

## Legal Fees and Charges 2017/2018

### 1. Introduction and Proposal

- 1.1. The Council's shared legal service, operating as BDT Legal, conduct planning and highways work arising from planning applications for new developments. The growth and regeneration agenda of the Council, particularly due to the move towards delivery of development schemes, through the Council's wholly owned regeneration vehicle Be First, will result in an intensification of the quantum and complexity of development schemes and associated legal work. In the past, fixed fees have been charged in connection with such work. In order to accommodate the growth plans of the Council, additional legal resources will be required. It is, therefore, proposed to impose hourly rates of £175 in connection with:
  - a. Planning agreements and undertakings under Section 106 of the Town and Country Planning Act 1990 (as amended), and
  - b. Section 278/38 highways agreements under the Highways Act 1980.
- 1.2. In circumstances where planning performance agreements (PPAs) apply, the hourly rate of £175 may be revised upwards in agreement with the developer/s entering into PPAs with the Council in order to enable the work to be fast tracked in line with milestones set out in PPAs.
- 1.3. Planning and highways agreements are typically required in connection with planning applications classified as major or minor applications. They will generally impact householder applications by individual residents for works connected with improvements to individual homes. Therefore, residents will not be impacted by these proposals.
- 1.4. Nationally, it is customary practice for applicants/developers seeking planning permission for minor/major developments to pay the Council's legal fees connected with the preparation, negotiation and completion of planning and highways agreements (including planning undertakings). Legal fees for these services are paid prior to completion of such agreements and undertakings.
- 1.5. Benchmarking against other London boroughs indicate that as at 2015/16, the following hourly rates applied: -
  - a. Royal Borough of Kensington and Chelsea - £220 ph
  - b. Westminster City Council - £260 ph (with an uplift to £320 ph where PPAs apply)
  - c. London Borough of Hammersmith and Fulham - £220 ph
  - d. London Borough of Southwark - £250 ph
- 1.6. Against this benchmarking, hourly rates of £175ph (where no PPAs apply) are deemed reasonable and proportionate for these discretionary services. The London Borough of Barking is identified as London's growth opportunity and the fees are deemed necessary and reasonable in order to support the broader regeneration agenda.

- 1.7. In respect of contracts and procurement work, it is proposed to introduce discretionary fees for preparation and sealing of contracts for works and services based on a sliding scale relative to the value of the contract. Lower value contracts under £100k will not incur any fees in order to ensure small scale contracts for which small and medium sized enterprises might bid are not caught. Also, the administrative and sealing processes are not as labour intensive for those contracts.
- 1.8. For contracts above £100k, a sliding scale of fees is adopted. The costs are deemed reasonable and are reasonably related to the administrative and paralegal support required to prepare contracts for binding and sealing relative to the value, complexity and time input. The fees will enable efficient processing and issuing of contracts once awards of contracts are made by the Council and the contractor will pay the fees in order to enable sealing and completion. The full schedule of proposed fees is set out at Appendix E.

## **2. Legal Implications**

- 2.1. The Council is required under the Local Government Finance Act 1992 to produce a 'balanced budget'. Income generated from fees and charges contributes to the Council's finances. Local authorities are under an explicit duty to ensure that their financial management is adequate and effective, and that they have a sound system of internal control and management of financial risk. The fees proposed contribute to this requirement.
- 2.2. By virtue of Section 93 of the Local Government Act 2003, the Council has powers to trade and to charge for discretionary services. The latter are services which the Council is not statute bound to provide, but has a 'discretionary power' to provide on a costs recovery basis. The discretionary power to charge for services is applicable where:
  - a) no statutory duty exists to provide the service/s
  - b) there are no specific powers to charge for the particular service/s
  - c) there are no prohibitions on charging for the particular service/s
- 2.3. Further, under the Localism Act 2011 the Council has a general power of competence conferring a power to charge for services on a cost recovery basis and subject to similar conditions and limitations under the Local Government Act 2003. Thus the Council may only charge for a service under the general power of competence if: -
  - a. it is a discretionary service
  - b. the service user agrees to the service being provided, and
  - c. there are no other power/s to charge for the service, including under section 93 of the Local Government Act 2003.
- 2.4. Where authorities have a duty to provide a statutory service to specified standards free of charge, a charge cannot be made for delivery of the service to the specified standard. Delivery, to a standard above and beyond that which is specified may constitute a discretionary service for which a charge can be made on the basis outlined above.

### **3. Other Implications**

3.1 **Risk Management** - In proposing these revised fees and charges officers have considered: -

- a) the potential of increases to adversely affect demand for or access to the services specified by end users.
- b) the achievement of community priorities for particular service areas and the Council's overall budget in delivering such services.

3.2 **Customer Impact** – The fees and charges will not negatively impact the impact customers and service users. On the contrary, the fees will support the delivery of the broader regeneration agenda and resourcing to process planning applications for minor/major schemes within target dates, whilst enabling the Council to achieve a balanced budget, ensure full cost recovery and the continued provision of both statutory and discretionary services to meet its corporate and community priorities. Notably the proposed fees will not impact residents at all. The exclusion of contracts valued at less than £100,000 will ensure that there are no impacts on small and medium sized enterprises who may be awarded contracts for works or services by the Council.

The charges proposed are deemed justified in accordance with the discretionary powers detailed in this report. The responsible officers have taken reasonable steps to ensure the charges are reasonable and proportionate on a cost recovery basis. The effectiveness of the proposed charges will be the subject of monitoring through the Council's various performance indicators, its service scorecards and the budget monitoring processes.