

EXPLANATORY MEMORANDUM TO

THE TOWN AND COUNTRY PLANNING (FEES FOR APPLICATIONS, DEEMED APPLICATIONS, REQUESTS AND SITE VISITS) (ENGLAND) (AMENDMENT) REGULATIONS 2017

2017 No. 1314

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These Regulations make various changes to the planning application fees charged by local planning authorities. Firstly, they provide for an increase in fees of 20%. Secondly they include a fee to be charged for an application for permission in principle, of £402 per 0.1 of a hectare of the site area. Permission in principle is a new planning consent route designed to separate decision making on ‘in principle’ issues addressing land use, location, and amount of development from matters of technical detail, such as what the buildings will look like¹. Thirdly, they enable any Mayoral development corporation, or urban development corporation, to charge for giving pre-application advice to an applicant about applying for any planning permission, approval or consent under the Town and Country Planning Act 1990 (c.8) (“the 1990 Act”). Fourthly, they provide that a planning application fee will be charged where a local planning authority has withdrawn “permitted development rights” through serving a direction or by a condition imposed on a grant of planning permission. The effect of “permitted development” is that no planning application needs to be made to the local planning authority to obtain planning permission, although in some cases the permitted development right will require the local authority to approve certain matters before the development can proceed (a process generally referred to as “prior approval”). Finally the Regulations also introduce a fee of £96 to be charged by a local planning authority for an application for their prior approval of certain matters before particular classes of permitted development² can proceed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

¹ The draft Town and Country Planning (Permission in Principle) (Amendment) Order 2017 S.I. 2017/1309 “the Order” is attached to this EM. These Regulations have been approved and the Order will be made to come into force on the same day as these Regulations so that local planning authorities can charge a fee for permission in principle applications.

² That is, permitted development rights introduced on 15 April 2015 by the Town and County Planning (General Permitted Development) (England) Order 2015 S.I. 2015/596, and on 6 April 2017 by the Town and County Planning (General Permitted Development) (England)(Amendment) Order 2017 S.I. 2017/391. They include allowing the installation of solar PV equipment of up to one megawatt on the roof of a non-domestic building, the erection of a collection facility within the curtilage of a shop, the temporary use of buildings or land for film-making purposes, and the provision of temporary state-funded schools on vacant commercial land.

Other matters of interest to the House of Commons

- 3.2 This entire instrument applies only to England.
- 3.3 This instrument amends the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (S.I. 2012/2920) (“the 2012 Regulations”), which apply in relation to England only (see regulation 1(2) of the 2012 Regulations). The instrument does not have minor or consequential effects outside England.
- 3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject-matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter; and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.
- 3.5 The Department has reached this view because it considers that the primary purpose of the instrument relates to planning, which is within the devolved legislative competence of each of the three devolved legislatures: the primary purpose of the subject matter of the instrument is not within Schedule 5 to the Scotland Act 1998 and is not otherwise outside the legislative competence of the Scottish Parliament (see section 29 of that Act); the primary purpose of the subject matter of the instrument is not within Schedule 2 or 3 to the Northern Ireland Act 1998 and is not otherwise outside the legislative competence of the Northern Ireland Assembly (see section 6 of that Act); the primary purpose of the subject matter of the instrument is within Part 1 of Schedule 7 to the Government of Wales Act 2006 and is not within one of the exceptions listed therein, nor is it otherwise outside the legislative competence of the National Assembly for Wales (see section 108 of that Act). Under section 303 of the 1990 Act the Welsh Ministers can, for example, make provision in regulations for the payment of a fee or charge to a local planning authority in respect of the performance of any function or anything calculated to facilitate or is conducive or incidental to the performance of such function (see subsection (1)).

4. Legislative Context

- 4.1 These Regulations amend the 2012 Regulations. The 2012 Regulations were made under section 303 of the 1990 Act, which was substituted by section 199 of the Planning Act 2008 (c.29).
- 4.2 Regulation 3 amends the 2012 Regulations to make provision in relation to fees for applications for permission in principle. Permission in principle and its effect are described in sections 58A, 59A and 70(2ZZA) to (2ZZC) of the 1990 Act (those sections were inserted by section 150 of the Housing and Planning Act 2016.) The permission in principle consent route is a two-stage process. The first (permission in principle) stage is where the local planning authority establishes whether the site is suitable for housing-led development in principle. At the second (technical details consent) stage the local authority will consider the remaining technical details (e.g. the design of buildings). After technical details consent is granted, the developer has planning permission and can get on and build out the site.

- 4.3 Regulation 4 of these Regulations provides that Mayoral development corporations and urban development corporations will charge for giving pre-application advice. Section 198 of the Localism Act 2011 provides for the establishment of Mayoral development corporations and section 202 of that Act provides that the Mayor may decide that the Mayoral development corporation may have planning functions for the area. Where a Mayoral development corporation has planning functions under Part 3 of the 1990 Act, section 7A of that Act applies to make the Mayoral development corporation the local planning authority for the area in question.
- 4.4 Section 135 of the Local Government Planning and Land Act 1980 provides for the establishment of urban development corporations. Section 149 of that Act provides that the Secretary of State may provide for the urban development corporation to have planning functions for its area. Where an urban development corporation has planning functions under Part 3 of the 1990 Act, section 7 of that Act applies to make the urban development corporation the local planning authority for the area in question.
- 4.5 Local authorities have the power to charge for giving pre-application advice under section 93 of the Local Government Act 2003 (power to charge for discretionary services). Regulation 4 of these regulations will put Mayoral development corporations and urban development corporations on the same footing as local authorities in being able to charge for this service.
- 4.6 Regulation 5 relates to permitted development rights. A local planning authority can issue a direction under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) which withdraws permitted development rights. The same effect can be achieved by a condition imposed by a local authority on a grant of planning permission.
- 4.7 These Regulations supersede the draft of the same title which was laid before Parliament on 23rd March 2015 and are being issued free of charge to all known recipients of that draft statutory instrument. The draft laid on 23rd March made provision for the charging for pre-application advice by Mayoral development corporations and urban corporations. These Regulations additionally make provision for the other matters mentioned at paragraph 2.1.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies only to England as set out in Section 3 under “Other matters of interest to the House of Commons”.

6. European Convention on Human Rights

- 6.1 Alok Sharma, Minister of State for Housing and Planning, has made the following statement regarding Human Rights:

In my view the provisions of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

National Fees Increase

- 7.1 Planning application fees were last increased in 2012. These Regulations increase the fees for planning applications by 20% and increase the fee ceilings by 20% for those local authorities that have committed to invest the additional fee income in their planning departments. This commitment has been made by all local planning authorities in England.
- 7.2 The Local Government Association (“the LGA”) works with local planning authorities on issues of capacity and resourcing of their planning functions. In its Housing Commission report “Building our homes, communities and future”, December 2016³, the LGA outlines, based on evidence it has collected in the last three years, that local taxpayers have subsidised a £450 million shortfall in resources going into planning from planning fees, from their local taxes. This averages out at £150m annually.
- 7.3 Government accepted the evidence presented, which was further reinforced through dialogue with individual authorities. In bringing forward the proposed 20% increase in fees the Government is seeking to reduce the funding gap, and estimate that some £80m additional fee income will be raised annually. Therefore, although the fee increase will help to address some of this shortfall, even taking this additional income into account, authorities’ costs will overall still be higher than the fee charged. The fee increase will also provide the opportunity for authorities to consider whether they are adequately resourcing their planning application service and whether the fee increase will provide an opportunity to employ more local authority officers or access more specialist advice and services. The overall impact of the measure will be that additional ring fenced resource will be available to planning departments to support the delivery of an effective planning system.

Introduction of a fee for applications for permission in principle

- 7.4 The Town and Country Planning Act (Permission in Principle) (Amendment) Order 2017 S.I. 2017/1309 which have been made and will be laid if these Regulations are approved, will give developers the option to apply to the local planning authority for a grant of permission in principle for minor development. Under the 2012 Regulations, local planning authorities are unable to charge a fee to cover the costs of processing permission in principle applications. They are, however, able to charge for an application for technical details consent because it is classed as an application for planning permission.
- 7.5 These Regulations provide for a fee of £402 per 0.1 hectare to cover the costs incurred in processing permission in principle applications including the costs of undertaking consultation and assessment against local and national policy. The permission in principle fee level is modelled on the approach set out in the 2012 Regulations for outline planning applications where the fee level is charged on a per 0.1 hectare basis. The Government’s assessment is that the costs of processing a permission in principle application are proportionately lower than the costs of processing an outline planning application as there will be fewer matters for an authority to consider in an application

³ <http://www.local.gov.uk/sites/default/files/documents/building-our-homes-commun-359.pdf>

for permission in principle, therefore, the fee has been set at a proportionately lower level to ensure it is fair to both local planning authorities and developers. It is charged on a per 0.1 hectare basis because the exact number of housing units in the proposed scheme will not be known until the applicant submits the technical details consent application. The general increase of 20% in fees for planning applications has been reflected in the level set for permission in principle applications.

Pre-application advice

- 7.6 The Government is keen to encourage applicants to prepare planning proposals to a high standard before they are submitted, including having discussions at an early stage with the local planning authority to iron out issues and avoid time being wasted on ill-conceived applications.
- 7.7 The first Mayoral development corporation, the London Legacy Development Corporation, was established in 2012 and took on planning functions, including the determination of planning applications. Since then it has been providing pre-application advice free of charge to applicants to aid the planning process. Further corporations have been established at Old Oak and Park Royal and Ebbsfleet taking over a range of planning functions from local planning authorities in those areas.
- 7.8 At the moment, if a developer intends to apply to a local planning authority and wishes to engage in pre-application discussions, it is likely that they would be charged a fee to cover the cost to the local planning authority of giving any pre-application advice. However, if a developer applied to an urban or Mayoral development corporation, they could not be charged for pre-application discussions as those bodies would not have the necessary powers to charge such fees. This results in the cost, which would normally be met by the applicant, being met by the taxpayer. Implementing this change will align Mayoral and urban development corporations with local authorities.

Fees in relation to permitted development rights

- 7.9 The Government seeks to ensure that the threshold at which an application for planning permission is required is set at the right level to minimise administrative burdens and that where local authority consideration is required, it can be obtained in the easiest way possible. The permitted development regime is one mechanism through which this objective is achieved. The Government also recognises the resource commitment for local planning authorities in determining planning applications where permitted development rights have been removed for sound policy reasons. At the moment, where a planning application is necessary because a local planning authority has made an article 4 direction withdrawing permitted development rights or grants planning permission conditional on the withdrawal of permitted development rights, it receives no fee in respect of those planning applications made. During the passage of the Neighbourhood Planning Act 2017 the Government made a commitment to remove this exemption, which means that a planning application fee can be charged where permitted development rights have been removed.
- 7.10 Where there are permitted development rights, there are occasions where it is appropriate for there to be an approval procedure by a local planning authority. Permitted development rights introduced on 15 April 2015 by the Town and County Planning (General Permitted Development) (England) Order 2015, and its subsequent

amendment on 6 April 2017, included the matters set out in the footnote on page 1 of this Memorandum. Prior approval is required enabling the local planning authority to consider matters such as siting and design, transport, noise and light impacts, and flood risks.

- 7.11 The usual fee payable for a prior approval where there is a permitted development involving a change of use has been £80 (although this will increase to £96 in line with the general rise in fees). It is considered that the administrative costs of the authority considering a prior approval application for these three new permitted development rights are similar to those of considering a prior approval application for a change of use and that this is therefore the appropriate fee to charge.

Consolidation

- 7.12 There are no plans to consolidate the 2012 Regulations in the immediate future.

8. Consultation outcome

National Fee Increase

- 8.1 The technical consultation on implementation of planning changes, published in February 2016 “the February 2016 consultation” set out options for how any increase in planning fees should be brought forward (see <https://www.gov.uk/government/consultations/technical-consultation-on-planning>). Section 1 outlined the Government’s proposals on planning application fees, including the proposal to adjust planning fees in line with inflation. 485 responses were received in relation to this inflation-level increase. The majority of respondents, from all sectors, supported increasing planning fees, often citing concerns about resourcing in local authority planning departments.
- 8.2 The Government response to this consultation was published on 7 February 2017, as a supporting document to the Housing White Paper ‘Fixing our broken housing market’ (see <https://www.gov.uk/government/collections/housing-white-paper>). This Paper set out that, subject to the will of Parliament, the Government’s intention is to increase planning fees by 20% from July 2017, for those authorities that commit to invest the additional fee income in their planning department. This increase reflects local planning authorities’ need for additional resources in order to better support their planning functions.

Introduction of a fee for applications for permission in principle

- 8.3 In chapter 2 of the February 2016 consultation, the Government asked for views about the fee that should be set for permission in principle applications. There were 433 responses to the question with a range of views about the approach to setting the fee. Some respondents said that the fee level should be on a cost recovery basis while others argued that the fee should be linked to factors such as development size, value and local authority performance. Others suggested that the Government should base the fee structure on existing models. It was suggested that the fee for permission in principle applications should be low to incentivise take-up. The Government wants to encourage developers to make use of this new route to planning permission.

Pre-application advice

- 8.4 The Government undertook a focused consultation with the local planning authorities whose areas are part of a current or proposed development corporation and with a sample of developers/agents who have expressed an interest in making applications within the areas covered by the existing and proposed development corporations. The consultation ran from 9 January 2015 to 6 February 2015. A total of 4 replies were received, from one local business, the Greater London Authority, one statutory harbour authority and one planning agent. Those who responded were supportive overall of the proposal that Mayoral development corporations and urban development corporations acting as the local planning authority for a designated area should have the ability to charge for giving pre-application advice to applicants and have their own fee charging schedule, like local authorities. Respondents commented that prior to a fee schedule being adopted it should be published. No concerns were raised through the consultation process and we are including a requirement to publish the proposed fee schedule before any charge can be introduced.

Prior approval fee

- 8.5 Consultations on changes to permitted development rights were carried out as part of the “Technical Consultation on Planning” from July to September 2014, see <https://www.gov.uk/government/consultations/technical-consultation-on-planning>, and the 2016 consultation. There was positive support for the new permitted development rights, but a small number of responses from authorities stated that the level of prior approval fees does not compensate for loss of income from planning application fees or cover their administrative costs. Whilst the Government cannot guarantee that the new increased figure of £96 will fully cover the costs of these applications, it considers that it is an appropriate level of fee having regard to the level of other prior approval fees. Fees income is not the only source of income for local authorities to undertake their planning functions, which are funded in part by other revenue streams.

9. Guidance

- 9.1 The Government has published guidance on Fees for Planning Applications. This will be updated and will be available when the Regulations are made, in order to provide up-to-date advice on these changes.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies has been assessed as negligible. Nationally set planning application fees have not been increased since 2012. In relation to the introduction of a fee for applications for permission in principle, the level of the fee (£402 per 0.1 hectare of the site area) is in line with fees charged for equivalent types of planning application. For the pre-application advice provisions, the primary purpose of the changes is to put Mayoral development corporations and urban development corporations on the same footing as local authorities. The £96 fee for prior approval applications to the local planning authority is a new cost, but one that negates the need to submit a planning application.
- 10.2 In relation to the impact on the public sector, there will be a benefit in (a) the increase in planning application fees and (b) the pre-application advice provisions. The increased fee income will provide additional resource for local planning authorities

and the pre-application advice provisions will mean that the cost of giving the advice, which would normally be met by the tax payer, will be met by the applicant. In relation to the prior approval provisions, the impact on the public sector is that authorities will receive a fee for considering a prior approval application in relation to the new permitted development rights, which reflects the administrative cost and will be less than the full planning application fee for that development. In relation to the fee for applications for permission in principle the impact on local planning authorities will be negligible because the fee level is in line with the fees charged for equivalent types of planning application.

- 10.3 An impact assessment was not required to be undertaken for these Regulations. This is because this is not the introduction of a new regime or policy change rather it is the increase across an existing fee regime. However, an impact assessment was prepared in relation to the new permitted development rights introduced by the General Permitted Development Order 2015 as referred to in regulation 5(3) of these Regulations. The assessment was published alongside that Order at <http://www.legislation.gov.uk/ukSI/2015/596/impacts>

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 11.3 The basis for the final decision to not take specific action is that the impact does not fall more heavily on small businesses than on other applicants for planning consent, nor is it anticipated that the impact will have a significant effect on the costs for business. The increase in national fees is applied equally across categories of development so the impact on applicants is consistent. In relation to the prior approval provisions, the instrument will have a small positive impact as set out above.

12. Monitoring & review

- 12.1 The 2012 Regulations expire on 21st November 2019 and a review was due to be carried out of all fees by November 2017, to assess whether the objectives of the Regulations are being achieved and whether the objectives remain appropriate. This review has been published in December 2017 and included consideration of the changes made by these Regulations. In particular, the Department reviewed the implementation of the pre-application advice provisions through monitoring of information collected from the accounts of the corporations concerned.

13. Contact

- 13.1 Stephen Gee at the Department for Communities and Local Government Telephone: 0303 444 0013 or email: Stephen.Gee@communities.gsi.gov.uk can answer any queries regarding the instrument.