Planning for a better future

Our planning manifesto for the government

Manifesto Background Paper 16

Improving LPA Funding

Until planning services are 100% funded from fees and other charges, their budgets will remain susceptible to the vagaries of local government funding. This paper looks at how we can get to a position where planning services are fully funded through fees and other charges and all that external income is statutorily ring fenced.

Limited company number (registered in England & Wales): 6709078
Registered charity number: 1140770
Registered office: Park House, 37 Clarence Street, Leicester LE1 3RW
www.planningofficers.org.uk

Planning Officers Society

POS is the single credible voice for public sector planners, pursuing good quality and effective planning practice. The Society's aim is to ensure that planning makes a major contribution to achieving sustainable development in ways that are fair and equitable and achieve the social, economic and environmental aspirations of the community.

We operate in three main ways:

- As a support network for planners in the public sector
- As promoters of best practise in planning
- As a think tank and lobbying organisation for excellence in planning practice

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: landowners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development. It is within this context that we have set out this advice to Government so we can plan together for a better future.

POS Manifesto

This started in early 2014 when we looked ahead to the national parliamentary elections in May 2015. The main parties were drafting their manifestos, so we thought about what we could do to help them. This resulted in Planning for a better future: Our planning manifesto for the next government. The time since then has seen an unprecedented amount of change to the planning system, so our initial planning manifesto for the next government has morphed into an on-going planning manifesto for government.

These are think pieces that tackle a topical area within planning practice and sets out our recommendations for improvement. They comprise a growing series of Manifesto Background Papers that look in detail at specific issues. Those that are still current are summarised in our main Planning Manifesto paper that sets out the current ask from POS to the government.

The views expressed in these documents reflect the initial view of POS. It is a consensus position. It should not be taken as a final position; rather an informed starting point to debate the issues. It is expected that the recommendations will evolve as the debate progresses.

Where we can, we will work across the sector to craft proposals that have widespread support from the people who operate the planning system at the coalface: land owners, developers, agents, legal, local authorities and politicians. We will be both radical and practical as we look for solutions to tangible problems that will make a real difference to crucial areas. Our objective is to improve the planning system to enable it to deliver its key aim of sustainable development.

Other titles in the series can be viewed from our website.

Contents

Published: January 2025

Contact details

Mike Kiely Board Chair chair@planningofficers.org.uk
Peter Geraghty President 2024/25 president@planningofficers.org.uk
Nicky Linihan Communications Manager communicatons@planningofficers.org.uk

Summary

Until planning services are 100% funded from fees and other charges, their budgets will remain susceptible to the vagaries of local government funding. This paper looks at how we can get to a position where planning services are fully funded through fees and other charges and all that external income is statutorily ring fenced. Our recommended changes are:

- Greater encouragement should be given in the NPPF for applicants to engage in pre-application discussions, coupled with the removal of perverse incentives to treat the application process as the vehicle for negotiating schemes. We do not support a national approach to setting fees for this, as the type of pre-application service offered by LPAs varies so enormously, that a one-size-fits-all approach would fail.
- POS fully supports recent changes to fees for planning applications and the move to local fee setting. We suggest further changes to the fees regime to help the move to full cost recovery. We also suggest long-overdue changes to the publicity and notification requirements to bring it into the digital age, improve publicity and save costs. We also draw attention to the long-established practice in the Republic of Ireland to charge (€20) for making representations on planning applications, not necessarily as a direct source of income, but more as a means by which repeat objections are discouraged. These must all be processed and absorb considerable resources, but the truth is that an objection is not enhanced by repetition. The weight of public opinion is not a matter that can be given any real weight in the decision-making process; it is the substance of that opinion that we must consider.
- Fees for dealing with discharging conditions and dealing with amendments are being revised, but POS also repeats its call for a proper legislative regime for dealing with amendments. The current ad-hoc regime doesn't work (as the recent case law in Finney, Armstrong, Fiske and Dennis have clearly demonstrated) and it makes it highly challenging to devise an approach to fee setting that has any real efficacy.
- We propose setting fees for planning appeals which should relate both to the scale/type of development (as with planning application fees) and the type of appeal route chosen, with higher fees for Hearings and Inquiries.
- Enforcement services throughout the country have suffered significantly over the last decade or so through austerity cuts. POS advocates for a range of changes that would bring more resources into planning enforcement services so that the credibility of these services is not undermined.
- It is important that infrastructure delivery is seen as a key part of a successful planning service, and we suggest a range of tweaks to improve the effectiveness and efficiency of this part of planning. It is a source of considerable delay and unnecessarily absorbs considerable resources. Much recent case law has shone a light on bad practice in this area and a review of how CIL and s106 operates is long overdue.
- Spatial planning services need to be funded but their ability to charge fees is severely limited and unlikely to get to a cost-recovery position. We look at the options around a levy on planning application fees and/or a recharge to CIL income.

1 Introduction

1.1 Government recognises that council planning services are underfunded and under resourced and accepts that these challenges need to be addressed urgently. MHCLG are developing proposals to address this, including funding for 300 additional planning apprenticeships and increases in national planning fees, with local fee setting promised. POS has already set out its suggestions for speeding up the DM process[1] which includes a range of proposals to effectively increase resources by streamlining what we do. In this paper we examine what can be done to improve the funding of planning services through fees and other charges.

1.2 We need to look at how the whole planning service is funded, not just the fee-earning DM element. The funding of planning services must also be considered within the context of local government funding; austerity policies over the last 10-15 years have resulted in a reduction of local authority funding to planning services of over 50%. Attempts to increase funding through planning application fee increases have emphasised the need to ring fence the additional income to the planning service. The budgets of virtually all DM services comprise an element of funding from the Council. Where a planning application fee rise increases funding into DM, there is nothing government can do to stop that Council from making a commensurate reduction in their central funding to DM thus maintaining a neutral position for the planning service with no overall increase in resources. Even if a DM service was fully funded through application fees and other charges, a Council can reduce the centrally funded budget to the planning policy service and expect the DM budget to pick up the slack. They can also use any planning fee surplus to fund other non-planning services as there is no legislative provision to prevent this.

1.3 Income from PPA charges are facilitated by the Local Government Act 2003's s93 power to charge for discretionary services. Under s93(3) you cannot make a profit, nor, by implication, can the money be used to fund other services. It is ring fenced to that extent. However, there is no such provision for planning fees in the Fees Regulations, and there should be. Other sources of income (eg Planning Delivery Grant) should also have a similar provision so that an LPA can optimise the extent to which their service is funded through income and are thereby isolated from the wider context of local government funding

1.4 The reality, however, is that total ring fencing of planning income cannot be guaranteed until the whole planning service is fully funded through fees and other charges and all that external income is statutorily ring fenced. That is effectively the case with Building Control (save for the emergency dangerous structures' service) and statutory protection is given to their fee income.

1.5 This paper looks at how we can get to a position where planning services are fully funded through fees and other charges and all that external income is statutorily ring fenced

[1] Manifesto Background Paper 15: Planning applications: how to speed up the process

2 Development management

2.1 The recommendations will start with DM and look at all its aspects: pre-application, applications, conditions and amendments, appeals, enforcement and infrastructure delivery.

Pre-application

2.2 The NPPF encourages LPAs to offer pre-application services and applicants are encouraged to engage with them. Wider resourcing problems, particularly the ability to recruit and retain sufficiently experienced planners, have made providing these services to the quality that LPAs wish to, and applicants rightly expect, extremely challenging.

2.3 There have been calls from developers for government to incorporate the cost of a pre-application service into the (presumably increased) planning application fee. The problem is that there are vast differences between what service is offered both between councils and between different types of application. Trying to arrive at a fee that covers costs through a national approach is even more challenging than doing so for application fees. Given that government now accepts that local application fee setting is necessary, we do not see a national set of pre-application fees as the way forward.

2.4 To encourage applicants to use pre-application services, it would assist LPAs if government took two actions:

1. In addition to the encouragement already given to pre-application engagement in the NPPF, to further state that applicants who do not engage in such discussions or ignore the advice given, cannot expect substantive negotiations to take place with the LPA during the processing of an application. Many LPAs operate this policy, and substantive negotiations are generally defined as those that the result of which would require further consultation, publicity or notification.
2. Where an LPA does engage in substantive negotiations during the processing of an application, the amended submission should be subject to a further planning application fee to cover the additional costs to the LPA. We recommend that this should be at a rate of 50% of the original planning application fee.

2.5 Good pre-application engagement is key to an efficient DM service and government's support in this area is welcome and we hope will continue.

Applications

2.6 POS welcomes the proposed resetting of fees for planning applications. It must be done on the basis that it will, on average, result in full cost recovery for the processing of those individual applications and, cumulatively, the DM service. PAS holds data that should enable a good estimate of what fees should be to achieve average cost recovery for all planning fee types.

2.7 LPAs should be able to set their own fees where they can demonstrate the need for a different set of fees to achieve cost recovery. Setting a national default fee (designed to achieve cost recovery on average) with the ability to set a different fee locally is the best option.

2.8 There are a wide range of application types for which no fee is charged. The justification is that people do not have a choice in making such applications (eg because their tree is preserved or property is listed). However nobody has a choice if they want to do something that needs a consent; they must make the appropriate application, which in most cases attracts a fee. The view of POS is that all planning applications should attract a fee that is designed to achieve full cost recovery. If there are exceptions, then the fee regime generally should be adjusted to cover those concessions so full DM cost recovery is still achieved. However the level of such applications (such as listed building consents) can differ considerably between LPAs, so this is a challenging option.

2.9 Applications for Prior Notification approval are set at a particularly low level. When first introduced (for agricultural and telecommunications PDR) there was a (misplaced) view that it was a procedure that was simpler than a planning application and involved less work. PN is now used for quite complex PDR where the work involved is clearly just as extensive as an equivalent application for planning permission and in many cases more so because the LPA must additionally check the PDR eligibility criteria has been met. These fees should therefore be at least the same as the equivalent application for planning permission.

2.10 Towards the end of 2023 government removed the fee exemption for repeat applications (the “free go”) but retained the ability to get a free go within 12 months (subject to other criteria being met) if their application was refused or withdrawn. This exemption should be removed because such applications clearly generate additional costs for the LPA to bear those costs in such circumstances is rarely justified.

2.11 The scope to amend an application once submitted, but before it is determined, is quite wide[2]. It is up to the LPA whether it accepts any such amendments. The applicant cannot unilaterally amend a planning application; there is no statutory right to do so. Most LPAs will accept such amendments, particularly where they are in response to statutory consultee responses. However, a significant constraint in the flexibility that could be achieved here is that there is no statutory provision to seek an extra planning fee during the determination if an amended application attracts a higher fee – the fee is payable on submission of the application based on what it contained at that time[3]. This is an area where flexibility in the Fees Regulations should be introduced to enable these changes to be made and any associated uplift in the application fee to be paid to the LPA. This should include extending the site area.

[2] Holborn Studios Ltd v The Council of the London Borough of Hackney (2018), which refined the “Wheatcroft principles” set out in Bernard Wheatcroft v Secretary of State for the Environment (1982)
[3] Regulation 3 of the Fees Regulations

2.12 Many applications commit the LPA to significant costs through the requirements for publicity via newspaper notices. There is an urgent need to look at this requirement, which is arcane, inefficient and unnecessarily expensive. It also potentially slows down the processing of planning applications. In a digital age, the requirement to use newspapers is outdated. LPA websites should be the vehicle for all such publicity. Bodies and individuals who have an ongoing interest in planning matters in an area can self-serve on many websites and indicate the area that is of interest to them and the types of applications that they wish to be informed about. This triggers an automatic email notification when an application is validated. This should be supplemented by site notices with a QR code linked to the online register so people can easily view the application on a smart phone device. Such a system would also negate the need for notification letters, saving considerable resources and improving efficiency. Councils that have moved to a site notice only approach to notification have also found that they experienced a rise in the number of representations made, suggesting that this approach communicates the existence of a planning application more effectively to the local community.

2.13 In the Republic of Ireland there is a charge to make a representation on a planning application. At the time of publication, the cost was €20. Government should consider introducing that here. The cost to an objector is nominal, so accusations that such a charge would reduce democratic representation are without substance. However, it should introduce discipline into the process and reduce the barrage of repetitive objections that are received and must be processed by the planning service. It is vital that the point is made clearly by government, either in the NPPF or PPG, that planning is not a referendum and the number of times a representation is made is of no relevance in decision making. Equally, who makes a representation is unlikely to be of any material relevance. It is what is said and the extent to which that is a material planning consideration that is important. The mass submission of objections, pro-forma letters to be signed and submitted, petitions etc are not beneficial elements of the planning application process and need to be discouraged because they add to the cost of the service. The weight of public opinion is not a matter that can be given any real weight in the decision-making process, it is the substance of that opinion that we must consider.

Conditions and amendments

2.14 Government has recognised that the current application fees for discharging conditions and dealing with amendments (s96a, s73 and, hopefully soon, s73B) are inadequate and are proposing that they be increased. It is important that this is on a cost-recovery basis and the success of this needs to be kept under review with empirical evidence.

2.15 The current regime for dealing with amendments to planning permissions (s73 & s96a) is not fit for purpose, as recent case law (Finney, Armstrong, Fiske and Dennis) has clearly demonstrated. Government needs to address this urgently. POS has set out its proposals[4] and it is not until a sensible, workable regime is in place that a cogent system of charging can be developed. The system that POS recommends (designed to deal with the challenges presented by the relevant case law) would require a new application with only the amendment (as a form of slot-in) to be determined. The other elements of the original planning permission (any completed parts of a development, on-going development and non-commenced elements) are merely copied across with no determination or amendment by the LPA. The fee could simply be the normal cost of applying for the slot-in amendment with a small additional administrative charge for dealing with the other elements.

2.16 The current ad-hoc regime makes it highly challenging to devise an approach to fee setting that has any real efficacy.

Appeals

2.17 Currently no fee is payable when you make an appeal. This should be introduced and designed to at least cover the LPA's costs of dealing with the appeal. Whether PINS' costs are also covered would be for government to decide. The appeal fee should relate both to the scale/type of development (as with planning application fees) and the type of appeal route chosen, with higher fees for Hearings and Inquiries.

2.18 POS recommends that the fee structure should mirror the approach in the planning application fees regulations and be designed to cover the cost of a written representation appeal.

2.19 On the basis that it would be virtually impossible to follow the same approach for hearings and inquiries, our recommendation is that if an appellant requests to be heard, then they must pay an administrative charge both to the LPA and PINS to cover the cost of dealing with the request. If the request is granted than the appeal fee would be twice the written representation fee.

2.20 POS does not think that the introduction of appeal fees needs to disturb the appeal costs regime. The principle that an appellant should only be entitled to their costs from the Council (or any other Rule 6 party) because of unreasonable behaviour by that party that has resulted in actual additional costs must remain. The return of an appeal fee would be decided within this context.

[4] Manifesto Background Paper 14: Dealing with Overlapping Consents

2.21 A significant source of additional work for LPAs is the practice of appellants submitting additional material during the appeal. The legal principles that apply here[5] can allow changes that require quite significant additional work by the LPA, which should properly have been either part of a pre-application discussion or submitted with the application. There are no provisions within the Rules[6] for amendments to be submitted and PINS advice makes it clear that the appeal process should not be used to evolve a scheme. POS considers that government needs to clarify the position here with a view to preventing all additional material and requiring that an appeal must be considered on the basis of the same scheme that was considered by the LPA and by interested parties at the application stage. The current position is confusing and inconsistently applied.

Enforcement

2.22 The credibility of a planning service is undermined by a poor enforcement service (NPPF paragraph 60). Unfortunately, this area has had to bear a disproportionate level of resource reduction over the last decade or so in response to wider Local Government austerity cuts. POS recommends the following changes to maximise the level of resources going into planning enforcement services with the aim of getting them to be self-funded or even profit making:

- The fees charged for retrospective planning and CLUoD applications should be twice that of a prospective application for planning permission.
- Appealing against an Enforcement Notice should carry a fee not just for ground (a) but for all the other grounds, as set out in our paper[7].
- Magistrates need to take enforcement breaches more seriously and impose greater fines. Further training is needed and in particular their attention needs to be drawn to s171G(7) (Temporary Stop Notices), s179(9) (Enforcement Notices) and s187(2A) (Stop Notices) which all say, “In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence”.
- A greater proportion of fines need to go to the LPA to help fund enforcement services.
- Magistrates also need to award fuller costs to LPAs. Too often they say that the cost of Council officers would happen anyway, yet the size of an enforcement team and other support services, such as legal officers, are directly related to the scale of breaches in an area.
- The use of fixed penalty fines needs to be explored, as set out in our paper[7].
- The use of confiscation orders under the Proceeds of Crime Act within planning enforcement should be more extensive and their use as a source of income to fund the service should be explicitly allowed.

2.23 These and other initiatives should be explored to ensure that each LPA has the resources it needs to fund a good quality enforcement service.

[5] Holborn Studios Ltd v The Council of the London Borough of Hackney (2018), which refined the “Wheatcroft principles” set out in Bernard Wheatcroft v Secretary of State for the Environment (1982)
[6] Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000
[7] Manifesto Background Paper 11: Improving Enforcement Services

Infrastructure delivery

2.24 With the advent of CIL, the delivery of necessary infrastructure to support development became an important part of delivering the local plan for an area. POS recognises that not all LPAs have actively taken up this role and this is due, we believe, to a combination of lack of national advice and the highly constrained operating environment of the last 15 or so years.

2.25 Lack of infrastructure is often cited as an objection to new development, particularly housing, however the way the regime operates does not always comply with the law and a misunderstanding of how it should operate is quite widespread and normalised. Addressing these changes should reduce the demands on DM services both during the application process and in the enforcement of s106 obligations and CIL allocation. It would also help to manage the community's expectations as to what a planning service can reasonably deliver.

2.26 Much of the complaint against new development is about a lack of local services such as a doctor's appointment or school place. Often this is not related to a need for new infrastructure (ie a new or extended surgery or school) but the funding of staff in the existing local surgeries and schools. Planning can't help with that as the operation of such infrastructure is funded through rates and taxes. The NPPF and PPG need to be more explicit on this point.

2.27 There are problems in this area that have been highlighted in several appeal and legal cases that Government need to address through clearer policy and guidance. What is required are changes to the existing regime along the following lines:

- A new universal CIL set at (say) 1 or 2% of average house prices (charged per m^2 on all new development) to fund infrastructure, the demand for which comes from development generally (the London Mayoral CIL for Crossrail/Elizabeth Line was charged at the rate of 1.8% of average house prices in the three charging zones).
- A higher rate of CIL can be set by the Planning Authority (where development viability allows) using the current process.
- Only affordable housing/RSLs should not be liable for CIL, everyone else should pay as they all generate demand for services. The justification for RSLs being exempt is that a CIL charge increases the cost of providing affordable housing through the development process – essentially robbing Peter to pay Paul!
- S106 to be available for securing affordable housing delivery, infrastructure (the demand for which is specific to the development) and other development mitigations. It should not be used for infrastructure, the demand for which comes from development generally, as that should be the role of CIL.
- The main body of s106 agreements should be converted into secondary legislation so there is no need to negotiate it each time.
- The commonly used obligations (generally set out in schedules to a s106 agreement) to be published on Council's websites. Government could publish model obligations with advice from the Bar Council.
- The LPA should be required to consult on commonly used draft obligation schedules (ie a Supplementary Planning Document type process) and where this has been done and negotiations on a specific development stall, the LPA

should have the power to unilaterally issue the s106 with the developer having a right of appeal with respect to the disputed obligation(s).

2.28 The statutory undertakers responsible for much of our infrastructure capacity (water, sewerage, electricity etc) need to be held to account for their frequent failures to discharge their statutory duty to plan to meet the growth that is clearly planned in development plans. In addition, the tendency for other infrastructure providers to seek funding for matters that are not infrastructure (or should be clearly defined as such if there is any doubt) needs to be curtailed. Examples include NHS Trusts seeking revenue funding because of their funding inefficiencies (as thrown out in two recent High Court challenges[8]), local constabularies seeking funding for police uniforms, radios and vehicles, local libraries for the purchase of books etc, or transport undertakers seeking to purchase buses or trains. These are either revenue funding or consumables that should be funded through rates, taxes, charges or fares and not the development process.

2.29 The important point here is that in any planning application there is a limited amount of money available to fund such matters. CIL is compulsory. S106 obligations must be necessary to make the development acceptable in planning terms[9]. Where there is a viability issue, it is affordable housing that is the victim because it is delivering a planning policy requirement and can, in the planning balance, be forgone. If the delivery of affordable housing is a government priority, this needs to be addressed and changed. POS has recommended a methodology[10] that could assist with this.

2.30 While the above relates to procedural matters rather than funding, they are matters that absorb a considerable amount of time and resource. Our proposals are designed to significantly reduce that, so the process is more efficient and absorbs less planning and other officer time. We must start by applying Regulation 122 properly and only allow funding for infrastructure that is necessary to make a development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. But government should consider going further and moving to a position where the funding of infrastructure through the planning system is considered a bonus and should not be expected to be fully funded as this misleads the public. Devolving funding and infrastructure delivery to the new regional levels, aligned with each area's housing numbers, as proposed in government's local authority funding reforms, will be vital so that they can then plan for and support delivery strategically. If government wants to deliver housing growth at the scale it has set out, there is a need to provide funding for infrastructure to support that housing growth. The development process can't do everything, even in high value areas, and priorities need to be set by policy design and not by unintended default, as is the case now. We set out more advice in these documents[11].

[8] The University Hospitals of Leicester NHS Trust, R (On the Application Of) v Harborough District Council [2023] EWHC 263 (Admin) and Worcestershire Acute Hospitals NHS Trust, R (On the Application Of) v Malvern Hills District Council & Ors [2023] EWHC 1995 (Admin)
[9] Regulation 122 of the CIL Regulations
[10] Manifesto Background Paper 5: Affordable housing: delivering it in a more effective way
[11] Our Planning Manifesto for the New Government (July 2024) and Manifesto Background Paper 15: Planning Applications: How to Speed up the Process (December 2024)

3 Spatial planning

3.1 Planning policy services are challenging to fund. It may be possible to charge for elements of the service, such as site allocations, but to fund it comprehensively is difficult to achieve by simply levying charges on elements of the service. A more comprehensive approach is needed.

3.2 A local plan performs a wide range of functions, but its core purpose is to inform the DM process so that the development that is managed and provided is what is needed to meet the needs of the area. POS considers that there are two potential options:

- a levy on planning application fees
- a recharge to CIL income

3.3 POS considers that it is a legitimate proposition for there to be a levy on planning application fees that not just represents the cost of delivering the DM process but also contributes to the spatial planning function of the council. This could take the form of a simple percentage uplift on all fees that equates with the cost of providing the spatial planning service. The data should be readily available from Council budgets to do this. A quick review of a couple of London Borough budgets suggests a full cost recovery uplift would be of the order of 40%. Like planning application fees, those councils who offer a different level of service, because of the needs of their area, should be able to set their own percentage uplift.

3.4 A recharge to CIL income could be an alternative or it could be combined with the planning application fee uplift approach. As an alternative approach, our London Borough review suggests a recharge to CIL of the order of 15% to cover the full cost of the spatial planning services.

3.5 Clearly a combination of both approaches would reduce both figures. Again, in our London Borough examples a 25% planning application fee levy would need a 5% CIL recharge to get to a full cost recovery position.

3.6 It is also necessary to look at the other services that are typically part of the overall spatial planning service, such as design and conservation and specialist services such as nature conservation, trees, minerals and waste etc. The approach recommended above should pick up the cost of these additional services insofar as they relate directly to the planning function.

4 Conclusions

4.1 POS believes that this package of changes would get planning services to a position where they are fully funded from fees and other charges with all that income statutorily protected. LPAs would then be able to plan to provide the services in their area that are required to deliver the housing numbers and economic growth that the country needs.

4.2 As always, POS stands ready to work with government to develop these proposals so that a more efficient and effective planning system can be delivered.