding the consultation is the apparent lack of acceptance that the planning application system is not a service for applicants. If that were truly the case then scrapping all need to consider development proposals in any formal way would be the most obvious route to addressing an imbalance between processing applications and the costs of so doing. The absurdity of such a suggestion leads to the conclusion that the true reason for such scrutiny of development proposals is to ensure that they do not cause demonstrable harm – either to private or public interests. This fundamental fact is recognised by the government in paragraph 9 of its own consultation paper yet is ignored in the wider debate.

It follows from the above that the costs for the planning service should fall on those benefitting from that service just as much as those who use the service. This is, therefore, not merely the applicants – after all one might assume that they would be more than happy for there to be no scrutiny of their planning applications in the public interest – but also the public themselves. This leads unavoidably to the conclusion that the public themselves should pay for this benefit.

Of course, we recognise that some of the planning application scrutiny process is in the interest of the applicant. Technical checks, policy constraints and requirements and meeting development plan vision and objectives are all seen as proper consideration of development proposals. Thus we do accept the need for a fee for applications. However, the idea that local authorities should be able to recover 100% of the cost of processing applications when some of that costs should, rightly, be borne by the general public is fundamentally wrong.

The recent research by Arups suggests that local authorities on average already receive 90% of the costs of processing planning applications through the fees that they currently receive (as set nationally by central government). While we have not undertaken any formal analysis of what a reasonable split of the costs of processing applications should be borne by the public who benefit from the process it must, surely, be considered to well above the 10% of the costs that are currently borne by them.

As a minimum any increases in planning application fees should not exceed this 10% “gap” as identified by the ARUP study since to do so would clearly run the risk of the majority of local authorities receiving more income from applications than they spend on provision of the service.

Paragraph 3 of the consultation seems to suggest that because applicants (should they receive planning permission) will benefit from an increased value in their land or building, they can easily afford the costs of the application. This is neither true in many cases, nor should development management be seen as a “value capture” process. Indeed, it does not address the issue of what happens if a planning application is refused. Presumably such refusals are made solely in the pubic interest and thus the idea that the applicant will benefit from them as suggested in paragraph 3 cannot be true.

Indeed, the requirement for such refusals to state clear reasons for the decision is to allow the applicant to address those reasons in a subsequent application, thus leading to an approval and an acceptable development. It is for this reason that applicants are granted a “free go” since they have already paid for an application which has granted them no benefit whatsoever. It would seem that if the government is to implement their proposal to remove this “free go” then they should also reimburse the fees taken from applicants who have their permission refused. While such a suggestion may appear preposterous it is a fair and logical extension of the case put forward by those advocating a 100% fees recovery process regardless of the outcome of the decision making process.

Value for Money

The idea that local planning authorities should be able to set their own fees raises a further fundamental issue as to how to determine if an applicant is getting value for money. The consultation paper raises this idea a number of times yet suggests 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” (paragraph 12). This is expanded upon further in the associated impact assessment of the proposals where the threat of a local authority setting its fees at a level that merely rewards inefficiency is discussed.

It is stated there (page 39) that “Government expects authorities to keep their costs to a minimum and to ensure that their charges are based on efficient services which remain affordable. As the decentralised system proposed will be more transparent, authorities will be directly accountable to residents and applicants for their fee charges”. Such a claim appears untenable given that local residents submit applications rarely, if ever, yet local businesses and national companies have no democratic voice in local authorities. The consultation paper suggests that aggrieved applicants who believe that the fees they were being charged exceeded the cost of determining their application (but, presumably not

those who believe that the LPA is running an inefficient service), they could complain (for free) to the Local Government Ombudsman. Such a process is far from “transparent”.

At the very least central government should prescribe the way LPAs must calculate the costs of processing planning applications if there is to be any chance at all of establishing whether or not inefficient practices are resulting in unnecessarily high fees in any LPA. Unfortunately the ARUPs research suggests that there is currently no consistent methodology employed by all local authorities to clearly account for the actual costs of their development management service as a whole, let alone those associated with different types of applications. Without a consistent approach it will not be possible to determine whether any individual authority is providing applicants with poor value for money or running an inefficient service since they will merely argue that they account for different parts of the process in a different way to their cheaper, or more efficient, neighbours.

We believe that a considerable amount of work has yet to be done to establish this consistent approach to accounting for costs, particularly on the basis of different types of application as well as the development management process as a whole.

Lack of Competition

Perhaps the biggest issue not addressed by the consultation paper at all is associated with the undeniable fact that each LPA runs a monopoly for development management services in their administrative area. This lack of competition means that applicants have no choice but to pay the fees set by the LPA if they are to have their application determined. It is a well established economic principle that lack of competition results in inefficient service provision and a lack of accountability or due regard to the users of a particular service.

The current process of nationally set fees ensures that each authority is constrained by the amount of fee that they receive for any particular type of application. Thus they must ensure that they are efficient and timely in providing these services or else the applicant has the right of appeal to the Secretary of State for non-determination – in effect, removing the monopoly power from the authority to make its own decisions.

We would be more than happy to enter a discussion with government as to how best remove the monopoly of decision making from each local authority. After all, under the new planning system based on localism, it will become easier for local communities to decide whether or not applications accord with their own vision for change and development within their own communities and it might be better for them, not the centralised local planning authority, to be empowered to make such decisions.

Such an approach is not touched upon at all by the consultation paper yet is fundamental to providing value for money to applicants.

Localism and Planning

This leads to our final issue that is not adequately addressed by this rather blinkered and one sided consultation paper. That is the wholesale reform of the planning system itself, particularly the greater emphasis on community planning and decision making and new requirements for potential developers to engage with communities and decision makers through pre-application discussions and throughout the development process.

These changes will shift the burden of costs on the developer to a much earlier process in the development cycle, even into the development planning or neighbourhood planning arena. According to the government, this should lead to development proposals with greater local support that are in line with community led development plans. The processing of the planning application itself will become little more than a formality and thus the application processing fee should reduce dramatically.

However, the consultation paper is silent on any amendments to the currently confusing charging regimes for pre application consultations with local authority planners and Councillors. The paper addresses fees for planning applications in isolation of all of the other changes occurring in the planning system.

For example, the proposal to introduce mandatory pre application discussion for major applications (for which, no doubt, a formal fee will be payable) and the requirement for greater engagement of applicants with local communities and a requirement to undertake public consultation prior to submitting an application is not referred to at all in this consultation. Nor does it recognise that greater community engagement and consultation prior to an application being made will, itself, incur considerable investment by the development industry for which they will appear to be given no credit.

As such the paper starts from the wrong point. The way in which applications will come forward and the amount of up front work (and investment by all parties including local authorities themselves) made in such applications must be factored into the whole development process, of which the determination of the planning application itself is only a small part.

We therefore propose that the government holds a much wider discussion as to how to address the whole development cycle costs in order to ensure that the community, the local authority and the developer all participate in, and contribute to the costs of, the proposed more inclusive, more responsive planning process. To focus merely on what is becoming a very small part of the development

process is a flawed approach to what is considered to be a critical part of the development process. We would, of course, be pleased to take a full and active part in such a debate in order to find a more transparent and fairer approach to meeting the costs of the development process.

Other Proposals

The consultation paper proposes three other changes to the current fees regime on which we would comment as follows.

The idea that local authorities should decide whether or not an applicant should receive a “free go” following the withdrawal of refusal of a previous application does not adequately discuss or address the issue raised in our discussion of fundamental issues set out above. There may be some logic in the idea that a resubmitted application requires a similar level of administration and consideration as the original application. However, where the applicant is merely seeking to address the reasons for refusal of the first application the amount of work should reduce proportionally since, in many cases, the principle of development is not at question.

There is a real fear that LPAs will see planning applications as a “cash cow” and force withdrawal of applications or increase refusal rates merely in order to generate further fees. The only defence against such bad practice is merely the idea that authorities will not be able to make a profit on applications. However, as stated above, without any transparent methodology of assessing costs against each application it will not be possible to determine whether or not second applications actually cost the same as a prior application.

As regards this being a discretionary power, we have recently seen the problems associated with giving such powers to local planning authorities in allowing them to draw up local validation checklists for applications. The almost uniform adoption of full (and in many cases unnecessary) validation checklists suggests that there would be very few cases where an authority would grant applicants a “free go” merely to address a minor reason for refusal of an application. However, there are many applications where a minor amendment to a previous application would address the reasons for refusal.

The second further proposal, to allow LPAs to charge higher fees for retrospective planning applications, is illogical and totally contrary to the idea of allowing authorities to recover no more than their costs of processing an application. There can be no logic to the idea that a retrospective planning application costs more to process than a planning application for the same development prior to it taking place. This is, presumably, why paragraph 21 suggests that LPAs should only be able to charge a higher fee where the application has come about as a consequence of investigatory work by the authority, in order to recover all of the related costs.

However, such a proposition is untenable and would create significant problems for LPAs to quantify the “investigatory” costs associated with such retrospective applications rather than the enforcement service as a whole. The proposal suggests that authorities are under greater pressure to approve retrospective applications since the development has already occurred. There is, however, no evidence to suggest that this is the case and, in the light of no evidence that such applications incur additional costs on a local authority to process (for which the fee is payable) the proposal should not be pursued. There is no tenable argument as to why retrospective applicants should be “punished” in some way for not following the rules, particularly where they acted in good faith believing that permission was not required due to a neighbourhood development order or some other type of deemed consent.

The third proposal is a discussion as to whether or not fees should be charged for other types of application currently exempt from such fees. While our members are not frequently affected by such applications it is curious that the government has concluded that there should not be a fee for listed building applications, conservation area consents and tree preservation order consents since these designations impose “a burden on those affected” and that such designations are “clearly in the public interest”. As we have pointed out above, the entire planning system is a “burden” on those who wish to develop their own land and that the control of that development is also clearly in the public interest yet applicants are expected to meet the costs of processing such applications.

This inconsistency must be addressed. The only logical choices are either to charge 100% fee recovery for such applications or to remove fees for all applications. If the former, more logical, route is followed we suggest that the government should directly consult all residents/occupiers of all listed buildings and all conservation areas in England in order to ensure that they are adequately consulted on the proposals to introduce such a fee.

Conclusion

The HBF considers that there are a number of fundamental deficiencies with the consultation paper’s proposals, some of which are based on misrepresentation of the current process from the industry’s perspective. We are well aware of those who suggest that developers are in favour of proposals which allow a higher fee for a more efficient service. While in principle this may be true there is no evidence of this promise ever having been kept. Despite fees increasing constantly since 1989 (as detailed in the consultation paper) there is no suggestion that this has ever resulted in more efficient service delivery. Indeed, if this were the case local authorities would not be continually arguing for fee increases year on year – they would merely increase their efficiency.

The current significant changes to the planning system taking place are the perfect platform on which to have a debate of financing the entire development process, including neighbourhood planning, rather than merely focussing on a very small (yet significant) part of the development management process.

We strongly advocate, therefore, that the government does not proceed with the proposals set out in this consultation paper and instead enters a whole new discussion over how to properly resource the development management system being introduced under the provisions of the Localism Bill. To merely tinker with a very small part of that new process would be ill timed, unrealistic and, ultimately, doomed to very early review.

I look forward to hearing from you regarding setting up the discussions we suggest above over the coming months.

Yours faithfully

Andrew Whitaker
HBF Planning Director