

TEWKESBURY BOROUGH COUNCIL

Report to:	Executive Committee
Date of Meeting:	20 March 2024
Subject:	Administration Fees for Handling of Invalid Planning Applications
Report of:	Associate Director: Planning
Head of Service/Director:	Executive Director: Place
Lead Member:	Lead Member for Built Environment
Number of Appendices:	None

Executive Summary:

The planning team deal with a significant number of planning applications that are invalid on receipt, it impacts on the timescales for processing applications and adds pressure on staff. The processing and handling of invalid applications which have to be returned to the applicant due to a lack of correct information imposes a cost on the Council which is not covered by statutory planning application fees set by the Government.

We are proposing to introduce new discretionary administration charges, set at a level to cover costs of dealing with invalid planning applications, which have to be returned to the applicant, to help reduce the burden on the Council and improve the quality and number of valid applications submitted.

Recommendation:

- 1. To APPROVE the proposed administration charges as set out at Paragraph 3.3 of this report, effective from 1 May 2024.**
- 2. To DELEGATE AUTHORITY to the Executive Director: Place to set the level of invalid charges annually in line with service costs.**

Financial Implications:

It is anticipated that the proposed charges will enable a small proportion of the cost of the service to be recovered.

Legal Implications:

Under section 93(1) of the Local Government Act 2003 (LGA 2003) the Council is permitted to charge a person for discretionary services (such as pre-application planning advice) to allow local authorities to recover the costs of providing non-mandatory services or enhancements to mandatory services. This is if the authority is authorised, but not required, by an enactment to provide the service to the person and the person has agreed to its provision.

Section 93(2) of LGA 2003 provides that section 93(1) does not apply if the authority (a) has power apart from section 93 of the LGA to charge for the provision of the service or (b) is expressly prohibited from charging for the provision of the service.

Section 3 of the Localism Act 2011 extends the power to charge for any service provided by exercising its power of competency under Section 1 of the Localism Act 2011. Any charges should be limited to a level that covers the costs of providing that service. In addition to the above, a local authority has subsidiary powers under section 111 of the LGA 1972 to authorise the provision of a service to facilitate the discharge of a specific function. Where it does so, the local authority may charge under section 93 for that function-related service. Section 93(7)(a) of the LGA 2003 specifically states that section 111(3) of the LGA 1972, which prohibits local authorities from using their subsidiary powers to raise money, is to be disregarded for the purposes of section 93(2)(b) as set out above.

The section 93 charging power is not intended to provide a new income stream. Its aim is to allow local authorities to recover the costs (fully or in part) of providing services or improvements to services that they might not otherwise have been able to justify providing or have been in a position to provide.

Under the planning legislation it is the responsibility of the applicant (or their agent if one is appointed) to submit the necessary documents required to assess a planning application. The Council has published guidance setting out the information required to be submitted in order to ensure that an application can be validated and to avoid delays. There are instances when this is not the case and the application has to be returned to the applicant if the additional information is not provided. Consequently, staff time is set aside to resolve such instances on behalf of the applicant, which creates an additional cost to the Council. The invalid application charge is proposed to be introduced to cover these costs and not to create additional income.

If the application cannot be validated (and the non-validation process provided for under article 12 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 has not been invoked by the applicant, in which case the fee would be retained), the local planning authority must notify and return the application fee to the applicant, as required by regulation 3(5) of the 2012 Fees Regulations, as amended.

The administration charge for dealing with the invalid application will be a separate charge due to the Council, which with the agreement of the applicant may be deducted from the application fee before the application fee is returned to the applicant.

Environmental and Sustainability Implications:

There are no significant implications within this category.

Resource Implications (including impact on equalities):

Other than Officer time to implement and promote the new charges, there are no resource implications.

Safeguarding Implications:

None arising directly from this report.

Impact on the Customer:

There would be a financial impact for the applicant, where the new charges are applicable.

It is anticipated that a decrease in the number of invalid applications submitted will lead to improved processing times for validation, benefiting planning customers and improving the planning service provided.

1.0 INTRODUCTION

- 1.1** In 2023, around 44% of the planning applications submitted were invalid on receipt. An application is considered to be invalid when it is missing the required level of information to enable determination of the application.
- 1.2** Dealing with such a high number of invalid applications uses a significant amount of time and resource. Submissions often go through the validation check process multiple times, which impacts on the timescales for processing applications and adds pressure on staff.
- 1.3** The processing and handling of invalid applications imposes a cost on the Council which is not covered by the statutory planning application fees set by the Government. Many Local Planning Authorities have introduced a charge for dealing with invalid planning applications to help reduce this burden and improve the quality and number of valid applications submitted and it is proposed this be introduced at Tewkesbury Borough Council.

2.0 BACKGROUND

- 2.1** To assist customers with the submission of planning applications there are validation checklists available on the Council's website to highlight the required information. This includes the national requirements, together with a local list of validation requirements. The majority of applications received are submitted via the Planning Portal which also offers an abundance of resource on validation requirements.
- 2.2** In addition, through our continuous improvement work, a guide was designed aimed at householders to support them through the application process with the intention of reducing the number of invalid submissions.
- 2.3** As part of the process of handling invalid applications, applicants or their agents are written to outlining the invalid reasons and given 28 days in which to supply the information needed. A review of the invalid process was undertaken in 2023 as part of the Development Management Improvement Programme. Enhancements were made to correspondence to better communicate expectations and the team are more stringent with returning applications once the 28-day time period has lapsed, if there has been no contact from the customer.
- 2.4** These changes have resulted in quicker responses from customers to supply the required information and we have seen a decline in the number of invalid submissions. In 2021, 1757 applications were submitted, 55% were invalid on receipt. 2023 saw fewer invalid applications submitted with 44% of the 1439 received being invalid. It is still a significant number and proportion of time spent processing them and returning them to the applicant if the requested information is not submitted within the 28 day timeframe. Furthermore 25% of the invalid submissions received in 2023 were never validated.
- 2.5** To reduce costs to the Council, as well as continuing to improve the validation process, it is proposed to introduce an administrative charge for handling invalid applications and the costs involved in returning the application to the applicant. The application fee is required to be refunded to an applicant where the application is found to be invalid as required by regulation 3(5) of the 2012 Fees Regulations, as amended. Where the application is found to be invalid, the proposed administrative charge will be imposed and the application fee will be returned to the applicant. It is anticipated that applicants will agree to the deduction of the administrative charge from the fee submitted before it is returned, however this will be agreed with the applicant prior to return of the fee (where paid).

2.6 Section 93 of Local Government Act 2003 (LGA 2003) allows for Councils to charge for discretionary services which includes enhancements to mandatory services which the Council is required to provide. A fixed or variable rate administration fee can be set, provided charges are set at a level that does not more than cover the overall costs of providing the discretionary service. For the purposes of Section 93 of the LGA 2003, discretionary services are those services authorised by statute that a local authority is not required to provide but may do so voluntarily (section 93(1)(a), LGA 2003). The examples given in the 2003 guidance produced by the Office of the Deputy Prime Minister demonstrate that the main motive behind charging for discretionary services is to achieve a better environment for the local community through the services offered. Although a service that a local authority has a duty to provide is not a discretionary service (and will not benefit from the section 93 charging power), an enhancement to a mandatory service, resulting in a higher standard of service, may be considered discretionary. Extensions to statutory services include a range of advisory services linked to planning and development control. These are not a statutory requirement but can make an important contribution to the operation of the statutory services. In this situation, a local authority can rely on section 93 to charge for the enhanced element of the service.

3.0 PROPOSED INVALID APPLICATION FEES

3.1 The proposed fees outlined at Paragraph 3.3 of this report have been set following a benchmarking exercise of other authorities who have set similar administrative charges, as outlined below:

Authority	Householder	Minor	Major
East Cambridgeshire	£26.50	£53.00	£159.00
Shropshire	£30.00	£30.00	£30.00
Blackpool	£30.00	£60.00	£90.00
Birmingham	£30.00	£50.00	£150.00
Leeds	£30.00	£50.00	£150.00
Thurrock	£48.00	£96.00	£192.00
Oxford	£50.00	£75.00	£100.00
Cotswold	£50.00	£100.00	£200.00
Blackburn	£50.50	£82.50	£245.00
Medway	£60.00	£60.00	£118.00
Redbridge	£60.00	£120.00	£200.00
Luton	£75.00	£120.00	£200.00
Average	£45.00	£74.71	£152.83

- 3.2 An analysis has also been undertaken to review the time taken to validate planning applications, at varying complexity, and the work involved in returning applications with the associated Officer costs.
- 3.3 Based on the costing and benchmarking exercises, it is proposed to introduce the following fees for invalid planning applications that are not progressed (that is where neither the information to validate as required by the Council has been provided nor the non-validation process has been invoked):

Development Type	Fee
Householder (and 'other' types)	£45
Minor	£75
Major	£150

- 3.4 The above fees will be applied where an application is made invalid and a satisfactory response to an invalid letter is not received within the 28-day period. If the customer requests to withdraw the invalid application, the charge will also be applied.
- 3.5 It is acknowledged that certain specialist reports may take longer than the 28-day target to produce. In these instances, we have asked customers to communicate as such with Officers, a case note will be added to the application to ensure it is not returned without further correspondence with the applicant or their agent.
- 3.6 The new fees would be publicised and planning agents who regularly use our service will be informed before implementation. Standard acknowledgement letters will be updated to highlight that the charge would be deducted from any refund.
- 3.7 To support the aim of reducing the number of invalid submissions, a guide for customers outlining the most common invalid reasons, and how to overcome them, will be included with communications about the new charges and available on the Council's website, alongside the validation checklists. Encouraging customer to use the pre-application advice service, should also assist in reducing the number of invalid applications.
- 3.8 It is also sought to delegate authority to the Executive Director: Place to set the level of invalid charges annually, as reasonable and to reflect the actual costs for the Council in providing that service.
- 3.9 It is considered that the implementation of an administration charge would improve and enhance the planning service provided by the Council by reducing the number of invalid applications submitted and increasing capacity within the Development Management team to validate planning applications in a more efficient manner, which in turn has a benefit to the customer experience.

4.0 CONSULTATION

4.1 Those agents in attendance at the Planning Agent and Developer Forum held in January 2024 were informed the Council was seeking approval to introduce new charges for handling invalid applications. Feedback at the Forum related to timescales allowing deadlines to be extended for specialist reports to be drafted and submitted in order to validate the application. This already forms part of our validation procedure.

5.0 ASSOCIATED RISKS

5.1 Adverse publicity and challenges from applicants or agents who are subject to a charge.

6.0 MONITORING

6.1 As part of the Development Management performance monitoring, the number of invalid submissions is regularly reviewed and any increase or decrease in the rate will be identified.

7.0 RELEVANT COUNCIL PLAN PRIORITIES/COUNCIL POLICIES/STRATEGIES

7.1 In line with the Development Management continuous improvement programme approved in 2021. The current Council Plan (2020-2024) includes priorities on finance and resources and customer first and the values of the emerging Council Plan.

Background Papers: None

Contact Officer: Business Transformation Officer
01684 272086 faye.smith@tewkesbury.gov.uk

Appendices: None