

Report of the Director of Environment

COUNTY COUNCIL

18th January 2017

Approval is sought for Carmarthenshire County Council's guidance and service level agreement on chargeable pre-application and post consent advice in relation to Developments of National Significance (Planning (Wales) Act 2015) and Nationally Significant Infrastructure Projects (NSIPs) (Planning Act 2008).

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1. BRIEF SUMMARY OF PURPOSE OF REPORT.

To seek approval for the Local Planning Authority to introduce charges for pre-application advice given to developers preparing DNS applications for submission to the Planning Inspectorate and to update existing guidance/fees relating to NSIPs. Charging will also apply to post-consent advice and discharging of responsibilities in relation to consent planning conditions, and monitoring.

2. KEY DECISIONS REQUIRED

- To agree the Council's duties and general procedures when providing the advice service to developers of NSIP and DNS projects.
- To agree amendments to the existing guidance relating to NSIPs, and include provisions to deal with DNS.
- To agree details of charges, invoicing and payment procedures.
- Details relating to developer confidentiality.

3. REASON(S)

- The Local Government Act 2003 gives Local Planning Authorities powers to recover the costs of pre-application advice in recognition of the time officers have to spend assessing and researching information in order to provide answers to prospective developers or agents. The use of a charging regime for pre-application advice is supported at a national level and is established practice with the majority of local planning authorities.
- The Planning (Wales) Act 2015 requires all local planning authorities (LPAs) in Wales to provide a statutory pre-application service. A set level of fees has been introduced for development categories to ensure consistency across Wales. Notwithstanding this LPAs retain flexibility and control on the type of pre-application service they provide and the fees associated with each development type, so long as they are in accordance with the Local Government Act 2003 (S.93 refers).
- This service will be a discretionary pre-application advice service which will include extra services not detailed or required by the statutory pre-application advice service relating to DNS. It will include meetings, post consent advice on the discharge of conditions, and more detailed assessment of technical documents, such as Landscape and Visual Impact Assessments, Cultural Heritage Assessments and Traffic Impact Assessments.
- The LPA is not the consenting body for NSIP or DNS applications; this is the relevant Secretary of State and Welsh Government respectively who issues a decision following an assessment and recommendation issued by the Planning Inspectorate (Pins). The fee for processing an NSIP and DNS application is given to Pins, although a significant amount of pre-submission work is undertaken by the Local Authority in the form of advice to developers. Furthermore, the Council has a duty to discharge 'Requirements' (NSIPs) and Planning Conditions (DNS) of consented developments whilst also enforcing and monitoring schemes at the post-consent stage. The charging service is necessary to recover some of the costs of providing advice in relation to these projects.
- To approve and implement charges which are both reasonable to the service user and contribute to the resourcing of Council services.
- To approve and implement the general procedures and duties of the advice service which are equitable to users of the service.

4. BACKGROUND AND EXPLANATION OF ISSUES

Appendix 2 sets out the general guidance, schedule of fees and the level of service developers of Nationally Significant Infrastructure Projects (NSIP) and Developments of National Significance (DNS) can expect to receive from the Council for non-statutory advice required in relation to their projects.

NSIPs and DNSs are major infrastructure developments in England and Wales such as proposals for power plants, large renewable energy projects, new airports and airport extensions, major road projects etc. NSIPs are defined in the Planning Act 2008, whilst a

DNS definition is contained within the Planning (Wales) Act 2015. NSIP and DNS applications are submitted to the Planning Inspectorate (Pins), for assessment and recommendation. Recommendations on NSIP applications are sent to the relevant Secretary of State for decision, whilst the Welsh Ministers determine DNS applications.

This process relating to each consenting regime is 'top loaded' and the emphasis is on the developer presenting a comprehensive case for assessment at the submission stage and this requires a significant amount of pre-application work through the undertaking of surveys, reports and a number consultations rounds with the public. The Local Authority is integral to the pre-application stage of the process and as the lead consultee will have a number of statutory and non-statutory duties to carry out when advising the developer.

Officers of the Local Planning Authority (LPA) have spent a considerable amount of time advising on NSIP developments since 2012, namely the Brechfa Forest West Wind Farm and the Brechfa Forest connection Project. The LPA has started engaging with a developer in relation to the submission of a DNS for a wind farm therefore a formal service level agreement and charging regime needs to be established beforehand in relation to pre-application advice the Authority gives.

The Council has an existing chargeable pre-application advice service for NSIP projects which was approved in 2013. The attached document updates this guidance to include DNS projects and a revised set of procedures and scale of fees. The principle of charging for the advice the LPA gives to developers is considered legally acceptable under the terms The Local Government Act 2003, for Local Authorities to recover the costs for providing discretionary services. Advice on DNS projects is also discretionary and is separate to the services the authority provides under the Developments of National Significance (Fees) (Wales) Regulations 2016 and Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016.

The accompanying documents provide further details of the terms and conditions of the advice service as they relates to NSIP / DNS projects in addition to a schedule of fees.

The guidance attached (Appendix 2) sets out the level of advice developers can expect and within what timescale. The advice given under the terms of the guidance will relate to information requested prior to the formal submission of NSIPs / DNS and also advice required from the Local Authority once a decision has been issued by the Secretary of State / Welsh Ministers. Clarification on the disclosure of public and commercially sensitive information is also provided along with a schedule of fees and the associated payment procedures.

Approval of this guidance and charging regime will introduce an efficient, structured and professional service that will reduce uncertainty and be highly cost effective for developers wishing to formally submit NSIPs and DNS. It will also enable the discharging of post consent matters to be done more efficiently, whilst ensuring that the costs on the Council's resources are reasonably met.

5. OTHER OPTIONS AVAILABLE, AND THEIR PROS AND CONS

An alternative option available to the developer of a DNS project is to obtain the Council's advice through the statutory pre-application services outlined in Developments of National Significance (Fees) (Wales) Regulations 2016 and Town and Country Planning (Pre-Application Services) (Wales) Regulations 2016.

This service and the associated fixed fee the Council would receive may not meet the expectations of the developer as the statutory pre-application advice service limits the local authority and developer to providing/receiving a standard level of information as outlined by the legislation. Under a discretionary advice service which the Council's proposes, there would be the opportunity for prospective developers to have more focused and detailed discussions through site meetings and the assessment of specific technical reports by officers.

A further advantage of the discretionary service is the opportunity for the Council to provide more thorough advice and guidance on the potential impacts of a development it could potentially host. Therefore it is important that the Council has in place an appropriate framework and service level agreement in which developers can request advice which falls outside that required by the statutory pre-application services.

6. IMPLICATIONS:

2. LEGAL

- Under the terms of the Local Government Act 2003, Local Authorities have the power to charge for discretionary services. The terms set out in the attached report are considered to comply with this legislation.
- The decision to approve the details of the pre-application charging service will also require Executive Board approval.

3. FINANCE

- There is a potential to recover costs associated with the advice service. In addition to professional advice, charges will also be incurred upon developers, for Council's legal input, travel and administrative and management handling of advice requests.
- The Council's Legal Department will be requested to provide advice where relevant and necessary.
- Depending on the type of advice required by the developer, other Council Departments may be requested to input where relevant / necessary.

7. FEEDBACK FROM CONSULTATIONS UNDERTAKEN

1. SCRUTINY COMMITTEE & DATE – Community Scrutiny Committee of 5th December 2016. Scrutiny committee agreed the report without any modifications.

2. LOCAL MEMBER (S) TO BE NAMED AND COMMENTS INCLUDED, IF ANY
N/A

3. COMMUNITY TOWN COUNCIL (S) - N/A

4. RELEVANT PARTNERS – N/A

5. STAFF SIDE REPRESENTATIVES

The Council's Legal Services division have raised no objection to the guidance

6. OTHER ORGANISATIONS - None

8. LIST OF BACKGROUND PAPERS USED IN THE PREPARATION OF THE REPORT

Title of Document	File Ref No.	Where available for public inspection
The Local Government Act 2003		http://www.legislation.gov.uk/ukpga/2003/26/contents
The Planning Act 2008		http://www.legislation.gov.uk/ukpga/2008/29/contents
The Planning (Wales) Act 2015		http://www.legislation.gov.uk/anaw/2015/4/contents
The Developments of National Significance (Wales) Regulations 2016		http://www.legislation.gov.uk/wsi/2016/56/contents/made