

Prescribed Fees Consultation.

Belfast City Council Draft Consultation Response. November 2021

Q1. Would you support a move to a 100% cost recovery Model, where the user pays the full cost incurred by councils of processing building control applications rather than ratepayers subsidising the service?

Yes

The Council would be supportive of a move to a 100% cost recovery model where the user pays the full cost of processing building regulation applications.

As outlined in the consultation, Schedule 1 and 2 building regulation fees have not increased sufficiently over time, and currently are at a level far below the cost of delivering the four prescribed functions outlined in the current fees legislation, as the fee schedules were originally established to do. This has been exacerbated by the continually increasing complexity of the regulations since the fees were introduced and the associated extra time and resource required to carry out these functions.

However, the Council would wish to emphasise that a move to 100% cost recovery model for the processing of building regulations applications and the user pays principle will not make Building Control's building regulation function completely non-rate borne because, as is recognised in the consultation document, not all aspects of the building regulation service are covered by the four prescribed functions.

The Council would make reference to the Building (Local Authority Charges) Regulations 2010 which were introduced to enable local authorities in England and Wales to determine their own charges, with the overriding principle to recover all costs associated with performing chargeable functions and providing chargeable advice. These regulations make it clear that only certain building regulation functions may attract a charge (chargeable activities); and the Council would also refer to the CIPFA Local Authority Building Control Accounting Guidance for England and Wales (Fully Revised Second Edition 2010) which sets out the 3 work activity types undertaken by Building Control as:

- Building Regulation Chargeable activities
- Building Regulation Non-chargeable activities
- Other Building Control Services

Building regulation non-chargeable activities outlined in CIPFA guidance include formal enforcement and court action, as well as inspections to identify unauthorised works, giving general advice to the public, their representatives, other council departments etc, liaison with fire authority, and carrying out prescribed functions on fee exempt works, which include works carried out for disabled people and in Northern Ireland also the installation of cavity wall insulation.

In the move towards 100% cost recovery, and the setting of fees to achieve this, the Council would request that the Department consider the need for more clarity and guidance to be provided on the chargeable building regulation activities that the application fee is to cover, and what building regulation activities are to remain rate borne, and in particular that clarity be provided around formal enforcement/court action.

The Council would also request a review of the prescribed functions, with consideration given to the inclusion of other activities, such as the provision of information as a prescribed function, enabling charging for pre-application advice. In addition, currently for a Full Plans application once rejected amended plans can be resubmitted any number of times under the original fee, making 100% cost recovery impossible. This is an issue for the Council, over the 4 financial years from 2017 to 2021 we received 1245 Full Plan applications on average per year but in the same timeframe dealt with an average of 1841 resubmitted applications meaning every application is resubmitted on average 1.5 times. With some individual applications being submitted multiple times and a first time approval rate of only around 18% this brings significant extra workload, and therefore consideration should be given to an additional charge for more than one resubmission which, in turn, would bring greater diligence in submission preparation.

The Council would also request that the current fee-exempt applications within the regulations be reviewed. This is necessary if 100% cost recovery is to be aimed at for the processing of building regulation applications.

In addition, in terms of the user-pays principle, and in determining what the fees should be set at in the future to achieve 100% cost recover, the Council would emphasise, as is touched upon in the consultation, that Building Control is not providing a service to individual users in return for a fee, rather the fee charged should be what is considered necessary for the Council to provide the prescribed functions to carry out the level of enquiry into compliance with the building regulations that is felt to be on average required for particular categories of work.

The level the fees should be set at is therefore interrelated with what level of enquiry would seem reasonable, and guidance on what is expected of the Council's in this regard may be beneficial in demonstrating what the set fee was calculated as covering. Although all Council's work to the same fees, their cost recovery will not be the same for many reasons including the type of applications they receive, their direct and indirect costs which vary, and in addition one Council may by maintaining a reduced resource and reduced enquiry into compliance, achieving better cost recovery rates than a Council with more staff and a much higher level of enquiry.

Q2. Are there any other aspects of the Fees Regulations you feel should be included in the review?

Yes

The Council would welcome a wider review of the fees regulations, and indeed such a review has been long awaited, as some issues beyond the level of the fees have been long-recognised.

The Council would make the following general comments on the Fee regulations to inform a wider review, for consideration by the Department:

- Consider introducing into the prescribed functions the provision of information (after the first hour) to allow pre-submission consultations to be charged for.
- Consider introducing a charge for the resubmission of amendments following rejection (after the first resubmission) and for amendment approvals
- There is a disparity in fee charged under Schedule 1 for a newbuild dwelling under 250m² and a dwelling slightly larger that falls under Schedule 3 with the fee based on the estimated cost of works, which attracts a significantly larger fee. Consideration is needed in how to

address this – with one option being the provision of more fee bands for dwellings of larger floor areas.

- There is disparity between the fee charged under Schedule 2 for extensions 40 - 60m² and an extension just over 60m² that falls under Schedule 3 with the fee based on the estimated cost of works, which attracts a significantly larger fee. Consideration is needed in how to address this disparity. One option may be to provide set fee bands under Schedule 2 for larger extensions.
- The fee-exempt status of cavity wall insulation installation should be reviewed.
- The fee exempt works for people with a disability should be reviewed, and consideration given to updating the definition of a disabled person in the regulation which only currently includes a physical disability. More clarity should be given on what works and what building types (for example dwellings only) a disabled fee exemption can be claimed for, and what supporting documentation the Council should receive to support the exemption claim.
- Consideration should be given to allowing the fee for multiple works attracting set fees to be calculated instead on the overall estimated cost of the works.
- In Schedule 2 use of the set fee for microgeneration should be clarified, and looking to the future the inclusion of fees for renewables and, for example, conversion of heating systems to use heat pumps should be considered.
- The Council notes that this consultation is only addressing Schedule 1 and Schedule 2. While agreeing that Schedule 3, being based on estimated cost of works is somewhat inflation-proofed, in a full review the Council would feel it sensible to also review Schedule 3. For some commercial building types estimated cost does not necessarily equate to increased building regulation complexity or time spent on prescribed functions. Therefore Schedule 3, particularly in the higher estimated cost end should be considered at the same time as Schedule 1 and 2. An option of providing bands for different development types should be considered.
- Consideration to giving more guidance on what items should be included in an estimated cost should be reviewed. The Council often has difficulty obtaining the estimated costs of works to assess the fee for 'other works' in both domestic and commercial schemes, and often when received these need to be challenged as being too low. Consideration should also be given to the provision of regularly updated Northern Ireland construction cost indices to building control for fees to be assessed against.
- While currently there are no set fees for non-domestic works, consideration could be given for some set fees, for example for the installation of PV to a non-domestic building, as some items such as this with high cost of works are thought to currently attract too high a fee under Schedule 3.
- The Department should consider, as much as is feasible, the implications of all forthcoming changes to the Building Regulations and any extra roles or responsibilities under or as a result of the Building regulations that may come to Building Control in carrying out a full review the Fees regulations.
- The Council would request the Department to include a mechanism to uplift the Fees in line with inflation on an annual basis, which would be preferable to widely spaced ad-hoc fee reviews.

Q3. Do you agree with the Department's proposals to increase fees for Schedule 1 by 17.5% from 1st April 2022?

Yes

The Council is supportive of any increase and move towards 100% cost recovery. However, while supporting the proposed increases in fees the Council notes the following:

The Council notes that this two-stage uplift proposed is an interim measure in advance of a wholesale review of the Fees regulations. However, previous experience of a similar proposal has shown that while the first stage uplift may be adopted and implemented as planned there is no guarantee that the second uplift will be implemented. In addition, The Council notes that work on a comprehensive review of the Fees Regulations was commenced previously by the Department and did not come to fruition.

The Council would seek reassurances from the Department that both planned uplifts will be implemented.

The Council would also ask the Department to give an undertaking that it will completely review the Fees regulations and set out a timetable for providing new consultation proposals for consideration.

Q4. Do you agree with the Department's proposals for a further increase in Schedule 1 fees from 1st April 2023 that would result in an overall increase of 35% on these fees as they are now?

Yes

The Council is supportive of the second increase and understands the need to introduce these increases in 2 stages rather than as a single larger uplift. However, the Council would have preferred an increase that would achieve near 100% cost recovery at this time and would be clear that the 35% increase currently proposed, while welcome, is not adequate. The Council would also seek assurances from the Department that the proposed second uplift will indeed be implemented in April 2023.

The Council again notes that this two-stage uplift proposed is an interim measure in advance of a comprehensive review of the Fees regulations. The Council would ask the Department to give an undertaking that it will completely review the Fees regulations and set out a timetable for providing new consultation proposals for consideration.

Once a level of fees is set that achieves near cost recovery for the prescribed functions (taking into account the forthcoming changes to the Building Regulations and increasing complexity and time requirement resulting from them), and indeed from April 2024, in case the full fees review does not come to fruition as intended, the Council would request the Department to include a mechanism to uplift the Fees in line with inflation on an annual basis, which would be preferable to widely spaced ad-hoc fee reviews.

Q5. Do you agree with the Department's proposals to increase fees for Schedule 2 by 17.5% from 1st April 2022?

Yes

The Council is supportive of any increase move towards 100% cost recovery. Also see comments given in response to Q3.

Q6. Do you agree with the Department's proposals for a further increase in Schedule 2 fees from 1st April 2023 that would result in an overall increase of 35% on these fees as they are now?

Yes

The Council is supportive of the second increase and understands the need to introduce these increases in 2 stages rather than as a single larger uplift. However, the Council would have preferred an increase that would achieve near 100% cost recovery at this time and would be clear that the 35% increase currently proposed, while welcome, is not adequate. The Council would also seek assurances from the Department that the proposed second uplift will indeed be implemented in April 2023. Also see comments to given in response to Q4.

Q7. Do you agree with the analysis/principal assumptions, costs and impacts set out in the draft RIA?

Yes

In general, the Council agrees with the contents of the draft RIA. The Council would also agree that Option 3 is preferred in bringing some fee increases in the near term, while Option 2 is what the Council would wish to see achieved in the medium term.

However, the Council would note the following:

In the policy objectives and intended effects section, it states the intention of ensuring that building control can 'deliver an affordable, high-quality service to those that use it'. Building regulations enforcement is about enquiry into compliance, not a service provision.

While 5 Councils used the CIPFA guidance to calculate a chargeable hourly rate being used to calculate the sample proposed fees, it is clear that this will need to be further analysed and agreed between all 11 Councils for the full review of the fees. In England and Wales the Councils set their own fees and the CIPFA calculation methodology is based around the provision of detailed timesheets, capturing time spent on chargeable and non-chargeable building regulation activities and well as other building control functions. To estimate this on behalf of a whole Building Control service without such records, and then also establishing the direct and indirect costs to be included, is not a simple undertaking and can lead to wide discrepancies. In addition Council financial officers will need involvement and therefore the Council would consider that more work is needed around this before a final cost/hr figure for calculating fee proposals could be agreed.

It is stated for Option 2 that the proposed fees at 100% cost recovery would be broadly equivalent to England and Wales current fees. The Council would point out that England and Wales is subject to competition, and fee competition could be considered a factor in the 'race to the bottom' recognised over recent years.