

Title of meeting: Cabinet Member for Planning, Regeneration and Economic Development
Date of meeting: Tuesday 31st July 2018
Subject: Planning Fees
Report by: Claire Upton-Brown, Assistant Director of Development
Wards affected: All
Key decision: No
Full Council decision: No

1. Purpose of report

- 1.1 The purpose of this report is to draw Members' attention to the implications of the recent amendment to the Fees Regulations insofar as they relate to planning applications required by either an Article 4 Direction or a restrictive planning condition that effectively removed 'permitted development' rights.

2. Recommendations

It is recommended that:

- 1. This report be noted, and**
- 2. The Assistant Director of Regeneration be authorised to make editorial amendments to the Council's Planning website pages to advise applicants of the new Planning Fees.**

3. Background

- 3.1 Since the original inception of the Planning Fees Regulations the Government made provisions for precluding the requirement for a planning fee on all applications for development that would otherwise have had the benefit of a deemed permission under the provisions of the General Permitted Development Order. At the time this was seen as a compensatory measure to applicants who would otherwise need to submit an application at their expense for development that ordinarily could be undertaken without the need for the express permission of the planning authority.
- 3.2 The exception to the requirement to pay a planning fee in respect of Article 4 Directions and restrictive planning conditions under Regulation 3 was included at Regulation 5 of the The Town and Country Planning (Fees for Applications,

Deemed Applications, Requests and Site Visits) (England) Regulations 2012. In 2013 an amendment was issued to the 2012 Regulations which inserted a new Regulation 5A into the 2012 Regulations which extended the exception for a fee to applications for planning permission in respect of the demolition of certain buildings in a conservation area.

- 3.3 However, when the level of Planning Fees were increased under the The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017, those Regulations repealed Regulation 5 of the 2012 Regulations, effectively removing the general exception for a planning fee under Regulation 3. The 'Explanatory Note' to the 2017 Amendment Regulations [which incidentally does not form part of the Regulations] stated "Regulation 5(2) omits regulation 5 of the 2012 Regulations. This means that a planning application fee may be charged by local planning authorities where they have made a direction withdrawing permitted development rights under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596 "the General Permitted Development Order 2015") or where permitted development rights have been withdrawn by a condition imposed on a planning permission."
- 3.4 Although the wording of the Explanatory Note appears to give local planning authorities discretion in relation to the level of a planning fee for applications required by Article 4 Directions or restrictive conditions, this is not borne out in the Regulations themselves.
- 3.5 Regulation 3 of the Fees Regulations 2012 has only been amended to include applications for 'permission in principle'. In all other respects it continues to stipulate that where an application is made to the local planning authority it must be accompanied by a fee calculated in accordance with the Schedule. There is no discretionary power.
- 4.0 Categories of applications affected.**
- 4.1 Applications that are required by virtue of the city-wide Article 4 Direction for the change of use between Class C3 and Class C4 would now attract the same planning fee as if the change of use was from Class C3 to a *sui generis* HMO, ie £462. This may affect the future behaviour of landlords who see little advantage in attempting to secure a Class C4 HMO where an application for a *sui generis* HMO could offer a greater return financially for the same outlay in application costs.
- 4.2 There are a number of Article 4 Directions in operation within conservation areas. These Directions are aimed at controlling householder developments that would otherwise be permitted development in the interests of protecting the character and appearance of the conservation area. They can vary from requiring planning permission for replacement windows and/or doors to replacement roof coverings or discouraging the loss of boundary walls and chimneys. Those applications would now incur the same planning fee as for

any other householder development, ie £206. Comparatively few applications are received as a result of Article 4 Directions in conservation areas.

- 4.3 Whilst restrictive planning conditions also remove householder permitted development rights, those conditions can also preclude commercial premises taking advantage of the change of use from one use to another within the same Use Class. Where a householder development requires planning permission because of a restrictive planning condition, the planning fee for such an application would amount to £206, the same as for any other householder development. However, the 2017 amendment to the 2012 Regulations has not affected the provisions of Regulation 5A (applications in respect of the demolition of certain buildings in a conservation area) or Regulation 6 (applications relating to same use class necessary because of condition). Those applications would not require a planning fee. Similarly, the exception under Regulation 4 for development that provides access and facilities for disabled persons remains unaltered.

5. Equality impact assessment

- 5.1 An equality impact assessment is not required as the recommendations do not have a disproportionately negative impact on any of the specific protected characteristics as described in the Equality Act 2010.

6. Legal implications

- 6.1 Legal Services have reviewed the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended), detailed in part 3 of this report, at the request of Planning Officers. Legal Services confirm the exception previously provided by Regulation 5 has been repealed. Consequently, fees must be calculated by reference to Regulation 3 and Schedule 1, plus by having regard to the various remaining exceptions. As stated above, the explanatory note does not have the force of law, and in our view it is doubtful that the word "may" was intended to imply any discretionary power.

7. Director of Finance's comments

- 7.1 Apart from a nominal lift in planning fee receipts; there are no financial implications in approving the recommendations contained within this report.

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Signed by:

Appendices:

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
Article 4 Direction (Art 4/HMO/01)	www.portsmouth.gov.uk/living/20617.html
The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012	https://www.legislation.gov.uk/ukdsi/2012/9780111527290/contents
The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2017	https://www.legislation.gov.uk/ukdsi/2017/9780111160749

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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 Signed by: