

EXECUTIVE SUMMARY

CABINET

28/11/2022

Sustainable Drainage Approval Body (SAB) pre-application fees and charges.

BRIEF SUMMARY OF PURPOSE OF REPORT.

In January 2019 Schedule 3 of the Flood & Water Management Act 2010 was enacted and Carmarthenshire County Council became a Sustainable Drainage Approval Body (SAB). This is a statutory duty that requires new developments of more than one dwelling or where the area covered by construction work, which has drainage implications, equals or exceeds 100 square metres to obtain approval from the SAB before construction can commence. The SAB will only grant approval if it is satisfied that the proposed surface water drainage system is compliant with the SuDS National Standards.

The SAB team is part of the Flood Defence and Coastal Protection Unit within Waste and Environmental Services Division. The team has an Assistant SAB Engineer and a SAB Engineer. The team also funds one FTE of business services support from the Planning service.

As with all new legislation, time and resource is spent developing processes and systems but also educating stakeholders. The team have continued to expend considerable effort and time providing statutory pre-application processing as well as advice and guidance which, is currently not being charged for.

While the statutory instruments pertaining to the legislation provide a charging scheme for SAB full applications they did not provide such a scheme for pre-applications and enquiries. Advice from Welsh Government, is that the SAB can charge for pre-application services under existing legislation such as the Local Government (LG) Act 2003. Additionally, there are existing charging mechanism for pre-application services contained within The Town and Country Planning Regulations 2016.

For example; Neath and Port Talbot Council are charging a flat fee of £250 (including VAT) in line with section 93 of the LG Act. Caerphilly County Borough Council are also charging for pre-application services under regulation 2A, schedule 4 of the Town and Country Planning Regulations 2016. Regulation 2A contains a charging scheme that provides greater scope to charge for a wide range of potential applications in terms of size and end usage.

In 2020/21 there were 66 official pre-application submissions which currently have no fee. Based on a standard fee of £250 these applications could have generated a further £16,500. In 2021/22 there were 65 pre application with no fee which would have generated £16,250. This year there have been 22 pre-apps which would have been another £5500. It is proposed that, like the Planning Process, most queries and advice will be channelled down the pre-app route once the charging mechanism is agreed.

This paper is being presented to gain approval to charge, under section 93 of the Local Government Act 2003 for pre-application advice and guidance associated with SAB application works.

The charges will be based on the schedule set out in regulation 2A, schedule 4 of the Town and Country Planning Regulations 2016 (see attached). These provide fairness and transparency in that they are charges written into legislation and in addition, they are used by multiple SABs which is affording consistency. At least eleven of the twenty-two Welsh Councils are charging for SAB Pre-Application services. All neighbouring SABs in southwest Wales are charging under the same mechanism.

It is proposed that the charging mechanism becomes effective as soon as this paper is approved.

OTHER OPTIONS AVAILABLE AND THEIR PROS AND CONS

Continue with a free service

Pros – customers get a free service which provides them with valuable information to ensure that their full applications and suitability are robust.

Cons – the SAB loses out on the income and its ability to grow the team to meet greater demands in future.

DETAILED REPORT ATTACHED?	Yes
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IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report:

Signed: **Ainsley Williams**

Director of Environment

Policy, Crime & Disorder and Equalities	Legal	Finance	ICT	Risk Management Issues	Staffing Implications	Physical Assets
NONE	YES	YES	No	YES	NONE	NONE

2. Legal

The **Town and County Planning (Pre-Application Services) Regulations 2016** imposes a duty of CCC to provide planning pre-application services.

The information/services that we must provide are prescribed by Regulations 7 & 8 of the above regulations. This includes the provision of information about “any other considerations which are or could be material in the opinion of the authority” and “an initial assessment of the proposed development”.

SUDs pre-application advice, in conjunction with the pre-planning process, can therefore be charged inline with the Fees/Charges set out in Schedule 4 of the Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales)(Amendment) Regulations 2016.

Under **Section 93 of the Local Government Act 2003**, CCC has the power to charge for discretionary services. The pre-SAB advice is discretionary, not a statutory requirement and as such falls into this category.

Legal colleagues have confirmed that:

SUDs pre-application advice is a discretionary service. Currently it is separate from the statutory pre-application T&CP process under the 2016 Planning Regs and as such the charging powers under section 93 of the LGA are most applicable.

Under this provision we have discretion over the sums to charge, although the charges that we impose - taking one financial year with another – must not exceed the costs of providing the service.

3. Finance

The SAB currently sits in the Waste and Environmental Services Division in the Flood Defence and Coastal Protection Business Unit. The team consists of 3 members of staff (x2 Engineers in the Flood Defence Team and x1 Business Support Officer based in the Planning Department).

There is no budget allocated to this team, the business case for these posts is based on the team receiving enough SAB application fees to cover the £131k associated costs (2022/23 figures). Costs are currently only partly covered and last year the SAB's balance sheet was a negative £45k.

The ability to charge for pre-application advice and guidance will make the SAB team more economically robust and self-sufficient which in turn will reduce if not eliminate the impact on the Flood Defence and Coastal Protection Business Unit whose revenue budget is currently subsidising these duties.

5. Risk Management Issues

Financial shortfall

Across Wales we are not seeing the application numbers that were expected given the number of planning consents being issued. As such we have a considerable shortfall in the predicted income while the volume (advice and guidance) has remained high.

The lack of income and national assistance has resulted us developing our own legal agreements, adoption agreements and bond agreements in addition to developing our own policies and processes etc. As such current resource levels do not allow for the development of an enforcement capability in this respect. Locally and nationally most SAB Engineers are concerned that given the volume of planning there must be developments proceeding without the necessary SAB permissions.

Most SABs across Wales are unable to fund further officers and engineers to undertake a monitoring / enforcement function and as such there is the risk that non-compliance will be the default as there is no consequence. This will undermine confidence in the process.

It is envisaged that the pre-application charges will, in time, generate enough revenue to allow the team to become self-sufficient and potentially expand and have a dedicated enforcement officer. In the short term, the proposed charging scheme will focus customers and reduce the number of general small basic queries that are currently resource intensive. This will hopefully free up some resource to focus on monitoring and enforcement.

CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: **Ainsley Williams**

Director of Environment

(Please specify the outcomes of consultations undertaken where they arise against the following headings)

1. Scrutiny Committee request for pre-determination	NO
If yes include the following information: -	
Scrutiny Committee	
Date the report was considered:-	
Scrutiny Committee Outcome/Recommendations:-	

- 2. Local Member(s) N/A**
- 3. Community / Town Council N/A**
- 4. Relevant Partners N/A**
- 5. Staff Side Representatives and other Organisations N/A**

CABINET MEMBER PORTFOLIO HOLDER(S) AWARE/CONSULTED	Yes
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**Section 100D Local Government Act, 1972 – Access to Information
List of Background Papers used in the preparation of this report:**

THERE ARE NONE

Title of Document	File Ref No.	Locations that the papers are available for public inspection