

PORTFOLIO HOLDER FOR FINANCE AND GOVERNANCE

25th June 2024

REPORT OF THE ASSISTANT DIRECTOR, GOVERNANCE

A.1 GOVERNANCE DIRECTORATE/LEGAL AND DEMOCRATIC SERVICES - PROPOSED FEES AND CHARGES FOR 2024/25

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To seek the Portfolio Holder's concurrence to the proposed schedule of fees and charges 2024/25 for the Governance Directorate for Legal and Democratic Services.

EXECUTIVE SUMMARY

- This report sets out the proposed fees and charges for 2024/25 for the Governance Directorate/Legal and Democratic Services. They continue to be considered against a number of key principles that form part of the long term financial forecast approach which are summarised later on in this report.
- No amendments to income budgets are envisaged at this stage, due to the reasons set out within the report. Income, together with expenditure, will require monitoring throughout 24/25 and any changes to fees and charges will be revised accordingly and consequently any necessary amendments to income budgets will be included within the Quarterly Financial Performance Reports for 2024/25.

RECOMMENDATION(S)

That the Schedule of Fees and Charges 2024/25 for the Governance Directorate/Legal and Democratic Services of the Council set out in Appendix A be agreed.

REASON(S) FOR THE RECOMMENDATION(S)

To enable the implementation of a revised fees and charges schedule for 2024/25.

ALTERNATIVE OPTIONS CONSIDERED

Please see the considerations / reasons behind the proposed fees and charges later on in this report.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The forecasting and budget setting process, including fees and charges, will have direct implications for the Council's ability to deliver on its objectives and priorities. At its heart, the 10 year approach to the forecast seeks to establish a sound and sustainable budget year on year through maximising income, including income raised from fees and charges, whilst limiting reductions in services provided to residents, businesses and visitors.

OUTCOME OF CONSULTATION AND ENGAGEMENT

Councillor Stephenson, Leader and Portfolio Holder for the service areas has been consulted and is happy with the proposed increase in fees and charges, and has noted the impact of changes to processes being implemented in Planning Services, due to the new mandatory statutory Biodiversity Net Gain (BNG) regime and a local choice on collecting Recreational Disturbance Avoidance and Mitigation (RAMS) contribution through a post decision condition, as opposed to pre-decision, which was until very recently the case. The service has been requested to ensure that the impact is monitored and included with quarterly financial performance reporting.

The Assistant Director for Governance is a member of Management Team and the Section 151 Officer's comments are included below.

Management Team would like to understand the context and rationale behind the change in approach within Planning Services to ensure decisions are being made corporately and not in silo by an individual department, however this will not hold up the Fees and Charges report being approved for publication and increased fees can be implemented.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

Is the recommendation a Key Decision (see the criteria stated here)	No	If Yes, indicate which by which criteria it is a Key Decision	<input type="checkbox"/> Significant effect on two or more wards <input type="checkbox"/> Involves £100,000 expenditure/income <input type="checkbox"/> Is otherwise significant for the service budget
		And when was the proposed decision published in the Notice of forthcoming decisions for the Council (must be 28 days at the latest prior to the meeting date)	N/A

The arrangements for setting and agreeing a budget and for the setting and collection of council tax are defined in the Local Government Finance Act 1992. The previous legislation defining the arrangements for charging, collecting and pooling of Business Rates was contained within the Local Government Finance Act 1988. These have both been amended as appropriate to reflect the introduction of the Local Government Finance Act 2012.

The powers to charge are set out in the Local Authorities (Goods and Services) Act 1970 and

the Local Government Act 2003 – Section 93 respectively. The latter also requires that charges for discretionary services should be on a cost recovery basis.

A local authority may be able to rely on the subsidiary powers under section 111 of the Local Government Act 1972 to authorise the provision of a service to facilitate the discharge of a specific function. Where it does so, the local authority may charge under section 93 for that function-related service (Section 93(7)(a) of the LGA 2003 specifically states that section 111(3) of the LGA 1972, which prohibits local authorities from using their subsidiary powers to raise money, is to be disregarded).

Under Para 4.4.1 (8) Part 3.45 of the Council’s Constitution, all Assistant Directors, in consultation with the relevant Portfolio Holder, Management Team Member and the Assistant Director (Finance & IT), are authorised to decide the level of the annual discretionary fees and charges for their service (including any in-year changes that may be required) for inclusion within the Council’s corporate schedule of fees and charges. Following the above consultation, an Officer decision must be published.

New considerations for 2024/25 relate to the launch of the Biodiversity Net Gain (BNG) scheme, which is mandatory under Schedule 7A of the Town and Country Planning Act 1990, as inserted by Schedule 14 of Defra’s Environment Act 2021, which requires that a development boosts biodiversity by at least 10%, and has been required for large sites and small sites since April this year. Under the legislation, local authorities have a legal duty to approve developers’ plans where they meet the BNG requirement, oversee on-site and most off-site gains, monitor compliance, and take enforcement action as appropriate. This new statutory duty will have an increased impact on the number of legal planning agreements (signed by all parties and executed as a Deed) required under Section 106 of the Town and Country Planning Act 1990 (as amended) to secure these obligations. Legal fees can be recovered but at this stage it is hard to predict the in-house capacity required and this will need to be monitored internally.

The National Audit Office published a report on 17th May 2024, *"Implementing statutory biodiversity net gain"* raising questions about whether councils had the capacity to monitor and enforce BNG. It said: *"While Defra’s calculation of the new burden to local authorities included an amount equivalent to a 0.2 FTE post, to acknowledge monitoring and enforcement requirements, local authorities have not received additional funding specifically to monitor or enforce on-site gains."* In addition, the report said that *"the discretionary nature of local authority planning enforcement means that there are compliance and enforcement risks for BNG"*. Both of these statements refer to planning resources, as opposed to legal.

□	The Monitoring Officer confirms they have been made aware of the above and any additional comments from them are below:
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The fees being proposed are within the Council’s legal powers as set out in the section above as these relate to charging for completing legal matters connected to performing Council functions.

FINANCE AND OTHER RESOURCE IMPLICATIONS

Finance and other resources

Fees and Charges have been reviewed against the key principles that underpin the long term forecast, which includes the generation of income whilst balancing strategic and external market

conditions.

Given the significant on-going financial challenges faced by the Council from 2024/25, a key underlying principle is to consider inflationary increases wherever possible to support corresponding increases in the Council's own costs in delivering the associated service(s). Set against an inflationary context, any proposed increases in fees and charges must be balanced against other considerations / market conditions, whilst also recognising the restrictions placed on local authorities in terms of setting fees and charges as set out within the legal section above. Further details relating to any proposed increases to fees and charges is set out below.

Any changes to income budgets resulting from any changes in the level of fees and charges agreed, will be included in Financial Performance Reports in 24/25. It is also recognised that there may be advantages to allocate some or all of any additional income to associated investment / expenditure.

In 2023/24 the Budget for Costs and Legal Expenses Recoverable was set at £60,670 and at year end £55,246.28 was recovered, this was a loss of £5423.72. The approximate breakdown for 23/24 was as follows:

- £18,960 for Section 106 Agreements – legal fees at a Solicitors hourly rate
- £17,800 for Unilateral Undertaking fixed fees
- £18,630 for Property Legal Fees.

As at 12th June 2024, £14,785 has been recovered for 24/25 (against a budget set at £59,480) however, the impact of the Planning UU process changing (referred to elsewhere) will have a negative impact going forward, but Legal Services hope to mitigate the predicted loss as set out within the risk section of the report.

The Section 151 Officer confirms they have been made aware of the above and any additional comments from them are below:

Although there are no further comments over and above those set out elsewhere in the report, it is important to highlight that the demand / volumes used to calculate the estimated total income figures included within this report are based on those held by the Service. As highlighted, associated income budgets will be monitored during the year, with any changes reflected in the quarterly Financial Performance Reports as necessary.

USE OF RESOURCES AND VALUE FOR MONEY

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services.	Please see relevant comments elsewhere in this report.
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks.	
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	

MILESTONES AND DELIVERY

Fees and Charges for 2024/25 form part of the wider budget setting process. Subject to the timing of their agreement, the impact on the budget will either be included within the detailed estimates that are annually presented to Full Council in February or included in other key financial performance reports as necessary ahead of the year to which they relate. In this instance, the fees and charges are being agreed in year, due to the impact on the recovery of legal costs recoverable being unknown earlier due to changes referenced elsewhere, in addition benchmarking has been undertaken on the fees for UU work. The impact will be monitored throughout the year and the outcome included within the financial performance reports if required.

ASSOCIATED RISKS AND MITIGATION

The recovery of legal costs and fee (income) budget for the Legal Service has been set at:

- For 22/2023, £28,330 and at the end of year £69,213 had been recovered; and
- for 23/2024, £60,670 and at the end of year, £55,246 had been recovered.

Legal fees and charges form part of the Heads of Terms on property transactions. In cases where these have been negotiated by the Assets or Housing Teams and it has been agreed with the third party that either a lower level will be recovered or each party to bear their own legal costs this has a negative impact on the ability to recover the costs to the service for undertaking the work. The Assistant Director for Governance believes that the legal charges agreed should be in line with the Fees and Charges for the current year and any departure should be agreed in consultation with the Head of Legal Services or Assistant Director for Governance.

In addition, where heads of terms are agreed but there is a delay in completion, which is due to lack of progress with the third party, legal fees should be set at the level within the relevant financial year, the matter is completed.

Since 2020, the Council's Legal Team have been responsible for the Unilateral Undertaking (a unilateral agreement under Section 106 of the Town and Country Planning Act) process and securing RAMS contributions prior to the Decision Notice being issued. This ensured that all RAMS payments were received, without enforcement, correct legal title information being provided, checking of the details for parties and signatories, and an income to the Council. The purpose was not to provide an income but to ensure that the right checks were being undertaken by officers with knowledge of legal title and the agreement format and legal requirements. Planning Services have decided to change the process and seek to secure the RAMS contribution through post-decision condition (this is separate to the BNG procedures), there are discussions ongoing around the new process but so far, UUs are still envisaged albeit a lower number and only required, if the condition is to be discharged. It is important to highlight that consequently, information such as legal title, or the correct names of the applicants or parties will no longer be checked by Legal Services prior to the planning decision being issued. The Assistant Director for Governance requested a projection on the impact to the Legal Service and there are a number of concerns, however for the purposes of this report, the risks will focus on the level of income recovered against the set budget.

Not all development will commence and so there will be a natural drop in instructions for UUs to secure RAMS. In addition, planning permissions can be implemented up to 3 years from the date of decision, therefore it's not possible to predict whether discharge of condition applications

will be made in years 1, 2 or 3, therefore the workflow is unknown. The previous process produced a steady stream of instructions coming through as planning applications were made.

It is not clear how much revenue will be lost through this, although the Head of Planning Services has estimated that if 25% are not commenced there will be a loss, per annum in the region of £4,000 to Legal Services. It is suggested that this loss could be met through:

- i) Increasing the fixed legal fee in line with other Councils. Some benchmarking undertaken supports the view that TDC's charges for UUs are, on average, are considerably less than other Local Planning Authorities. This was due to an estimate of time initially being approximately 1 hour of legal work, however, it is thought more realistic that the time involved is at least 2 hours, therefore it is recommended that the UU preparation fee is increased to £250 and a further reviewed undertaken through the year; and
- ii) Charging monitoring fees (but noting this income will not be recovered by Legal Services, it is still an income to the Council, but with an additional call on resources to monitor).

BNG uplift in legal planning agreements (currently it is not possible to determine what this will equate to, and may require additional capacity depending upon the complexity of the agreements).

EQUALITY IMPLICATIONS

The fees apply equally to matters and are related to the type of transaction, as opposed to any individual's circumstances, and the costs recovered do not relate to direct service delivery. Therefore, none of the protected characteristics would be impacted by the level set. Equality implications for each transaction are considered separately, and if such a situation arose whereby the level of fees and charges had an adverse impact these would be considered on an individual basis at the time.

SOCIAL VALUE CONSIDERATIONS

The recovery of the costs for the administration of transactions listed within the Schedule contribute to the Council being able to provide an internal legal service, which in turn supports other council services such as planning, property and housing to make the best use of its powers and assets to improve the economic, social and environmental wellbeing of the area.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

The proposed decision is neutral in relation to the Council's emissions ambitions.

OTHER RELEVANT CONSIDERATIONS OR IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder
Health Inequalities
Area or Ward affected

The changes introduced do not have implications on these considerations and apply equally to transactions irrespective of the area or ward in which the matter is located.

PART 3 – SUPPORTING INFORMATION

BACKGROUND

Income from fees and charges form an important element of the budget and the financial sustainability of the Council as set out in the long term forecast.

Similarly to previous years, Departments have been asked to review their fees and charges on an individual basis as changes may need to be made to meet specific aims or strategic objectives or in some cases in response to external factors such as market forces.

The review of fees and charges has been set against the following key principles:

- general inflationary increases where possible or lower where appropriate / justified
- amounts rounded for ease of application, which may result in a slightly above inflation increase.
- on a cost recovery basis as necessary
- reflect statutory requirements.
- increases where market conditions allow
- to meet specific priorities or service delivery aims / objectives

As highlighted earlier in this report, the Council continues to face a number of significant financial challenges in 2024/25 and beyond. It is therefore important that fees and charges are considered against this context and to maximise income opportunities where possible, albeit whilst balancing the various issues highlighted above.

Income budgets for 2024/25 will need to reflect any required changes from the proposed fees and charges set out in this report.

Within the attached appendix of fees and charges there are those charges made by the Electoral Registration Officer (ERO) in exercise of their statutory duties. These are not fees charged by the Council. However, it is useful to record them alongside the Council's own fees and charges from the point of view of openness about those fees. The Council that appointed the ERO must, by law, provide them with the resources they need to discharge their statutory functions, and any expenses properly incurred by an ERO in the performance of their functions must be paid by the Council that appointed them. The income derived from statutory fees and charges levied by the ERO will reduce the resources required by the ERO to be recovered from the Council.

It is also worth recording that while the licensing service of the Council forms an integral part of the Governance Service Area, its functions are generally non-executive and, as such, the relevant fees and charges are determined through the relevant non-executive Committee of the Council (Licensing and Registration Committee).

GOVERNANCE DIRECTORATE/LEGAL AND DEMOCRATIC SERVICES - PROPOSED FEES AND CHARGES 2024/25

Set against the current fees and charges for 2023/24, **Appendix A** includes the schedule of fees and charges proposed for 2024/25, which have been developed by applying the key principles highlighted above.

A summary of the major changes are as follows:

- Generally overall we have applied the 4-5% inflationary increase to the fees and charges;
- UU fees are proposed to be increased to £250, based on benchmarking undertaken;
- New fees introduced for:
 - Standard Lease extensions as opposed to Shared Equity Lease Extensions – the service has seen a rise in requests for lease extensions;
 - In respect of hire for accommodation, it is worth noting that the fees and charges for the Committee Room are managed through the Princes Theatre. From time to time though there may be an opportunity to allow external bodies to use the Connaught or Whitelaw Rooms for meetings. In looking at the Theatre’s charges for use of the Essex Hall, it was clear that, by comparison the charges for the Whitelaw and Connaught Rooms were too low. The cost of processing requests and supporting such external meetings led to a proposed resetting of those charges at a new higher rate. In addition, and to reflect additional services that may be requested it is proposed to introduce:
 - New charge for teas and coffees in the Connaught Room/Whitelaw Room when booked by outside parties;
 - New charge for the use of the AV Screens in the Connaught Room/Whitelaw Room when booked by outside parties.
 - The deletion of fees under the Administration – General heading in respect of provision of Council Books/Council Constitutions/Cabinet and Committee Reports and Minutes/provision of a CD recording of a Council meeting and the inspection of papers– all of these items are now freely available on the Council’s Website/You Tube.

There is no intention to increase the charge made for “Endorsement of foreign pension certificates (Proof of Life)”. This charged for service is still relatively new and holding the fee for 2024/25 would seem appropriate. The income level from this fee is relatively modest.

As highlighted earlier in this report, the Council faces a number of significant financial challenges in 2024/25 and beyond. It is therefore important that fees and charges are considered against this context and to maximise income opportunities where possible, albeit whilst balancing the various issues highlighted above.

Income budgets included in the detailed estimates for 24/25 reflected any required changes from looking at previous years, and the proposed fees and charges set out in this report, which were being considered at the time of budget setting. The position regarding securing BNG obligations and changes to post decision RAMS process was unknown at that stage.

The fee income budget has been set at £59,480 for 2024/25. Legal fees have generally been increased by between 4% and 5% but not across all fees and charges (see attached fees and charges for 2024/25). The work that generates these fees is volatile and cannot automatically be relied upon, for example significant fees are paid via Section 106 and Unilateral Undertaking preparation but that depends on the number of planning applications received. Equally, property work that also generates income and is depended upon transactions being completed, which can be delayed by external factors. However, having said that the Legal Services team have recovered in excess of £55,000 for the last two years, and if there is any shortfall in the recovery this will be highlighted through the quarterly review process within the team.

Taking the above into account, it is not proposed to make any changes to income budgets

and expenditure budgets in 2024/25 but to ensure the position is monitored carefully through the year.

It is important to highlight that the changes above will not place the relevant service budgets into a net surplus position, so the cost recovery requirement set out within then legal section above is not breached.

PREVIOUS RELEVANT DECISIONS

Decision of Assistant Director (Governance) and Monitoring Officer – 4 January 2023

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

None

APPENDICES

Attached – Detailed fees and charges 2024/25 for the Governance Directorate/Legal and Democratic Services

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