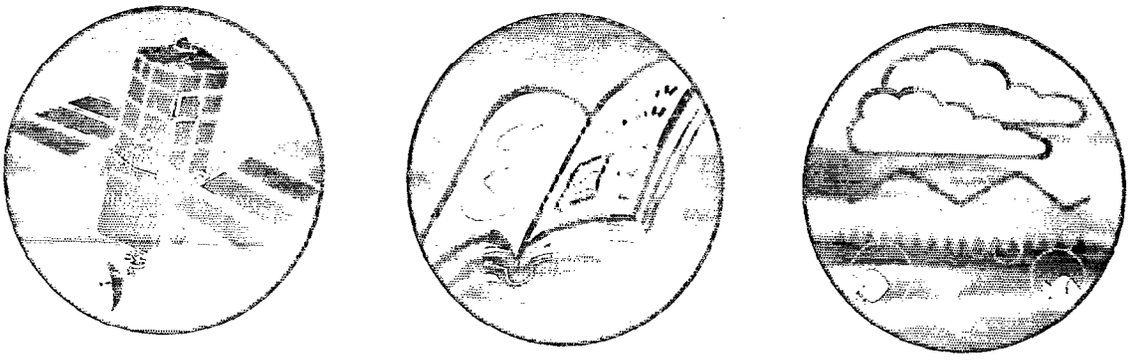
The Feasibility of Charging for Planning Application Consultations



Research and Development

Technical Report
W203

ENVIRONMENT AGENCY

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The Feasibility of Charging for Planning Application Consultations

R&D Technical Report W203

Research Contractor:
Land Use Consultants

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Statement of use
This report presents an assessment of current practice on pre-application advice within the Environment Agency and the feasibility of charging for this advice. It is for all staff involved in land use planning and will be implemented through national groups such as the customer services managers group and the national planning liaison group. It will be of interest to the external consultees and developers. In addition, a project record W4/008/1 has been produced which contains the report plus appendices.

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Executive Summary

The aim of this study was to assess current practice on pre-application advice and ascertain the feasibility of charging for this advice. The study considered this aim in respect of the Environment Agency's dealings with developers and hence did not consider the feasibility of charging local planning authorities.

The study considered the following aspects :

The Environment Agency's funding regime; the legal framework for imposing charges; current Environment Agency approach to planning application consultations and other organisations' approach to planning application consultations and charging. The views of the development industry were also sought in order to gauge how they may react to charging.

The study establishes, with reference to the appropriate legislation, that the Environment Agency does have the power to charge for advice. The study interprets Government guidance to mean that any charges that the Environment Agency may decide to set for planning consultations would be set at a level to recover the costs involved but no higher. This would accord with the 'Cost Recovery' principle currently practised for other charging streams.

On a cost recovery basis the potential estimate of income that could be generated directly by planning liaison equates to £5.8M and that for pre-application consultations with developers, which is estimated to represent 13% of planning liaison staff time, the potential recovered cost would be in the region of £0.75M. The study estimates that the potential cost recovery, with function staff time included, could rise to the region of £9.3M for all planning liaison consultations and £1.3M for pre-application consultations with developers. The study provides estimates of time spent on the different functions by planning liaison staff, the greatest level of involvement being flood defence.

Based on researching the aforementioned aspects, which included canvassing the opinion of Environment Agency staff, internal individuals, bodies and organisations, the study identifies the pros and cons of charging. These are as follows :

PROS	CONS
Consistency with policy on charging for information	Potential conflict with the Agency's duty to act in the public interest
Will provide incentive to ensure advice provided is of a high standard	Potential income to be generated unlikely to justify costs involved.
Will help ensure consistency in approaches across the Regions	Danger of duplicating charges (e.g. where consents/licences are required.
Reduction in unnecessary/speculative enquiries	Potential marginalisation of the Agency from the development industry.
Creation of a positive income stream for planning liaison with potential for it to become a separate Agency function	May deter developers seeking Agency advice, particularly at the pre-application stage, leading to reduced Agency influence over development.
Raising the status of developer consultations leading to a better service	Potential reduced goodwill with developers

Could potentially lead to reinvestment in the functions	Potentially reduced opportunities to realise planning gain.
	Increased paperwork
	Time-delays due to processing and administration
	Potentially increased legal liability
	Increased consultation work at the statutory consultation stage (for both the Agency and LPAs)
	Could lead to a two tier system between those able to afford payment (e.g. large developers) and those who cannot)
	Penalisation of environmentally conscious developers who enter into consultations as part of their normal practice.
	Potential conflict with Customer Charter.
	Potential increased overall Agency input due to delayed influence over development proposals
	It would lead to greater numbers of applications referred to appeal

The key findings of the research are set out as 6 recommendations :

Recommendation No 1: Charging for information
The Agency should issue clearer guidance to planning liaison staff when it should be charging developers for site-specific requests for information. The distinction between provision of information and advice should be clarified. The Agency should ensure that the charging policy is applied consistently across all Regions and Areas.

Recommendation No 2: Quality of Service
The Agency should introduce quality control measures to ensure that the service provided in planning consultations with developers is of the highest quality.

Recommendation No 3: General Principle of Not charging for Pre-application Consultations.
Agency policy should be that, in principle, site-specific consultations should not be charged for, if developers can confirm that these consultations are part of their genuine pre-application enquiries. Where the request is solely for existing information relevant to the site, the Agency policy on charging for information should be applied as appropriate.

Recommendation No 4: Speculative Enquiries
A charge should be made for all speculative enquiries where the cost of responding exceeds £50. Speculative enquiries are all enquiries where the person or body making the enquiry, or for whom the enquiry is being made, is not the owner of the land concerned. The charge should be based on the full costs incurred in responding to the enquiry, whether or not the response required the provision of information or advice. Relevant terms and conditions, and an estimate of the costs, should be notified to the person making the enquiry, prior to work

being undertaken. Work on responding to the request should not commence until payment has been cleared.

Recommendation No 5: Feasibility of providing Consultancy Services
The Agency should carry out a study to investigate the feasibility of providing consultancy services to developers, in order to ascertain whether such a service would further the interests of the Agency. Any such service should be without prejudice to the statutory duties and responsibilities of the Agency, including its role as statutory consultee.

Recommendation No 6: Encouraging Pre-application Consultation
The Agency should issue guidance to local planning authorities and, where appropriate, meet lead planning officers, to indicate when a developer should be advised to enter into pre-application consultations with the Environment Agency, and the advantages to both the developer, and the local planning authority. The Agency should also issue similar clear and simple advice on the advantages of pre-application consultations to developers and their representative bodies.

It is intended that this R&D report and its recommendations act as a catalyst to enable the sponsoring function group, NPLG, to take the findings of the study forward. It need not be the case that NPLG and their head of function agree all of the recommendations as they stand.

Recommendations 3 and 4 merit particular consideration, in the context of extending the cost recovery principle to as much planning liaison work as is feasible. As such , the National 'Funding and Income Steering Group' will be consulted in preparing an appropriate way forward.

Recommendations 1 and 2 merit particular consideration in the context of continuous business improvement, moving quickly to implement a consistent national approach. Consideration to implement via an Ops instruction underpinned with appropriate new performance measures needs to be given. An appropriate forum to take this forward would be the Customer Services Managers Group.

Recommendation 5, provision of consultancy services, would best be considered by NPLG.

The overall implementation plan to further the work of this R&D report could best be accommodated as part of the Planning Liaison Efficiency Initiative package.

1. INTRODUCTION

In November 1998, Land Use Consultants were commissioned by the Environment Agency to carry out a study to assess the feasibility of charging for planning application consultations.

The Environment Agency is a statutory consultee within the Town and Country Planning system so as to ensure that the environment is protected and, where possible, enhanced. The Agency recognises that pre-planning advice (i.e. prior to a planning application being submitted) has considerable benefits, including:

- reduction in the number of inappropriate environmentally damaging applications;
- improvements in the quality of applications, resulting in the identification of the need for mitigation, or enhancement opportunities, at the earliest stage; and
- reduction in the Agency's response time when formal consultation is undertaken by the Local Planning Authority.

The Brief for the project states that the Environment Agency has a policy that seeks to recover the cost of supplying information. However, this does not extend to charging for advice with respect to site-specific requests received from developers if they can confirm that these are part of a genuine pre-planning or pre-development enquiry. The project objective is therefore:

"to assess current practice on pre-application advice and ascertain the feasibility of charging for this advice".

This report presents the findings of LUC's research into the feasibility of the Agency charging for planning application consultations. It sets out the pros and cons of introducing such charges, and concludes with a series of recommendations.

2. METHOD OF APPROACH

2.1 Principal Stages of Work

The study was undertaken in eight principal stages:

(i) Review of the financial and legal context;

(ii) Review of current practice in the Agency;

(iii) Review of other organisations' practice;

(iv) Assessment of current practice;

(v) The developers' viewpoint;

(vi) Identification of the pros and cons of charging for pre-application advice;

(vii) Preparation of recommendations;

(viii) Presentation.

2.2 Stage 1: Review of The Financial and Legal Context

To provide a framework to the study, we carried out a review of the financial and legal context. The aim of this exercise was to ascertain:

- the Agency's funding regime;
- current accounting procedures for dealing with income raised from different sources, and how charges for services are currently determined and accounted for;
- the legal implications regarding the introduction of charges for planning application consultations.

This stage was carried out through a series of meetings and telephone discussions with Agency financial and legal officers. The officers were contacted in writing in advance of meetings/telephone discussions in order to set out the purpose of the exercise, and the issues to be discussed.

The financial implications were covered in a meeting, held in the Agency's office in Bristol on 9 December 1998, with Steve Silvey (Business Efficiency Team, Finance Directorate), Liz Radcliffe (National Charges Manager, Finance Directorate), and Sharon Liverton (Assistant Charges Manager). Various documents and reports were provided to LUC at this meeting.

The legal implications were assessed in discussions with the following internal Agency legal staff:

- Ralph Seymour (South West Region, meeting in Exeter, 1 December 1998);

- Anne Harrison (Thames Region, meeting at LUC's offices in London, 8 December 1998);
- Peter Bilborough/Julie Hinman (Southern Region, telephone discussions 10 December 1998);
- Adrian Nuttall (North East Region, telephone discussion 14 December 1998).

2.3 Stage 2: Review of Current Practice in the Agency Areas

Having understood the funding regime and operations of the Agency, we then carried out a review of how the various Regions and Areas approach the task of giving pre-application advice.

A questionnaire was sent out by post on 17 December 1998 to the Planning Liaison officers for each of the Agency's Areas. Officers were asked to respond by 6 January 1999. The following issues were addressed in the questionnaire:

- estimate of the proportion of time spent by planning liaison on planning application consultations;
- the types of development proposals discussed;
- description of the main issues raised during the planning application consultations;
- estimates of the time inputs required by Agency functions to deal with consultations;
- views of the advantages and disadvantages (in terms of the Agency's interests) in charging for consultations;
- views on what types of development and organisation should or should not be charged;
- potential developers to contact to discuss the issue of charging for planning application consultations, including contact details.

The above information provided us with a comprehensive database of information regarding the nature of planning application consultations, and the benefits and risks attached, as perceived by front-line officers. We then contacted by telephone ten of the officers for follow-up discussion, with the aim of covering the full range of approaches currently used, and exploring the issues that they raised.

2.4 Stage 3: Review of other Organisations' Practice

In parallel with Stage 2 of the project, we also contacted by telephone a range of organisations, including other Government sponsored agencies, and a sample of statutory undertakers, who are also likely to be approached by developers for planning application advice.

Each organisation was contacted in writing in advance. The telephone interviews aimed to find out whether charges are made for providing advice in planning application consultations, how the charges operate, and the level of charges imposed. The views of the organisations of the pros and cons of charging were also requested.

We also contacted the Royal Town Planning Institute (RTPI), the Planning Officers' Society, and the Town and Country Planning Association (TCPA), to determine their views of the efficacy and implications of charging for planning application consultations.

2.5 Stage 4: Assessment of Current Practice

Stage 4 brought together the findings of the first three stages in an Interim Report, with respect to:

- the Agency's funding regime;
- legal framework for imposing charges;
- current Agency approach to planning application consultations (subject to detailed telephone discussions);
- other organisations' approach to planning application consultations and charging;
- assessment of current practice, and initial views of the pros and cons of charging.

The Interim Report was discussed with members of the Agency Project Steering Group on 18 January 1999.

2.6 Stage 5: The Developers' Viewpoint

Having set out and discussed the principles of charging for planning application consultations, the final group of consultees that were consulted was the development industry. The aim of this exercise was to gauge the development industry's views about how they would react to charging, if and what they would see as a reasonable level of charges, and what they would expect in return from the Agency in terms of service.

We contacted in the first instance the following representative bodies:

- House Builders Federation (HBF);
- Royal Institute of Chartered Surveyors (RICS);
- Quarry Products Association;
- Confederation of British Industry (CBI).

We also added a sample of developers (or their representatives) suggested in the Planning Liaison officers' questionnaires. As with the consultations with the statutory consultees, structured telephone interviews were carried out.

2.7 Stage 6: Identification of the Pros and Cons of Charging for Planning Application Consultations

Following the discussion at the Progress Meeting, and taking on board the comments of the Project Steering Group, the pros and cons of charging in principle for planning application consultations were identified, including:

- Charges that should already apply;
- Relationship with existing charging schemes;
- Potential effects on delivering the Agency's interests;
- Potential effects on service delivery and customer expectations;
- Types of charging scheme that could apply;
- Quantification of potential income to be generated;
- Accounting, implementation and administration;
- Potential risks.

2.8 Stage 7: Preparation of Recommendations

The findings from the first six Stages form the basis of this Final Report, which sets out our recommendations as to:

- whether it is feasible to charge for giving planning application consultations; and if so
- when charging should operate;
- the level of charges that would be appropriate;
- how it should be administered, and accounted for in terms of function.

A Draft Final Report was presented to the Agency Steering Group on 8 March 1999, for discussion with the Agency Steering Group on 15 March 1999. The comments of the Steering Group have been incorporated into this Final Report.

2.9 Stage 8: Presentation

A presentation of the Final Report was made to the National Planning Liaison Group on 11 March 1999.

3. CURRENT POLICY, FINANCIAL & LEGAL ISSUES

3.1 Introduction

As a prelude to the detailed research to determine the pros and cons of charging for planning consultations, three contextual issues had to be addressed:

(i) the way in which the Agency administers and accounts for income it currently generates;

(ii) current Agency policy re. charging for information and advice with respect to planning application consultations;

(iii) whether the Agency has the legal power to charge for planning application consultations, and what would be the legal implications of introducing charges.

Each of these issues is addressed in turn below.

3.2 Financial Issues

3.2.1 Income Sources

The Environment Agency derives its income from three main sources:

- income raised from its own charging schemes;
- levies raised on local authorities to fund flood defence activities;
- Government grants (principally DETR grant-in-aid; MAFF grant-in-aid for Fisheries, and MAFF grants for flood defence capital schemes).

A breakdown of income for 1997/98 is provided in **Table 3.1.**

Table 3.1: Analysis of income by source for year ended 31 March 1998

Income Source	£m	Proportion of Total Income
Charging schemes	207	35%
Flood defence levies	220	37%
Grant income	167	28%
Total	**594**	**100%**

Source: Environment Agency Annual Report & Accounts 1997-98 (page 98)

Of the income arising from charging schemes, the major sources relate to:

- discharges to controlled waters;

- abstraction from surface and groundwater;
- integrated pollution control;
- radioactive substances regulation;
- waste regulation.

Charges are also made with respect to licensing fisheries, navigation and for a range of other sundry activities and services. Charges relating to the provision of information represent a small proportion of 'miscellaneous income' being between £1 million and £2 million per annum. This figure is based on the assumption that the vast majority of information requests that incur a charge are related to property searches. In late 1997 a survey indicated that the Agency receives around 25,000 such requests annually. These searches are typically charged at between £35 and £50 each. Taking an average of £40, this equates to a total of £1 million. Additional charges and volume increases since 1997 are likely to make this figure higher, but not significantly so.

3.2.2 The 'Cost Recovery' Principle

At present, charges imposed by the Agency, as a public body, are set at a level that reflects the costs involved in delivering a particular service. This is known as the 'cost recovery' principle. The full costs of a charging scheme, such as charging for information, usually comprise, at a minimum:

- time costs spent by Agency staff;
- printing or copying costs;
- a proportion of overhead costs.

Some argue that the above costs should also include an element to account for past training, research, information collection and analysis, etc., which necessarily must have taken place for the service to be provided.

Agency policy also states that the full costs of providing a relevant service should include any deficits from previous years, depreciation, and non-cash costs such as return on capital.

3.2.3 Government Advice on Selling Services

Para 7.3 of HM Treasury 'Fees and Charges Guide' states that:

"The presumption is that services should wherever possible be provided by the private sector rather than the public sector, with the public sector buying in the services as necessary. This presumption applies in particular where a Government body would be competing with the private sector. The fact that a public body can provide a service as well and as cheaply as any outside supplier is not in itself a reason for extending the service. Commercial services provided to non-Governmental bodies will normally be ancillary to the main objectives of Government bodies. The Treasury has issued separate guidance to Government bodies on this subject. Where a body

wishes, therefore, to consider selling its services commercially to the private sector or the wider public sector for the first time, or wishes to expand existing services of this kind in a significant way, it should consult the Treasury at the earliest opportunity".

However, in July 1988, the Enterprise & Growth Unit of HM Treasury issued revised guidance on 'Selling Government Services into Wider Markets. Policy and Guidance Note'. The guidance is aimed at making 'best use of existing public sector assets'. The guidance note is primarily aimed at the exploitation of commercial potential held within the public sector, which can be broken down into two types of asset:

(i) physical assets including equipment, land and premises;

(ii) non-physical assets such as intellectual property, data and skills.

The guidance sets out the criteria that should apply to commercial activity. It states that such activity is:

"of a discretionary nature which is:

- *not a statutory service (a statutory service is normally defined as one where there is, or would need to be, a provision in statute, including statutory instruments giving effect to EC Directives, to recover a fee or charge for the service);*
- *not sold only to other Government departments and other bodies listed in the definition of 'inter-departmental services' but also includes sales to local authorities, and other bodies in the wider public sector and/or the private sector;*

and where:

- *public sector customers receive the same pricing structure and conditions of sale and service as private customers;*
- *customers are not tied to the supplying department, and are free to buy the goods or services concerned from whatever source provides the best value for money."*

Whilst it could be argued that pre-application consultations are non-statutory, our interpretation of the guidance would suggest that the opportunity to charge a commercial rate fails the last two criteria. Public sector customers are not usually charged (e.g. under the Memorandum of Understanding signed between the Agency and Local Authority Associations on 14 February 1997), and it could be argued that the Agency is the only organisation in a position to sell its services given the data sources it holds.

This would imply that, should the Agency decide to charge for planning consultations, the rate would have to be set at a level sufficient to recover the costs involved in undertaking the consultations, but no higher.

3.2.4 Accounting for Income and Expenditure

All income and expenditure is applied only to the function to which it relates. In practice, this is broken down into seven 'business functions':

- water resources;
- flood defence;
- pollution control (and for each of its sub-functions, i.e. water quality, process industries regulation, radioactive substances regulation, waste regulation, and land quality);
- navigation;
- fisheries;
- recreation;
- conservation.

Although there are strong links between certain functions (e.g. water resources and water quality) cross-subsidisation between functions is generally not permitted. Since 'planning liaison' is not considered to be a business function of the Agency, it does not have its own income stream. Planning liaison costs are recharged to the business functions. Although its role is to provide a service to the other functions, it is therefore sometimes thought of as an overhead. As an 'overhead', it could be argued that 'planning liaison' costs are under pressure to be reduced.

Planning liaison falls under Customer Services provided by the Agency. Customer Services are therefore responsible for recording time and expense costs. Sundry income sources, such as charging for information, are administered and accounted for by the Regions, whose approaches vary. For example, some of the Agency Regions (e.g. Wales and Anglian Regions) operate a time sheet system, whilst others do not.

3.3 Current Agency Policy on Charging for Information/Advice

The Agency's Customer Charter (Second Edition, dated September 1997) states that:

"We are committed to being an open organisation, sensitive to the needs of our customers"

and that:

"Our aim is to provide value for money in all that we do. Our charging schemes generally cover the costs of the services we provide. We will also see how much new procedures cost before we put them into practice. We then balance these against the benefits for the environment and our customers".

In line with Government policy, the Agency currently seeks to recover the costs of supplying information by charging for the provision of such information. This approach has been developed on the basis of the statutory provisions on public

registers – the Environmental Information Regulations and the Open Government Code of Practice on Access to Government Information. The public registers that the Agency holds include:

- Integrated Pollution Control (IPC) Register;
- Radioactive Substances (RAS) Register;
- Water Quality and Pollution Control Register;
- Water Abstraction and Impounding Register;
- Maps of main rivers for each area covered by Agency regional flood defence committees;
- Waste Management Licence Register;
- Carriers and Brokers of Controlled Waste Register.

The definition of information covered by the Environmental Information Regulations 1992 is wide ranging. Regulation 2 paragraph 2 states that:

"for the purposes of these Regulations information relates to the environment if, and only if, it relates to any of the following, that is to say –

(a) the state of any water or air, the state of any flora or fauna, the state of any soil or the state of any natural site or other land;

(b) any activities or measures (including activities giving rise to noise or any other nuisance) which adversely affect anything mentioned in sub-paragraph (a) above or are likely adversely to affect anything so mentioned;

(c) any activities or administrative or other measures (including any environmental management programmes) which are designed to protect anything so mentioned."

The policy on charging is set out in the Agency leaflet 'charging for information'. Certain enquiries are exempt from charges:

- a customer inspecting a public register or receiving an explanation as to how the register works;
- reasonable information requests by students in full-time education;
- simple telephone requests that can be answered immediately;
- a request for information coming from the press prior to an agreed media interview;
- a request from a statutory or regulatory body providing the Agency with information free on a reciprocal basis (including local authorities);
- a request from a water undertaker relating to certain data;

- any request made under a statutory power to obtain information;
- for a leaflet, booklet or other publication where there is no cover price.

For non-exempt requests, charges are made according to the following scale:

Table 3.2: Scale of charges for the provision of information

Scale of Charges	Paper Copies @ 10p per side	Staff time @ £25 per hour	Materials at known cost
Information on paper from public registers	Yes	Yes	Yes
Information from a public register on disk, special format or special retrieval	Yes	Yes	Yes
Information covered by the Environmental Information Regulations or the Code of Practice	Yes	Yes	Yes

Source: Environment Agency (1998) Charging for Information

No charges are made if the costs do not exceed £50.

In addition, charges are currently made for land ownership enquiries, and for searches. Searches are defined as:

"....a request received from a solicitor, property developer, consultant or other similar commercial body, asking the Agency to search its records for data and/or information relating to a specified area of land of a reasonable size or a single site."

A flat rate charge applies to searches (£50 for a single site or radius up to 250m, plus £50 for each additional 250m of radius; £35 for a single residential dwelling) and land ownership enquiries (£35 per enquiry). However, a search excludes, amongst other requests:

"site-specific requests received from developers if they can confirm that these are part of their genuine pre-planning or pre-development enquiries."

Such requests are still dealt with under the appropriate public register provisions or the Environmental Information Regulations and may be subject to charges if the costs exceed £50.

3.3.1 Distinguishing between Advice and Information

The Agency policy towards the provision of advice in the form of consultations differs from that for the provision of information. A request for information is defined as:

"any request for existing information, or data, in accessible form, including opinions if already recorded, but not including other opinions or a request for the Agency to create information by any means".[1]

Thus, the Agency does not charge for consultations. However, if the Agency has given advice in the past, this becomes 'information' available to any future request, and therefore would be charged, subject to meeting the above criteria.

3.4 Legal Issues

3.4.1 The Power of the Agency to Charge

Section 43 of the Environment Act 1995 (the '1995 Act') sets out the incidental power of the Agency to impose charges:

"Without prejudice to the generality of its powers by virtue of section 37(1)(a) above and subject to any such express provision with respect to charging by a new Agency as is contained in the preceding provisions of this Chapter or any other enactment, each new Agency shall have the power to fix and recover charges for services and facilities provided in the course of carrying out its functions."

Section 37(1)(a) states that the Agency:

"May do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, carrying out of its functions."

Our discussions with Agency solicitors have led us to conclude that section 43 of the 1995 Act does indeed give the Agency power to charge for planning consultations, even if the consultations cannot be linked directly to one or more of the Agency's statutory functions. This is because there is a strong case for arguing that such consultations fall under the general duty of the Agency to contribute towards attaining the objective of achieving sustainable development, as specified in section 4(1) of the 1995 Act. However, there is no duty, under section 43, for the Agency to impose incidental charges.

This view is notwithstanding the judicial decision in *McCarthy & Stone (Developments) Ltd v Richmond upon Thames London Borough Council.* In this case the respondent council adopted a policy of charging a fee of £25 for consultations between developers and the council's planning officers before a formal application for planning permission for speculative development or redevelopment was made. In accordance with that policy, the council charged the developer £25 for each of two meetings with a planning officer to discuss the developer's proposals for a housing development. The developer questioned the legality of the charge and paid the fees under protest. They then applied for judicial review of the council's decision to continue its policy of charging for pre-application consultations. The judge dismissed the application on the ground that the council had power to levy charges in respect of pre-application consultations by virtue of section 111 of the Local Government Act 1972 (the 1972 Act), which conferred on local authorities:

[1] See para. 4.10 of Environment Agency (1997) Dealing with Public Requests for Information and General Enquiries in Chief Executive's Office Volume 01 (Ref: EAP/CE/LL/003)

"power to do any thing....which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions."

The developer appealed to the Court of Appeal, which dismissed the appeal. The developer then appealed to the House of Lords. The House of Lords held that a local authority could not lawfully impose a charge for pre-application planning consultations. Although the giving of pre-application advice facilitated or was conducive or incidental to the council's planning functions, a charge for that advice did not facilitate nor was it conducive or incidental to those functions and it was therefore not within the authority's ancillary powers under section 111 of the 1972 Act. The appeal was therefore allowed.

According to the internal Agency solicitors, section 43 was specifically included in the Environment Act 1995 to give the Agency incidental powers to charge where local authorities are unable to under the Local Government Act 1972.

One Agency solicitor that was contacted claims that it may be preferable for the Agency to charge for advice by entering into a separate contract with the developer, rather than relying on section 43 to impose charges. If this alternative approach were to be adopted, the Agency would have to decide whether to provide the advice requested, whether to charge for the advice provided, and the level of charges that should be set. In any event, the level of charges set cannot be higher than the costs of delivering the advice to the developer. In defining these costs, a decision would have to be made as to whether to include an element for overheads, or for previous work undertaken which is relevant to the request.

3.4.2 Legal Liability in Providing Advice

It is the opinion of the Agency solicitors consulted that the Agency has a duty of care in the advice and opinions it provides to third parties, whether or not a charge is made. The fact that a charge is introduced does not necessarily increase this duty of care. However, from a practical point of view, it may increase the expectations of the requester about the quality of the advice provided.

Whenever advice is given, Agency solicitors advised that it should be provided in writing (or recorded in written form), with terms and conditions attached as appropriate, similar to those attached to the provision of information. It is usual practice when dealing with searches, for a disclaimer to be attached. For example, the standard disclaimer used by the Regional Solicitor for the Agency's Southern Region in response to search requests from solicitors is as follows:

"The replies given are based upon information available to the officers of the Agency at the present time and the Agency accepts no liability in respect thereof in the absence of negligence."

3.4.3 Relationship with other Regulatory Powers

The Agency currently charges for issuing licences and consents in relation to environmental protection (e.g. waste regulation, integrated pollution control, etc.) and water management (e.g. abstraction licences). The need for such consents or licences

often arises out of a planning application. One Agency solicitor contacted expressed some concern that it may be difficult to distinguish between where consultations regarding the planning application end, and where consultations relating to licences and consents begin. Prospective applicants would not look favourably on the Agency if they felt they were being charged twice for the same service.

4. CURRENT PRACTICE AND VIEWS OF AGENCY PLANNING LIAISON OFFICERS

4.1 Questionnaire Survey

With the aim of identifying current consultation practice and the views of Agency planning liaison officers regarding the introduction of charges, a questionnaire survey was undertaken. This questionnaire was designed to establish:

- the present type and scope of planning consultations with developers (i.e. the time spent on consultations by planning liaison officers and internal consultees, the types of development proposals arising and the kind of consultation issues raised);
- the officers perceived benefits and concerns associated with the introduction of charges for planning consultations; and
- the specific circumstances where planning liaison officers considered it would be appropriate or inappropriate to charge for consultations (e.g. regarding particular types of developments, enquiries, developers or organisations).

A copy of the questionnaire is included in **Appendix 1 of R&D Project Record W4/008/1.**

Questionnaires were sent on 17 December 1998 to 23 planning liaison officers covering the eight Regions of the Environment Agency and their respective Areas. All 26 Areas of the Agency were covered in the survey with joint questionnaires sent to the Wales Region and the Midlands Upper Severn and Lower Trent Areas. Responses were requested by 6 January 1999. A total of 18 completed questionnaires were received by 1 March 1999 (78% response rate). A list of contacts to whom the questionnaire was sent and details of those who responded are included in **Appendix 2 of R&D Project Record W4/008/1.**

4.2 Telephone Interviews

On the basis of the questionnaire responses ten planning liaison officers were contacted by telephone for follow up structured interviews. A list of those selected is also included in **Appendix 2 of R&D Project Record W4/008/1.**

The aim of these interviews was:

- to clarify any outstanding issues arising from the questionnaire;
- to obtain further details of the nature of Agency consultations with developers; and
- to elucidate on the views of the officers regarding the introduction of charges.

A copy of the questions used to structure the interviews is provided in **Appendix 3 of R&D Project Record W4/008/1.**

The following section presents a summary of the main findings of the questionnaire survey and follow up interviews with planning liaison officers.

4.3 Current Practice

4.3.1 Proportion of Planning Liaison Officers' Time Spent on Planning Consultations

In the questionnaire survey, planning liaison officers were asked to estimate the proportion of their time spent on planning consultations.

Table 4.1: Proportion of planning liaison officers' time spent on planning consultations

% of Time	Pre-application consultations (number of responses)	Post-application consultations (number of responses)	Post-permission consultations (number of responses)
0-20%	13	6	14
20-40%	5		3
40-60%		7	
60-80%		5	1
80-100%			

The findings in **Table 4.1** show that less time is generally spent on pre-application and post-permission consultations compared to post-application consultations. Indeed it is apparent that, for most Areas, the pre-application and post-permission consultations involve less than 20% of planning liaison officers' time. In comparison the majority of planning liaison's time appears to be taken up by post-application consultations.

Owing to differences in the interpretation of the question, in the follow up discussions with the ten planning liaison officers, more detailed information concerning the percentage of time spent on planning consultations was obtained. **Table 4.2** illustrates that there are wide variations between the different Agency Areas. In the North West (South Area) for example, 100% of officers' time is spent on dealing with planning consultations compared with only 20% in the North East (Ridings Area).

We subsequently contacted the Ridings Area to clarify why the amount of time spent on consultations is so low relative to other Areas. In hindsight it was felt that they might have underestimated the amount of planning liaison time spent on consultations. The planning liaison section is currently undergoing re-organisation so it has proved difficult to obtain any accurate figures. Discussions with one planning liaison officer however suggests that the amount of time spent on dealing with planning consultations may in fact be significantly higher.

Table 4.2: Total proportion of planning liaison officers' time spent on planning consultations

Area	Percentage of Time Spent on Planning Consultations
North West (South Area)	100%
Southern (Kent Area)	99.9%
Midland (Upper Severn Area)	95%
North East (Dales Area)	85%
Anglian (Northern Area)	85%
South West (Cornwall Area)	80%
Thames (South East Area)	80%
Thames (West Area)	80%
Wales (South West Area)	55%
North East (Ridings Area)	20%

Despite the wide overall range of time spent on planning consultations, it is evident that planning consultations do generally constitute a significantly high proportion of planning liaison work (with eight out of the ten areas quoting a figure of between 80%-100%).

For those planning liaison officers interviewed, **Figure 4.1** sets out the relative proportions of time spent on pre-application, post-application and post-permission consultations.

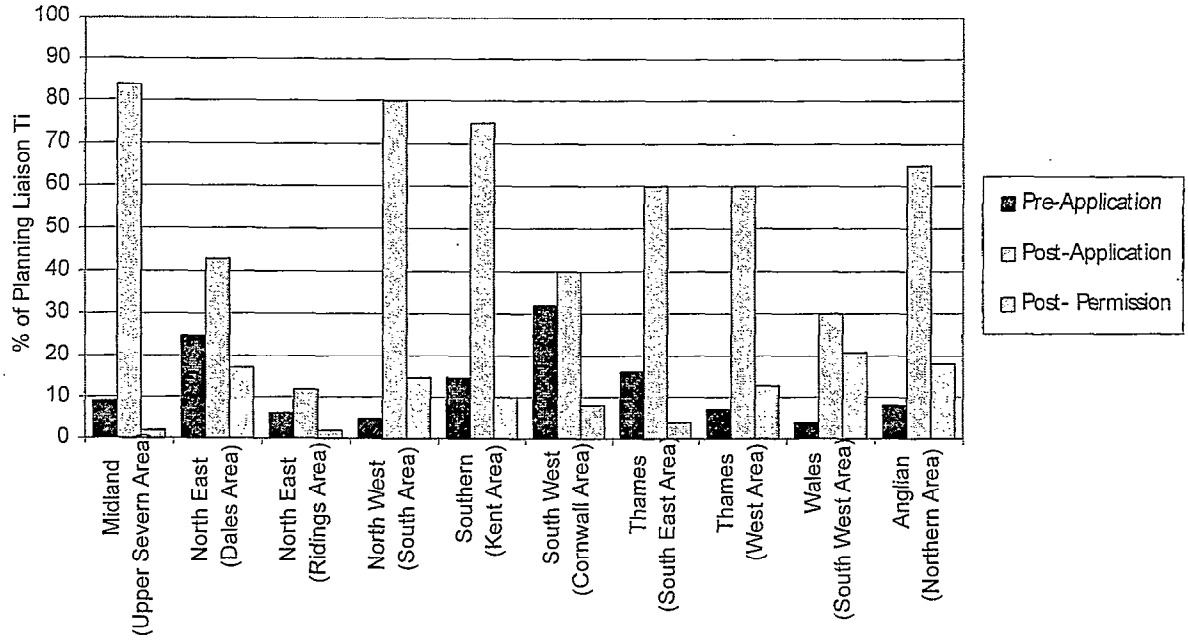

Figure 4.1: Percentage of planning liaison time spent on pre-application, post-application and post-permission consultations

It is evident from **Figure 4.1** that there are wide disparities between different Areas in the percentage of planning liaison time spent on pre-application, post-application and post-permission consultations. These variations reflect the relative differences in the total amount of time spent by planning liaison groups on planning consultations as a whole, as outlined in Table 4.2.

In terms of the relative proportion of time spent on the different stages of consultation, it is apparent that pre-application and post-permission consultations generally only constitute a small proportion of all planning consultations. For example, the time taken up with pre-application consultations ranges from 4%-32% (with a mean of 13%) compared to 12%-84% (with a mean of 56%) for post application consultations. These percentages need to be treated with some caution since there may have been some variation in the interpretation of the question by different planning liaison officers.

4.3.2 Number of Developer Enquiries and Planning Applications

In the follow up interviews, the ten planning liaison officers were asked to provide details of the total number of consultations their Area enters into in a typical year, divided between developer enquiries, and planning applications forwarded to the Agency as a statutory consultee.

Table 4.3: Number of developer enquiries and planning applications

Area	Total Number of Developer Enquiries (per annum)	Total Number of Statutory Planning Consultations (per annum)
North West (South Area)	200-300	4,500
Southern (Kent Area)	400	3,500
Midland (Upper Severn Area)	N/A	N/A
North East (Dales Area)	810	2,490
Anglian (Northern Area)	300	700
South West (Cornwall Area)	1,000	N/A
Thames (South East Area)	300	1300
Thames (West Area)	138	2,080
Wales (South West Area)	200	3,000-3,200
North East (Ridings Area)	N/A	N/A

*N/A = Information not available

Table 4.3 shows that the number of consultations associated with developer enquires is relatively low in comparison to the number of planning applications. Whilst these developer enquiries may take place at any stage of the development process, it is evident that they form a small proportion of all consultations. This re-confirms the findings highlighted in Figure 4.1 that post-application statutory consultations form the main focus of planning liaison work.

4.3.3 Main Types of Development Proposals Planning Liaison is Consulted Upon

In the questionnaire the officers were asked to list, in descending order of frequency, the main type of development proposals that planning liaison is consulted upon. A summary of the cumulative ranking of the responses is provided below, with 1 = the most common.

Table 4.4: Main types of development proposal planning liaison is consulted upon

Ranking	Most common type of development consulted upon in descending order of frequency
1.	Residential
2.	Industrial
3.	Commercial
4.	Waste Management
5.	Minerals

6.	Transportation
7.	Agriculture
8.	Leisure/Recreation

It is evident from the results that residential, industrial and commercial developments are the most common types of proposals for which planning liaison is asked to provide advice.

4.3.4 Type of Issues Most Commonly dealt With in Consultations

The questionnaire respondents were also asked to list in descending order of frequency the type of issues which are most commonly dealt with by planning liaison officers, and the time spent on these consultations (1= the most common issue dealt with).

Table 4.5: Issues most commonly dealt with in consultations and the typical amount of time spent

Rank	Most common type of issue dealt with, in descending order of frequency	Typical time spent on each issue (number of responses)		
		High	Medium	Low
1	Land Drainage and Flood Defence	15	9	1
2	Water Resources	5	8	9
3	Fisheries/Ecology/Recreation (FER)	5	8	3
4	Water Quality	8	4	3
5	Contaminated Land	8	4	-
6	Waste Regulation	2	10	2
7	IPC/RAS	1	9	5

NB: Not all of the issues were identified by all the respondents.

Table 4.5 shows that the greatest amount of time and the most frequent consultations are undertaken with regard to land drainage and flood defence. Water resources and, FER are also common issues although they tend to require less time to deal with. In contrast, water quality and contaminated land issues, whilst arising less frequently tend to require higher amounts of time input. Finally, consultations relating to waste regulation and IPC/RAS generally require low amounts of planning liaison officers' time and are relatively uncommon.

4.3.5 Time Spent by Internal Consultees on Planning Consultations

In order to give an indication of the degree of internal consultation associated with developer enquiries and proposals, the questionnaire respondents were asked to estimate the amount of time inputs provided by the respective core functions of the Agency in consultations.

Table 4.6: Time spent by internal consultees on planning consultations

Function	Time spent (number of responses)			
	High	Medium	Low	None
Flood Defence	9	-	-	-
Water Quality	3	4	-	-
Water Resources	2	4	3	-
Conservation	2	3	3	-
Waste Regulation	1	7	-	-
Fisheries	-	3	6	-
Land Quality	-	3	3	3
Recreation	-	2	6	1
Navigation	-	1	1	6
Process Industries Regulation	-	-	9	-
Radioactive Substances Regulation			8	1

NB: 5 of the respondents did not answer this question.

Table 4.6 shows that the level of internal consultee involvement is greatest for the function of flood defence. Water quality, water resources, conservation, and waste regulation also require notable amounts of input. The lowest levels of internal consultation are required for the functions of radioactive substances regulation, process industries regulation, navigation, recreation, land quality, and fisheries. These results broadly concur with the findings outlined in Table 4.5.

In order to obtain more detailed information concerning the level of input from internal consultees, the ten officers interviewed in the follow up discussions were asked to provide estimates of the number of hours spent by internal functions on planning consultations. Due to the fact that in many Areas a time recording system is not used, the officers experienced difficulty in providing accurate hourly estimates. Some officers therefore quoted the number of planning consultations dealt with by the different functions, whereas others outlined the percentage of internal consultees' time spent on planning related enquiries.

Due to the inconsistencies in the form of responses, it is not possible to provide detailed figures for all Areas of the number of hours spent by internal consultees on planning consultations. It is, however, possible to give a broad indication of the extent to which the various functions are involved in consultations:

- In the Thames Region (South East Area), flood defence issues require the greatest time commitment from internal consultees involving 1,500 hours per annum. Waste regulation, conservation and water quality in comparison require only between 100-200 hours pa, and fisheries, recreation and navigation between 5 – 50 hours pa.

- In the North West Region (South Area) the highest time inputs are provided by the water quality, flood defence and land quality functions involving over 6,000 hours each per annum. The functions of waste regulation and conservation typically involve 1,600 hours pa with the remaining functions requiring less than 100 hours each pa.

- In the Southern Region (Kent Area) 20-30% of the total work undertaken by the flood defence and land quality functions is related to planning consultations. For waste regulation, water quality and FER, planning consultations provide less than 10% of their total time commitment, and for water resources 5%.

- In the Wales Region (South West Area) planning consultations constitute a large proportion of all flood defence and water resources work (45%- 55%). The functions of waste regulation, land quality and water quality also spend significant amounts of time dealing with consultations (35%). FER and process industry regulation in contrast spend less than 10% of their time dealing with planning enquiries.

It is apparent from a comparison of these Areas that whilst the total input from internal consultees is significantly different, certain function spend greater amounts of time on planning consultations than others. For example, in most areas flood defence spends a significantly high proportion of its time dealing with planning consultations. In contrast the level of time commitment provided by the functions of process industries regulation and waste regulation is relatively low. These findings concur with those outlined in Table 4.6.

Disparities between Areas are however evident in terms of the proportion of planning consultation work undertaken in the water resources function. As noted above in the Wales Region consultations account for 55% of all water resources time compared to less than 10% in the Southern Region. This highlights the fact that whilst broad similarities may be identified between Areas, local variations in the number and length of consultations do occur. In the Thames Region (West Area) for example internal consultations regarding flood defence are relatively insignificant in number compared to surface water pollution and groundwater enquiries, contrasting with the neighbouring Thames Region (South East Area).

4.3.6 Types of Planning Consultations

In order to get a feel for the scale and form of planning consultations, the planning liaison officers interviewed by telephone were asked to give an indication of the duration, size, complexity and variety of planning consultations they are typically involved with. Whilst there was a general consensus of opinion that there is no such

thing as a 'typical' consultation, it was possible to identify a general spectrum of planning consultations that officers are typically faced with.

At the smallest end of the scale, six of the ten officers interviewed stated that proposals relating to the development of /or extensions to a single residential dwelling are generally the most common and least complicated enquires. In such cases, if there were no concerns relating to Agency interests, then the consultation process would usually take ½ - 1 hour. At the opposite end of the scale, the most complex and time-consuming enquiries are generally those which involve consultations with a number of different functions. Large industrial developments, service stations, major residential estates, mineral and quarrying operations, and open cast mining were cited by officers as often requiring significant amounts of Agency time to deal with. Consultations associated with these developments may typically involve between two to four weeks of Agency time and can be on going over a number of years.

A number of officers stated that it is important to recognise that there is not always a correlation between the size of the development and its complexity. A proposal for a small development in the floodplain for example may be of greater complexity than a larger proposal away from any major watercourses. In this way it is not possible to conclude that smaller proposals will require less consultation time than larger developments.

4.3.7 Proportion of Planning Consultations Dealt with Directly by Agency Functions

Occasionally planning enquiries are dealt with directly by the respective functions. The 10 officers interviewed were therefore asked to estimate the number of enquiries that are not passed through planning liaison. 9 of the 10 officers stated that in line with Agency policy less than 1% of enquires are dealt with directly by the various functions. However in the North East (Ridings Area) it was found that over 100 enquiries a year (4.4% of all enquiries) do not get passed through planning liaison. This practice is found to occur where developers seeking specialist advice prefer to contact the relevant experts direct.

4.3.8 Speculative Enquiries

In order to ascertain the number of speculative pre-application enquiries that pass through planning liaison, the officers contacted in the follow up interviews were asked to estimate how many such enquiries they typically receive in one year. Speculative enquiries are defined as those requests for advice where the developer is not the land owner but is seeking the advice of the Agency before a decision is made to purchase a site.

Of the ten officers interviewed, six stated that they receive very few speculative enquiries (i.e. less than 50 per annum). The remaining four officers stated that they receive a large number of such enquiries (i.e. over 250 per annum). In those areas where speculative enquiries are common, the officers find that dealing with them is very time consuming. In the case of the Southern Region (Kent Area) and the Thames Region (South East Area) speculative enquiries constitute 70-75% of all developer enquiries. Many of these enquiries are made by large developers/ solicitors or

consultancy teams who present the Agency with a list of sites as part of a development trawl. Residential developments appear to be the most common type of development for which speculative enquiries are made.

In Areas where the number of speculative enquiries dealt with by planning liaison is low, the enquiries are usually dealt with directly by customer contact or search teams. Such enquiries are usually considered to be requests for information rather than for advice. As such, a number of Areas charge for these enquiries under the Environment Agency national policy of charging for information.

In the Midland Region (Upper Severn Area) and Wales Region (South West Area) charges are made for all speculative enquiries regardless of whether they involve the provision of advice or information. This policy is implemented by asking developers at the outset to specify whether or not they are the owners of the site. In the Wales Region (South West Area) the customer contact department received over 500 speculative enquiries in 1998 and to date payment has only been received from 193 of these.

4.4 Views of Agency Planning Liaison Officers

4.4.1 Benefits Accruing from Charging for Planning Consultations

The main aim of this study is to identify the pros and cons of introducing charges for planning consultations. In this context the planning liaison officers surveyed in the questionnaire were asked to outline what they perceived to be the main benefits of introducing such charges. Of the 18 responses received, 14 (78%) recognised that some potential benefits may be gained, whereas four (22%) stated that there are no advantages in introducing any additional charges. The main benefits highlighted were:

- the creation of a positive income stream. This was the most commonly cited advantage (stated by 12 of the 18 respondents);
- the re-investment of income generated towards an improved service;
- the reduction of unnecessary /speculative developer enquiries. It was felt this could reduce the pressure on officers' time allowing resources to be directed more effectively and used more efficiently;
- raising the status of developer consultations internally with the provision of better, more focused advice, and the improved organisation / management of enquires; and
- the establishment of a consistent and equitable charging policy throughout the Environment Agency.

4.4.2 Problems Arising from Charging for Planning Consultations

The questionnaire respondents were asked to identify the potential disadvantages of introducing charges. The key issue raised was that:

- the introduction of charges could act as a deterrent to pre-application consultations (stated by 16 of the 18 respondents).

This was considered an unwelcome proposal for two main reasons. Firstly, pre-application consultations give the Environment Agency the opportunity to be proactive and positively influence the design, scale and siting of schemes early in the development process. Opportunities for environmental protection and enhancement could therefore be lost if the existing consultation arrangement is changed. Secondly, pre-application consultations enable relevant reports and assessments to be completed prior to the submission of a planning application thereby minimising possible complications at a later stage.

Other issues questionnaire respondents highlighted were that the introduction of charges could:

- generate a negative reaction from developers leading to less 'goodwill' and flexibility in future consultations; and
- result in reduced potential for planning gain.

In terms of the practicalities involved in introducing charges, the respondents identified four main areas of concern:

- it could involve the creation of excessive paperwork;
- there is no system in place for accurately and consistently recording time spent on consultations;
- there is a risk of duplicating charges (e.g. for searches previously undertaken by customer services or work carried out by other Agency functions); and
- the Agency could face added liability if the advice given was found to be inadequate or incorrect.

It was also felt unlikely that the generation of additional income would be reinvested in providing extra resources for the planning liaison function.

4.4.3 Current Charges for Developer Consultations

In order to provide a broad review of the current practice for charging for consultations, the officers were asked to specify what charges are presently being made of developers and for what services. The majority of respondents stated that they currently charge for information in line with the national Agency 'charging for information' policy guidelines. A number of officers added, however, that there is still some confusion over when and how to charge for information.

In the North East (Ridings Area) charges are currently levied for all enquiries unless the initial request specifically states that it is a pre-application planning enquiry. Charges are therefore sought for all consultations involving the provision of information or advice. Charges are made on the basis of the flat fee recovery system set out in the 'charging for information' guidelines. To date the planning liaison

officers in this Area have not encountered any negative reaction towards this charging policy.

In contrast the potential deterrent effect of charging is well illustrated in the South West Region (Cornwall Area) where, following the introduction of the Agency's national 'charging for information' policy, a number of developers refused to consult ahead of submitting planning applications.

4.4.4 Distinguishing Between Pre-Application, Post-Application and Post-Permission Consultations

Pre-application discussions are non-statutory, whereas the local planning authority is obliged to consult the Environment Agency as a statutory consultee on certain types of planning application. The questionnaire respondents were therefore asked to state whether they thought a distinction should be made between pre-application, post-application and post-permission consultations. Eight (44%) of the officers did not answer the question because they felt that no developer consultations should be charged for. Of the ten remaining respondents there was no clear consensus of opinion.

Three (17%) officers felt that no distinction should be made between the various stages of consultation to ensure that a consistent and uniform approach is maintained. It was also added that any distinctions made should be drawn on the basis of time rather than the type of information provided. Four (22%) officers did however state that there needs to be a distinction between pre and post application and permission development. If charges were to be introduced then they felt that charges could only be levied for pre-application consultations. This is because most post-permission / post-application consultations are concerned with meeting Agency requirements and thus it may frustrate Agency objectives to charge for them. However, concerns were raised once again that the introduction of charges at the pre-application stage could discourage developers seeking advice from the Agency.

One suggestion put forward to encourage pre-application discussions was that post-application consultations could be charged for at a higher rate.

4.4.5 Distinct Elements for Charging

The questionnaire respondents were also asked if they considered whether there are any parts of planning consultations that could be seen as distinct elements and charged for (e.g. factual information, Agency advice). There was a wide disparity in the responses. Whilst some officers stated that developer enquiries requiring active involvement are very distinct from those requiring information, others stated that they cannot be separated out.

In the follow up discussions with the ten planning liaison officers, three stated that charges could be levied for factual information (i.e. development enquiries that do not involve giving Agency opinion/ advice).

4.4.6 Specific Developments/Enquiries for which it is Appropriate to Charge

To gain a better understanding of those circumstances where planning liaison officers feel it is appropriate to charge developers, the questionnaire respondents were asked to specify for what types of development/enquiry charging may be justified. The majority of respondents stated that the current system of charging for information is satisfactory and should not be extended. Three officers did however state that charging should be introduced for planning consultations in association with major schemes. This is because such schemes often require input from a number of the different functions and can take a long time to prepare a response. It was also suggested that charges could be levied on those developers who make repeated requests for the same information/advice on a specific site.

In the telephone interviews with the planning liaison officers, four of those interviewed stated that charges could be made for speculative enquires. As outlined above, in some areas a high percentage of developer enquiries are speculative and can take a considerable amount of time to deal with. In these cases the officers feel that the Agency is fully justified in seeking to recoup the costs of providing information or advice. These officers feel that it would be easy to identify those enquiries that are speculative and thus extend the current system in this manner.

In the follow up discussions, two of the planning liaison officers interviewed stated that they feel the Agency has a strong case for introducing charges for all consultations where advice is being sought. The need to reduce the number of irrelevant enquiries was cited in justification of this approach.

4.4.7 Specific Developments/Enquiries for which it is Inappropriate to Charge

Six (33%) of the questionnaire respondents reiterated the stance that it is inappropriate to charge for any type of development/ enquiry where the Agency's views are being sought.

The other planning liaison officers felt it is inappropriate to charge for the following types of developments/ enquiries:

- small scale developments (of a defined threshold);
- single dwelling/household enquiries;
- developments proposed by non-profit organisations (e.g. charities, lottery proposals); and
- any development requiring a consent/licence from the Agency.

4.4.8 Specific Developers/Organisations it is Appropriate To Charge

Eight (44%) of the questionnaire respondents stated that they felt there is no specific type of developer/organisation which should be charged for consultations. Other officers thought charges could be sought from:

- members of the House Builders Federation; and

- consultants/agents who directly profit from the development of a site.

These views were continued in the follow up discussions.

Specific Developers/Organisations it is Inappropriate to Charge

In terms of those developers/organisations for which planning liaison officers felt it is inappropriate to charge, the following groups were highlighted in the questionnaire responses and follow up interviews:

- charities/ lottery bids and non-profit making organisations;
- single households;
- developers seeking to include environmental enhancements;
- developers of small scale proposals;
- health trusts; and
- organisations seeking to improve the environment.

4.4.9 Practicalities of Charging

In order to identify the most suitable system of charging (if charging were to be introduced), the ten planning liaison officers interviewed were asked to state what they believe would provide the most appropriate basis for charging. The main comments raised were that the system needs to be simple, easy to understand, and applied uniformly across the whole Agency.

Eight of the ten officers interviewed stated that a flat rate system would provide the most appropriate basis for charging. This mechanism of payment is currently used for charging for land ownership enquiries (£35 + VAT), non-residential searches (£50 +VAT, or multiples thereof, depending on site size), and residential property searches (starting at £35 + VAT). It was argued a time cost recovery system would prove very difficult to implement as many of the Agency Areas do not operate a time recording system. In addition it was felt that such a system would be difficult to justify and as such would be unacceptable to developers.

A number of officers expressed reservations over the introduction of a time recording system. It was felt that such a system would place extra administrative demands on already over stretched resources. If such a system were to be introduced then it was felt that the benefits need to be clearly spelled out to officers to ensure that the system is effectively implemented.

Whilst there was a general consensus of opinion that a flat rate system of payment would provide the most suitable form of charging, five of the officers interviewed stated that this could be in the form of a sliding scale of charges. For planning applications the level of fees payable to local planning authorities are dependent on the type and size of development. In the same way it was suggested that the Agency could introduce charges according to the category and scale of development. For example, large commercial developments could be charged at a higher rate than single dwelling

extensions. An alternative approach suggested by two officers was that in the first instance a flat rate should be charged, but for enquiries involving considerable amounts of Agency time an additional time recovery fee could be introduced.

Two of the officers interviewed stated that a system of account charging for frequent enquirers would be necessary. This would involve developers who frequently seek advice from the Agency setting up an account from which fees are withdrawn as required. From the perspective of the Agency this system would reduce administration time and costs, and for developers it would help to minimise unnecessary delays. Southern Water currently uses this system when charging developers for information.

The comment was made by one officer that the Agency should not seek to introduce direct charges for its services but rather recoup expenses through planning application fees. Local authorities should raise their fees and distribute the income generated to the relevant statutory consultees. It was argued this method of payment would prevent developers being deterred from consulting with the Agency in the pre-application stage.

4.4.10 Introduction of a Premium Service

At the Interim Report stage of the project the concept was put forward for introducing a premium advisory service for developers. This would involve introducing charges for developers who want to pay for an improved/ express service. The ten planning liaison officers interviewed were asked to express their opinions on the pros and cons of such an approach.

Seven of the ten planning liaison officers interviewed stated that the introduction of a premium service would not be appropriate. The main concerns raised were as follows:

- the Agency does not have the resources to implement either an improved or express service;
- it would result in a two tiered system with the implication that those not paying would receive a second class service;
- planning liaison officers could be put under extra pressure to meet deadlines which could conflict with the Agency's statutory responsibility to comment on planning applications;
- it would involve a significant increase in administrative paperwork;
- an express/ improved service is not just dependent on planning liaison, greater resources would also need to be invested in the various functions; and
- the Agency has a moral duty to provide advice in a fair and consistent manner to all who request it.

Two of the officers interviewed however did feel that the introduction of a premium service could have potential benefits. The main benefits highlighted include;

- improving relations with large developers by providing an express service; and

- increasing the opportunity for environmental enhancement in major developments.

5. CURRENT PRACTICE AND VIEWS OF OTHER ORGANISATIONS

5.1 Introduction

To review the current practice of other statutory consultees/undertakers, we contacted by telephone a range of organisations who may also be approached by developers for planning application advice. These comprised:

- Countryside Commission (CoCo);
- Countryside Council for Wales (CCW);
- English Heritage (EH) / Historic Buildings and Monuments and Commission;
- English Nature (EN);
- Health & Safety Executive (HSE);
- Highways Agency (HA);
- Farming and Rural Conservation Agency (FRCA);
- Scottish Environment Protection Agency (SEPA);
- English Sports Council (ESC);
- Severn-Trent Water;
- Northumberland Water;
- Eastern Electricity.

In addition, professional bodies were contacted to establish their opinions on the possibility of the Agency introducing charges for developer consultations:

- Royal Town Planning Institute (RTPI)
- Town and Country Planning Association (TCPA);
- Planning Officers Society.

Details of the 15 organisations contacted are provided in **Appendix 4 of R&D Project Record W4/008/1.**

The telephone interviews with the statutory consultees/undertakers were based along the lines of the discussions held with Agency staff, focusing on the following key issues:

- whether or not the organisation currently charges for planning consultations with developers;

- whether the organisation has ever considered charging for such consultations;
- what they perceive to be the main benefits and drawbacks regarding charging for developer consultations; and
- what are their opinions on the implications of the Agency introducing charges.

The discussions with the relevant professional bodies were designed to establish:

- the pros and cons of introducing charges for developer consultations;
- the feasibility of the Agency introducing charges; and
- the wider implications of any new charging system.

5.2 Statutory Consultees

5.2.1 Current Practice in Charging for Developer Contributions

With the aim of reviewing current practice, the statutory consultees were asked whether the or not they currently charge for planning consultations with developers. The results were as follows:

- 5 stated that they currently charge for publications (Countryside Commission, Sports Council, Countryside Council for Wales, English Heritage and the Highways Agency);
- the FRCA currently charges for the provision of information, including the time spent to gather information;
- English Nature and the Scottish Environment Protection Agency have charging policies for the provision of information and advice; and
- the Highways Agency charge for consultations in the post-permission stage and only in exceptional circumstances in the pre-application stage.

English Nature's Current Charging Policy

English Nature has a policy to charge for the following:

- publications;
- advice to the Heritage Lottery Fund;
- information and advice; and
- other work and services.

Under the terms of English Nature's Financial Memorandum, they are required to charge for services they provide. With regard to the provision of advice and information, under the Environmental Information Regulations (EIR), English Nature has a statutory duty to make publicly available requested environmental information.

The White Paper on the Open Government Initiative (OGI) however states that " where requests for information involve significant additional work for the public authority, charges should recover these costs". The general presumption held by English Nature therefore is that requests for information under OGI and EIR should be charged for, when they cause additional work.

With regard to charging for other work and services, the usual presumption is that the full costs will be recovered. This it is stated also applies to services provided to JNCC, CCW and SNH. In some circumstances when providing expert advice to commercial organisations English Nature reserve the right to charge a profit mark up on cost rather than merely recovering full costs. In these circumstances where there is available information on market rates for professional advice, these are used to guide appropriate charging rates.

In practice, implementation of this policy is left to Local Area teams. It is considered by English Nature head office that the normal approach is to charge developers for information, but not for consultations and advice. For further details of English Nature's charging policy please refer to **Appendix 5 of R&D Project Record W4/008/1.**

Scottish Environment Protection Agency Charging Policy

SEPA currently charges for consultations associated with the Private Finance Initiative (PFI). These are schemes for which the Government has turned to private funding to finance developments which are traditionally paid for through public capital expenditure. They typically involve multi-million pound developments involving the input of a number of consultants and expert bodies.

Highways Agency Charging Policy

The Highways Agency has a policy to charge for developer consultations in the post-permission stage of development. Charges are levied to developers for all costs incurred after planning permission has been granted. This is typically for work associated with the design of highway improvement schemes. Charges are based on 'actuals' i.e. the actual costs incurred by the Highways Agency in the administration and design of a project. A Section 278 agreement is entered into between the Agency and the respective developer.

In exceptional circumstances the Highways Agency exercises the right to charge for pre-application consultations. Usually this occurs where the Agency is asked for advice in association with major development proposals, such as Terminal 5 at Heathrow. In such cases an abortive cost undertaking is drawn up. This is a contract whereby the developer agrees to meet the costs incurred by the Agency if the developer decides to abort the project or planning permission is not granted. If planning permission is granted then the Agency recoups its costs through a Section 278 agreement as outlined above.

5.2.2 Consideration of Charging for Planning Consultations

Those statutory consultees that have not introduced any system for charging for developer consultations were asked if they have ever considered charging. All stated

that they have never considered charging in the past and have no intention of introducing charges for consultations in the foreseeable future. However, the Health & Safety Executive is currently considering charging for activities under the Control of Major Accident Hazards Regulations 1999.

5.2.3 Potential Benefits and Drawbacks of Introducing Charges for Developer Consultations

With the aim of establishing the pros and cons of introducing charges, the statutory consultees were asked to outline what they perceive to be the main benefits and drawbacks of charging for developer consultations. Two organisations stated that there are no potential benefits to be derived from introducing charges (EH, FRCA). Potential benefits identified by other statutory consultees include:

- charges could discourage unnecessary speculative consultations (CCW, CoCo, ESC, SEPA); and
- it will create additional income (CCW, CoCo, and SEPA).

The main potential disadvantages identified by the statutory consultees are as follows:

- it could act as a disincentive for early consultations which most organisations are seeking to increase to achieve satisfactory development solutions (EH, CCW, CoCo, ESC, HA, SEPA);
- it could place extra pressure on local authorities, with greater consultations carried out at the post application stage (EH);
- it could lead to the establishment of a two tier system, with large developers being able to afford an express/ improved service (EH);
- it could lead to greater costs and use of resources with higher numbers of developments referred to appeal (EH, CCW); and
- significant costs could be incurred to implement the scheme, which may be over and above the income recouped through charges.

5.2.4 Implications of the Agency Charging for Developer Consultations

The main concern raised by EH and the CCW is that the introduction of charges may lead to extra pressure being placed on other statutory consultees to implement similar measures. In addition, CoCo highlighted that the introduction of charges could have general ramifications for the environment and the work of other statutory consultees, and that lower quality planning applications would be put forward.

5.3 Statutory Undertakers

5.3.1 Current Practice

The three statutory undertakers interviewed, Northumberland Water, Severn Trent Water and Eastern Electricity, currently do not charge for consultations with developers.

5.3.2 Consideration of Charging for Planning Consultations

Severn Trent Water has in the past considered charging developers for work associated with determining the detailed costs of sewerage and mains installations. A study was undertaken 10 years ago to assess the feasibility of introducing a charging system to recover these costs. This scheme was not implemented due to three main problems identified in the study. These include:

- difficulties associated with getting developers to pay for services they considered should be free;
- the increased pressure on company resources associated with raised expectations of the standard of work expected by developers; and
- the added liability faced by the company with regards to the provision of potentially inaccurate information/advice.

Northumberland Water is also in the process of undertaking a study to assess the feasibility of charging for enquiries from developers. As yet the study is in the very early stages and issues such as how, and when, charges should be introduced have not been decided. The study has been undertaken because Northumberland Water is keen to reduce the amount of time wasted on dealing with speculative proposals. They are, however, concerned about the possible implications of introducing charges, particularly that they may become less aware of what developments are taking place.

Eastern Electricity is involved in very few consultations with developers (less than 15 per year) and as such they have no intention of introducing charges. To the contrary the company is actively seeking to increase the number of consultations it engages in, with the aim of promoting its business interests.

5.3.3 Implications of the Agency Introducing Charges for Developer Consultations

Northumberland Water stated that they feel that the introduction of charges by the Agency will not have any significant impact on their own operations or concerns. In contrast Severn Trent Water stated that they have reservations relating to the Environment Agency charging for advice which they should provide free on behalf of the public.

5.4 Professional Bodies

In order to establish the potential pros and cons of introducing charges, the professional bodies were asked to express what they consider to be the main benefits and drawbacks of charging for developer consultations.

5.4.1 Potential Benefits and Drawbacks of Introducing Charges for Developer Consultations

All of the professional bodies interviewed (RTPI, Planning Officers Society and the TCPA) stated that they feel the Agency should not be seeking to introduce any new charges for advice. In particular they identified two main problems:

- that the introduction of charges could lead to a reduction in pre-application consultations, with developers dissuaded from seeking Agency advice. This in turn could have repercussions for the planning system with increased costs and delays at the planning application stage of the process;
- that it could set a precedent, increasing the pressure on other statutory agencies to introduce charges; and
- that philosophically, the Agency has a responsibility to look after the public interest and introducing charges could compromise this position.

With regard to the potential advantages of introducing charges, the RTPI stated that there are no benefits to be gained. The TCPA, however, suggested that if the income generated was used for demonstrative good then the potential provision of greater resources and improved standards of service could justify the introduction of charges. The Planning Officers Society also added that whilst they are fundamentally opposed to the introduction of charges, in some specialised circumstances charges may be justified where the Agency is asked to act in the role of a consultant.

5.4.2 Feasibility of Introducing Charges

The RTPI expressed concern over the feasibility of charging for developer contributions. In particular they question the ability of the Agency to charge for developer contributions relating to those developments requiring an environmental assessment. Under the draft Town and Country Planning Regulations, Regulation 21 states that all statutory consultees are required to co-operate and provide information to assist the environmental assessment process. The RTPI interpreted this draft regulation as meaning the provision of information free of charge.

On the 14th March 1999 the new Environmental Impact Assessment Regulations came into force. This includes an amendment to the draft version (Regulation 12 in the final approved Regulations) which states that:

"A reasonable charge reflecting the cost of making the relevant information available may be made by a body, including the relevant planning authority, which makes information available in accordance with paragraph (4)" (para.4 refers to the preparation of the Environmental Statement).

Contrary to the concerns of the RTPI, therefore, it is evident that the Agency now has a clear remit to charge for information in relation to Environmental Impact Assessments.

5.4.3 Implications of Introducing Charges

The main implications of introducing charges as identified by the RTPI and the TCPA is that it could potentially damage the image of the Agency, raising doubts over its role to safeguard and enhance the environment. In addition the TCPA stated that the introduction of charges could result in other statutory consultees being pressured to recoup their costs through similar schemes.

6. THE DEVELOPERS' VIEWPOINT

6.1 Introduction

Having discussed the principles of charging for planning consultations with planning liaison officers and other statutory consultees, the final interest group to be interviewed was the development industry. A broad range of players were consulted:

- house builders (Crest Homes and Beazer Homes);
- commercial/ minerals developers (TARMAC);
- planning consultants (Chapman Warren and DTZ Debenham Thorpe);
- and representative bodies (House Builders Federation, Royal Institute of Chartered Surveyors (RICS), Confederation of British Industry (CBI) and the Quarry Products Association).

Three additional developers were contacted but were unwilling to be interviewed, or did not respond despite repeated requests.

The aim of the interviews was to gauge the development industry's reaction to the possibility of the Agency introducing charges for planning consultations. The discussions were focused on the following key issues:

- the nature of developer consultations with the Environment Agency;
- the pros and cons of introducing charges for developer consultations;
- the practicalities of the Agency introducing charges;
- the implications of charging in terms of the quality and status of advice expected; and
- developer reactions to the concept of introducing a premium service.

A copy of the questions used to structure the interviews is provided in **Appendix 6 of R&D Project Record W4/008/1.**

6.2 Findings of Interviews with Developers/ Planning Consultants and Professional Bodies

6.2.1 Types of Issue Most Commonly dealt with in Consultations

Developer consultations with the Agency are undertaken on a broad range of issues. The most commonly cited issues for which developers seek advice are regarding watercourse capacity, flood risk, land contamination, water quality and surface water discharge.

In addition to seeking Agency advice, several of the larger developers such as TARMAC, Beazer Homes and Crest Homes stated that they always undertake their own specialist investigations of a site. This is to ensure that all potential issues of concern are covered before a planning application is lodged.

6.2.2 Process of Consultation

The majority of developers/ planning consultants stated that they usually approach the Agency direct before they are advised to do so by the local planning authority. The House Builders Federation and RICS stated that their members approach the Agency direct and on the advice of local planning authorities. All of the developers claimed that they nearly always undertake consultations in the pre-application stage. The major house builders also stated that as a matter of course they consult the Agency before any purchase of land is made.

There was a general consensus of opinion that planning consultations are generally useful in identifying issues of concern to the Agency. It was also felt that direct pre-application discussions with the Agency could be an efficient and effective method of resolving issues at an early stage in the development process. If discussions are left until the post- application exchanges with the local planning authority then delays and protracted negotiations can often ensue. It was therefore felt that it is in the interest of the Agency, developers and local planning authorities, to undertake consultations at the pre-application stage of development.

Despite the importance of consultations with the Agency, several developers expressed concern over the performance of the Agency in handling both pre and post-application discussions. Particular problems identified include:

- slow response times, causing delays to the completion of project feasibility and design studies;
- inaccurate or inadequate data and advice;
- lack of co-ordinated responses to individual cases, arising from a number of officers acting as the point of contact;
- frequent staff changes, leading to a loss of continuity and changes in approach between case officers;
- inconsistencies in policy and approach between different officers and different Agency Regions;
- an insistence on excessive conditions out of proportion to the degree of risk and the importance of features to be affected; and
- the absence of a mechanism for resolving technical disputes within the Agency.

The CBI is currently undertaking an extensive survey of its members to assess the performance of the Agency. Whilst the results of this survey are not complete, the preliminary findings appear to suggest that the Agency is failing to provide a satisfactory service. The main problems highlighted mirror those outlined above,

particularly that Agency responses are often slow, contain insufficient detail, and are inconsistent between officers and Regions.

6.2.3 Charges Levied by Other Bodies

All of those interviewed were asked to identify what other public or private bodies currently charge for advice. All developers/planning consultants and professional bodies stated that they are not aware of charges for consultations by any other organisation.

6.2.4 Benefits and Problems Arising from Charging for Consultations

With the aim of establishing the pros and cons of introducing charges, the developers/ planning consultants were asked to outline what they perceive to be the main benefits and problems associated with charging for planning consultations. All of those interviewed stated that they do not consider there to be any benefits, unless the introduction of charges results in a substantial improvement in Agency performance in relation to the concerns outlined above.

The main potential disadvantage identified by the developers/ planning consultants is that a charging system would discourage pre-application consultations. This reiterates the findings of the discussions with planning liaison officers and statutory consultees. It is felt that this approach would be contrary to the thrust of planning guidance and statements of best practice. In particular it is felt that charges would actively deter smaller developers from entering into pre-application consultations. Due to the potentially nominal amount of money that would be charged, larger developers stated that they are unlikely to be deterred from entering into consultations (i.e. Crest Homes, Beazer Homes).

The implications of discouraging pre-application discussions are suggested to be fivefold:

- lower quality planning applications - to the detriment of the operation of the planning system and environmental protection;
- marginalisation of the Agency from the development industry;
- an increase in workload for local planning authorities who are already under-resourced;
- an increase in the number of applications referred to appeal;
- penalisation of environmentally conscious developers who undertake consultations in the pre-application consultation stage.

In addition to deterring pre-application consultations, the developers expressed real concerns that there would be a significant increase in the time to process and respond to enquiries. This it is felt would lead to added delays and rising costs. Residential developers in particular stated that pre-purchase negotiations for land are often completed within a very short time-scale (less than two weeks). It was therefore

stressed that the Agency must be able to respond quickly to such enquiries. If they do not, development opportunities will be lost.

Several developers also outlined a concern that revenue arising from a charging scheme would not be used to remedy the deficiencies in the current consultation process. Given this scenario, there would not be any benefits gained from introducing a charging system.

Developers also expressed a fundamental concern that the introduction of charges would be contrary to the statutory duty of the Agency to protect and enhance the natural environment.

Despite the strong reservations of developers concerning the introduction of charges, in practice it is likely that they (in particular medium to large-scale developers) would be prepared to pay to consult with the Agency. Two of the housebuilders contacted confirmed that this would be their response, because the charges incurred would be minimal in relation to the overall costs of development. The issue of charging is therefore more likely to be one of principle and quality of service than cost.

6.2.5 Practicalities of Introducing Charges

If a charging system were to be introduced then the majority of developers felt that it should be based on a fixed fee system. It is argued that charging on a time basis would not be appropriate as the Agency is not commercially driven. In this respect developers could not be expected to pay for internal Agency problems or "incompetent" officers. One planning consultant did however feel that an hourly rate was the most appropriate basis for charging owing to the fact that the Agency would be acting in the role of a consultant.

If charges were introduced then the developers feel that the quality and status of advice provided would need to improve significantly. Additional requirements that would need to be met include:

- the provision of clear statements of the standard of service that will be delivered, with the refund of fees if those standards are not attained by the Agency;
- guarantees that charges will be protected from internal staff changes in the Agency (e.g. the cost of new staff becoming familiar with a project, or adopting a different approach to their predecessor).

6.2.6 Introduction of a Premium Service

Five of the developers/ planning consultants/ organisations interviewed categorically stated that the introduction of a premium advisory service for developers would be inappropriate. The main reasons cited were as follows:

- the Agency does not currently provide a satisfactory free service;
- developers would effectively be paying for the Agency to meet its statutory duties;

- it would result in a two tiered system with the connotation of a degraded service for lower or non-charge payers;
- it is the duty of the Agency to represent the public interest. The public interest includes the interests of business. Business should not therefore have to pay more to obtain a prompt and satisfactory service;
- it could have an impact on the level of resources available to deal with formal consultation responses to planning applications; and
- it would result in excessive amounts of paperwork.

The two planning consultants interviewed felt that the introduction of a premium service could provide a possible alternative to a blanket charge. Whilst they were not opposed to the suggestion in principle, concerns were raised that a two tiered system would be to the detriment of non-charge payers.

7. ANALYSIS OF THE PROS & CONS OF CHARGING

7.1 Introduction

A set of preliminary 'pros and cons' of charging were presented to the Steering Group in the Interim Report. These were based on the findings of the research at the time, and included our own interpretation of information and views provided. The Steering Group offered their opinions on the preliminary list of pros and cons, and provided some additional suggestions of their own.

Subsequent to production of the Interim Report, we have held further discussions with both planning liaison officers and representatives of the development industry. There are a number of issues arising out of our discussions that need to be considered when deciding on the pros and cons of charging:

- Charges that should already apply;
- Relationship with existing charging schemes;
- Potential effects on delivering the Agency's interests;
- Potential effects on service delivery and customer expectations;
- Types of charging scheme that could apply;
- Quantification of potential income to be generated;
- Accounting, implementation and administration;
- Potential risks.

7.2 Charges that should already Apply

The Agency already has a tried and tested system of charging for activities carried out under its regulatory duties, with respect to:

- discharges to controlled waters;
- abstraction from surface and groundwater;
- Process Industries Regulation;
- Radioactive Substances Regulation;
- waste regulation;
- land drainage and flood defence;
- fisheries;
- navigation.

The Agency also has national guidance on 'charging for information'. However, our survey of planning liaison officers has indicated that there is considerable confusion as to when to charge, and what for. For example, the South West Region (Cornwall Area) has already tried to introduce charges for planning consultations, and the North East (Ridings Area) currently charges for all enquiries unless the initial request specifically states that it is a pre-application enquiry. Other Regions state that they charge in line with the national guidelines, but the impression is that there is some inconsistency about how this is applied.

One of the Agency solicitors consulted pointed out that there is already considerable scope for charging. A charge can be made for all requests for information, in line with the national guidelines, if it is for "existing information, or data, in an accessible form, including opinions if already recorded". Much information held by the Agency falls under the public register provisions, or under the Environmental Information Regulations, and therefore should be charged for, assuming that total costs exceed £50. In theory, therefore, the only time when a charge should not be made is when the request is for new information or new advice. This could be considered to include time spent in consultations with developers. We suspect from our discussions with planning liaison officers that, in many instances, charges are not made when there is an opportunity to do so, although this has been difficult to verify.

Interestingly, with respect to other bodies, both English Nature and SEPA already have a policy of charging for information and advice, in certain instances. In English Nature's case:

- charges can be made for information under the Open Government Initiative and the Environmental Information Regulations will only apply when a request is novel or requires the English Nature to undertake work which it would not have undertaken if the request had not been made;

- there is a presumption that charges for other work and services will be to recover full cost, and when providing expert advice to commercial organisations, a profit mark up on cost can be considered, commensurate with market rates for professional advice.

However, whilst English Nature has this policy in place, it is understood that implementation is left to Local Area teams, who are likely to charge for the provision of information, but not consultations.

SEPA does not in general charge developers for consultations, but it does on occasion charge for staff costs incurred when dealing with large PFI schemes.

7.3 Relationship with Existing Charging Schemes

If charges were to be formally introduced for planning consultations, there is a real risk of 'double-counting' where the developer is required to pay for a consent or licence under statutory regulations. Again, it can be difficult to decide where the division lies between what is a legitimate 'planning issue' and what falls under environmental protection regulations. Often the distinction is blurred, yet charges are already made for the granting of consents and licenses. For example, as part of its pre-

application consultations, a developer may contact the Agency to find out whether it will be possible in a development proposal to discharge to controlled waters. In such a situation, it must be questioned whether this advice should be charged for, given that the developer would have to pay a charge for an application to discharge, and an annual charge for the consent.

7.4 Potential Effects on Delivering the Agency's Interests

Significant concerns were raised by planning liaison officers about whether the Agency should charge for planning consultations, particularly pre-application consultations. Perhaps the most important concern is that charging would deter developers from approaching the Agency. If this were to occur, the opportunity for early Agency influence over development design, scale and siting, would be reduced. It was also suggested that this may lead to reduced potential for planning gain.

On the other hand, the number of pre-application consultations entered into, and the amount of planning liaison's time they take, suggest that pre-application consultations tend to be the exception rather than the norm. For whatever reason, developers do not generally approach the Agency prior to the submission of an application, and so the significance of the deterrence effect of introducing charges must be questioned.

If the introduction of charges were to lead to a reduction in the potential of the Agency to further its interests, some functions are likely to be more affected than others. Our predictions of the potential effects for each function are as follows:

- ecology and recreation (including landscape): this function is the one most likely to be affected since it has little in the way of regulatory powers, but at the moment it is often heavily involved in planning consultations. Influence is likely to become significantly weaker, the later the input into a development;

- land drainage and flood defence: this function will be able to rely on its regulatory powers to ensure that there is no increase in flood risk. However, later involvement in the planning process may mean that there is reduced potential to achieve objectives relating to source control, floodplain management, etc.. Flood defence is the function currently most involved in planning consultations.

- water resources: this function also has a significant input into planning consultations. The issue of water resources is a difficult one to address in planning terms, since water companies are under a duty to provide developments with a water supply, yet the Agency has a duty to regulate abstraction licences. This can lead to conflicts. If there is a reduced opportunity to influence development proposals through a reduction in planning consultations, for example through development location, design (e.g. water efficient measures) and phasing, then water resources could be significantly affected;

- water quality: the Agency licenses discharges into controlled waters through a system of consents, and hence it would continue to be able to control any direct adverse effects of development proposals. However, there are may be indirect

effects of development proposals, such as issues relating to pollution from run-off, and in relation to the capacity of sewage treatment works to deal with increased loads. These may be more difficult to resolve the further down the planning process they are addressed;

- fisheries: whilst the Agency has regulatory powers in terms of licensing fisheries activities, many development proposals have significant implications for the quality of fisheries (e.g. through changes to water quality and habitats) and so any reduction in planning consultations could have a knock-on effect;

- land quality: The Agency has a duty to regulate the remediation of contaminated sites. Its responsibilities and duties are shared with local authorities. The use and remediation of contaminated land is best dealt with at all stages of the planning process, although much of the sites-specific details are likely to be covered during the detailed stages;

- waste regulation: this function currently spends less time in planning consultations than the above functions. Any reduction in involvement in planning consultations is likely to affect early consideration of waste management facilities, and also the achievement of the waste hierarchy and proximity principles in development proposals. However, the overall effect is unlikely to be significant;

- Process Industries Regulation/Radioactive Substance Regulation: the Agency regulates major industrial processes, and issues certificates to users of radioactive materials and disposers of radioactive waste. Currently, these functions play only a small role in planning consultations. They are therefore less likely to be materially affected by any reduction in planning consultations that might arise as a result of charging;

- navigation: this function currently does not get involved in many planning consultations, and is not likely to be affected materially by the introduction of charges.

The most significant benefit that might arise to the functions from charges would be the availability of additional resources. This assumes that at least a proportion of the charges would be ploughed back into the relevant functions. However, this would require a time-recording system that few Areas currently operate.

7.5 Potential effects on Service Delivery and Customer Expectations

This is a potentially significant issue, and is probably one of the key deciding factors as to whether or not to charge for planning consultations.

The developers and their representative bodies contacted during the course of this study were strong in their views that, if the Agency were to charge, it would have to improve dramatically the level of service that it provides. Amongst other issues, there were serious complaints about the Agency relating to response times, inaccurate data and advice, staff changes leading to loss of continuity, and inconsistencies in approach

between officers and Regions. The CBI is currently undertaking an extensive survey of its members to assess the performance of the Agency.

Emphasis was placed on the role that the Agency plays in representing the public interest. Developers argued that they should not have to pay for the Agency meeting its statutory duties.

The Agency has a commitment to business and industry, under the Customer Charter to:

"to ensure that costs are kept to a minimum whilst maintaining and improving the environment".

Clearly, if the Agency were to introduce charges for planning consultations, there would be considerable loss of goodwill from developers. Potentially this could lead to fewer pre-application consultations, and, in the long run, lower quality applications. This could complicate the planning process at a late stage, to the possible detriment of the quality of the environment. It could be questioned, therefore, whether the Agency would be achieving its obligations under the Customer Charter.

7.6 Types of Charging Scheme that could Apply

With respect to planning consultations that do not fall under existing charging schemes (i.e. the provision of new information or new advice), the discussions with planning liaison staff and external bodies have indicated that charging could be applied in a number of different ways. Options include:

(i) cost-recovery basis, applicable only when the costs are above a certain threshold;

(ii) a flat rate charge for all consultations, applicable only when costs are above a certain threshold;

(iii) as (ii) plus an additional charge, if the costs incurred by the Agency are over a second higher threshold;

(iv) a sliding scale of charges, dependent on type of development, location, size, etc., similar to the scheme operating for planning application fees payable to local planning authorities;

(v) charges (either flat rate or sliding scale) dependent on the type of organisation with whom consultations are being held (commercial, individuals, etc.);

(vi) charges for pre-application consultations only, or for all consultations;

(vii) charges for work undertaken by the Agency in a consultancy role.

The advantages and disadvantages of each option are discussed below.

(i) Cost-recovery basis, applicable only when the costs are above a certain threshold

This approach would be in line with normal Agency policy. It would also mean that the more complex and time-consuming proposals receive commensurate charges. However, this would potentially require administrative systems to be changed in order to account for time spent by interest functions in the consultations.

(ii) A flat rate charge for all consultations, applicable only when costs above a certain threshold are incurred by the Agency

A flat rate charge may mean that some developers would incur charges over and above the costs incurred by the Agency, whilst others might be under-charged. In effect, those consultations requiring little Agency time would be cross-subsidising those requiring significant amounts of time. This approach is likely to conflict with the cost-recovery principle.

(iii) A flat-rate charge plus an additional charge, if the costs incurred by the Agency are over a second higher threshold

This approach would be closer to the cost-recovery principle, assuming that the flat rate charges were to be set at a low level. However, calculating the additional charge could cause accounting difficulties similar to those in (i) above.

(iv) Sliding scale of charges, dependent on the types of development

A system of a scale of charges already operates for local planning authorities in order to cover the costs of administering and determining planning applications. However, it has been criticised for being over-complex and difficult to administer, and there are moves afoot to simplify the application fee structure. For the Agency, difficulties could arise where the details about the type of development proposal are still unclear (as can often be the case in pre-application consultations). A sliding scale of charges would not necessarily equate to the cost-recovery principle.

(v) Charges (either flat rate or sliding scale) dependent on the type of organisation

It is widely agreed that charities and voluntary organisations, and other statutory bodies including local authorities, should be excluded from charges. A number of those interviewed argued that commercial bodies should be charged. This approach would be in line with the policy of 'charging for information'. It could be considered to be discriminatory only to charge certain types of commercial developer/organisation, for example based on size, type of developer, etc. The position regarding private individuals is less clear. Should private individuals be exempt from charges, there may be a temptation for developers to enter into consultations under the guise of a private individual in order to avoid charges.

(vi) Charges for pre-application consultations only, or for all consultations

There was some disagreement between planning liaison officers as to whether a distinction should be drawn between pre-application and post-application consultations. Perhaps the most important distinction to make is that local planning authorities are obliged to consult the Agency on planning applications submitted for certain development proposals, although the Agency is not obliged to respond. This process can be facilitated by the developer entering into consultations direct with the Agency. On the other hand, pre-application consultations are non-statutory, and therefore could attract a charge without necessarily frustrating the Agency's statutory obligations. Charging for pre-application consultations only could lead to consultations taking place only at the later post-application stage. This could reduce Agency influence, and could lead to more Agency work in the long-run.

(vii) Charges for work undertaken by the Agency in a consultancy role

Perhaps the most clear-cut instance when the Agency might wish to charge is where the Agency is effectively acting in the role of a consultant to a developer. For example, a developer may wish to determine the key environmental issues relating to a site. Where these fall within the remit of the Agency, the developer may approach the Agency to carry out site investigations and to come up with an opinion and advice about the site and the implications for a development proposal. The Agency would still be obliged to provide independent objective advice. However, if the developer can agree terms of reference with the Agency for the work to be undertaken, then there is a legitimate case for the Agency to charge in order to recover the costs involved. However, the resources available to the Agency, and the risks attached, may preclude this as an option. Also, the Agency may feel that there is a danger of being seen to lose its position of independence, finding itself committed to a proposal through association.

7.7 Quantification of Potential Income to be Generated

Given that the Agency does not operate a time-sheet system, and the large variations in both approach to planning application consultations, and time incurred by the different Regions, it is difficult to be accurate about the amount of income (i.e. recovery of costs incurred) that would be generated by a charging scheme.

However, we have carried out some rough calculations based on the data provided to us by planning liaison officers, to give an indication of the income that could be generated. In determining the level of charges that could apply, consideration would need to be given as to which cost items would need to be covered, such as:

- gross salaries;
- common services (e.g. finance, personnel);
- depreciation of fixed assets;
- accommodation costs;

- travel and subsistence;
- staff development and training;
- office services (e.g. printing, copying, postage and telecommunications);
- notional costs (e.g. costs of capital and insurance);
- services bought from external suppliers;
- any other appropriate costs that may arise.

For the purposes of our income calculations, we have assumed that the time costs of staff would be charged at £25 per hour, which would enable the recovery of direct costs plus some overheads, and would be in line with the charging structure for charging for information. We have also assumed that there would no change in the number or length of consultations arising as a result of charging being introduced.

We should like to stress that no distinction has been made between those consultations that are strictly planning related, and those that relate to the issuing of licences/consents. There is a possibility, therefore, that in calculating the potential income, an element of double-counting could occur (i.e. two charges made for the same service).

7.7.1 Potential Income Generated Direct by Planning Liaison

From information provided by planning liaison officers, we have assumed that on average there are:

- four planning liaison officers per Area (based on Corporate Manpower Tables 1998/99);
- 13% of their time is spent on pre-application consultations with developers;
- there are 1,725 working hours per annum.

Given the above assumptions, and the fact that there are 26 Areas, direct income (before materials and copying) would equate to £583,050 per annum nationally (4 officers x 26 Areas x 13% of time x 1,725 hours per annum x £25 per hour), and on average £22,425 per annum for each Area.

If all consultations were to be charged (i.e. pre-application, post-application, and post-permission) income would rise to £3,588,000 per annum nationally (average of £138,000 per annum for each Area), assuming that 80% of planning liaison's time is spent in all forms of consultation relating to development proposals. However, the true figure is likely to be considerably less since a significant proportion of post-application consultations will be with local planning authorities rather than direct with developers.

7.7.2 Potential Income Generated by Functions

For the basis of our calculations for function inputs into consultations, we have used figures provided by the Anglian Region (Northern Area), North West Region (South Area) Southern Region (Hants and Isle of Wight Area), and the Thames Region (South East Area), and Thames Region (North East Area). Of all the Area responses, these have provided the greatest detail. Although each Area suggests that there can be wide variation in hours per function, both between and within Areas, the average figures for the five Areas should provide a useful indication of typical hours input.

Table 7.1: Basis of Agency function cost calculations

Function	Average hours (per annum)*	Cost (@ £25 per hour)
Flood defence	3,045	£76,125
Water quality	1,935	£48,375
Land quality	1,290	£32,250
Conservation	795	£19,875
Waste regulation	703	£17,575
Water resources	349	£8,725
Fisheries	196	£4,900
Recreation	195	£4,875
PIR	165	£4,125
RAS	165	£4,125
Navigation	55	£1,375
Total per annum (average per Area)	**8,893**	**£222,325**

* LUC estimates of averages based on responses given by Area planning liaison officers for Anglian Region (Northern Area), North West Region (South Area) Southern Region (Hants and Isle of Wight Area), and the Thames Region (South East Area), and Thames Region (North East Area).

Assuming that the average for the Areas across the country as a whole is the average of the above five Areas, total annual income for all function consultations would be £5,780,450. However, in practice, this figure is likely to be considerably lower since a significant proportion of functions' time is spent responding to local planning authority consultations rather than consultations direct with the developer. If it were assumed that 13% of the above time inputs relate to pre-application consultations with developers, the average income per Area would be £28,902 per annum. Across all Areas, the national total would be in the region of £751,459 per annum.

7.7.3 Potential Total Income

Adding the estimated income generated by both planning liaison and the functions, total income for charging for pre-application consultations with developers only could be in the region of £1,334,509 per annum (i.e. £583,050 + £751,459). This equates to £51,327 per annum per Area. For all consultations, this total could in theory rise to approximately £9,368,450 per annum (i.e. £3,588,000 + £5,780,450), equivalent to an average of £360,325 per annum per Area. However, it is likely that a significant

proportion of these costs would not be recoverable since they relate to the time spent consulting with local planning authorities on planning applications as well as with developers. It should be stressed therefore that these figures are very much estimates.

7.7.4 Potential Income from Charging for Speculative Enquiries

Some planning liaison officers interviewed suggested that it might be appropriate to charge for speculative enquiries. From information provided by planning liaison officers, we have assumed that on average there are 115 speculative enquiries per annum per Area. If it were assumed that the average speculative enquiry takes two hours to process, at a rate of £25 per hour, the average income per Area would be £5,750 per annum. Across all Areas, the national total would be in the region of £149,500.

If, on the other hand, it were assumed that a speculative enquiry takes one day to process then the average income generated per Area would be £23,000 per annum. This would equate to a national cost recovery total of around £598,000.

7.8 Accounting, Implementation and Administration

At present the Agency allows some flexibility in the way that the various Regions account for income generated from miscellaneous sources. However, if planning consultations were to be charged for, there would be a need for consistency between Regions to ensure that developers are treated equitably.

Since most consultations would be charged on a time basis, there would need to be some means of recording the amount of time. Most commercial organisations would operate a time-sheet system, but currently only a few Regions (e.g. Welsh and Anglian) operate such a system within the Agency. This explains why it has been difficult during the course of our research to determine the amount of time spent by planning liaison and function staff on planning consultations as opposed to other responsibilities.

If charges were to be made, a suitable approach would be to channel all income through planning liaison. By creating an income stream, planning liaison would be in a position to be set up as an Agency function in its own right. Planning liaison would also be responsible for administering the whole consultation process. It would then buy services at cost prices from the other functions, including an element to cover overheads as described above.

The other Agency functions would therefore have the costs of their involvement covered by the income stream administered by planning liaison. Assuming a time-sheet accounting system were to be introduced, all hours taken up in a planning consultation would be accounted for, and allocated to a specific developer.

If the Agency were to decide to charge, it would need to agree in writing with the developer the following:

- the specific nature of the request;

- the terms and conditions under which the information or advice would be provided, such as:
  - use of the information by the developer;
  - that the information is provided without prejudice;
  - legal liability;
- standards of service that the Agency will deliver;
- estimate of delivery date of the information or advice;
- an estimate of the charges, and the basis for calculations.

7.9 Potential Risks

There are two main risks that might arise out of a decision to charge for consultations:

- there may be a greater weight placed on the Agency's duty of care, and hence legal liability, in providing advice (although one Agency solicitor stated that this duty of care is already significant given its role as a statutory body);
- potential for perceived conflicts of interest, if a developer is seen to be paying for advice.

7.10 Summary of Pros & Cons of Charging

Taking into account the above issues, and the detailed comments made by those individuals, bodies, and organisations contacted during the study, **Table 7.2** provides a summary of the pros and cons of charging for planning consultations.

Table 7.2: Summary assessment of pros & cons of charging

PROS	CONS
Consistency with policy on charging for information	Potential conflict with the Agency's duty to act in the public interest
Will provide incentive to ensure advice provided is of a high standard	Potential income to be generated unlikely to justify costs involved
Will help ensure consistency in approaches across the Regions	Danger of duplicating charges (e.g. where consents/licences are required)
Reduction in unnecessary/speculative enquiries	Potential marginalisation of the Agency from the development industry
Creation of a positive income stream for planning liaison with potential for it to be become a separate Agency function	May deter developers seeking Agency advice, particularly at the pre-application stage, leading to reduced Agency influence over developments

PROS	CONS
Raising the status of developer consultations leading to a better service	Potential reduced goodwill with developers
Could potentially lead to reinvestment in the functions	Potentially reduced opportunities to realise planning gain
	Increased paperwork
	Time-delays due to processing and administration
	Potentially increased legal liability
	Increased consultation work at the statutory consultation stage (for both the Agency and LPAs)
	Could lead to a two tier system between those able to afford payment (e.g. large developers) and those who cannot
	Penalisation of environmentally-conscious developers who enter into consultations as part of their normal practice
	Potential conflict with Customer Charter
	Potential increased overall Agency input due to delayed influence over development proposals
	It could lead to greater numbers of applications referred to appeal

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 Introduction

This section of our report brings together the key findings of the research, and sets out our recommendations on the feasibility of charging for planning consultations.

8.2 Clarification of What Already Qualifies for Charging

There is currently considerable inconsistency between the different Regions and Areas in applying the national policy guidelines on 'charging for information'. The policy guidelines already give considerable scope for the Agency to charge for the provision of information. However, it appears that many Regions and Areas are not sure exactly when they should be charging.

To clarify our understanding of the position, the costs of responding to developers' requests for site-specific information covered by statutory provisions on public registers, the Environmental Information Regulations, and the Open Government Code of Practice on Access to Government Information, should be charged for, subject to certain criteria being met (e.g. minimum costs).

The only time a charge should not be made is when the Agency has to undertake new work, or provide new advice, or provide information that is not covered by the above regulations and codes. This is most likely to occur when the Agency undertakes meetings with developers, or prepares site-specific written reports, letters, etc.

Recommendation No. 1: Charging for Information

The Agency should issue clearer guidance to planning liaison staff when it should be charging developers for site-specific requests for information. The distinction between provision of information and advice should be clarified. The Agency should ensure that the charging policy is applied consistently across all Regions and Areas.

8.3 Quality of Service

The developers, and their representative bodies/agents, contacted during the course of the study, were at times extremely critical of the service provided by the Agency. It is essential that the Agency improve the quality of service delivery if it is to retain the goodwill of developers, and if it is to meet its obligations under the Customer Charter. It is essential that this be achieved before the Agency considers charging for consultations. If this does not happen, there is the potential that developers will wish to test the validity of the information and/or advice provided by the Agency, perhaps in the form of legal proceedings. The chances of this happening could be increased if charges were to be introduced.

Recommendation No. 2: Quality of Service

The Agency should introduce quality control measures to ensure that the service provided in planning consultations with developers is of the highest quality. Particular attention should be paid to:

- **Speed of response;**
- **Quality and accuracy of information and advice;**
- **Staff training and expertise;**
- **Quality assurance review of information and advice provided;**
- **Consistency between Regions, Areas, and Officers;**
- **Ensuring that the nature of the Agency response is commensurate with the environmental significance of the issues involved.**

8.4 The Principle of Charging

During the course of our research, we carried out a series of discussions with a wide range of individuals, statutory and non-statutory organisations, and private sector interests. Whilst the strength of opinion varied from the mild to the very strong, most felt that the Agency should not be charging for planning consultations. The development industry, their representative bodies, and the RTPI were particularly dismissive of the idea. However, similar reasons were given for not charging by most contacts, most notably that:

- charging would be contrary to the Agency's duty to act in the public interest;
- charges may act as a deterrent to developers consulting the Agency at an early stage in the development process, to the potential detriment of the environment, and could lead to delays and extra work when determining planning applications;
- there would be reduced goodwill between developers and the Agency;
- there would be reduced opportunities to realise planning gain;
- it could lead to extra pressure being placed on local planning authorities at the post-application stage;
- it could lead to a two-tier system for those who can afford to pay and for those who cannot;
- it could penalise those developers who wish to be environmentally responsible by entering into consultations at an early stage;
- there would be an increase in paperwork;

- there would be a risk of duplicating charges, particularly with charges relating to the regulatory functions of the Agency;
- there may be added liability if information provided is inaccurate or incorrect.

Despite the overwhelming number of reasons given for not charging, it was recognised by planning liaison officers (but not the development industry or the RTPI) that there might be some advantages:

- charging would create a positive income stream;
- it could potentially reduce speculative enquiries;
- it would put pressure on the Agency to provide a higher quality of service;
- it would lead to greater consistency between different Agency Regions and Areas, and with the policy of charging for information.

Nevertheless, the disadvantages of charging for planning consultations seemed to outweigh considerably the advantages. Of particular concern is that the duty of the Agency to further the achievement of sustainable development might be significantly compromised. This is particularly likely to happen if developers become deterred from consulting with the Agency at an early stage in the planning process, because of the introduction of charges.

We would also maintain that the Agency should not charge when acting in its role as a statutory consultee in its responses to planning applications that have been submitted to local planning authorities. This may further discourage developers to contact the Agency at the pre-application stage if the developer realised that no charge would be made if the local planning authority requested the same information during the statutory application stage.

On the basis of the responses received from those contacted during the course of the research, we have come to the following conclusion.

Recommendation No. 3: General Principle of Not Charging for Pre-Application Consultations

Agency policy should be that, in principle, site-specific consultations should not be charged for, if the developer can confirm that these consultations are part of their genuine pre-application enquiries. Where the request is solely for existing information relevant to the site, the Agency policy on charging for information should be applied as appropriate.

8.5 Exceptions to the General Principle

Whilst the general principle of the Agency should be not to charge for planning consultations, there are two instances where we believe that charges could be justified:

- speculative enquiries;
- defined tasks undertaken by the Agency on behalf of a developer.

8.5.1 Speculative Enquiries

Certain planning liaison officers and statutory bodies agreed that there is some merit in charging when the consultation is clearly speculative, and does not form part of a genuine pre-application enquiry. Speculative enquiries can create a significant workload for planning liaison officers. Charging for these enquiries may promote a better use of resources, reducing the time spent dealing with speculative requests, thereby allowing planning liaison officers to concentrate their efforts on genuine pre-application enquiries.

It is estimated that in some Regions speculative requests can constitute up to 75% of all developer enquiries. Many of these enquiries are made by large developers, or their representatives, who present the Agency with a list of sites as part of a development trawl. Whilst the Agency already has a policy of charging for searches, there is an inconsistent approach adopted by different Regions to such requests. Some apply the 'charges for information' policy, even when it is actually advice being given. Two Areas contacted define a speculative request as one where the developer does not own the site.

It has been estimated that the potential cost recovery from charging for speculative enquires could be between £149,500-£598,000 (depending on the time taken to deal with the enquiries). At an Area level it is likely that there would be wide variations in the level of income generated, depending on the number of speculative enquiries received. 6 out of the 10 planning liaison officers interviewed stated they receive less than 50 speculative enquiries per annum with 4 officers stating they receive more than 250 per annum.

The main disadvantage of charging for speculative requests is that a developer may decide to submit an application without first discussing the proposals with the Agency, in order to avoid the cost of consultation. In some of these cases, the application may not have been submitted if the developer had realised in advance that the Agency would be likely to object, or have severe concerns about the proposal. Nonetheless, because the application has been submitted without consulting the Agency, the full statutory decision-making process will need to take place, entailing unnecessary costs for all parties involved.

Nevertheless, we believe there is a case for making a proper charge for speculative enquiries. In doing so, there needs to be greater consistency between the Regions and Areas to ensure that developers or their agents receive the same treatment across the country as a whole. Since the time spent responding to speculative requests can be significant, the charge made should more properly reflect the costs involved.

Recommendation No. 4: Speculative Enquiries

A charge should be made for all speculative enquiries where the cost of responding exceeds £50. Speculative enquiries are all enquiries where the person or body making the enquiry, or for whom the enquiry is being made, is not the owner of the land concerned, or does not have an option agreement on the land. The charge should be based on the full costs incurred in responding to the enquiry, whether or not the response requires the provision of information or advice. Relevant terms and conditions, and an estimate of the costs, should be notified to the person making the enquiry, prior to work being undertaken. Work on responding to the request should not commence until payment has been cleared.

Defined Tasks Undertaken by the Agency on Behalf of a Developer

We recognise that there are some instances where planning consultations require a significant amount of additional work for the Agency. There is a very real danger that the amount of time spent in these consultations could compromise the ability of Agency staff to deal with their other everyday duties, including involvement in non-complex consultations.

Nonetheless, we believe that the Agency has a duty in the public interest to carry out such consultations, and this should be the over-riding consideration. Such development proposals are likely to be the ones where the Agency's interests (and therefore the public's) are most likely to be relevant. It is particularly important, therefore, that the Agency encourages developers to discuss their proposals with the Agency at the earliest opportunity. If the Agency were to introduce a charge specifically for complex cases, the potential for early influence could be compromised.

In all development proposals, and in particularly in complex cases where there is a significant potential for the Agency's interests to be affected, the Agency should be clear about its specific concerns. It should also highlight any opportunities for environmental enhancement that might emanate from the development proposal.

If the Agency can answer the developer's request through the provision of existing information, this should be supplied in accordance with the national policy of 'charging for information'. Where new work is required (e.g. site surveys and investigations), the Agency should set out in clear terms the specification for the work required, so that the developer can commission the relevant studies. The Agency should not be undertaking such work on behalf of the developer free of charge.

Potentially, this will give the developer a choice. Either the developer can carry out the work in-house, or it can commission private consultants, or it can approach the Agency to undertake the work as the competent body with the relevant expertise.

The Agency will therefore have to make a decision as to whether it wishes to offer a consultancy service to developers to carry out work on their behalf, in order to inform the development proposals. Issues to consider would include:

- the effect that carrying out work under contract to a developer might have on the Agency being able to maintain independence in the planning process (e.g. the ability to object to a later planning application);
- the resources required to carry out the work, and the effects that this might have on other workloads and priorities of the Agency;
- the risks attached, particularly in relation to any legal liability that might arise if the information or advice provided is inaccurate or deficient in any way;
- whether local authorities and other Government bodies should be charged at similar rates;
- whether such a service is feasible, both in terms of statutory remit and powers, and whether it accords with Government policy and guidance (ref. HM Treasury rules).

We have not investigated these issues in any detail since this is beyond the scope of this study. However, we believe that the Agency should consider whether there is a case for providing such a service.

Recommendation No. 5: Feasibility of Providing Consultancy Services

The Agency should carry out a study to investigate the feasibility of providing consultancy services to developers, in order to ascertain whether such a service would further the interests of the Agency. Any such service should be without prejudice to the statutory duties and responsibilities of the Agency, including its role as a statutory consultee.

8.6 Encouraging Developers to Consult

We have already identified that one of the main justifications for not charging for pre-application consultations is to ensure that the Agency is in a position to influence development proposals at the earliest possible stage. However, we have also discovered that the number of developers entering into pre-application consultations continues to be the exception rather than the rule.

The Agency should therefore seriously consider how it could encourage more developers to enter into consultations at the pre-application stage, particularly where there are likely to be significant environmental issues. This would have the added advantage of sieving out those development proposals that stand little or no chance of being given permission, and hence may reduce the number of unnecessary applications which local planning authorities, the Agency, and other statutory bodies have to deal with. A possible approach would be to consider introducing charges for post-permission and post application consultations as an incentive for developers to approach the Agency at the pre-application stage. However, this may lead to developers foregoing consultations with the Agency, preferring to let the local planning authority contact the Agency direct. We have therefore not included this as a recommendation.

Recommendation No. 6: Encouraging Pre-Application Consultations

The Agency should issue guidance to local planning authorities and, where appropriate, meet lead planning officers, to indicate when a developer should be advised to enter into pre-application consultations with the Environment Agency, and the advantages to both the developer, and the local planning authority. The Agency should also issue similar clear and simple advice on the advantages of pre-application consultations to developers and their representative bodies.