

Explanatory Memorandum to The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015

This Explanatory Memorandum has been prepared by the Planning Directorate and is laid before the National Assembly for Wales 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) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Carl Sargeant

2 June 2015

1. Description

- 1.1 These Regulations consolidate, with amendments, the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 (S.I. 1989/193), instruments which have amended those Regulations in relation to Wales, and The Town and Country Planning (Fees for Non-Material Changes) (Wales) Regulations 2014.
- 1.2 The principal amendments include raising existing fee levels by 15%, making provision for a refund of the fee where an application for planning permission or approval of reserved matters is not determined within specified times, introducing new fees for applications made under planning conditions (and making provision for a refund of the fee where an application is not determined with specified times), and providing that where cross boundary applications are made a fee is payable to each local planning authority (LPA) to whom an application is made. Amendments also provide that fees in respect of deemed applications are paid to the LPA rather than half to the LPA and half to the Welsh Ministers and remove the exemption where a reserved matter application is resubmitted following previous approval.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 None

3. Legislative background

- 3.1 These draft regulations are made by the Welsh Ministers in exercise of their powers under section 303 of the Town and Country Planning Act 1990 (TCPA 1990), which was substituted by section 199 of the Planning Act 2008.
- 3.2 The instrument is subject to approval of the Assembly (the affirmative procedure).

4. Purpose & intended effect of the legislation

Background

- 4.1 The Welsh Government wants a planning system that enables appropriate development. It needs to support national, local and community objectives for infrastructure, new homes and development that supports business growth and jobs. To ensure the development management system helps deliver this vision we need to ensure LPAs have the necessary resources and that they are used in the most efficient and effective manner.
- 4.2 The Welsh Ministers consider that the LPA should be prepared to pay for activities that are purely or largely for the wider public good; such as

development plans. Yet planning decisions often bring private benefit to the applicant as well; a property with planning permission may be much more valuable than it would be without. The fee that accompanies a planning application is an acknowledgment of that private benefit and reflects the overall cost of handling, administering and deciding the various types of application.

- 4.3 The level set is designed to include recovery of direct costs and an apportionment of related overheads.

The issue

- 4.4 The last time planning application fees were increased was 2009. The increase was based on research conducted by Arup that concluded there was a shortfall between fee income and associated costs of processing and determining applications. Evidence gathered to support the 2014 consultation paper on revisions to planning application fees concluded that the current planning fees do not provide sufficient income for authorities to recover their costs. The evidence also shows a disparity between the levels of costs recovery seen between LPAs.
- 4.5 Wider research into the planning system also identified that changes in the complexity of applications submitted to LPAs and the manner in which they are dealt means that areas of the existing fee regime are unsuitable and do not provide sufficient recompense to the LPA for undertaking the work. This occurs in three situations: applications to approve planning conditions; resubmitted applications for a reserved matter following a previous approval; and where the LPA determines the smaller area in a cross boundary application. In these situations work is undertaken without the receipt of a fee although the application can require substantive input on behalf of the LPA. The research has also shown that the payment of a fee for a deemed application alongside an enforcement appeal is an inefficient mechanism, resulting in fees being paid to both the LPA and Planning Inspectorate.
- 4.6 Importantly, the Welsh Government considers that the fee payable to the LPA is a reflection of the LPA undertaking work to process and determine that application. Therefore it is considered unreasonable for an LPA to go beyond certain time periods before providing a decision on a planning application. The fee that accompanies an application is payment to the LPA to process and determine that application. Where an LPA has not determined the application within time, they have not provided the service.

Purpose and intended effect

- 4.7 The existing legislative regime provides LPAs with income to recover the cost of administration and determination of planning applications that are submitted to them. The evidence would suggest that this system does not require

fundamental changes but should be amended to reflect the costs and resources the LPA incur in providing this service. The main changes will:

- increase planning application fees so that fee income better reflects the resource output of LPAs in processing and determining applications;
- provide for a refund of the application fee where an application remains undetermined after specified times;
- introduce a fee for applications made under planning conditions and make provision for a refund of the fee where an application is not determined with specified times;
- provide that fees payable in respect of deemed planning applications will be paid to the LPA rather than half to the LPA and half to the Welsh Ministers;
- provide fees are payable to each LPA to whom an application is made where cross boundary applications are made; and,
- remove the exemption from payment of a fee where a reserved matter is resubmitted following previous approval.

Risks if legislation changes are not made

4.8 If the proposed revisions to the regulations are not introduced, the following issues may arise:

- The planning application fee income will remain the same, and the difference between the fee level and the resources required to determine applications will increase. The lack of resources available to LPAs will lead to a decline in the speed and quality of determining applications;
- LPAs will retain the fee even where they have not made the determination within time;
- LPAs will undertake work on applications for the discharge of conditions without receipt of a fee;
- Deemed application fees will continue to be processed by two separate parties, resulting in an inefficient system; and,
- The fee to accompany a cross boundary application will only be paid to a single LPA, resulting in the other LPA undertaking work without an associated fee.