

## **Explanatory Memorandum to The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016**

This Explanatory Memorandum has been prepared by the Department for Natural Resources 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) (Amendment) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Carl Sargeant  
Minister for Natural Resources  
2 December 2015

## **1 Description**

- 1.1 The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016 (“the 2016 Fees Amendment Regulations”) amend the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) Regulations 2015 (“the 2015 Fees Regulations”).
- 1.2 The 2016 Fees Amendment Regulations introduce standard fees across Wales for a basic statutory pre-application service from local planning authorities (LPAs) and for submitting minor changes during the time between the application being submitted and being determined. The regulations provide for a reduced fee (subject to conditions) for applications to vary a condition attached to planning permission if the proposed variation has already been the subject of an unsuccessful application for a non-material amendment to planning permission.
- 1.3 They also make amendments which are consequential to amendments to be made to the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 in order to preserve the position under the 2015 Regulations in relation to applications for approval of reserved matters.

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

- 2.1 Regulations are intended to be made in early 2016 for the provision of pre-application services by LPAs. It is also intended to amend the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 to make provision for amendments to applications for planning permission for major development before the application is determined. These intended instruments are described below.

## **3 Legislative background**

- 3.1 The powers enabling the 2016 Fees Amendment Regulations to be made are contained in sections 303 and 333(2A) of the Town and Country Planning Act 1990 (“the 1990 Act”).
- 3.2 This instrument is subject to the affirmative procedure.
- 3.3 Provisions in the 2016 Fees Amendment Regulations are connected to provisions in the following statutory instruments which are intended to be made and will be subject to the negative procedure:-
  - The Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016 (“the Pre-Application Services Regulations”); and
  - The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016 (“the 2016 DMPO Amendment Order”).

3.4 It is intended that the Pre-Application Services Regulations and the 2016 DMPO Amendment Order will be made in early 2016 and come into force on the same date as the 2016 Fees Amendment Regulations.

3.5 Section 18 of the Planning (Wales) Act 2015 inserts section 61Z1 (Wales: pre-application services) and section 61Z2 (Pre-application services: records and statements of services) into the 1990 Act. The Pre-Application Services Regulations will make provision under those sections for:-

- the provision of statutory pre-application services by LPAs in Wales;
- the retention of records of the pre-application services requested and provided; and
- publication of information on the type of pre-application services provided.

The Pre-Application Services Regulations will require LPAs, if requested by an intending applicant, to provide specified services before an application for full or outline planning permission or an application pursuant to section 73 of the 1990 Act is made to them.

3.6 The 2016 Fees Amendment Regulations introduce fees payable in respect of requests for pre-applications services made to LPAs.

3.7 The 2016 DMPO Amendment Order will amend the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 and introduce provision for amendments to applications for planning permission for major development before the local planning authority determine the application (post submission amendments). The 2016 Fees Amendment Regulations make provision for fees payable in respect of post amendment submissions.

## 4 Purpose & intended effect of the legislation

4.1 The consultation paper 'Positive Planning' set out how the Welsh Government intends to achieve its vision for the planning system in Wales: 'a planning system which helps us to deliver national, local and community objectives by supporting appropriate development'. To achieve this we need a planning system which is positive in outlook and facilitates rather than frustrates appropriate development.

4.2 To improve local delivery of this vision through an efficient development management service, a number of changes are being made to how development proposals are handled before a planning application is submitted, during its determination and after planning permission is granted. The 2016 Fees Amendment Regulations are intended to address the resources needed by LPAs to undertake the changed processes but also in a proportionate way so that applicants do not pay more than they need to.

4.3 The 2016 Fees Amendment Regulations introduce or amend fees for three areas of development management processes:

- **Pre-application Services** – The service LPAs will be required to provide under the Pre-Application Services Regulations to prospective applicants, on request, before a planning application is submitted
- **Post-submission Amendments** – Minor amendments proposed by applicants before the planning application is determined

- **Minor Material Amendments** – Small amendments proposed to planning permissions already granted.

### **Pre-application Services**

- 4.4 LPAs can currently offer a discretionary pre-application service and should they choose to, charge a fee based on the size and scale of the proposed development on a cost-recovery basis. Both the fee levels and the thresholds currently set by LPAs vary significantly across Wales.
- 4.5 The intention is to provide standard fees across Wales for a statutory pre-application service, based on the principle of cost recovery. This will improve consistency and provide applicants with certainty and clarity on what fee will be applicable to a request for pre-application advice and what information they can expect to receive in return for such fee.
- 4.6 If the proposed revisions to the 2015 Fees Regulations are not made, LPAs will not be able to charge for the provision of services under the Pre-Application Services Regulations, exacerbating the limited financial resources available to them.

### **Post-submission Amendments**

- 4.7 The Welsh Government wants to address the impact of post-submission amendments and the additional administrative costs they impose on LPAs.
- 4.8 Depending on the complexity of the post-submission amendment submitted by an applicant, additional time may be necessary to determine the application, especially if those already consulted on the application and those who may be affected by the amendment are to have the opportunity to comment on the revised development proposal.
- 4.9 Under the existing arrangements there is no charge for post-submission amendments, which means that the officer time and resource spent considering the amendments are not recovered by the LPA. We propose to set a fee that recoups the cost involved.
- 4.10 If the proposed revisions to the 2015 Fees Regulations are not introduced, the LPA will continue to not receive a fee for the administration and determination of post submission amendments resulting in an associated ongoing cost in terms of time and financial resources.

### **Minor Material Amendments**

- 4.11 The Welsh Government introduced a statutory procedure for making non-material amendments to existing planning permissions (section 96A of the 1990 Act). The changes that can be made under section 96A are those with non-material impacts. So where an LPA considers a change will have a material impact they must refuse an application made under section 96A. Although a change may have a material effect it may still be minor in nature, and therefore section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached) offers a more proportionate way to consider that change compared to the submission of a whole new planning application.

- 4.12 The responsibility for determining whether a proposed change is non-material lies with the LPA and what constitutes a 'non-material amendment' can depend on a number of factors - what may be non-material in one context may be material in another. This can create confusion on behalf of the applicant whether they should apply through section 96A or section 73 of the 1990 Act to make the amendment. Where the application under section 96A is refused on the grounds that it would be a material change, to gain permission, the applicant must submit an application under Section 73. In these circumstances the LPA is receiving two fees to consider the same amendment and this can mean that LPAs receive fees in excess of that required to process and determine the same information that has already been considered by them.
- 4.13 The intention is to provide a reduced fee, subject to conditions, for a section 73 application that follows an earlier application under section 96A of the 1990 Act which has been refused, partially refused or not determined within the period specified in article 28A of the Town and Country Planning (Development Management Procedure) (Wales) Order 2012, so that the application costs are proportionate to the costs of determination.
- 4.14 If the proposed revisions to the 2015 Fees Regulations are not introduced, the planning application fees to make amendments to planning permissions will remain the same, meaning that they will not reflect the time and resources required for their determination.

## **5 Consultation**

- 5.1 The fee proposed for a statutory pre-application service was first consulted on between 06 October 2014 and 16 January 2015. A second consultation together with the other two fee areas was undertaken between 19 June 2015 and 11 September 2015. Details of consultation undertaken are included in the Regulatory Impact Assessment in Part 2 below.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

#### **Pre-application fees to accompany a statutory pre-application service**

1. As outlined in section 3 of the Explanatory Memorandum in Part 1 above, the proposed statutory pre-application service, as outlined in Option 2, will be introduced through a separate statutory instrument – the Pre-Application Services Regulations. The Pre-Application Service Regulations will require LPAs to provide standard information by way of written response to pre-application requests from prospective applicants. The statutory pre-application service will be subject to standard fees.

### **Options**

2. Two options have been considered:
  - Option 1 – Do nothing i.e. continue with the current provision of pre-application service and any accompanying fee by local planning authorities (LPAs) on a discretionary basis.
  - Option 2 – The introduction of standard fees for the new statutory pre-application service.

#### **Option 1 – Do nothing**

##### **Description**

3. Currently, there is no statutory requirement for LPAs to provide a pre-application service to potential applicants. However, if they choose to, it is provided on a discretionary basis, resulting in a lack of consistency in service provision. For example, some LPAs may not require a fee for a householder pre-application enquiry, where others will. Similarly, the charging schedules and the thresholds used to determine fee charges can vary significantly across Wales. For example, in respect of major developments, one LPA requires a fee of £300, while another LPA requires a fee of £1,500. This highlights the significant variations in fee levels.
4. Under this option, LPAs would continue to offer pre-application services on a discretionary basis, with little consistency across Wales. LPAs would retain the ability to charge different fees for pre-application services, with some offering free advice and others charging.

##### **Costs**

##### Local Planning Authorities

5. There are no additional costs to LPAs associated with this option. LPAs would continue to operate their existing charging schedules which, although varied in terms of fees and thresholds, should represent cost recovery for the work required to inform a pre-application enquiry.

6. LPAs have the power to amend their charging schedule, providing they comply with the terms of section 93 of the Local Government Act 2003. Those LPAs that do not currently charge for their pre-application service could do so in the future. This results in further uncertainty for developers and the potential for inconsistency.

#### Development Industry - Costs to the developer of engaging with the LPA

7. There are no additional costs to developers under this option. Developers that wish to engage with the LPA at pre-application stage face uncertain costs as LPAs currently operate under different charging schedules for the same development type, resulting in varying fee levels<sup>1</sup>. As the current system is discretionary, the developer does not necessarily get the same level of service across each LPA for the fee paid.

#### **Benefits**

##### Local Planning Authorities

8. LPAs retain flexibility and control over the type of pre-application service they provide, the thresholds of development and the fees associated with these thresholds, so long as they are in accordance with section 93 of the Local Government Act 2003.

##### Development Industry

9. One benefit to developers is that if they request a pre-application service from an LPA that does not currently charge a pre-application fee, they will be receiving a service for free.

#### **Option 2 – The introduction of standardised fees to accompany requests for pre-application services under the Pre-Application Services Regulations.**

##### **Description**

10. The Pre-Applications Services Regulations will specify the pre-application service that LPAs will be required to provide to applicants, when requested. Intending applicants wishing to use the service will complete a standard pre-application enquiry form and submit this with the relevant fee to the LPA. The LPA will validate the enquiry (subject to all the relevant information being submitted and the correct fee being paid) and be required to provide a written response to the applicant (within a specified timeframe) which will need to include certain specified information. This option proposes introducing a standard fee schedule based on the size and scale of a proposed development to accompany a statutory pre-application service. A copy of the proposed fee schedule can be found in Annex 1.
11. Should the LPA wish to provide potential applicants with information beyond that required by the Pre-Application Services Regulations, they will continue to have the ability to offer a discretionary service and charge a fee in accordance with section 93 of the Local Government Act 2003.

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<sup>1</sup> Planning (Wales) Act – Regulatory Impact Assessment Methodology Paper – October 2014

## **Costs**

### Local Planning Authorities

12. Across all LPAs in Wales, this option would effectively propose a cost-neutral alternative for LPAs as the proposed standardised fees for a statutory pre-application service would be based on the averages of existing charges. Individually, there would be LPAs who would lose income (see Annex 1) compared to their existing charges, but there would also be LPAs who would gain additional income for offering a pre-application service. As the current number of pre-application enquiries across Wales is not currently known, it is not possible to quantify the aggregate impact of this proposal.
13. As a statutory pre-application service is intended to be on a cost recovery basis, the proposed fees are based on the estimated time taken of providing the required written response to a valid pre-application enquiry (see Annex 3)

### Development Industry

14. Similar to the costs for LPAs, while there may be a redistribution of costs, there is not considered to be any significant cost impact for the development industry as a whole as the proposed standardised fees for pre-application enquiries are based on the averages of existing discretionary fees.
15. This option does not place any statutory duties on developers so if a developer does not request a pre-application service from their LPA, there is no resulting cost. Furthermore, the fees required for a statutory pre-application service represent a small percentage of an overall development cost and therefore, the proposed regulations would not affect the level of development activity in Wales, or the location of development within Wales.
16. LPAs may also wish to provide an enhanced pre-application service that goes beyond the statutory minimum requirement and charge for these services under section 93 of the Local Government Act 2003. However, developers can choose whether they wish to seek these services and pay the additional costs.

## **Benefits**

### Local Planning Authorities

17. LPAs would be able to recover the costs of providing the proposed statutory pre-application service through standard fee levels and will also retain the ability to offer additional, discretionary pre-application services and charge for these services on a cost recovery basis.

### Development Industry

18. With a statutory pre-application service that encompasses national fee levels, there may be some instances where developers would have to pay for pre-application service where they previously would not. Subsequently, there will be instances where developers would currently pay less than the proposed fee level for advice. But in many cases the cost of the service under the new, statutory system would be less



than developers have to pay under existing charging arrangements. Also, the level of service currently provided varies significantly, and therefore developers will not know exactly what service they can expect for the fee they have paid.

19. A standardised, service will allow developers across Wales to pay the same fee for a statutory pre-application service and know exactly what information they can expect to receive from LPAs. If additional information is required, LPAs will continue to offer a discretionary service, should they choose to, and have the ability to charge a fee for any additional information on a cost-recovery basis. But it should be noted that developers are under no obligation to use these discretionary services.

### **Summary and preferred option**

20. Current fee levels for pre-application services across Wales vary significantly creating uncertainty among developers regarding the level of service they can expect from LPAs. The proposal to introduce a statutory pre-application service in Wales means that all LPAs will be required to provide standard information to prospective applicants. This allows for a standard fee to be charged throughout Wales on cost recovery basis. Option 2 is the preferred option.

### **Post-submission amendment fees**

21. The introduction of a set fee of £190 so that LPAs can recoup costs incurred in processing post submission amendments to major planning applications.

#### **Options**

22. The following options are considered:
  - Option 1: Do nothing – Do not charge for post submission amendments. LPAs would continue to undertake work without receiving a fee to cover costs
  - Option 2: Introduce a fee for post submission amendments – This would provide an income for LPAs to help cover the cost of processing amendments to major planning applications.

#### **Option 1 – Do nothing**

##### **Description**

23. LPAs would continue to undertake work without receiving a fee to cover costs

##### **Costs**

##### Local Planning Authority

24. Where post submission amendments are made they will need to be approved and determined by the LPA. Under the current system they undertake this work without charging a fee.

### Development Industry

25. Under the current system, there is no charge to accompany post submission amendments to a planning application, and as such there are no direct additional costs to the development industry.
26. There may, however, be indirect costs with the current process, as without resources to expedite the work associated with the post submission amendments, the LPA may not prioritise this area of work. This can cause delay in the system which would adversely affect applicants.

### **Benefits**

#### Local planning authorities

27. There are no benefits to LPAs under the current system as they are undertaking mandatory work for which they do not receive a fee. This will have a direct impact upon resources.

#### Development Industry

28. With no fee attached to a post submission amendment application, applicants are effectively receiving a free service from LPAs, regardless of how many amendments they submit.

## **Option 2 – Introduce a fee for post submission amendments to major planning applications**

### **Description**

29. This option proposes the introduction of a fee (£190) that the LPA should receive for accepting amendments to applications for major development. This is to cover the additional costs that the LPA would incur in considering the proposed amendments submitted during the determination period, which are likely to require additional publicity and re-consultation.

### **Costs**

#### Development Industry

30. Post submission amendments for major applications will be accompanied by a fee to cover LPA costs.
31. Statistics regarding the number of major planning applications in Wales subject to post submission amendments are not collected by the Welsh Government. 463 major applications were registered in total (residential, office, retail and industry) in the financial year 2014-15. Assuming that the number of major applications remains constant and that the proportion subject to post submission amendment stands at 50% per annum, then this presents a total cost to the development industry of £44,000 per annum (231 applications x £190 rounded up).

32. It is anticipated that with greater statutory emphasis on pre-application LPA services and consultation the need for post submission amendments would be reduced significantly.

#### Local planning authorities

33. LPAs currently process post submission amendments so there are no additional direct costs to the LPA in undertaking this element of the process. The additional costs associated with this procedure will only be an additional administrative cost to process the fees received. The fee level is set at the same as that for a minor material amendment under section 73 of the 1990 Act as the work associated with these procedures is considered to be similar. As such, work undertaken by the LPA should be covered by the application fee, proposed at £190 (See Annex 1 for further details of calculations).
34. LPAs may incur a minimal one-off indirect cost associated with familiarising themselves with the new fee schedule and updating any guidance, such as the website, that they publish.

#### **Benefits**

##### Development Industry

35. As the application is accompanied by a fee, it is anticipated LPAs will dedicate resources to this function. This means businesses will benefit by experiencing a speedier and more efficient service when discharging conditions, helping to reduce delay in the system.

##### Local planning authorities

36. The introduction of the £190 fee to accompany applications for post submission amendments, will mean LPAs will benefit from an increase in planning fee income. The level of additional income received by an LPA will be dependent on the number and type of amendments received. For example, LPAs with larger strategic sites would generally have greater numbers of major developments – with potentially a greater number of applications that would be subject to post submission amendments – and so experience a greater increase in the income received. Based on the assumptions set out in paragraph 31, the additional fee income received by LPAs in Wales is £44,000 per annum.

#### **Preferred option**

37. Option 2. The LPA would receive a fee for accepting amendments to major applications during the determination period. This is to cover the additional costs that the LPA occur in considering the proposed amendments submitted during the determination period, which are likely to require additional publicity and re-consultation.
38. The primary goal of this proposal is to reinforce the Welsh Government's positive planning programme and make the planning system more efficient. It is considered that the proposed fees will encourage schemes to be finalised and agreed at the pre-

application stage. If this is achieved then the need for post submission amendments will be removed, resulting in a faster and more efficient system.

## **Minor Material Amendments – Fee reduction, subject to conditions, for section 73 applications that follow, refusal, partial refusal or non determination of section 96A applications**

39. Provide a reduced fee, subject to conditions, for a section 73 application that follows refusal, partial refusal or non determination of a non-material amendment application under section 96A of the 1990 Act.

### **Options**

40. Two options have been considered:

- Option 1 – Do nothing i.e. continue with the current arrangement for section 73 applications. Where these are submitted following a section 96A application applicants will pay the full fee.
- Option 2 – Introduce a new reduced fee, subject to conditions where a section 73 application is made following refusal, partial refusal or non determination of a section 96A application so that the total fee (payable on both applications) is equivalent to a section 73 application.

### **Option 1 – Do nothing**

#### **Description**

41. The current arrangements would remain. Where an applicant wishes to secure a minor change to their planning permission, but it is not clear whether the change would have material planning impacts or not, the applicant has three options:
- (a) apply for a full planning permission and pay a possibly substantial fee based on the extent of the development;
  - (b) depending on the conditions attached to the planning permission, apply under section 73 to vary the condition for a fee of £190;
  - (c) apply for a non-material amendment for a fee of £95, then if the LPA determine material impacts are likely, make a section 73 application for an addition £190.
42. Option (a) would require the applicant to resubmit all the information previously provided with the original application together with a possibly substantial fee. This is why a more proportionate application type is being pursued.
43. Where a change is of a minor material nature then pursuing option (b) would cost the applicant the least. However if their proposed change is non-material and they took this option they would have paid double the fee necessary to achieve the change (that is, they could have made a section 96A application and paid £95).
44. Where a change is thought to be non-material, so is the subject of a section 96A application but determined to have material effects, the applicant is then forced to

pay 50% more in total than if they had pursued a section 73 application from the outset. Where a change is thought by the applicant to be minor-material, so is the subject of a section 73 application, but is actually non-material in its impact, the applicant will have paid 100% more (£190 instead of £95) than if they had applied under section 96A from the outset. Therefore to secure permission for a small amendment, the applicant may correctly anticipate the local planning authority's view of their change, but if they don't they will pay 50% or 100% more in fees.

## **Costs**

### Local planning authority

45. The costs of the LPA determining the application are offset by the fee received for section 96A and section 73 applications. They will also incur costs in processing and determining both applications.
46. The LPA will receive £95 per application (or £30 for a householder application) for the section 96A application and receive £190 for the section 73 application.
47. Appendix xx shows that the cost of determining a simple section 96A application may be less than the income the LPA receive. Where the change proposed under section 96A is material, the LPA will incur lower costs in their determination than where the application is non-material. The costs are considered to be lower as once the LPA have determined the change is material they will not need to consider the need for new conditions or draft a complex decision letter. The costs to determine the application and issue a decision notice refusing the application are considered to be £37.50.
48. The LPA will incur costs for the determination of the section 73 application. The LPA will already be aware of the issues the amendment makes, as these will have been identified in the section 96A application. Therefore the costs for determining these applications will be lower than those incurred in determining a section 73 application that does not follow a section 96A application.

### Applicants (including development industry)

49. The applicant will be required to submit two applications and experience the costs associated with these. The costs to the applicant are £95 (or £30 for a householder application) for the section 96A application and £190 for the section 73 application.
50. Data is not collected on the number of cases in which a section 96A application is followed by a section 73 application. We are therefore unable to estimate the aggregate impact of the proposal.

## **Benefits**

### Local planning authority

51. The LPA will receive income for each application. Where applications submitted under section 96A are simple, the income received is higher than the costs incurred in determining the application.

### Applicants (including development industry)

52. There are no benefits to applicants.

### **Option 2 – Provide a reduced fee, subject to conditions for a section 73 application that follows refusal, partial refusal or non determination of a non-material amendment application under section 96A of the 1990 Act**

#### **Description**

53. Introduce a new reduced fee, subject to conditions, where a section 73 application is made following an earlier section 96A application so that the total fee (the sum payable for both applications) is equivalent to a single section 73 application. The fee for a section 96A application is currently set at half the fee for a section 73 application (or £30 for a householder application).
54. Where an amendment is clearly material, it is considered that the processing and determination costs are lower than those for an application that requires detailed consideration by the LPA. It is considered that the fee should reflect that an earlier application was made for the same amendment.
55. The applicant would only be required to pay the difference between the non-material application and that of a section 73 application. As section 73 applications allow greater amendments this process is limited to making the same changes as proposed in the original section 96A application.

#### **Costs**

##### Local planning authority

56. The LPA will receive income for the section 96A and section 73 applications. The total income the LPA will receive is £190 for both applications, which is the same as if a single section 73 application is submitted.
57. The figures in option one above show that, where an application is simple, the determination costs (of £37.50) for a section 96A application are £57.50 below the income received for that application. Also, as the LPA has already considered the amendment under section 96A, and understood the issues it raises, the determination of the section 73 application should be simpler than if the application was submitted without a section 96A application having first been submitted. The LPA should therefore be able to cover the costs of determination within the £190 fee received.

##### Applicants (including development industry)

58. Applicants will pay a reduced fee for a section 73 application that follows an application made under section 96A. The introduction of the fee will mean that applicants will save £95 on the section 73 application.

## **Benefits**

### Local planning authority

59. The reduced fee for a section 73 application that follows refusal, partial refusal or non determination of an earlier section 96A application will only apply in certain circumstances. These circumstances are: the section 73 application is made within 6 months of the refusal, partial refusal or expiry of the period for determination of the original application; the application relates to same amendment as the section 96A application; the fee was paid for the original application; and the applicant has not already benefited from payment of a reduced fee.
60. By ensuring the LPA receive the application within 6 months and limiting the change to that originally applied for, the LPA will be aware of the impacts the amendment may have, allowing the LPA to focus its consideration on those impacts. This will reduce the financial burden the LPA experience in determining the application. Limiting the change also ensures that applicants cannot seek to make substantially different changes that should be considered afresh by the LPA under a new application.
61. As the LPA will have received the fee for the original application, the total income received is £190. This covers the costs associated with the application

### Applicants (including development industry)

62. Providing the reduced fee for a section 73 application that follows a section 96A application provides greater flexibility to applicants. Where an applicant is unsure if a proposed change is non-material, they may apply under section 96A. Should the change be non-material they will benefit from the simplified procedure this route takes. Should the amendment be deemed material, the applicant is able to apply for the change under section 73. The cost of the two applications is the same as if the applicant first made a section 73 application.

## **Preferred option**

63. Option 2 is preferred because it will reduce uncertainty for applicants by establishing a section 96A application as the default first step for proposed minor changes when it is not clear whether they have material planning impacts or not. In doing so the amount of fees payable would be proportional to the extent of work required to determine the application.

## **Consultation**

64. The fee proposed for statutory pre-application services was first consulted on between 06 October 2014 and 16 January 2015. A second consultation together with the other two fee areas was undertaken between 19 June 2015 and 11 September 2015. Details of the consultations are at: <http://gov.wales/consultations>
65. The consultation papers were made available on the Welsh Government's website. In addition, stakeholders from the private, public and third sectors were notified in writing.

66. Whilst consultation responses indicated there was support for the fee schedule set out within the second consultation paper, concern was expressed by LPAs that the fee levels were too low for what is required to provide a statutory pre-application service. We have therefore increased the proposed fees payable when a person requests pre-application services from the LPA under the Pre-Application Services Regulations.
67. There was also some concern that the proposed reduced fee for section 73 applications following an earlier section 96A application would not provide LPAs with sufficient income to cover the cost of considering the section 73 application, even though they will have seen details of the amendment in the application made under section 96A. It is considered the proposed amendment is still the most appropriate approach to dealing with amendments to consents. In such circumstances the LPA will first have had lower costs in dealing with the section 96A application and the additional fee for a subsequent section 73 application will ensure the LPA receives in total sufficient income to process and determine the subsequent section 73 application.
68. The majority of respondents agreed that a fee should be charged by LPAs when a post submission amendment is made to a major application. When considering the fee that should be payable, again the majority agreed that the standard fee of £190 was appropriate to cover LPA costs in processing these changes.

### **Competition Assessment**

69. The competition filter tests (in Annex 3) shows that it is not likely that the regulations will have any detrimental effect on competition; therefore a detailed assessment has not been conducted.

### **Post implementation review**

70. The Planning Directorate has close dialogue with all stakeholders involved with the planning system as a whole, which will allow general feedback and assessment of how the changes have impacted stakeholders. Due to the technical nature of the change, it is anticipated that should anything arise specific stakeholders will raise concerns on how the new regime is working and whether there are any particular areas of ambiguity.



## ANNEX 1 - Calculations

### Householder development:

Average annual salary of a *Planning Officer* (including on-costs) = **£47,545**

£47,545 / 52 weeks = **£914 per week**

£914 / 37 hours = **£24.71 (rounded up to £25) per hour**

It is estimated that it would take 1 hour to provide the statutory pre-application service for householder development.

Therefore, we calculate the cost to answer an enquiry about householder development to be **£25.**

### Minor development:

Average annual salary of a *Planning Officer* (including on-costs) = **£47,545**

£47,545 / 52 weeks = **£914 per week**

£914 / 37 hours = **£24.71 (rounded up to £25) per hour**

It is estimated that it would take 10 hours to provide the statutory pre-application service for minor development.

Therefore, we calculate the cost to answer an enquiry about minor development to be **£250.**

### Major development:

Average annual salary of a *Senior Planning Officer* (including on-costs) = **£55,190**

£55,190 / 52 weeks = **£1,061.35 per week**

£1,061.35 / 37 hours = **£28.69 (rounded up to £29)**

It is estimated that it would take 20 hours to provide the statutory pre-application service for major development.

Therefore, we calculate the cost to answer an enquiry about major development to be **£600.**

Large major development:

Average annual salary of a *Senior Planning Officer* (including on-costs) = **£55,190**

£55,190 / 52 weeks = **£1,061.35 per week**

£1,061.35 / 37 hours = **£28.69 (rounded up to £29)**

It is estimated that it would take 35 hours to provide the statutory pre-application service for large major development.

Therefore, we calculate the cost to answer an enquiry about large major development to be **£1000**.

## Existing pre-application service charges

### Householder

Local Planning Authority	Existing Charges*	Proposed Charges	Difference
Blaenau Gwent	£25	£25	£0
Bridgend	£0	£25	£25
Caerphilly	£0	£25	£25
Cardiff	£60	£25	£35
Carmarthenshire	£0	£25	£25
Ceredigion	£44	£25	£19
Conwy	£0	£25	£25
Denbighshire	£0	£25	£25
Flintshire	£65	£25	£40
Gwynedd	£60	£25	£35
Isle of Anglesey	£50	£25	£25
Merthyr Tydfil	£25	£25	£0
Monmouthshire	£60	£25	£35
Neath Port Talbot	£0	£25	£25
Newport	£0	£25	£25
Pembrokeshire	£0	£25	£25
Powys	£60	£25	£35
Rhondda Cynon Taff	£0	£25	£25
Swansea	£0	£25	£25
Torfaen	£0	£25	£25
Vale of Glamorgan	£0	£25	£25
Wrexham	£50	£25	£25
Brecon Beacons National Park	£60	£25	£35
Snowdonia National Park	£0	£25	£25

Pembrokeshire Coast National Park	£0	£25	£25
<b>AVERAGE (total)</b>	<b>£22.36</b>		

\* Written response only

### Minor

Local Planning Authority	Existing Charges*	Proposed Charges	Difference
Blaenau Gwent	*£110*	£250	£140
Bridgend	£180	£250	£70
Caerphilly	£60	£250	£190
Cardiff	£300	£250	£50
Carmarthenshire	£0	£250	£250
Ceredigion	*£176*	£250	£74
Conwy	£0	£250	£250
Denbighshire	£60	£250	£190
Flintshire	*£500*	£250	£250
Gwynedd	*£250*	£250	£0
Isle of Anglesey	*£475*	£250	£225
Merthyr Tydfil	£150	£250	£100
Monmouthshire	*£90*	£250	£160
Neath Port Talbot	£240	£250	£10
Newport	£72	£250	£178
Pembrokeshire	£0	£250	£250
Powys	*£420*	£250	£170
Rhondda Cynon Taff	£0	£250	£250
Swansea	£300	£250	£50
Torfaen	£100	£250	£150
Vale of Glamorgan	£240	£250	£10
Wrexham	*£400*	£250	£150
Brecon Beacons National Park	*£420*	£250	£170
Snowdonia National Park	£0	£250	£250
Pembrokeshire Coast National Park	£0	£250	£250
<b>AVERAGE (total)</b>	<b>£181.72</b>		

\* Written response only

\*(...) \* See calculations below

#### *Blaenau Gwent:*

- £70 for single dwelling
- £150 for between 2-9 dwellings
- Average taken ( $£150 + £70 / 2$ ) = £110

*Ceredigion:*

- £44 per half hour
- £44 x 4 hours = £176

*Flintshire:*

- £80 for single dwelling
- £120 per dwelling for between 2-9 units (equals a maximum of £1,080)
- Median point between £1,080 and £80 taken = £500

*Gwynedd:*

- £150 for 2-4 residential houses
- £350 for 5-9 residential houses
- Average taken ( $£350 + £150 / 2$ ) = £250

*Isle of Anglesey:*

- £95 per dwelling for between 1-9 units
- Average taken ( $£95 \times 5$ ) = £475

*Monmouthshire:*

- 'Level 2' on the charging schedule used

*Powys:*

- Median point between £120 and £720 taken = £420

*Wrexham:*

- £80 per dwelling for between 1-9 units
- Average taken ( $£80 \times 5$ ) = £400

*BBNPA:*

- £240 for between 2-5 dwellings
- £600 for between 5-9 dwellings
- Average taken ( $£600 + £240 / 2$ ) = £420

**Major**

Local Planning Authority	Existing Charges*	Proposed Charges	Difference
Blaenau Gwent	£250	£600	£350
Bridgend	£300	£600	£300
Caerphilly	£180	£600	£420
Cardiff	£1,500	£600	£900
Carmarthenshire	£0	£600	£600
Ceredigion	*£440*	£600	£160
Conwy	£0	£600	£600
Denbighshire	£60	£600	£540
Flintshire	*£1,760*	£600	£1,160
Gwynedd	£675	£600	£75

Isle of Anglesey	<b>*£1,950*</b>	<b>£600</b>	<b>£1,350</b>
Merthyr Tydfil	<b>£300</b>	<b>£600</b>	<b>£300</b>
Monmouthshire	<b>*£570*</b>	<b>£600</b>	<b>£30</b>
Neath Port Talbot	<b>£600</b>	<b>£600</b>	<b>£0</b>
Newport	<b>£240</b>	<b>£600</b>	<b>£360</b>
Pembrokeshire	<b>£0</b>	<b>£600</b>	<b>£600</b>
Powys	<b>£1,200</b>	<b>£600</b>	<b>£600</b>
Rhondda Cynon Taff	<b>£0</b>	<b>£600</b>	<b>£600</b>
Swansea	<b>*£1,050*</b>	<b>£600</b>	<b>£450</b>
Torfaen	<b>£200</b>	<b>£600</b>	<b>£400</b>
Vale of Glamorgan	<b>£360</b>	<b>£600</b>	<b>£240</b>
Wrexham	<b>*£1,600*</b>	<b>£600</b>	<b>£1,000</b>
Brecon Beacons National Park	<b>£1,200</b>	<b>£600</b>	<b>£600</b>
Snowdonia National Park	<b>£0</b>	<b>£600</b>	<b>£600</b>
Pembrokeshire Coast National Park	<b>£0</b>	<b>£600</b>	<b>£600</b>
<b>AVERAGE (total)</b>	<b>£577.40</b>		

\* Written response only

\*(...)\* See calculations below

*Ceredigion:*

- £44 per half hour
- £44 x 10 hours = £440

*Flintshire:*

- £1,120 plus £160 for any additional dwelling over 10 (up to max. £2,400)
- Median point between £2,400 and £1,120 taken = £1,760

*Isle of Anglesey:*

- £900 plus £180 for any additional dwelling over 10 (up to max. £3,000)
- Median point between £3,000 and £900 taken = £1,950
- *Monmouthshire:*
- Average of 'Level 3' (£290) and 'Level 4' (£850) from the charging schedule taken.
- $£290 + £850 / 2 = £570$

*Swansea:*

- £900 for between 10-19 dwellings
- £1,200 for 20+ dwellings
- Average taken  $(£1,200 + £900 / 2) = £1,050$

*Wrexham:*

- £800 plus £160 for any additional dwelling over 10 (up to max. £2,400)
- Median point between £2,400 and £800 taken = £1,600

## Large Major

Local Planning Authority	Existing Charges*	Proposed Charges	Difference
Blaenau Gwent	£250	£1000	£750
Bridgend	£300	£1000	£700
Caerphilly	*£240*	£1000	£760
Cardiff	£3,000	£1000	£2,000
Carmarthenshire	£0	£1000	£1000
Ceredigion	*£880*	£1000	£280
Conwy	£0	£1000	£1000
Denbighshire	£60	£1000	£940
Flintshire	£2,400	£1000	£1,400
Gwynedd	£950	£1000	£50
Isle of Anglesey	£3,000	£1000	£2,000
Merthyr Tydfil	*£350*	£1000	£650
Monmouthshire	£850	£1000	£150
Neath Port Talbot	£600	£1000	£400
Newport	£360	£1000	£640
Pembrokeshire	£0	£1000	£1000
Powys	£1,200	£1000	£200
Rhondda Cynon Taff	£0	£1000	£1000
Swansea	£1,200	£1000	£200
Torfaen	*£350*	£1000	£650
Vale of Glamorgan	£360	£1000	£640
Wrexham	£2,400	£1000	£1,400
Brecon Beacons National Park	*£2,400*	£1000	£1,400
Snowdonia National Park	£0	£1000	£1000
Pembrokeshire Coast National Park	£0	£1000	£1000
<b>AVERAGE (total)</b>	<b>£846.00</b>		

\* Written response only

\*(...) See calculations below

### Caerphilly:

- £180 for between 10 – 49 dwellings
- £300 for 50 or more dwellings
- Average taken  $(£300 + £180 / 2) = £240$

### Ceredigion:

- £44 per half hour
- £44 x 20 hours = £880

### Torfaen:

- £200 for between 10-49 dwellings
- £500 for 50+ dwellings
- Average taken  $(£500 + £200 / 2) = £350$

- **Annex 2 - Provide a reduced fee for a Section 73 application that follows refusal of a non-material amendment application under section 96A of the 1990 Act**

Receipt and Validation		
Receipt and fee	----->	0.33hr x £15.78 £5.25
Validation	----->	0.33hr x £15.78 £5.25
Is it material?		
Yes/No (simple consideration)	----->	0.5hr x £23.77 = £11.86
Complex consideration	----->	1hr x £23.77 = £23.77
Report		
Simple notice	----->	0.33hr x £23.77 = £7.84
Complex notice	----->	1hr x £23.77 = £23.77
Manager sign off		
Simple notice	----->	0.25hr x £29.14 = £7.29
Complex notice	----->	0.5hr x £29.14 = £14.57
Potential additional costs		
Site visit	----->	0.75hr x £29.14 =
10% allowance		

**Totals**

Simple application = 37.49

Complex application = 94.47

**Table 1.**

<b>Position (average number of officers in that post )</b>	<b>Local Planning Authority – Development Management</b>			
	<b>Average Salary*</b>	<b>On Costs<sup>#</sup></b>	<b>Total*</b>	<b>Hourly*</b>
Head of Development Management (1)	£43,390 (42,032-44,742)	£32,100	£75,495	37.75
Team leader/ Principal Planner (2)	£33,495 (30,311-36,676)	£24,785	£58,280	29.14
Senior Planning Officer (3)	£31,720 (30,311-33,128)	£23,470	£55,190	27.60
Planning Officer (2)	£27,325 (25,727-28,922)	£20,220	£47,545	23.77
Planning technician/ admin (5)	£18,140 (15,882-20,400)	£18,140	£31,565	15.78

\*Figures have been rounded

# On Costs include:

- national insurance and pension contributions,
- Accommodation
- Phone/postage
- It
- Stationary and reprographics
- Advertising/publicity
- Travel and subsistence
- Training
- Publications and professional fees
- Personnel/ recruitment
- finance



## ANNEX 3 – Competition Filter Tests

### Pre-application fees to accompany a statutory pre-application service

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

### Post-submission amendment fees

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers	No

The competition filter test	
Question	Answer yes or no
do not have to meet?	
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

### Minor Material Amendments – Fee reduction for subsequent section 73 applications

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	No
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No