

Report to: Lead Cabinet Member for Transport and Environment

Date of meeting: 20 July 2015

By: Director of Communities, Economy and Transport

Title: Pre-Application Charges for Drainage Advice

Purpose: To establish the charging regime for pre-application advice and data provision in the County Council's role as a technical advisor on surface water management and drainage design as part of the development process.

RECOMMENDATIONS: The Lead Member is recommended to:

- (1) Agree the schedule of charges set out in Appendix 1 to this report as the County Council's tariff for pre-application advice and the provision of data; and**
 - (2) Delegate authority to the Director of Communities, Economy and Transport to agree annual reviews of the tariff.**
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1 Background Information

1.1 This report sets out the need, and the proposed tariff, for charging for advice and data relating to the management of surface water and drainage design by the County Council as Lead Local Flood Authority (LLFA) for East Sussex. Following changes to the Development Management Procedure Order 2015 (DMPO) the County Council in its capacity as LLFA is now a statutory consultee to the planning system on major development applications that have drainage implications. This role took effect on 15 April 2015.

1.2 The definition of major development is set out in Appendix 1.

1.3 The Flood and Water Management Act 2010 (FWMA) was enacted following the report of Sir Michael Pitt examining the impact of the floods of the summer of 2007. The FWMA designated upper tier authorities (e.g. County Councils) as Lead Local Flood Authorities with a range of responsibilities, amongst these was to act as the Sustainable Drainage Systems (SuDS) Approving Body. Developers under these arrangements would have had to submit a separate application for drainage approval. The process was intended to be supported by application fees which could be partly used to provide the technical resource necessary to process applications. A major issue was identifying how to fund the ongoing monitoring and maintenance, because any system the County Council approved, it would then be obliged to adopt and maintain in perpetuity. Agreeing a sustainable funding regime to maintain drainage systems has proved difficult for DEFRA to resolve.

1.4 Commencement of the Approving Body role had been anticipated for some time but had been delayed by Government on a number of occasions. The Government then indicated it intended to take an alternative approach to the one envisaged in the FWMA. It now wished to deliver SuDS through changes to the current planning regime. The Government consulted on its proposals to deliver sustainable drainage systems through the planning system in the autumn of 2014 and the County Council's response was considered by the Lead Member for Transport and Environment on 10 November 2014.

1.5 As a statutory consultee, the County Council will be obliged to comment upon all consultations on "major" planning applications from the Districts and Boroughs, the South Downs National Park Authority, and ESCC in relation to surface water drainage matters. The County Council is also required by the DMPO to report annually to Government on its performance in responding. Current estimates indicate that the County Council can expect to be consulted on some two hundred planning applications each year. These cases will range in scale and complexity, and will involve assessing the surface water drainage aspects of development proposals.

1.6 The Leader of the County Council wrote to the Government in his capacity as the chair of the South East 7 (Appendix 3), expressing profound concern over the inadequacy of funding for this new role. The proposed levels of funding, allied with a 30% cut in the Local Services Support Grant for the LLFA role, places unsustainable pressures on service delivery. As a consequence there is a need to consider whether to charge for action outside the specific consultee role.

2 Supporting Information

2.1 The County Council, along with other LLFAs across the country, have had little time to prepare for this considerable change in direction. However, it is evident from the New Burdens Assessment provided by DCLG, that the County Council is expected to comment upon planning applications for major development (as defined by the DMPO) within the standard 21 day consultation period which takes place once the planning authority has received the application and has begun to determine it.

2.2 This fails to recognise the need to provide pre-application advice, data that is held (and has been developed at cost to the service), subsequent negotiations entered into with an applicant once comments have been submitted and any work associated with appeal hearings should an application be refused on the County Council's advice.

2.3 The Government has provided a one off payment of £80k for the 2015/16 financial year to meet establishment and running costs. Given resource constraints, there is a need to charge for those services which are necessary to improve the quality of planning applications and ensure that applicants get the right strategy in place at the earliest possible stage. This will minimise costs to developers and the County Council in the long term, and ensure that local flood risk affecting the development and its environment is reduced to acceptable levels.

2.4 The proposed charges are set out in Appendix 1 to this report and the draft pre-application advice request form is in Appendix 2.

2.5 Progress on developing and publishing tariffs in the South East is limited, although, nationally, a number of Lead Local Flood Authorities have published their charging regimes. These regimes have been taken into account when developing this tariff, as has the Environment Agency's approach to providing flood risk pre-application advice.

2.6 The tariff recognises that as a statutory consultee, the County Council is obliged to provide a substantive response to the planning authorities free of charge.

2.7 Critically, the tariff reflects current hourly rates, makes allowance for costs and does not seek to place an undue burden on the development industry which is recovering from a protracted down turn. It is also proposed that this tariff is reviewed annually and that delegated authority should be given to the Director of Communities Economy and Transport to agree any changes to the tariff.

3 Conclusion and Reason for Recommendation

3.1 The County Council as LLFA is a statutory consultee on major applications having drainage implications, the response is provided free of charge. However, it is appropriate to charge for other actions which are not part of the statutory consultee role, but still contribute to the management of flood risk.

3.2 The proposed tariff for providing pre-application advice and relevant data is set out in Appendix 1. The Lead Member for Transport and Environment is requested to approve the charges set out in Appendix 1 as the County Council's approved charging regime for pre-application advice and the provision of data, and that the delegated authority is given to the Director of Communities Economy and Transport to agree subsequent reviews of the tariff.

RUPERT CLUBB

Director of Communities, Economy and Transport

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LOCAL MEMBERS

All

BACKGROUND DOCUMENTS

None

Lead Local Flood Authority Planning Pre Application Advice and Data Tariff

This document establishes East Sussex County Council's tariff for the provision of advice and data relating to the management of local flood risk and provision of sustainable drainage as part of new development proposals. These charges will be made in accordance with s.93 of the Local Government Act 2003.

As a statutory consultee the County Council is obliged to provide a substantive response to consultations on major development (as defined by the Development Management Procedure Order 2015 and set out below) received from planning authorities. It is also obliged to provide free advice on the scope of information necessary to enable it to provide a substantive response at the application stage. In addition, the County Council cannot charge for data which is required to be placed on a public register. Items 1 and 2 under the Levels of Service section clarify what is not chargeable.

However, the Lead Local Flood Authority welcomes and encourages discussions with a developer before submission of a planning application whether it is outline, reserved matters, full or for the discharge of conditions. The benefits of seeking pre-application advice from the Lead Local Flood Authority include:

- the potential for reducing the time and associated costs that professional teams spend working up the proposals:
- an indication of those proposals that may present an unacceptable flood risk to the development and/or properties elsewhere:
- the provision of advice on the maintenance implications of drainage and surface water management strategies and techniques:
- avoiding "show stoppers" at a late stage in the development process and the minimising the costs associated with this
- detailed interpretation of the information required to support the application as set out in the Guide to Sustainable Drainage Systems in East Sussex and our surface water drainage checklists both of which can be found on the flooding pages of the the County Council's website: and
- written confirmation of the advice that can be submitted formally as part of any subsequent application which will help to speed up the decision making process.

It is desirable that developers engage with the County Council on the drainage and local flood risk implications of their proposals as often these issues cannot be incorporated into a design retrospectively without considerable cost to the applicant or potentially jeopardising the scheme.

Entering into discussions at an early stage will assist in designing more resilient, sustainable development which will be adapted to the predicted increase in the force and frequency of short duration high intensity rain fall events.

The County Council also holds data which it has developed at its own cost this includes investigations into land drainage problems, the analysis of surface water risk and the recording of flood incidents. This information is available at a charge at the rates set out below.

Levels of advice

To assist the County Council in processing requests for advice developers will be required to complete a form setting out key details of the proposal and its location.

1. The County Council as Lead Local Flood Authority will provide advice free of charge relating to the extent of information required to assist it in responding in a substantive manner to a planning application. Whilst these requirements are outlined in our Guide to Sustainable Drainage Systems in East Sussex, we will provide a clarification where necessary.
2. Where the County Council is aware of the presence of assets which may have an impact on the management of local flood risk (and are not the responsibility of the Highway Authority, Environment Agency or a Water and Sewerage Company) information will be provided on their location, general condition and ownership free of charge.
3. A checking service reviewing data held by the Lead Local Flood Authority relevant to the management of local flood risk will be undertaken at a cost of £100 + VAT. This will take the form of a report detailing (where appropriate) the following:
 - a. Any records of local flood incidents (including dates and extent where available) that have occurred since the submission of the last Preliminary Flood Risk Assessment for East Sussex to the Environment Agency
 - b. The outputs of detailed surface water modelling (where available)
 - c. The outputs of detailed topographic surveys (where available)
 - d. The outputs of detailed asset surveys (where available)

Other relevant data will be held by the Environment Agency, Southern Water and the Highway Authority and developers will be recommended to consult them separately.

4. All other requests for advice, meetings or correspondence will be chargeable at a rate of £85/hour plus VAT.

Exemptions

East Sussex County Council reserves the right to adjust (or waive) charges in exceptional circumstances. Please be aware that no advice, subject to a pre application charge, will be given over the phone.

Major Development

For the avoidance of doubt The Development Management Procedure Order 2015, defines “major development” as:

...development involving any one or more of the following:

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where -
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more

Guidance Notes

Please read the following notes before completing this form:

This form should be used where you require pre application advice from East Sussex County Council relating to a specific site.

The advice provided is informal and does not bind the County Council to any course of action.

Where you intend to submit a planning application to a Local Planning Authority (LPA) we recommend that you contact the relevant LPA to determine the likelihood of your proposed development receiving planning permission before submitting a pre-application enquiry to East Sussex County Council.

We will give you our pre application advice within 21 days of receiving your request, but if we are unable to do this, we will contact you to request further time to respond.

Please submit the completed form to

**Flood Risk Management Team
Communities Economy and Transport
East Sussex County Council
County Hall
St Anne's Crescent
Lewes
East Sussex
BN7 1UE**

or

SUDS@eastsussex.gov.uk

East Sussex County Council
Pre-Application Advice Request Form



Please complete this form using block capitals and black ink. You should read the guidance notes before completing this form.

Section 1 – Contact Details			
Title:		Organisation:	
First name:		Last name:	
Address:			
Postcode:		Phone number:	
Email:			
Section 2 – Invoice Address (if applicable)			
Title:		Organisation:	
First name:		Last name:	
Address:			
Postcode:		Phone number:	
Section 3 – Site Details			
Address:			
Postcode:		Grid Ref:	
Existing site use:			

Previous use of site

Development Proposals (including proposed layout, if available):	
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Location Plan (Submit a location plan

A location plan clearly showing the boundary of the proposed development must be submitted with your enquiry. This should be at a scale between 1:100 and 1:2500

If there are any watercourses or water features on or within the vicinity of your development site, you will need to identify these on your location plan.)

If possible, please include a shapefile delineating the site boundary.

Section 4 – Flood Risk at Site

Is the Site located within Flood Zone 2 or 3	Yes		No	
Is the Site affected by a surface water flow path?	Yes		No	

Please provide images as appropriate showing the flood risk to the site.

Section 5–Surface Water Drainage

How will the foul drainage be dealt with for the proposed development? (please tick):

Main Sewer	
Package Treatment Plant	
Septic Tank	
Cesspool	
Other (please state)	

Section 6 – Attachments / checklist

Please ensure the following are attached to your application:

- Completed application form
- Location map, showing the site of proposed works
- Site plan showing existing drainage assets
- Shapefile of site boundary (if available)
- Images showing flood risk to site

Section 8 – Declaration

By signing below, you are declaring that as far as you know, the information given in this application, including any maps and supporting documents is true.

Signature		Date	
Title:		Position:	
First name:		Last name:	

Additional notes

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Cllr. Keith Glazier
Chairman of South East 7
East Sussex County Council, County Hall,
St. Anne's Crescent, Lewes, East Sussex BN7 1UE



Rt. Hon Eric Pickles MP
Secretary of State for Communities and Local Government
2 Marsham Street
London
SW1P 4DF
eric.pickles@communities.gsi.gov.uk

16 March 2015

Dear Secretary of State,

Lead Local Flood Authorities – New Statutory Consultee Role

I write in my capacity as the Chairman of the South East 7 (SE7) partnership of seven county and unitary authorities in the South East of England with regard to the imminent new role for Lead Local Flood Authorities (LLFAs) as statutory consultees to the planning system.

As this issue affects both the Department of Environment, Food and Rural Affairs (Defra) and the Department for Communities and Local Government (DCLG), I have also written in a similar manner to Rt. Hon Elizabeth Truss MP, Secretary of State for Environment, Food and Rural Affairs.

As you are aware, the Local Government Association has been involved in discussions with Government on the draft New Burdens Assessment for this new role. Officers from the SE7 authorities have discussed the implications of this proposed role with their Local Planning Authorities and the Environment Agency and the outcomes of these discussions inform the contents of this letter.

As Lead Local Flood Authorities, we are profoundly concerned that both DCLG and Defra have significantly underestimated what is required of LLFAs if they are to provide the technical advice and support necessary to deliver national policy on flood risk. The speed with which these new arrangements are being prepared have added to the challenge. The overwhelming view of respondents to the autumn 2014 consultation was that the new arrangements will not secure the benefits that the Government anticipates.

Expanding upon the twin issues of the overestimation of benefits and the underestimation of resource implications, it is the view of LLFAs and Local Planning Authorities that the Government is establishing a framework which will lead to the failure of national policy with

the consequent adverse impacts on growth and local communities. The reasons for this are set out below:

- This change in policy appears to be based on the assumption that, by using the planning system, delays and costs will be minimised in comparison with the SuDS Approving Body. The SE7 considers that the nature and extent of work necessary to support Local Planning Authorities has not significantly altered;
- The draft New Burdens Assessment assumes that the LLFAs' involvement occurs during the small window of consultation on a planning application. This is not the case as LLFAs need to be engaged in all stages of development to deliver policy objectives;
- We contest the assumption set out in the New Burdens Assessment that applications can be processed within six hours, with 40% of applications processed in an hour in year two onwards. Experience demonstrates that if the task is to be done effectively and efficiently, the LLFA must be involved throughout the process;
- Without pre-application discussions, it is highly unlikely that a development proposal will be acceptable. In such cases, where there is no negotiation to find an acceptable resolution, applications will be refused or permitted contrary to LLFA advice (due to under resourcing);
- With a refusal there comes the risk of an appeal and the need for the LLFA to provide its evidence without any additional funding;
- If conditions are used, these must be discharged, monitored and enforced. Government assumes that Local Planning Authorities will perform these tasks (despite their specialist technical nature). We do not believe that this can be done without appropriate funding;
- There is a need for reassurance that the current poor practice will not be reinforced by the Government's proposals as there is no concrete evidence that the proposed (minor) amendments to national policy will secure the ongoing maintenance of new drainage systems; and
- We are concerned that these proposals will lead to more delays in the system, greater flood risk, and more costs imposed upon Local Government and their communities.

The LLFAs are aware of the need to meet the Government's objective of reducing the deficit; for example, our Local Services Support Grant for 2015/16 is set to reduce by one third. Also, as a partnership of upper tier authorities, the SE7 is developing and delivering greater savings by capitalising on our collective skills, the use of technology and purchasing power.

Nevertheless, many of us have undertaken what is now abortive work as a consequence of the Government's sudden change in policy. We are now in the position of having to prepare for a new role with the prospect of wholly inadequate funding and no clarity on what this role will actually involve. With under a month before the changes are set to take effect, LLFAs are presented with the scenario of an ill-defined, under-resourced role, which we believe will not deliver the desired policy objectives but act as a brake on development.

As public bodies charged with the economic, social and environmental wellbeing of our communities, we are profoundly concerned that our duty to manage localised flood risk will be compromised and that much needed growth in our communities will be delayed.

Given the significant risks outlined above, we urge the Government to acknowledge these very real and legitimate concerns and to provide a reasonable and fair level of funding to meet national policy requirements.

Yours sincerely,

Cllr. Keith Glazier on behalf of SE7 Leaders

Chairman of SE7 and
Leader of East Sussex County Council

SE7 additional information

The SE7 Councils are: Brighton & Hove City Council, East Sussex County Council, Hampshire County Council, Kent County Council, Medway Council, Surrey County Council, West Sussex County Council.

The SE7 is a partnership of upper tier Local Authorities in the South East that are committed to working together in a set of key work areas.

The initiative is led by Councillors and aims to find opportunities to reduce costs; improve service delivery; and enhance public facilities and services in our region. The SE7 authorities cover a population of 5.8 million and have responsibility for net budgets worth approximately £3.5 billion per year.