

**“CONSULTATION ON FEES CHARGED FOR APPLICATIONS UNDER  
THE ELECTRICITY ACT 1989”**

**Report by Service Director Regulatory Services**

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**PLANNING & BUILDING STANDARDS COMMITTEE**

**30 APRIL 2018**

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**1 PURPOSE AND SUMMARY**

- 1.1 This report seeks approval of the response prepared by the Chief Planning Officer on behalf of Scottish Borders Council in respect of the changes to the fees regime for applications to the Scottish Government’s Energy Consents Unit under s36 and s37 of the Electricity Act 1989.**
- 1.2 Scottish Ministers are seeking views on their proposals to substantially increase the fees applicable for such applications and for their proposed new fee structure. The fee structure is set out in Annex1 to the consultation document which is attached as Appendix B.
- 1.3 The proposals seek to deliver full recovery of costs for the Energy Consents Unit enabling it to maintain service delivery and support future service improvement. Whilst the general provisions of the new fee regime are acceptable, controversially, the proposals specifically state that there will be no reciprocal increase in the fee payable to Local Planning Authorities for the work they undertake in the determination and assessment of such applications. There will also still remain a significant discrepancy between the fees charged in Scotland and the rest of the UK for such development.
- 1.4 The report seeks approval for the response to the consultation set out in Appendix A, which requires to be submitted to Scottish Government by 14 May 2018.

**2 RECOMMENDATIONS**

- 2.1 I recommend that the Council approves the consultation response set out in Appendix A as the Scottish Borders Council’s formal response to the consultation on the fees charged for applications under the Electricity Act 1989.**

### **3 BACKGROUND**

- 3.1 In February 2017, Scottish Borders Council responded to the consultation on raising planning fees in Scotland (Appendix C). This specifically related to fees for planning applications and ultimately led to the planning fee cap being raised to £125,000 (for most categories of development) to better reflect the level of resources they demand. The maximum fee for Planning Permission in Principle applications was also raised to £62,500. The changes did not affect the current fee structure and the new cap only comes into consideration if the development is of a scale to trigger a fee beyond the previous maximum caps. There was no across the board increase in fees. Once the full implications of the changes being introduced by the Planning Bill are understood the wider planning fee regime will be reviewed.
- 3.2 The Council's response to the consultation highlighted that the proposals were silent on fees for applications made under Section 36 and 37 of the Electricity Act. In the Scottish Borders, numerous applications have been processed for windfarms that fall within the provisions of Section 36. This has placed a significant strain on existing staff resources and associated budgets. Whilst the Energy Consents Unit is the determining body a significant part of the assessment of the application is undertaken by the Planning Authority. The Council's response set out clearly that Planning Authorities should receive a fee commensurate with the work carried out and that it should, at the very least, be on par with the new fee charged for major applications (up to £125,000).
- 3.3 Following the implementation of the new planning fees regime last year it was intimated that a review of fees for s36 and s37 applications was to be undertaken and that it would acknowledge the substantial work carried out by Local Planning Authorities. It is therefore deeply disappointing that the published proposals effectively freeze payments at current levels and do not include a deserved proportionate increase in the fee payable to the relevant Local Planning Authority. This would mean that SBC would continue to receive only £12,000 (2/3rds of the current maximum fee to ECU of £18,000) for applications exceeding 50MW but not exceeding 100WM (which are the majority received in the Borders) for which the Energy Consents Unit would now receive a fee of £190,000.

### **4 KEY PROPOSALS**

- 4.1 The consultation recommends increasing the application fee tariffs dependent on the size of the proposed project in terms of its MW output or the length of the overhead line. The introduction of a simple and understandable fixed fee structure is supported.

- 4.2 The proposed increase in fee level is significant and merited. This is a move in the right direction in terms of ensuring that they more accurately reflect the costs of processing such applications. However, the proposals acknowledge that they fail to address the significant discrepancy between the fees charged in Scotland and those in other part of the UK. Scotland has a large proportion of renewable power activity in the UK and its regulators are being penalised financially due to the fee regime operated in Scotland. The resultant lack of resources to deal with this work will undoubtedly continue to have an impact on the ability to respond to this agenda.
- 4.3 A fundamental flaw of the consultation proposals is how the fees are apportioned between central and local, as they do not reflect the extent of the work carried out by Planning Authorities in the assessment of such applications, in their scoping and in supporting the appeal process. Local Planning Authorities are also responsible for the purification/enforcement of deemed planning consent conditions. The effective freezing of the fee payable to Local Planning Authorities to a maximum of £12,000 (2/3rds of fee currently payable to ECU) is unreasonable, unfair and ill-judged.
- 4.4 It is also proposed to introduce phased payments of fees at screening and scoping stage for proposals subject to Environmental Impact Assessments (EIA) and that this payment will form part of an instalment toward the total application fee. In principle this is a logical and sensible proposal designed to enable early and productive pre-application dialogue and that regulators are recompensed for this work. Tellingly, no reference is made as to whether any of this fee will be available to Local Planning Authorities. This omission will potentially discourage and reduce the ability of authorities to engage at this early stage of the process.
- 4.5 Whilst recognising that fees for all Electricity Act applications need to increase, the consultation recommends introducing a distinction between the fees charged for EIA and non-EIA development. This is to reflect the differing complexity of the information and resources required to administer EIA proposals. This appears to be a reasonable and logical approach.
- 4.6 The consultation recommends that a fee be charged for the variation of consent. The fee would be at the same level as the original application and subject to the caveat about the Local Planning Authority receiving an appropriate portion of the increase fee, this proposal is supported. The varied application will require a full and detailed assessment, on par with the original analysis and suitable recompense for that work should be sought.
- 4.7 The consultation sets out the context for the proposed changes and seeks answers to 8 set questions. The response to the questions is set out in Appendix A.

## **5 RESPONSE TO CONSULTATION**

5.1 The response to the consultation questions is set out in Appendix A.

## **6 IMPLICATIONS**

### **6.1 Financial**

There are no cost implications arising for the Council in responding to the consultation.

Scottish Borders Council has processed numerous applications for windfarms that fall within the provisions of Section 36. This has placed a significant strain on existing staff resources and budgets. There are serious concerns that freezing the fee payable to Planning Authorities at a maximum level of two thirds of the current fee level will have on SBC's ability to respond effectively to such applications. SBC will potentially not benefit from the proposed increase in fees proposed in the document but will be expected to continue to improve performance and provide resources to process such applications.

SBC will be financial disadvantaged unless a fee is received commensurate with the work it carries out and that should, at the very least, be on par with the planning application fee charged for major applications.

Scottish Ministers have increased the maximum fee cap for major planning applications, which will potentially generate substantial fees for windfarm applications in the Scottish Borders. However, it would be perverse if the position is reached where the fee received by SBC for considering S36 applications (£12,000 maximum), which by definition are of greater scale and complexity, is significantly lower than that which it will receive for a major planning application (£125,000 maximum).

### **6.2 Risk and Mitigations**

The key risks to the Council if the Scottish Government's proposals are implemented are stated in Section 6.1, in addition to references throughout the main body of the report. It is hoped that by highlighting specific concerns in our response, the Scottish Government will reconsider the proposals that have a negative financial and resource impact on the Council.

### **6.3 Equalities**

After considering the requirement for Equalities Impact Assessment the Scottish Government concluded that there would be no disadvantage created between equalities groups and no assessment was necessary.

**6.4 Acting Sustainably**

There are no significant adverse effects on the economy, community or Environment and there will be real potential for the more effective delivery of sustainable economic development.

**6.5 Carbon Management**

There are no significant adverse effects on carbon management or emissions arising from the proposals.

**6.6 Rural Proofing**

This report does not relate to new or amended policy or strategy and as a result rural proofing is not an applicable consideration.

**6.7 Changes to Scheme of Administration or Scheme of Delegation**

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals in this report.

**7 CONSULTATION**

7.1 The Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Chief Officer Human Resources and the Clerk to the Council are being consulted and any comments received will be incorporated in the final report.

**Approved by**

**Brian Frater**

**Service Director Regulatory Services**

**Signature .....**

**Author(s)**

Name	Designation and Contact Number
Ian Aikman	Chief Planning Officer

**Background Papers:**

APPENDIX A – CONSULTATION ON FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989 - PROPOSED RESPONSE BY SCOTTISH BORDERS COUNCIL - APRIL 2018

APPENDIX B - FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989 – SCOTTISH GOVERNMENT CONSULTATION - FEBRUARY 2018

APPENDIX C - CONSULTATION ON RAISING PLANNING FEES - RESPONSE BY  
SCOTTISH BORDERS COUNCIL - FEBRUARY 2017

**Previous Minute Reference:**

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jacqueline Whitelaw can also give information on other language translations as well as providing additional copies.

Contact us at Jacqueline Whitelaw, Place, Scottish Borders Council, Council Headquarters, Newtown St Boswells, Melrose, TD6 0SA, Tel 01835 825431, Fax 01835 825071, email [eitranslationrequest@scotborders.gov.uk](mailto:eitranslationrequest@scotborders.gov.uk)

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## APPENDIX A

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### CONSULTATION ON FEES CHARGED FOR APPLICATIONS UNDER THE ELECTRICITY ACT 1989

#### Response by Scottish Borders Council

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#### 1 Comments on Proposals

- 1.1 The re-examination of the fees payable for Section 36 and 37 applications is welcomed, although it is long overdue. As things stand, there is a two tier system for the calculation of fees for electricity generating applications in Scotland, which is illogical and unfair. In addition, as is acknowledged in the consultation paper, there is also currently a significant discrepancy between the fees charged in Scotland and those in England and Wales that will still not be addressed, even if the proposals in the consultation are introduced.
- 1.2 Scottish Borders Council made representations on the consultation on planning fees in February 2017 in which it recommended government re-examine the fee regime for section 36 & 37 applications. The need for this re-examination was also set out in the consultation response submitted on behalf of Heads of Planning Scotland.
- 1.3 There had been encouraging feedback from government that this review would not just address the need to cover the costs of the Energy Consents Unit in managing such applications but that it would also acknowledge the substantial work carried out by local authorities. It is therefore deeply disappointing that the proposals freeze payments to Local Planning Authorities at current levels and do not include a deserved proportionate increase in the portion of the fee payable to the relevant authority. The reference in "*Footnote – Local Planning Authorities*" that: "*...the cost to planning authorities of undertaking their statutory function in the consultation process is included in the local authority settlement.*" is ill-judged and does little to maintain the excellent existing working arrangements between the unit and planning authorities.
- 1.4 The principle of seeking full recovery of costs for public services is supported. However, the proposals, as they are drafted, fail to recognise the significant costs incurred by Local Planning Authorities in responding to S36 & S37 applications. Local Planning Authorities play a major part in the determination and assessment of such applications, in their scoping and in supporting the appeal process; as well as the purification/enforcement of deemed planning consent conditions.
- 1.5 Scottish Borders has processed numerous applications for windfarms that fall within the provisions of Section 36. This has placed a significant strain on existing staff resources and budget. Whilst the Energy Consents Unit is the determining body in reality a significant part of the assessment of the

application is undertaken by Local Planning Authorities. The relevant Local Planning Authority should receive a fee commensurate with the work carried out and that should, at the very least, be on par with the planning application fee charged for major applications.

- 1.6 It would be perverse if a position is reached where the fee received by the Planning Authority for considering S36 applications, which by definition are of greater scale and complexity than major applications, is significantly lower than it would receive for considering a major planning application.

<b>CONSULTATION QUESTIONS</b>
<p><b>1. Do you agree or disagree the application fees should be revised to maintain and improve our service levels?</b></p> <p>Agree.</p> <p>It is agreed that the fees charged by the Energy Consents Units should be increased to help improve and expand its services. However, as set out above, there needs to be an acknowledgement of the role of and work carried out by Local Planning Authorities in support of the process. The fee payable to Local Planning Authorities should be subject to a similar analysis which should result in an appropriately increased fee being received.</p>
<p><b>2. Do you agree or disagree that we should continue to have a fixed fee structure as proposed?</b></p> <p>Agree.</p> <p>The fixed fee structure is simple to operate, is understandable and generally reflects the fee mechanism operated in the planning system. The reference to generating capacity and length of line are sensible and avoid red line boundaries being manipulated to reduce the fee.</p>
<p><b>3. Do you agree or disagree with the proposal that application fees should be phased in the manner proposed, to spread the risk associated with potentially abortive or unsuccessful application costs?</b></p> <p>Agree.</p> <p>However, it is not all about reducing risks to developers but the recognition of potentially abortive costs to the Energy Consents Unit and Planning Authorities at the pre-submission stage.</p> <p>A considerable amount of work and effort is expended at the pre-application stage by the Consents Unit and Local Planning Authorities (this pre-engagement is actively encouraged by the Planning Bill). The proposals should perhaps include a provision for a pre-application stage payment that would be split between the Consents Unit and the relevant Planning Authority. It could be argued that the ability to charge discretionary fees proposed in the Planning Bill will allow planning authorities to recoup some of this cost.</p> <p>A phased payment at screening and scoping request stage is a sensible proposal but again, as the latter process involves the Planning Authority, then a payment to the planning authority would also be appropriate. It is agreed that the fees payable at screening and scoping stage be subtracted from the eventual application fee.</p>



**4. Do you agree or disagree the existing arrangement should continue where the same fee is required for overhead lines exceeding 15km in length whether or not there is EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**

Agree

There will undoubtedly be a greater level of assessment required for an EIA development but experience of proposals for overhead lines in the Scottish Borders does not lead to the conclusion that a different fee structure would be justified. However, a commensurate proportion of the fee should be made available to the relevant Planning Authority.

**5. Do you agree or disagree with the introduction of a fee for processing applications for variations of consent, whether for EIA or non-EIA development? If you disagree please provide a proposed alternative and expand on this in your answer to question 6.**

Strongly Agree.

The amount of work undertaken by the Consents Unit and the Local Planning Authority for the revised application is on par with that required to assess the original application and the introduction of a fee is fully justified. Again, a commensurate proportion of the fee should be made available to the relevant Planning Authority.

**6. On balance, do you agree or disagree with the fee levels proposed? If you disagree, please specify which fee in Annex 1 you think should be reconsidered and provide a proposed alternative.**

Agree.

In general they are appropriate but they are only a first step toward what should be the aim of parity of fees throughout the UK for similar types of development. It is perverse that just a few miles further south over the border planning applications and applications under the Electricity Act will be charged at significantly differing levels. There is no justifiable reason for this differential and there is certainly no less a level of assessment required by the Consents Unit and Local Planning Authorities in Scotland.

Scotland has a large proportion of the renewable activity in the UK and its regulators are being penalised financially due to the fee regime operated in Scotland. The resultant lack of resources to deal with this work will undoubtedly have an impact on the ability to respond to this agenda.

**7. Do the proposals in this consultation have any financial, regulatory or resource implications for you and/or your business (if applicable)? If so please explain these.**

There are financial and resource implications for Local Authorities.

It is considered that the Business & Regulatory Impact Assessment does not adequately cover the impacts on Local Planning Authorities and is focussed too narrowly on the impacts on applicants/developers. The payment of a fair portion of the increased fees to Local Planning Authorities would allow investment in staff and resources and the building of capacity to deal more effectively and efficiently with such applications.

Capping fees to Local Planning Authorities to their current level will act as a

disincentive to Local Planning Authorities to be more actively involved in pro-active pre-submission dialogue. This may result in poorer quality submissions with less chance of success and ultimately more refusals, all of which would contributed towards slowing down the application and consultation process and meeting renewable targets.

**8. Do you have any other comments?**

See 1 - Comments on Proposals above.

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Ian L Aikman  
Chief Planning Officer  
Scottish Borders Council

30<sup>th</sup> April 2018

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## Appendix C

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### CONSULTATION ON RAISING PLANNING FEES

#### Response by Scottish Borders Council

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#### 1 Introduction

- 1.1 Scottish Borders welcomes the opportunity to respond to the consultation on raising planning fees in Scotland.
- 1.2 The consultation seeks views on a revised fee cap for major planning applications. Planning fees are currently capped at £18,270, £20,055 and £30,240 depending on the category of development. The Scottish Government's proposal is to raise the current planning fees cap (for most categories of development) to £125,000 to better reflect the level of resources they demand. It is also proposed to raise the fee cap for Planning Permission in Principle applications to £62,500. The proposed changes do not affect the current fee structure and the new cap only comes into consideration if the development is of a scale to trigger a fee beyond the existing maximum caps. The proposals do not contain an across the board increase in fees.
- 1.4 This paper sets out Scottish Borders Council's response to the consultation.

#### 2 Response to Consultation

- 2.1 There have been numerous research papers produced examining the fee regime in Scotland in recent years. Planning Authorities and Heads of Planning Scotland have also provided detailed evidence to Scottish Government on the operating costs of planning services. In the Council's view, there is already sufficient evidence to justify raising planning fees as proposed and moving towards a position where full cost recovery for all planning services can be achieved; not just for Development Management.
- 2.2 It is clear that there is a significant disparity in the fees applicable in England to those in Scotland, with the maximum payable south of the Border set at £250,000. A recent assessment undertaken by Dumfries & Galloway Council identified that for a range of similar applications in Carlisle the fee payable would be in the region of £1.5m, in contrast to a fee of £330,000 payable in Scotland. There is no difference in the work involved in determining such applications

and the absence of a realistic fee in Scotland puts additional pressure on already stretched budgets and resources. The Scottish baseline fees and maximum fee caps should progressively move towards parity with the charges south of the Border.

- 2.3 A preliminary assessment of the impacts of the consultation proposals has been carried out for the Scottish Borders. After examining applications lodged in 2016, it is clear that the increase in the upper threshold would have had an impact on the fees collected last year. The majority of the 1080 applications received fell within the categories where the change would not have been applicable and would have made no difference to the fees generated. Only 5 applications would have incurred increased fees above the existing maximum cap. For those five applications, the additional fees amounted to £2,000 for a housing site, £39,000 for a distillery development, £36,491 for a tourism/chalet scheme and a significant additional fee of £104,950 each for two windfarms. This makes a grand total of £287,391. This additional fee income would have been very welcome but would not have fully addressed the underlying budget pressures, or the costs of service provision, facing Planning Services in the Scottish Borders. Until this is addressed Planning Services in the Scottish Borders continue to be subsidised from funds from other hard pressed Council services. It is also likely that, had the new fee structure been in place, the site boundaries of the two windfarm applications would have been modified to reduce the fee burden and therefore the amount payable to the Council.
- 2.4 Scottish Borders Council agrees with the recommendation for a substantial increase in the planning fees for major planning applications but considers that this must be seen as a partial solution towards full cost recovery and one which will have little impact on many Planning Authorities that have few major applications. The fee increase is justified because major applications are more complicated to assess and process and the consultations involved can be complex, involving a wide range of stakeholders and often require specialist advice and guidance. They can also generate significant public interest and representation, as well as challenge to the process and decisions.
- 2.5 The additional income generated by an increase in planning fees should be retained by Planning Authorities as a discrete operating budget. Improvements in Planning Services will be difficult to achieve without the opportunity to reinvest in resources and enhanced levels of service provision, once full cost recovery targets have been met.
- 2.6 It is acknowledged that more fundamental changes to planning fees may take some time to be implemented. Scottish Borders Council

would ask that Scottish Government introduce, at the earliest possible stage, a % increase in the baseline planning fee (of at least 20 – 30%), as a progressive step towards full recovery of fees. There has already been progressive improvement in performance in the recent years to justify this increase, as set out in Scottish Councils Planning Performance Frameworks.

- 2.7 Scottish Borders Council accepts that further increases in planning fees must be linked to continuous improvement in performance. However, performance should not be exclusively related to time taken to determine applications but should also be related to delivering quality outcomes on the ground and the achievement of Placemaking standards. The Council supports the development of the Planning Performance Framework as a means for the link between fees and performance to be maintained and strengthened.

### **3 Additional Comments**

- 3.1 The proposals are silent on fees for applications made under Section 36 and 37 of the Electricity Act. In the Scottish Borders, we have processed numerous applications for windfarms that fall within the provisions of Section 36. This has placed a significant strain on our existing staff resources and our budget. Whilst the Energy Consents Unit is the determining body a significant part of the assessment of the application is undertaken by the Planning Authority. The Planning Authority should receive a fee commensurate with the work it carries out and that should, at the very least, be on par with that charged for major applications.
- 3.2 It would be perverse if we moved to a position where S36 applications, which by definition are of greater scale than major applications, are charged at a significantly lower rate. This could lead to applications being artificially modified to negate paying the major application fee.
- 3.3 Scottish Borders Council welcomes Scottish Government's intention to consider wider changes to the fee structure, including scope for further discretionary charging taking account of changes to the planning system flowing from the review. The Council does not support any of the additional funding generated being used to fund existing central government functions.

### **4 Conclusion**

- 4.1 In conclusion, Scottish Borders Council:
- Supports the proposed increase in the maximum planning fee for major applications, as a first stage of a review of the review of planning fees;

- Highlights that the fee increase, although welcome, will not fully alleviate resource pressure on local authority planning services;
- Acknowledge that the fee increase will benefit authorities who receive more major planning applications. For authorities with few major applications, there will be little benefit as a result of the proposed fee increase;
- Recommend that a percentage increase in fees of at least 20-30% be implemented as soon as possible to bridge the existing funding gap in the period leading to the second phase of the fee review;
- Recommend that there be a progressive move towards fee parity with England. This significant gap will need to be closed if full cost recovery planning costs is to be achieved in Scotland, and
- Agree that the second stage of the fee review should be linked to improved performance but that performance should be gauged using an updated Planning Performance Framework.

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Ian L Aikman  
Chief Planning Officer  
Scottish Borders Council

20th February 2017

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