DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

Communities and Local Government Circular 04/2008
Department for Communities and Local Government
Eland House, Bressenden Place, London SWIE 5DU

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PLANNING-RELATED FEES

CONTENTS

INTRODUCTION

1. This Circular is about the fees which local planning authorities charge for handling applications for planning permission, for approving certain details remaining after outline permission has been given, and for altering or removing conditions imposed on planning permissions. It also explains the fees for 'deemed' applications (generated in the course of appeals against enforcement notices), and for applications to display advertisements, for lawful development certificates, and for confirmation that planning conditions have been fulfilled. The Circular describes the scope of the planning fee régime, and the categories in which fees are grouped, and it offers general advice about charging them.

2. In the text below, the phrase 'the Regulations' refers to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations of 1989 [*Statutory Instrument 1989/193*] as amended by subsequent legislation. ***Annex A*** contains a short glossary of terms.

3. Local planning authorities have to decide which fee, if any, within the general scale of fees prescribed by the law and described in this Circular, would be appropriate in any case before them. Guidance in the Circular should be taken into account wherever relevant. Inserted into the guidance are panels containing informal hints and examples to show how fees should be calculated, but it is for the individual planning authority to interpret the law and apply it to the facts of individual planning proposals.

4. With effect from 6 April 2008, this Circular replaces Department of the Environment Circular 31/92, *The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (No.2) Regulations 1992*, which it hereby cancels.

BACKGROUND

5. Planning fees were introduced in 1981, with the intention that users and potential beneficiaries of the planning system, rather than taxpayers in general, meet the costs incurred by local planning authorities in deciding planning applications. Fee levels are set by law. Section 303 of the Town and Country Planning Act 1990 ['the Act'] empowers the Secretary of State to prescribe what the fee levels and arrangements will be. This is done by means of the 1989 Regulations mentioned above. Some planning applications are more time-consuming and expensive to process than others. The fees régime has been devised so that both simple and more complex proposals can be properly assessed and considered by local planning authorities with appropriate resources. The Government adjusts fee levels periodically, in line with research findings[1], the response to public consultations, and policy aims, and subject to impact assessment.

6. The scale of fees, set out in the 1989 Regulations, is modified from time to time by further secondary legislation. The latest amending legislation is the Town and Country Planning (Applications and Deemed Applications) Fees (Amendment) (England) Regulations 2008 [*Statutory Instrument 2008 /958*], effective from 6 April 2008. The 2008 Regulations, and this Circular, are relevant to England only.

1 For instance, Arup with Addison Associates: Planning Costs and Fees (Communities and Local Government, 2007), available at www.communities.gov.uk/research_and_statistics

7. Most planning fees are grouped in categories to reflect, in broad terms, the differing amounts of work authorities are likely to have to do when processing applications for different types of development. A local planning authority's work on a planning application could include statutory notification, consultation, publicising the proposal, maintaining the Planning Register, correspondence with applicants and objectors, and the time spent by officers and elected council Members in considering the merits of each case. Introduction of the Standard Application Form, clearer guidance on validation, and the ability to submit planning applications over the internet as an alternative to the paper form, should all help to improve efficiency and the application-handling performance of local planning authorities.

8. Planning fee income at present can be spent as the local authority sees fit. However, the Government sets planning fee levels on the basis that, while the fees should cover as far as possible the cost of handling applications, other planning-related costs – enforcement activity, for example – will for the time being continue to be funded from local authority central budgets. Income from increased planning fees, even when supplemented by planning-related grants from central government such as those that reward a local authority's plan-making in the context of its Local Development Framework, will not remove the need for this additional funding.

9. The changes in 2008 increase the fees for applications for planning permission, applications for approval of reserved matters, determination of requests for prior approval for certain types of permitted development, applications for lawful development certificates, and consents for the display of advertisements, which are made on or after 6 April 2008; and also for applications deemed to have been made in the context of an appeal against an enforcement notice issued on or after that date.

10. Another change in 2008 is that a fee is payable for written confirmation by the local planning authority that one or more planning conditions imposed on a permission have been complied with. The arrangements are explained in paragraphs 124 to 132.

11. Two other points should be noted. First, since planning permission can be granted only by a local planning authority or the Secretary of State, and applications are processed wholly within government, the service is a 'non-business activity', and there is consequently no VAT to pay on planning fees. Second, it used to be possible to extend the life of a planning permission. Now, however, every planning proposal for which permission has expired (or is about to expire without a start having been made) must be considered afresh, in the light of current material circumstances. That means a new application, and payment of whatever fee is appropriate.

SCOPE OF THE FEES SCHEME

12. The fees described or discussed in this Circular are relevant to:

- applications for planning permission, including 'retrospective applications' where development has already taken place;

- applications (under section 73 of the Act) to develop without complying with a condition imposed on permission already granted (also known as 'variation of condition');

- applications for the approval of reserved matters[2] following the grant of planning permission in outline;

- 'deemed' applications[3];

- applications made by local planning authorities for the development of any of their own land within their area, or for development by themselves (whether alone or jointly) of other land in their area;

- applications for lawful development certificates;

- requests for written confirmation of compliance with a planning condition;

- applications for 'prior approval' of some permitted development;

- applications for consent to display advertisements; and

- the monitoring of landfill and minerals permissions.

13. For some of these charges which form part of the broader scheme of planning fees are explained in other documents. For instance, though formally a part of the Regulations, arrangements for charging for the monitoring of mineral-working and landfill sites are not covered in this circular. The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006[4] provided for payment of a fee to the local planning authority to support monitoring activity at active or inactive mining and landfill sites. Mineral and landfill permissions often involve development over many years, and may be subject to complex, technical planning conditions designed to mitigate the impact on the environment. The fee income is intended to ensure that sites can be monitored thoroughly, in accordance with *Fees for monitoring of mining and landfill sites in England: A guide to implementation and good practice* (ODPM, 2006)[5].

14. Special arrangements have also been brought in to cater for urgent development by the Crown. Crown 'immunity' came to an end in 2006, and most planning applications for development to Crown land are now made to the local planning authority, and the normal fee paid. However, a protocol of 7 June 2006 covers situations where the Crown needs to carry out urgent development. The Crown has to pay fees to the Secretary of State for any application it makes to her for permission to carry out urgent development under section 293A of the Act. These fees will be the same as would be paid to the local planning authority; in other words, they should accord with the provisions of the Regulations. Fee cheques for such urgent development should be made payable to the Secretary of State and sent to the Planning Inspectorate. There is more about this in DCLG Circular 02/2006, *Crown Application of the Planning Acts*, accessible on the website[6].

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2 The term 'reserved matter' is explained in paragraphs 20-21.

3 See paragraphs 107 to 115. A 'deemed' application is one made on behalf of the developer in the course of his or her appeal against an enforcement notice, as a means to determine the issues arising.

4 Statutory Instrument 2006 / 994, which can be viewed on the website www.opsi.gov.uk

5 This is on the website www.communities.gov.uk

6 It is proposed to set these fee arrangements in statute.

15. Planning Performance Agreements were introduced in 2008. Developers intending to apply for permission for major development proposals may seek to negotiate an agreement with the local planning authority by which the latter guarantees to offer, for instance, appropriate pre-application advice and a firm timetable for its decision. For this, the local planning authority may receive not only the normal planning fee for the type of development proposed, but also a supplementary charge made under section 93 of the Local Government Act 2003, in order to pay for whatever additional discretionary service is to be supplied. Separate guidance on Planning Performance Agreements has been produced by ATLAS, the Advisory Team for Large Applications, and as they are outside the planning fees régime, they are not discussed further here.

16. The fees scheme does **not** apply to, and there are therefore no planning application fees in relation to –

- applications for consents (other than 'reserved matter' approvals) required by a condition imposed on an outline permission[7];
- applications for listed building or scheduled monument consent;
- applications for conservation area consent**;**
- applications for consent to lop or fell trees subject to tree preservation orders;
- applications under s.19 of the Planning (Listed Buildings and Conservation Areas) Act 1990 for discharge of a condition imposed on a listed building consent;
- applications for approvals under the Building Regulations, for which charges are fixed locally under separate legislation;
- applications for certificates of immunity from listing[8], under s.6 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- applications for review of old mining permissions under Schedule 2 of Planning and Compensation Act 1991 and old mineral permissions under Schedules 13 and 14 of the Environment Act 1995;
- work on the preparation of section 106 agreements (also known as 'planning obligations');
- the Community Infrastructure Levy;
- applications under the Commons Act 2006 to register a village green or other common land; and
- applications (for valuation purposes) for Certificates of Appropriate Alternative Development, under s.17 of the Land Compensation Act 1961.

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7 This does not include fees for confirmation of compliance with conditions attached to planning permissions as set out in paragraph (5) of the 2008 Regulations and paragraphs 124-132 of this circular.

8 These are free of charge.

'OUTLINE' PERMISSION AND 'RESERVED MATTERS'

Outline applications

17. A developer may seek outline planning permission – that is, approval in principle only – at the outset, and then if successful submit full details – the 'reserved matters' – at a later date. It is for the applicant to decide in which form to seek permission, but in the interests of good planning the local planning authority does have power to require details to be supplied, even where the applicant would prefer to submit the proposal in outline.

18. Applications for outline permission can be made in respect of development in Fee Categories 1, 2 and 3. All three categories adopt the same thresholds, and the charges depend on site area. If the site area does not exceed 2.5 hectares, the fee is simply £335 for each 0.1 hectare. If the site area is larger, there is a charge of £8,285 for the first 2.5 hectares, and then an additional £100 for each 0.1 hectare of the site above the 2.5 hectares already counted.

19. An application solely for change of use of land or buildings can never be made in 'outline'.

Reserved matters applications

20. Where planning permission has been granted in outline only, the remaining aspects of the scheme still require approval by the local planning authority. 'Reserved matters', as defined in article 1(2) of the Town and Country Planning (General Development Procedure) Order 1995 as amended[9], are:

    - access
    - appearance
    - landscaping
    - layout
    - scale

21. Applications for approval of any or all of the reserved matters can be made in any order, unless the local planning authority has specified a sequence in which they should be made. The authority can also ask applicants to supply additional information necessary for calculation of the fee. Subject to the following paragraph, each separate application for approval of any number of reserved matters is charged at the same rate as for a full planning application. (Whatever sum was paid for the outline application is irrelevant in this context.) The fee is calculated with reference to the category or categories appropriate to the development as a whole, whatever the reserved matters involved. Where an application for approval of reserved matters relates to only one part or phase of the development covered by the outline permission, fees should be charged on the

9 inserted by article 3 of the Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2006 [S.I. 2006 /1062]

basis of the number of buildings or the floor space included in that part or phase. Subsequent applications – in respect of other parts or phases – will attract fees on the same basis.

22. A flat-rate fee arrangement is in place to benefit an applicant who makes more than one attempt to have the same reserved matter(s) approved, and this is explained at paragraph 90.

23. If an applicant has applied for full permission and paid the appropriate fee, it is not open to the local planning authority to choose to grant permission in outline only. To put it another way, where details of the statutory 'reserved matters' are provided with the initial application, the authority cannot reserve those matters for approval at some future date, as, by definition[10], reserved matters are ones for which 'details have not been given in the application'. In such a case, the local planning authority may advise the applicant to withdraw the original proposal and resubmit in outline. There is, though, a disadvantage: the revised application – for outline permission – would not benefit from any waiver of fee, since old and new applications will be of different types.

HYBRID APPLICATIONS

24. A local planning authority may accept a 'hybrid' application; that is, one that seeks outline planning permission for one part and full planning permission for another part of the same site. The fee for each part would have to be calculated separately on the appropriate basis, subject to any relevant maximum, and the total – which would *not* be subject to any maximum – would then be chargeable. An authority may also, following discussion, allow an application to be separated into core elements so that permission for site preparation works, say, can be given priority. Whether to accept a proposal in hybrid form is at the discretion of the local planning authority, not something on which an applicant may insist. One should bear in mind that a local planning authority is empowered to require details even when the application is in outline, if necessary in the interest of good planning. The term 'hybrid application' is not defined in statute.

CATEGORIES OF PLANNING APPLICATION FEE

25. In order to work out what fee is payable in a particular instance, it is first necessary for the local planning authority to decide to which fee category the application belongs. The fee categories are set out in the Regulations, the main aspects of the fee categories are discussed below, under convenient headings; arrangements for mixed-category developments are explained in paragraphs 52 to 59, and at appropriate points the Circular indicates the various concessions, flat rates and exemptions available. In shaded panels are set a few worked examples of fee-charging.

Residential development (Category 1)

26. The Regulations define 'dwellinghouse' for fees purposes as 'a building or part of a building which is used as a single private dwelling and for no other purpose'. In this Circular, therefore, the words 'dwellinghouse' and (more commonly) 'dwelling' are used with the same meaning, to include:

10 article 1(2) of the General Development Procedure Order 1995.

- a house, maisonette, flat or other single private residential building, whether the principal residence or a second home;

- a house in multiple occupation with communal sharing of facilities; and

- a house, maisonette, flat or other private residential building such as a lodge, self-contained and used solely as a holiday dwelling by a private owner.

27. One implication of the above is that a building intended to be built or converted for letting to a series of short-term paying guests is more likely to be regarded as a commercial guesthouse within Use Class C1, Hotels, than as a dwellinghouse. If there is doubt, the planning authority will need to decide on the facts whether particular arrangements constitute a dwellinghouse, and also to advise whether a number of lodgers in a private home would compromise its land-use status as a dwellinghouse.

28. It should be noted that fee calculations can be affected by whether any existing accommodation involved in a proposal already amounts to a dwelling, and by whether accommodation proposed to be created (through either construction or change of use) will amount to a dwellinghouse. In other words, an applicant may need to establish whether planning permission for change of use of land will be required, as well as permission for the works.

29. Anything not a building (such as a caravan, mobile home or house-boat) is excluded from the definition of dwellinghouse. The local planning authority may need to take a view on whether a particular style of cabin or chalet should be treated as a building or a caravan. Incidentally, the definition of dwellinghouse here differs from that in other legislation such as the Housing Act or the General Permitted Development Order.

30. An **outline** application (that is to say, for permission *in principle*) to create dwellings on a site not exceeding 2.5 hectares would be charged at £335 for each 0.1 hectare of the site. By contrast, if the site is greater than 2.5 hectares, an application for outline permission would be charged a fixed basic £8,285 with an additional £100 for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of £125,000.

31. **Full** applications for individual dwellings are charged according to the number of dwellings to be created. The rate for the first fifty is £335 per dwelling. If more than fifty dwellings are planned, a fixed total of £16,565 would be payable for the first fifty houses, plus £100 for each dwelling in excess of fifty, subject to a maximum in total of £250,000.

(i) Outline permission for 20 flats, 10 maisonettes and 45 houses on a site of 2 hectares only? 2 hectares at £335 per 0.1 hectare = 20 x £335 = £6,700

(ii) For outline for houses on a 10 hectare site? £8,285 for the first 2.5 hectares plus (£100 x 75 =) £7,500 = £15,785

(iii) For an application for approval of three reserved matters where outline has been granted for 20 dwellings? 20 x £335 = £6,700

(iv) Full application for 10 flats, 10 maisonettes and 30 houses? 10 + 10 + 30 = 50 dwellings, so total is 50 x £335 = £16,750

(v) For 520 dwellings, the basic £16,565 would be payable for the first fifty, to which would be added (470 x £100 =) £47,000. That gives a total fee of £63,565

Non-residential building works (Category 2)

32. Outline applications for buildings (other than dwellings, agricultural buildings, glasshouses or plant and machinery) are charged at £335 for each 0.1 hectare up to 2.5 hectares.

33. For outline on sites over 2.5 hectares, there is a basic £8,285 to pay, with an additional £100 for each 0.1 hectare in excess of 2.5 hectares, subject to a maximum in total of £125,000.

34. Applications for full permission for buildings other than dwellings, agricultural buildings, glasshouses, plant or machinery are charged according to the gross floor space to be created. Applications for development creating no new floor space, or not more than 40 square metres of new floor space, are charged a total fee of £170. Where floor space to be created would exceed 40 but not 75 square metres, the total fee is £335. For buildings above 75 but not exceeding 3,750 square metres of floor space, £335 is payable for each 75 square metres of the application site. However, if the area is greater than 3,750 square metres, there is a fixed fee of £16,565 plus another £100 for each 75 square metres in excess of 3,750 square metres, subject to a maximum in total of £250,000.

(i) Outline application for an industrial estate of 5 hectares? Since the site exceeds 2.5 hectares, the basic fee of £8,285 plus (25 x £100 =) £2,500 should be paid; that is, a total of £10,785.

(ii) For the same proposed development, a subsequent application for the approval of reserved matters (where the flat-rate does not apply), in respect of a first stage of 950m^2 of industrial floor space? 950m^2 at £335 per 75m^2 or part thereof[11] would be 13 x £335 = £ 4,355.

(iii) Application for a new shop front, filling-station canopy, or a lighting or CCTV camera pole? Since these developments create no floor space, the fee is £170.

(iv) To put up a perimeter wall or fence too tall to be 'permitted development'? This creates no floor space, so the fee is again £170.

(v) Application for an extension adding 70m^2 of floor space to commercial premises? 70m^2 additional floor space = £335

11 Where the Regulations specify a unit of area to be used when measuring a site in order to calculate the fee (here, for example, 75m^2), and the site happens to include a fraction of that unit (in this example, 50m^2 left over), that fraction counts as another full unit.

Agricultural buildings (Category 3)

35. This category applies to buildings on agricultural land which are to be used for agriculture, other than glasshouses. Agricultural land is land regarded by the local planning authority as being in use for agriculture or horticulture; it would not include livery stables or land used mainly for recreation, even if horses graze there. Agriculture is defined in section 336 of the Town and Country Planning Act 1990.

36. For applications for outline permission there is a fee of £335 for each 0.1 hectare of the site area, unless the site is greater than 2.5 hectares. Where the site exceeds 2.5 hectares, the fee would be a fixed basic £8,285 with an extra £100 for every 0.1 hectare over that 2.5 hectare threshold, subject to a total maximum of £125,000.

37. For applications for full permission there is a fee of £70 for creating floor space of 465 square metres or less; for buildings over 465 square metres but no larger than 540 square metres, the fee is £335. Where the gross floor space would exceed 540 square metres but not 4,215 square metres, £335 would be charged for the first 540 square metres, and an additional £335 for each 75 square metres or part thereof in excess of 540 square metres. Finally, where the gross floor space would be greater than 4,215 square metres, £16,565 would be paid with a further £100 for each 75 square metres (or part thereof) in excess of 4,215, subject to a maximum of £250,000. Where development in this category includes the erection of a dwelling, see paragraph 31.

A full application for a barn of total floor space 600m^2? First 540m^2 at £335, plus another £335 in total for the remaining 60m^2 = £670

Glasshouses and polytunnels (Category 4)

38. A glasshouse is a structure which has not less than three-quarters of its total external area comprised of glass or other translucent material; which is designed for the production of horticultural produce; and which is used for the purposes of agriculture. Polytunnels are generally treated as glasshouses, though a polythene cover not supported on struts fixed into the soil, and which creates no floor space, may escape classification as operational development. It is for the local planning authority to advise whether a particular type of polythene cover amounts to a glasshouse for which a planning fee could be charged. Applications for glasshouses attract a charge of £70 for creating 465 square metres of floor space or less. Where floor space greater than 465 square metres is to be created, the fee is £1,870 in total. In this context, floor space means gross floor space, regardless of how many separate glasshouses are included in a proposal.

Three polytunnels (amounting to development), each of 400m^2, covering 1,200m^2 in total? If all on one application: £1,870. However, the farmer could lawfully make three separate applications for the same, for only £210 in total.

Plant and machinery (Category 5)

39. Cranes, external conveyor belts, non-domestic radio masts and other electronic communications equipment are among the many types of plant and machinery in this category. If unclear whether particular plant falls into this category, the advice of the local planning authority should be sought. An outline application is not possible in the context of this category.

40. Wind turbines are Category 5 for fees purposes (unless of the small domestic type, where installation should be treated as an alteration or curtilage operation in Category 6 or 7a if not allowed as permitted development). To calculate the fee for a new windfarm, add all the land over which the blades of each turbine can rotate[12] to the area of the footprint of any ancillary structures and engineering works. It is not necessary to include within the red line(s) on an application to put up wind turbines any other land between the turbines if no development is proposed there. On a site of no more than five hectares, £335 should be charged for each 0.1 hectare. Over five hectares, a fixed sum of £16,565 is payable with an additional £100 for each 0.1 hectare in excess of the first five hectares, subject to a maximum in total of £250,000.

41. By the way, using land within the perimeter of a windfarm for agriculture would not require planning permission for change to a mixed use.

Application to add one turbine to a windfarm, with a substation, buried cable, extended access track and enlargement of the perimeter fence? Including land the blades rotate over, substation and other engineering works, but excluding the access track, the relevant area is 2 hectares. The fee for 2 hectares at £335 per 0.1 hectare comes to 20 x £335 = £6,700. There is no need to include the fixed £170 for new access track (under Category 7b), or the £170 for more fencing (a Category 2 structure that creates no floor space), since only the largest fee is chargeable (see **Mixed category applications**, *below*). Therefore only £6,700 would be payable.

Application to install oil refinery equipment and associated pipes and tanks on a site of 2 hectares?

2 ha at £335 per 0.1 hectare = 20 x £335 = £6,700.

Householder extensions and alterations (Categories 6 or 7(a))

42. A flat-rate fee of £150 is charged for an application to enlarge, improve, or alter an existing dwelling, to put up a boundary wall or fence, or to carry out operations in its curtilage that are ancillary to the dwelling use. If an application under category 6 relates to one existing dwelling, the rate is £150 per dwelling; in relation to two or more dwellings, £295 in total.

12 Area of sweep will be approximately 3.1416 times the square of the radius.

43. Categories 6 and 7a also cover works such as an extension to an existing house or flat, the provision of a garage, summerhouse or shed in a domestic garden, or the installation of any solar panel, domestic wind turbine or antenna which needs specific planning permission. It should be noted that, if it is to be chargeable under 6 or 7a, the application must relate to works to a dwelling which is already 'existing': that is, a completed dwelling not a building site or something extant only on plan.

Installing one or more satellite antennas on a house where that is not 'permitted development', erecting a wind turbine in a domestic garden, or putting a wall round the edge of a flat roof to provide a maisonette with a sitting-out area? £150

To add extensions (each larger than allowed as 'permitted development') to a row of 5 houses? £295 in total.

Access, car parks etc. for existing uses (Category 7(b))

44. Applications to construct service roads, other access ways, or car parks serving an existing use on a site are subject to a flat-rate fee of £170. A multi-storey car park, however, should be treated as a building within Fee Category 2.

Single application to create a new access road plus a footpath and parking spaces for eighteen cars, to serve an existing block of flats? Total fee £170.

Exploratory drilling for oil and natural gas (Category 8)

45. Operations in connection with exploratory drilling for oil and natural gas are charged according to site area. Where the site does not exceed 7.5 hectares, the fee is £335 for each 0.1 hectare. Where the site is greater than 7.5 hectares, £25,000 is payable, plus £100 for each 0.1 hectare in excess of 7.5 hectares, subject to a maximum in total of £250,000.

Application for exploratory boreholes and associated works, within an area of 10 hectares? The works affect the entire site. Since the site exceeds 7.5 hectares, the fee is the fixed basic fee plus £100 for each remaining 0.1 hectare. The sum is therefore £25,000 + (25 x £100 =) £2,500, total £27,500.

Other operations not within any of the above categories (Category 9)

46. In the case of operations for the winning or working of minerals, £170 is payable for each 0.1 hectare if the site area does not exceed 15 hectares. However, if the site is greater than 15 hectares, the fee for the winning or working of minerals would come to £25,315, with an additional £100 for each 0.1 hectare in excess of 15 hectares, subject to maximum of £65,000. In the case of any underground workings, the site area should include all the land under which any of the workings are to take place. However, development of oil and gas reserves (other than Category 8) is regarded as above-ground working in this context.

47. Applications for any other sort of operational development are charged, in each case, £170 for each 0.1 hectare of the site area, subject to a maximum of £250,000.

48. If a mezzanine floor of 200 square metres or more is to be created within a building in use for retail, that will amount to Category 9 development for which a planning application is required. If one or more mezzanine storeys are to be inserted, the floor area of the mezzanine(s) would be the 'site area' for fees purposes; the existing floors and the footprint of the whole building are not relevant to the calculation.

Application for an underground pipeline 6,000 metres in length on a site 3 metres wide? This development is not for the winning or working of minerals. The site area is 18,000m^2; that is, 1.8 hectares. 1.8 ÷ 0.1 = 18, so the fee would be 18 x £170 = £3,060.

Application for works on a caravan site with an area of 0.9 hectares? 0.9 hectare at £170 per 0.1 hectare comes to £1,530.

Conversion to a dwelling (Category 10)

49. If the change of use proposed is from single dwelling use to use as two or more single dwellings, the application would be charged at the rate of £335 for each **additional** dwelling created by the development, provided no more than fifty additional dwellings are involved. If the change of use will lead to the creation of more than fifty houses or flats, £16,565 is payable plus £100 for each house or flat in excess of the first fifty, subject to a maximum in total of £250,000. If, by contrast, the change of use would be from non-residential to use as fifty or fewer dwellings, the fee is £335 for each dwelling; if more than fifty new dwellings are involved, £16,565 is payable plus £100 for each house or flat in excess of the first fifty, subject to a maximum in total of £250,000. In the latter case, all the dwellings would be 'additional'.

Application to convert a single dwelling into 3 flats? Creation of 2 new dwellings at £335 for each additional dwelling = £670

However, there is no change of use if, say, four flats are combined into two apartments. The only planning fee to pay might be under Category 6, if the works would cause the building's external appearance to be altered.

Application to turn an old workshop to 3 dwellings? 3 new dwellings at £335 each would come to £1,005.

Scheme to convert high-rise offices into 55 new homes? £16,565 + (5 x £100 =) £500, total £17,065

Waste disposal, and deposit and storage of minerals (Category 11)

50. Applications to use land for disposal of waste, or for storage of minerals in the open, or for the deposit of materials remaining after mineral extraction, are charged according to site area. If the site does not exceed 15 hectares, £170 is charged for each 0.1 hectare or part thereof. Where the area is greater than 15 hectares, a fixed basic £25,315 is payable along with an additional £100 for each 0.1 hectare in excess of 15, subject to a maximum in total of £65,000. (See paragraph 13 for references to fees for the monitoring of landfill sites.)

> Open-air storage of mine waste on 80 hectares? £25,315 for the first 15 hectares, plus (65 ÷ 0.1 x £100 =) £65,000 would come to £90,315. However, a £65,000 upper limit is in force.

Other changes of use (Category 12)

51. An application for the change of use of buildings or land (other than in categories 10 and 11 above) is charged a flat-rate fee of £335. Where several changes of use on one site are envisaged, or one use for several buildings, only one fee is payable: fees are not aggregated for each use or building involved (but note the following paragraphs, about mixed category applications).

> Application to convert a barn into an industrial workshop together with an area for the retail of goods? For that change of use, the flat-rate £335.

MIXED CATEGORY APPLICATIONS

52. Applications for planning permission sometimes involve development which falls into more than one of the categories set out in the Regulations. For instance, a proposal could include a mix of houses and other types of building or structure; or the creation of non-residential buildings together with other works; or change of use of land together with any works; or more than one significant change of use. Fees for display of advertisements are always priced separately, and none of this advice on mixed-category development applies, but in all other cases the first step is to calculate the fee separately under each of the fee categories which are relevant, having regard to any concession available. There are then different rules, according to whether the project includes new housing or not, as follows.

Residential with non-residential

53. Where an application is for **full** permission to build dwellings (that is, fee category 1(b)) along with buildings in category 2 and/or 3 and/or 4, the gross floor space of both must be calculated. If the project creates shared floor space which serves both uses of the site (such as a common access), regard should be had to the advice in paragraph 56.

54. Using that basis, the sum of the fees in both the relevant categories is then chargeable[13]. This applies whether the two types of development are combined or in separate buildings on the same site. In this situation, where any 'maximum total' fee is stipulated, that limit is relevant only within the fee category where it is imposed. It means that if, in this context of applying for a full permission, mixed category development including new residential is involved and in any of the categories a maximum is imposed, the overall fee payable is not restricted by that upper limit. Straightforward addition gives the total to be paid[14]. This is one of only three circumstances in which a planning application fee can exceed any maxima the Regulations lay down for particular fee categories. The other two would be where the application is hybrid (*see paragraph 24*) or is deemed[15].

55. Where an application or deemed application is for **full** permission to build dwellings (fee category 1(b)) along with development in categories 2, 3 or 4, but it also includes development in any of the categories from 5 to 13, the fee for the development in any of the latter categories must be worked out separately, and only the largest of those amounts is then paid, on top of whatever is charged for the development in categories 1 to 4 inclusive[16].

56. For an outline application for mixed category development including dwellings, by contrast, the fee is calculated on the total site area[17]. If the site does not exceed 2.5 hectares, the fee is £335 for each 0.1 hectare of the site. If the site is greater than 2.5 hectares, a basic £8,285 is charged, with an additional £100 for each 0.1 hectare in excess of 2.5 hectares. There is a maximum fee of £125,000. Where a mixed use building includes common service floor space areas (for example, foyers) serving both the residential and other parts of the building, these areas are divided *pro rata* between the floor space of each type of development, for the purpose of calculating the fees.

Outline application for 85 flats and 2,000m^2 of office space on a site of 3 hectares? This is a mixture of Fee Categories 1 and 2. However, as rates for outline are the same in both, there is only one sum to do. To the fixed, basic £8,285 (covering the first 2.5 ha of the site) must be added the fee for the remaining half hectare. 0.5 hectare at £100 per 0.1 hectare = £500. The total is therefore £8,785.

Single application for approval of three reserved matters (not subject to a flat-rate fee) for development of 60 dwellings and 4,150m^2 of office space? The number of dwellings (Category 1) exceeds 50, so to the basic £16,565 for the first 50 should be added (10 x £100 =) £1,000. This brings the Category 1 total to **£17,565** (it makes no difference how many reserved matters are included in the same reserved matter application).

13 Schedule 1 Part 1 paragraph 14(2) to the Regulations

14 Schedule1 Part 1 paragraph 14(1) to (3) to the Regulations.

15 for a 'deemed application', the fee is double the total reached. Additional sums charged under s.93 of the Local Government Act 2003 – perhaps as part of a Planning Performance Agreement – are not planning fees.

16 Schedule 1 Part 1 paragraph 14(4) to the Regulations

17 Fee Category 1(b), and Schedule1 Part 1 paragraph 15(2) to the Regulations.

The office space (Category 2) exceeds the 3,750m^2 threshold by 400m^2, chargeable at £100 for each 75m^2 or part thereof. Thus, to the basic £16,565 for the first 3,750m^2 should be added (6 x £100 =) £600 for the remainder. This comes to **£17,165**.

The total fee would thus be £17,565 + £17,165 = **£34,730**

Other mixed development

57. Where an application is for full permission for development in two or more fee categories, but not including residential, **only the highest of the fees** calculated under each of those categories is charged. When working out which fee is highest, regard should be had to any maximum total fee prescribed for any of the fee categories concerned, and to any other concession available.

58. For an outline application for mixed category development without dwellings, however, the fee is again calculated on the total site area. If the site does not exceed 2.5 hectares, the fee is £335 for each 0.1 hectare of the site. If the site is greater than 2.5 hectares, a basic £8,285 is charged, with an additional £100 for each 0.1 hectare in excess of 2.5 hectares. These fees are capped at £125,000.

59. If full permission is sought for part of a site and outline permission for the remainder, a hybrid application may be needed: see paragraph 24.

Application for full permission for a building incorporating one shop of 1,000m^2, several offices with a combined total area of 500m^2, and 30m^2 of common service floor space? For fee charging purposes the total floor space of the shop is 1,000 plus two thirds of 30 square metres, which is 1,020m^2; and the office would be 500 plus the remaining 10 square metres of shared service space. However, only the higher fee (the one for the shop) should be paid, namely £335 for each 75 square metres. 1,020 ÷ 75 x £335 = £4,556.

The Ministry of Defence has applied to the local authority for full permission to build 3 storage buildings on a farmer's field adjoining a base, plus a security fence 2.5 metres high. The stores together have a gross floor space of 3,825m^2 so (under Fee Category 2) would come to £16,565 plus £100 for the 75m^2 in excess of the initial 3,750m^2. That comes to £16,665, plus £170 for the fence (also a Category 2 structure, but one that creates no floor space), giving £16,835. The fee for change of use of land would be £335 but, in such a case of mixed-category development, only the larger fee – £16,835 – would be payable.

MORE ABOUT HOW TO CALCULATE FEES

Site area and floor space

60. To assist applicants, and to help local planning authorities provide a more efficient and effective service, the Government has introduced the Standard Application Form. This is for use throughout England, whether the planning application is made over the internet or on paper. All applicants are advised to check that they understand what will be required of them, before they submit their proposals. The local planning authority can go back to the applicant for further evidence or information, if necessary, but that causes delay. Another risk is that an inadequately supported application is simply not validated, and so cannot begin the process of determination. The Standard Application Form is accompanied by guidance to applicants, including advice about plans and drawings, and the need to show clearly the size and location of each proposal.

61. Accurate measurement of site area is important, too, for the calculation of fees. For fees purposes, site area is defined as the area to which the application relates. This is usually shown edged in red on plans accompanying an application, while other land in the same ownership but not being developed is normally outlined in blue. This Circular accepts that red line / blue line convention, although other colours would be lawful: what is essential is clarity.

62. If a proposal is for the carrying out of the same alteration or works to the same type of existing structure in many locations across a wide area, the local planning authority may – at its discretion – accept plans in which the wide area is enclosed by a blue (or, if not owned by the applicant, other coloured) line, and each small works site within that line is ringed or marked out in red. The application site area in such a case would be the sum of all the pieces of land within red lines. For example, modifications to the turbines scattered across a large windfarm would not necessitate inclusion inside the red line of land within the perimeter of the windfarm where development is not being proposed.

63. As noted above, where the proposal is only for one or more mezzanine storeys to be inserted in a building, only the floor area of the mezzanine(s) counts as site area.

64. Where fee assessments are based on the number of hectares or square metres, any fraction of the stipulated unit of site area or floor space included in the application should be *corrected upward* to the 0.1 of a hectare or square metre respectively. For example 2.56 hectares would be rounded to 2.6 hectares and 60.7 square metres would be rounded to 61 square metres.

65. Floor space is taken to be the gross amount (all storeys, including basements and garaging) to be created by the development shown in the application. This is an external measurement, including the thickness of external and internal walls. It is for the local planning authority to decide which spaces within a building count for fee-assessment purposes. However, authorities may find it convenient to equate 'gross floor space' with Gross External Area as defined in the *Code of Measuring Practice: A Guide for Surveyors and Valuers*, published by the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers.

66. There is no simple rule on whether a canopy creates floor space. Absence of external walls is not necessarily the determinant. For instance, it is generally held that a filling-station canopy would not create floor space; in contrast to a Dutch barn, say, where there is sufficient sense of enclosure to regard the entire floor underneath as a contained space to serve the primary function of the barn.

Prior approval applications

67. Where proposed development is covered by the general planning permission granted in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, it usually means that there is no requirement to submit a planning application, assuming the development would not breach any of the limits and conditions that Order imposes. However, in certain circumstances, a developer has to submit to the local planning authority a request for a determination as to whether its prior approval[18] will be required. Where prior approval is required but withheld – for example, if planners reject the design of a new farm building, or cannot accept the way the land would be left after demolition of a house – the permitted development right cannot be exercised.

68. A fee for a prior approval application is payable only in relation to certain types of development authorised by four Parts within Schedule 2 to the 1995 Order. Under Regulation 11A the amounts to pay are:

- in respect of certain agricultural buildings and operations in Part 6 – £70;
- in respect of certain forestry buildings and operations in Part 7 – £70;
- in respect of development by Electronic Communications Code Operators under Part 24 – £335; and
- in respect of demolition of buildings under Part 31 – £70.

69. Those amounts are payable every time: there is no waiver if a further application for prior approval is made.

Development by local authorities or on their land

70. Under section 316 of the Act and Regulation 3 of the Town and Country Planning General Regulations 1992 (SI 1992 / 1492), local planning authorities are required to make applications for planning permission in the same way as other applicants. Planning applications by local authorities for the development of any of their own land within their area, or for the development by themselves (whether alone or jointly) of any land in their area, attract planning fees in the same way as applications from any other source.

18 Prior approval is not itself a planning permission, but authorisation to implement a planning permission granted by the General Permitted Development Order.

EXEMPTIONS AND CONCESSIONS

71. The Regulations make a number of exemptions and concessions in respect of fees payable for planning applications and applications for approval of reserved matters.

Alternative developments on the same site

72. A developer may put forward alternative proposals for the same site. If different proposals for full or outline permission, or for approval of a reserved matter, are all submitted on the same application form by, or on behalf of, the same applicant, a concession is available. The fee should first be calculated separately for each alternative for which permission is sought. The total fee payable is then calculated by adding to the highest of these separate amounts half the sum of the other separate amounts.[19]

Cross-boundary development

73. Where an application site straddles one or more local planning authority boundaries, it is necessary to submit identical applications to each local planning authority, identifying on the plans which part of the site is relevant to each. The planning fee is payable solely to the authority of whichever area contains the larger or largest part (within the red line) of the whole application site. If an application is made to one authority but falls to be determined by another, Regulation 3(4) provides that the application and the fee received shall be forwarded to the determining authority.

74. The fee, however, for this divided site would be either the sum of the fees payable for each part of the site, calculated separately, or else, if it comes to a smaller figure, 150% of the fee that would have been payable if there had been only one application to a single authority, covering the entire site.

> You seek full permission to build 80 dwellings on two hectares that straddle a local authority boundary. 75% of the land within the red line on your plan lies in Nearton DC's area, on which 58 houses are planned; the rest is in Farborough. You will need to apply to both authorities, but you have two contrasting calculations to do beforehand.
>
> First, calculate the fee for each application as if the two were unrelated. For the 58 houses you wish to build in Nearton, the fee would be £16,565 (for the first fifty) plus (8 x £100 =) £800 = £17,365. For the remaining 22 houses, at Farborough, the fee would be 22 x £335 = £7,370. These two figures together come to £24,735.

19 Schedule 1 Part 1 para 10 of the Regulations. It is also possible to benefit from Part 3 Class E of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. A developer uncertain which future land-use will prove more successful may apply simultaneously for more than one permission for change of use of that land and, if the permissions are granted, switch from one land-use to any of the other permitted uses without having to get further permission (unless a planning condition or other legal constraint prevents this). The right to switch land-uses lasts for ten years, after which fresh applications would be necessary.

Next, for comparison, work out the planning fee for 80 houses on a single 2 hectare site. This would be £16,565 for the first fifty, plus (30 x £100 =) £3,000, which makes £19,565. One hundred and fifty per cent of the latter sum would be £29,348.

Since the latter figure is larger than the previous one, pay £24,735 to Nearton council. (Farborough gets no fee, simply an application covering the lesser site area.)

People with disabilities

75. Planning fees are waived, first, where the proposal is to alter or extend an existing dwelling for a disabled person who is living or intending to live there; and second, where the application is for works in the curtilage of an existing house to create access for, or to provide for or improve the safety, health or comfort of, a disabled person living or intending to live in the house (Regulation 4).

76. In this context, a disabled person is someone to whom section 29 of the National Assistance Act 1948 would apply, or a child with a disability recognised in Part III of the Children Act 1989. Decision-makers should have regard to the Human Rights Act and Disability Discrimination Act, but the intention of this concession should be noted. The exemption is intended to facilitate a safe, dignified and comfortable home life, or safe and convenient access to their homes, for people with a physical disability.

77. Applications which relate solely to works to provide a means of access for disabled people to a building to which the public are admitted (whether on payment or otherwise) are similarly exempt[20]. This is not only to facilitate provision of access for disabled people, but to help to create a situation in which there is general confidence that suitable access arrangements will be in place. It is for the local planning authority to interpret the regulations and apply the Disability Discrimination Act guidance, but the Government recommends that the definition of 'the public' in this context should not be a narrow one. For example, private ownership of a building would not preclude it being regarded as a 'building to which the public are admitted'.

78. There is no fee exemption for an application to construct a new dwelling for someone with a disability.

Permitted Development and Use Class rights

79. The Town and Country Planning (General Permitted Development) Order 1995 grants a general planning permission for various forms of minor development, which usually means that one can proceed with the work or the change of land-use without needing to apply for permission or pay a fee. However, where permitted development cannot be carried out as such because the relevant right has been removed by a direction made under article 4 of the 1995 Order any application for specific planning permission which becomes necessary as a consequence is exempt from fees (Regulation 5).

20 Regulation 4(2)

80. Similarly, no fee is payable for an application for change of use of land if that application is rendered necessary because a right to change the land-use granted by The Town and Country Planning (Use Classes) Order 1987 as amended has been removed by a condition imposed on a previous grant of planning permission (Regulation 6).

Parish and Town Councils

81. Parish councils and town councils enjoy various rights under Schedule 2 Part 12 of the Town and Country Planning (General Permitted Development) Order 1995 to carry out works without making a planning application. However, where parish or town councils or their agents do need to apply, Schedule 1 to the 1989 Regulations provides that the fee is half the normal fee for the type of application in question.

Playing fields

82. There is a flat-rate fee of £335 for applications made by non-profit making clubs or other non-profit-making sporting or recreational organisations, relating to playing fields for their own use. The concession covers applications to change the use of land to use as playing fields and associated operations such as earthmoving, draining or levelling; but it does not cover applications to erect buildings. The term 'playing field' includes, for instance, football, cricket, hockey or hurling pitches, but not enclosed courts for games such as tennis or squash, and not golf courses or golf driving ranges.

Revised applications following withdrawal, refusal, or non-determination (the 'free go')

83. An application may be withdrawn; for instance, where planners have suggested that certain changes would make it acceptable. Alternatively, an application may be refused, and the applicant may try again with a revised proposal. Where an application is withdrawn or refused, where an appeal or a 'called-in' application has been rejected by the Secretary of State, or where the applicant has appealed to the Secretary of State on the grounds of non-determination of his application, the same applicant may submit, without paying a fee, one further application for the same character or description of development on the same site, or part of that site (Regulation 8). Additional land can be included only in connection with revised access arrangements. It is for the local planning authority to assess whether a revised proposal would maintain the character or description of the previous one, and so be eligible for the 'free go'.

84. Where the original application was in outline, only a revised outline application can be exempt. Where the original application was for full permission, the further application must also be for full permission if it is to be exempt. Similarly, in the case of applications for reserved matters, the revised application must relate to the same reserved matter(s) if it is to be eligible for the exemption.

85. There are also time-limits. Where permission was refused, whether upon application or appeal, the revised application must be made within twelve months of the refusal. In the case of a withdrawn application, the revised application must be made within twelve months of the making of the earlier one; or, in the case of an appeal against non-determination, within twelve months of the expiry of the eight-week period or (in the case of major applications) thirteen-week period for determination.

86. In order to benefit from these provisions, any fee due for the original application must have been paid in full. The applicant may benefit from the 'free go' exemption only once for any given site, regardless of whether the type of development now being proposed differs from that proposed previously. Where any applicant needs to submit a third or subsequent revised application, the full fee is payable.

87. In certain circumstances, however, a second 'free go' can be sought by the applicant in respect of the same site if he or she seeks it under a different Regulation. For example, if the applicant had earlier been allowed a free go in respect of a revised application under Regulation 8, and the same person makes a second application for permission to vary a planning condition attached to the permission, having paid the fee on the first occasion, another free go may still be available under Regulation 7.

88. However, if the site changes hands, and a new applicant submits a fresh application and pays the appropriate fee, that applicant would then enjoy the same ability to make a free second application under the rules outlined above. In other words, any 'free go' taken up by the previous applicant would not be taken into account. Again, on all these points, it is up to the local planning authority to interpret and apply the law.

89. There is no equivalent 'free go' for an application for prior approval to carry out permitted development authorised by the Town and Country Planning (General Permitted Development) Order 1995.

Revised 'reserved matter' applications

90. An applicant may need to make more than one attempt to have the same reserved matter approved. A reserved matters application may involve any number of reserved matters, but it will incur only one fee (at the same rate as an application for full permission), however many matters are involved, until the total amount paid by that applicant in respect of reserved matters alone equals, or exceeds, the fee that one would now have to pay for full permission for the whole development. When that point is reached, any further reserved-matter application will attract the flat-rate fee of £335 [21]. The concession is available only if it is the same outline permission and the same applicant. These rules do not block the possibility of a 'free go' in the circumstances set out in the preceding paragraphs.

Revised applications following permission

91. A developer may seek to vary a planning permission by having a planning condition discharged or modified. Strictly speaking the developer would be applying (under section 73 of the Town and Country Planning Act 1990) for the same planning permission but without whichever of the imposed condition(s) he or she finds inconvenient. The first such application to vary a permission is entitled to a 'free go' under Regulation 7, subject to the rules and time-limits described above. More than one condition at a time can be removed or altered in this way, without any multiplication of the fee to be paid.

21 Schedule 1 Part I para.6(2) of the Regulations.

92. However, the duration of a planning permission can no longer be extended by variation of a condition.

93. Incidentally, a local planning authority may decline to accept an application under section 73 if the actual or potential impact of varying the relevant conditions would more properly be the subject of an entirely fresh application for full planning permission.

COLLECTION OF FEES

Payment

94. Without payment of the appropriate fee, an application is not valid. As part of the process of validating an application before it is placed on the Planning Register, the local planning authority should make certain it has received the correct fee. If an application is submitted without the correct fee, the authority should explain to the applicant as soon as possible that the process of registering, assessing and deciding the application cannot begin, and return it.

95. Under the validation procedure, payment of the correct fee must happen before an application can be registered. Registration of a valid application must occur within fourteen days of receipt of the fee[22].

Refunds and adjustments

96. **There is no provision in the Regulations for the refund of correct fees paid for applications** (other than deemed applications) **once these have been validated** by the local planning authority, but refunds may be made at any stage of fees paid for applications rejected as invalid and of any sum not required by the Regulations. Refunds must be made, however, where a request for confirmation of compliance with conditions is not dealt with in twelve weeks: see paragraph 126.

97. The fee to be paid is fixed on the basis of the application as and when it is made. Once an application has been registered, the local planning authority cannot go back to the applicant with a demand for a higher planning fee. Even if permission is granted for a development of a different size, or the application is adjusted by agreement, or it is realised that an outline application needs to have certain supplementary details attached from the outset if decision-makers are to deal with the issues involved, there is no provision for adjustment to the fee, either in the form of a refund or an additional charge.

98. If an applicant obtains outline permission, but planning fees go up before any or all of the reserved matters have been applied for, the fee for submitting each reserved matter application will be charged at the new rate. The fee payable for approval of reserved matters must be calculated by reference to the Regulations as they stand on the day the reserved matter application is made. In other words, the fact that fees were lower when the process of securing the whole permission began does not protect the applicant from the increase. However, where an applicant wishes to benefit from the flat-rate arrangement for additional reserved matter applications (*see paragraph 90*), the local planning authority should calculate the fee as if the applicant had from the outset paid at the new, higher fee level.

22 Statutory Instrument 1995 / 419, article 25(9).

99. Local planning authorities have a discretionary power to decline to determine applications where developers repeatedly apply for permission for the same proposal in an apparent attempt to wear down resistance from either the planning authority or the local community (section 70A of the 1990 Act). The arrangements are explained in ODPM Circular 08/2005, *Guidance on Changes to the Development Control System*[23]. There is no refund of any planning fee accepted when a valid but repeat application is submitted. In considering such an application, and identifying it as one the authority ought to decline to determine, administrative work will have been done and resources used. It is only fair that the authority retain the fee.

Invalid, misdirected or unnecessary applications

100. The fee due in respect of an application must accompany the application when it is submitted to the local planning authority, and it must be refunded if the application is rejected as invalid.

101. Applications must be made to the appropriate determining authority. A wholly misdirected application should generally be regarded as invalid, and the fee refunded when the application is returned. However, where the application site straddles the boundary between authorities, and the application is sent to the wrong one, the application should be treated as valid (all else being in order), and the receiving authority should ensure that application and fee are forwarded to the correct recipient as soon as possible. Only when the proposal has reached the appropriate authority and been validated can the application process formally begin.

102. If a planning fee is paid and it is subsequently realised that the application was unnecessary (for example, where the relevant works or change of use could have been carried out as permitted development), there is no statutory obligation to refund the fee.

Disputes

103. If there is a disagreement between applicant and planning authority about the amount of the fee payable, the authority should try to resolve the dispute with as little delay as possible. There is no disputes procedure in the Regulations, but if an authority refuses to validate, register and determine an application because it considers that the correct fee has not been paid, the applicant may, after eight weeks (or 13 weeks for major applications), seek to appeal on the grounds of non-determination (though only if the application is, in all other respects, capable of validation).

104. In those circumstances, the Secretary of State would have to consider whether she has jurisdiction in the case; whether the application is otherwise valid; and whether the amount paid in by the applicant was correct. If the Secretary of State considers that she has no jurisdiction, the applicant, in the light of the Secretary of State's view as to the fee payable, may choose to pay the required fee to the local planning authority, which should then determine the application. If the correct fee has been paid, the Secretary of State will proceed to determine the planning proposal as an appeal case. However, if the correct fee has not been paid, the Secretary of State cannot consider the appeal

23 Available on the planning / planning policy pages of the website www.communities.gov.uk or by purchase from The Stationery Office, telephone 0870 600 5522.

because the eight- or thirteen-week period for determining the application will not have begun to run. The Secretary of State can consider the correctness of a fee only when it arises as a preliminary issue to an appeal against non-determination.

ALTERING A PLANNING PROPOSAL

105. Wherever possible, planning applicants should try to ensure that the nature and impact of their proposals are fully discussed and understood before submitting an application to the local planning authority. A search of development plan documents for relevant local policy, pre-application discussion with the local planning authority, and informal preliminary consultation with interested parties or those with relevant expertise, can help the planning applicant to shape and adjust a scheme early on, smoothing the path of the application when finally submitted to the local planning authority. Nevertheless, not every material fact may be known before an application is made, and some potential consequence of a proposal may come to light only after the application has been publicised and placed on the Planning Register. In the interests of efficient handling of planning casework, local planning authorities may allow applicants to make minor amendments to the details of applications, or their reserved matters, before the decision stage is reached.

106. If such changes are proposed to a local planning authority, it would have to reach a view on whether the changes would be minor and, if so, whether a delay for a further round of publicity would be desirable in order to give third parties the opportunity to comment afresh on the new situation. Unless a new or revised application for approval of a reserved matter is being submitted, no fee would be required for introducing these late, minor adjustments to a scheme. However, fairness and transparency should prevail in the handling of any proposal to alter a submitted application, and in deciding whether additional consultation, perhaps including letters to those who commented earlier, would be advisable.

107. Material changes to a submitted proposal are likely to cause the local planning authority to insist on a fresh application, which may or may not benefit from the 'free go' arrangement explained above. Once detailed planning permission has been given, the authority does not at present have discretion to allow significant changes to be made to a scheme, or to any conditions imposed; a new planning permission would be necessary[24].

'DEEMED' PLANNING APPLICATIONS

108. When someone appeals against an enforcement notice under section 174 of the Act on ground (2) (a) – namely, that planning permission ought to be granted – the mechanism for resolving the issue is a 'deemed application'. This is an application deemed to have been made for planning permission to carry out whatever activity or change of land-use had earlier been found unlawful by the local planning authority. As with any other type, there is likely to be significant work involved in processing and determining a deemed application, so a fee is normally payable (Regulation 10).

24 Amendment of the law on the authorisation of non-material changes after the granting of a permission is, however, under active consideration (2008).

109. The fee is double that which would be payable for a corresponding planning application made at the time the enforcement notice was issued. There is no 'free go' for a revision of such an application, but other concessions – for instance, where the development provides access for disabled people – could be claimed.

110. After the Secretary of State has received an enforcement notice appeal, the appellant and the local authority will be informed of the fee amount for the deemed application; when and how payment should be made; and the arrangements for notifying the Secretary of State that payment has been received. Legislation is being proposed to provide that the entire double fee should in future go to the local authority but, until directed otherwise, appellants should make payment to the Secretary of State. Failure to pay within the time limit prescribed will mean that neither the deemed application nor the ground of appeal specified in section 174(2)(a) of the Act will be considered.

Deemed application refunds

111. A refund is due where

(i) the related enforcement notice is withdrawn by the local planning authority at any stage;

(ii) the related appeal is withdrawn at least 21 days before the public inquiry, or the site inspection where the written representations procedure is used. (An appeal is regarded as 'withdrawn' on the date when the Secretary of State receives notice in writing of the withdrawal.)

(iii) an enforcement notice appeal is rejected as invalid, is null, or is formally dismissed for lack of facts in support of the grounds of appeal within a period prescribed by the Secretary of State;

(iv) an enforcement notice is quashed, and the appeal is allowed by the Secretary of State because the local planning authority has failed to submit prescribed information within a prescribed period; and

(v) an enforcement notice appeal is allowed because the enforcement notice is found to be invalid or to contain a defect which the Secretary of State cannot correct within the appeal process.

112. Furthermore, when an enforcement notice is varied under section 176(1) of the Act (other than as a result of planning permission being granted on the deemed application under section 177(5)), and the fee payable on the varied notice is less than was actually paid, then the difference can be refunded.

113. Enforcement notices must make it clear what area of land is covered by the notice: a breach of planning control may affect the whole planning unit, or an area within it. If the latter, the smaller area should be coloured on the enforcement notice plan to distinguish it from the planning unit and, if area is the basis for any fee to be charged for a deemed application arising from appeal, the fee should be based on the smaller area. (The planning unit should always be identified in the enforcement notice and edged in a distinctive colour on the plan.)

Submitting an enforcement appeal and paying the fee

114. When an enforcement notice is served on a number of persons, an appeal to the Secretary of State by one of those persons will suspend the effect of the notice for all of them, until that appeal is determined. Each person who appeals against an enforcement notice is required to pay the appropriate fee for the deemed application.

115. If an appellant against an enforcement notice had already applied to the local planning authority for planning permission before the enforcement notice was issued, or if an appeal has been made to the Secretary of State against refusal of planning permission before the date on which an enforcement notice is due to take effect, the appellant will not need to pay a further fee for a deemed application, provided that neither application nor appeal is determined before the appropriate date, and provided that he or she has paid the appropriate fee.

116. Each appeal against an enforcement notice gives rise to a separate deemed application, and a fee is payable for each deemed application. The fee payable depends on the development to which the notice relates. When a notice is issued alleging a number of different activities which fall within more than one category of development, the fee payable is the highest amount calculated.

DISPLAY OF ADVERTISEMENTS – THE FEES

117. Fees for applications for consent for the display of advertisements are dealt with in Regulations 1, 2 and 11 and Schedule 2 of the Fees Regulations. Regulation 9 of the Town and Country Planning (Control of Advertisements) Regulations 2007 [25] requires an application to be made where express consent to display an advertisement is needed. Accordingly, Regulation 11 of the Fees Regulations provides for a fee to be paid to the local planning authority when such an application is made.

118. The provision requiring payment of this category of fee refers to the site on which the advertisement is displayed. 'Site' is defined in Regulation 2(1) of the Control of Advertisements Regulations as the land or building on which the advertisement is to be displayed. The effect is that there is only a single fee (at the highest rate applicable to the type of advertisement to be displayed) for each 'site' included in any application. For example, where an application involves a building and its curtilage, and it is proposed to display one advertisement on the building and another within the curtilage or on its boundary, there is only one fee. However, when the application deals with advertisements to be displayed on more than one site, a fee at the appropriate rate will be payable for the advertisement-display at each site included in the application.

119. When a number of advertisements are to be displayed on parking meters, litter-bins, public seating benches or bus shelters in a specified area, Regulation 11 (4) of the Fees Regulations provides that the whole of the specified area is to be regarded as one site for the purpose of calculating the fee.

25 Statutory Instrument 2007/ 783.

120. 'Advance signs' are advertisements which give advance notice of premises situated in the locality of the proposed advertisement (and not on land comprising part of the premises), but which are not visible from the site on which the advertisement is to be displayed. For example, when a hotel in a rural area wishes to obtain express consent for an advance sign beside a main road, and the hotel cannot be seen from the site where the advertisement is to be displayed, the fee will be £95; but when a hotel wants to put up an advertisement beside a main road, on a site from which the hotel itself can be seen, the fee goes up to £335.

LAWFUL DEVELOPMENT CERTIFICATES – THE FEES

121. A lawful development certificate confirms that the particular use, operation or activity named within it is lawful, so far as planning law is concerned, on the dates specified. A fee is payable for an application to the local planning authority for such certificates. For fees purposes, it is necessary to distinguish between applications made under section 191(1)(a) and (b), under section 191(1)(c), and under section 192 of the Act.

- **A section 191(1)(a) or (b) application** is for a certificate to establish the lawfulness of an existing land-use, or of development already carried out. The fee would be the same as if one were applying for a new permission for that use or operation.

- **A section 191(1)(c) application** is for a certificate to establish that it was lawful not to comply with a particular condition or other limitation imposed on a planning permission. The fee in all cases is £170.

- **A section 192 application** is for a certificate to state that some future development would be lawful. The fee would be *half* what it would be necessary to pay if one were applying for planning permission to carry out whatever form of development is the subject of the certificate.

122. There are, however, circumstances where the following rules apply instead:

- where a use specified in an application under section 191 (1)(a) is use as one or more separate dwellings, the fee payable is:

  (a) where the use is for 50 or fewer dwellings, £335 for each dwelling;

  (b) where the use is for more than 50 dwellings, £16,565, and an additional £100 for each dwelling in excess of 50, subject to a maximum in total of £250,000.

- Where an application is made both under section 191 (1)(a) and/or (b) and under section 191(1)(c), the fee to be paid is the sum of the fees that would have been paid if there had been separate applications.

- Where – and only where – a lawful development certificate application fee is based on the equivalent planning application fee, advantage may be taken of any exemption or concession that would be available for that 'equivalent' application, as explained above.

REQUESTS FOR CONFIRMATION OF COMPLIANCE WITH PLANNING CONDITIONS

123. Article 21 of The Town and Country Planning (General Development Procedure) Order 1995 provides that where an application has been made to a local planning authority for any consent, agreement, or approval required by condition or limitation attached to a grant of planning permission (other than an application for approval under Part 24 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995(a))[26] or if the request would be in respect of a reserved matter, which should be the subject of a reserved matters application), the authority shall give notice to the applicant of its decision on the application within a period of **eight weeks** from the date when the authority received the application, or any longer period agreed in writing by the applicant and the authority. This remains as the usual mechanism by which a developer seeks to clear a condition.

124. A fee will henceforth be payable where a written request to the relevant local planning authority is made for any application, in accordance with article 21 of the General Development Procedure Order, where written confirmation is required that one or more conditions imposed on the same permission have been complied with.[27] The fee chargeable by the authority is £85 per request (or £25 where the related permission was for extending or altering a dwellinghouse or other development in the curtilage of a dwellinghouse). The fee must be paid when the request is made, and cannot be required retrospectively. For these purposes, it does not matter when the relevant planning permission was granted. It may be that some conditions on a permission have already been discharged by 6 April 2008 (the earliest point at which a request can be made under regulation 11D of the Fees Regulations as amended). The request, identifying the permission and the conditions concerned, can be made in any written form which is clear and legible. Alternatively, applicants may wish to use the Standard Application Form (application for the approval of details reserved by a condition) to set out the same details which they would like the local Planning authority to consider.

125. In most cases the local planning authority will be able to respond in less than eight weeks. Indeed, authorities should endeavour to respond within 21 days for simple approvals, though a longer period may be justified if an authority has itself to obtain evidence or confirmation of compliance from a third party, such as a statutory consultee. Where confirmation or indication that-confirmation cannot be given, has not been supplied within twelve weeks of receipt of the request, the request fee **must be refunded**. The period of twelve weeks is in order to provide sufficient time to the authority to confirm compliance, particularly where it needs to get confirmation from third parties.

126. If the local planning authority considers that a condition has not yet been complied with, the authority should explain to the applicant what remains to be done. It is expected that there will be an exchange of information in either written or other form in order to provide evidence of compliance. Where the exchange of information to secure compliance of a condition is ongoing, it is not necessary for a new request to be

26 Development by telecommunications code system operators

27 For avoidance of doubt the term complied with includes any written confirmation of discharge of a condition

made to the authority. The authority should issue confirmation of compliance when satisfied, unless it finds that enforcement action or a retrospective planning application would be more appropriate in the circumstances.

127. To confirm clearance of more conditions, a further request, and a further fee, would be required if the developer needs written confirmation. An additional request for confirmation that a **revised** detail achieves compliance with a condition would be charged as if it were the first such request; there is no discount or 'free go' in this context.

128. The facility just described is **not** available if the request is in respect of conditions imposed on a minerals or waste permission under Fee Categories 9(a) or 11 for which the inspection arrangements provided for in Statutory Instrument 2006 / 994 and regulation 11B already cater.

129. In order to vary the terms of a condition, it will still be necessary to make an application under section 73 or 73A of the Act. It is for the planning authority to decide which part of the Fees Regulations is applicable to an individual case.

130. Local planning departments may choose to 'confirm' some conditions informally without seeking the new fee, where they find it appropriate and more efficient to do so. It will be for the developer to decide whether any approval provided will suffice, or whether he or she should pay the new fee and request a more formal statement of compliance.

131. Although administrative practices in one local planning authority may differ from those in another, planning department staff should make every effort to ensure that requests from different applicants within the same authority area are handled fairly and with similar attention to the timing and quality of outcome; inconsistency of treatment should be avoided.

ANNEX A

GLOSSARY OF TERMS

The Act, or T&CPA	The Town and Country Planning Act 1990 as amended.
deemed application	for the purposes of an appeal against enforcement, the applicant is deemed to have made the appropriate application.
determination	making the formal decision on a planning application.
development / developer	defined in section 55 of the Town and Country Planning Act 1990, it includes not only works (such as building or engineering operations) but also significant changes of land-use. A 'developer' is anyone carrying out development, regardless of its function or scale.
gross floor space	total floor area of all storeys to be created, measured externally. Planning authorities may find it convenient to equate 'gross floor space' with 'Gross External Area' in the *Code of Measuring Practice: A Guide for Surveyors and Valuers* of the Royal Institution of Chartered Surveyors and the Incorporated Society of Valuers and Auctioneers.
hybrid application	seeks full permission for part of a site, outline for the rest.
operational development	development other than a change of use of land; for example, building or engineering work.
outline permission	planning approval *in principle* only (see reserved matters)
permitted development	development for which one does not need to apply for permission, because it is authorised in an Order such as the Town and Country Planning (General Permitted Development) Order 1995.
The Regulations	The Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 [*Statutory Instrument 1989 / 193*] as amended.
Reserved matters	if outline permission is granted, the developer still needs to have the details or 'reserved matters' approved: access, appearance, landscaping, layout and scale.
Secretary of State	the Secretary of State for Communities and Local Government is responsible for national planning policy in England. Planning appeals are made to the Secretary of State, who may also call in applications for his or her own decision.

OTHER INFORMATION

This Circular can be purchased from The Stationery Office (telephone 0870 600 5522) or viewed on the planning / planning policy pages of the website, www.communities.gov.uk. Enquiries should be addressed to:

Planning Delivery and Performance
Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU.

Policy staff there cannot, however, comment on individual cases or rule on the correct fee for a particular application. It is for the local planning authority to interpret and apply both law and guidance. Only the Courts provide a definitive interpretation of the law.

If trying to ascertain what a particular fee would be, ensure the effect of *all* relevant legislation is taken into account. The Regulations of 1989 have been amended many times, and fees may change again in future years. Statutory Instruments are accessible on the website www.opsi.gov.uk. This Circular will remain in force until there are significant policy changes, and the reader should adjust the figures if necessary in the light of later legislation.

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