

Bath & North East Somerset Council

MEETING:	Cabinet	
MEETING DATE:	13 February 2013	EXECUTIVE FORWARD PLAN REFERENCE:
		E 2437
TITLE:	Highway Adoption Charges	
WARD:	All	

AN OPEN PUBLIC ITEM

List of attachments to this report:

Appendix 1: Highway Adoption Charges: Section 38, 106 and 278 Agreements

Appendix 2:

Table A2.1: Cost Comparison: Staff Costs v Developer Income from 2008 onwards

Table A2.2: Proposed Fee Band with Minimum Fee

Table A2.3: Alternative Flat Supervision Fee Percentage(excluding costs of Structures)

Table A2.4: Alternative Fee Band with Minimum Fee

Appendix 3: Comparative Charges for Highway Adoption (Section 38, 106 and 278 Agreements)

1 THE ISSUE

- 1.1 Bath & North East Somerset Council currently charge developers a 6% flat fee for the supervision of developers highways works under Sections 38 and 278 of the Highways Act of 1980, and Section 106 of the Town and Country Planning Act of 1990. The technical approval of developer's works is currently not charged for. This charge rate has not been amended since 1996 and in recent years has shown an annual shortfall to the Authority through its Design & Projects team who carry out this work.
- 1.2 The 6% flat fee applies to all sizes of development and is the percentage of the estimated cost of the development related highway works whether on or off site. The finance records show that this rate has not covered the costs of officer time. On average there has been a £94K shortfall per annum over the last five years (2008/9 to 2012/13) comparing developer funding with staff costs, meaning the Authority has subsidised its highway adoption role.
- 1.3 The *Manual for Streets* [Department for Transport, March 2007] and other national guidance, (e.g. the encouragement of the use of non-conventional materials) has over a number of years led to more complex sites being promoted which in turn

has increased the level of input into technical approvals and site supervision for Section 38, 106 and 278 works.

- 1.4 The additional time spent by the Authority on both design checks and on-site supervision is essential to ensure that new roads are built to Bath & North East Somerset Council standards and do not result in a higher level of maintenance and liability by the Highway Authority. Staff costs include Section 38 and 106 Agreement preparation which is carried out by the Authority's Legal Services.

2 RECOMMENDATION

The Cabinet agrees that:

- 2.1 Supervision charges on S38, S106 and S278 works be increased by the Council to include both technical approval and on-site supervision as set out in **Appendix 1**;
- 2.2 That the charges be increased to cover staff time. Details of the income and costs of the previous five years and estimated income from the proposed increase is shown in **Appendices 1 and 2**.
- 2.3 At-cost charges for Structures officers be imposed by the Council to include for technical approval and supervision of each highways structure element, such as culverts, retaining walls and bridges.
- 2.4 The basis for the fee changes be subject to a further review in 2013/14.

3 FINANCIAL IMPLICATIONS

- 3.1 The increase in charges detailed above would increase revenue from S38, S106 and S278 agreements by an estimated £94K per annum including structures income.

4 CORPORATE OBJECTIVES

- 4.1 The proposal options are for developers to meet the cost of funding officers time, to help their developments meet the criteria needed for the adoption of new highways and that improvements to the surrounding transportation infrastructure are to the Authority's standards. This helps with the following corporate objectives:
 - *Creating neighbourhoods where people are proud to live*
 - *Building a stronger economy*

5 THE REPORT

- 5.1 Section 38 (supervision and technical approval) works is from the Highways Act of 1980 and is there to ensure that new highways built within developments meet adoptable standards for the Council to maintain in the future. Highway adoption is one of the biggest assets acquired year on year by the Authority, and, once adopted, the costs of its maintenance and upkeep of the new piece of road, pavement, or cycleway etc. become the Authority's responsibility.
- 5.2 Section 106 works (of the Town and Country Planning Act 1990), and Section 278 works (of the Highways Act of 1980) relates to monies paid by developers to Local

Planning Authorities to offset / mitigate the external effects of the development, which in this context is new highway infrastructure.

5.3 The charges imposed by Bath & North East Somerset on Developers for Sections 38 and 278 of the Highways Act of 1980, and Section 106 of the Town and Country Planning Act of 1990 has remained constant since 1996.

5.4 Currently a site supervision charge of 6% is levied which provides for the inspection of work in progress to ensure that:

- (1) Works are carried out in accordance with the drawings that form part of the Section 38, 106 or 278 Agreement;
- (2) Arranging for testing and sampling of materials;
- (3) Liaison with the developer throughout the construction period;
- (4) To inspect the finished works and ensure that remedial works are carried out within the 12 month maintenance period;
- (5) To carry out the final inspection and adoption process;
- (6) Liaison with our Legal department to ensure that the process is being followed correctly.

5.5 Technical Approval work is not currently charged for, (unless a specific agreement is in place), with this work involving:

- (1) Technical approval of the developers design to ensure that it complies with the Council's adoption requirements, including structural elements;
- (2) Liaison with the developer throughout the technical approval process leading to confirmation of technical approval;
- (3) The checking of the developers proposed contractor to ensure that the contractor has all the necessary insurances and accreditations;
- (4) Formal receipt of the approved drawings from the Developer, the calculation of bond and supervision fees, and the request to Bath & North East Somerset Legal department to enter into an agreement with the developer.

5.6 The *Manual for Streets* [Department for Transport, March 2007] and other national guidance, (e.g. the encouragement of the use of non-conventional materials) has over a number of years led to more complex sites being promoted which in turn has increased the level of input into technical approvals and site supervision for Section 38, 106 and 278 works.

5.7 This is evidenced by the comparative staff costs and income for supervision over the last five years which show (from **Table A2.1 of Appendix 2**) that on average there has been a £94K shortfall per annum over the last five years (2008/9 to 2012/13) comparing developer funding with staff costs.

5.8 The Council's income from Developer's site supervision works has averaged £161K per annum over the last five years, made up of £150K supervision fee income and £11K technical approval fee income, (from those agreements where the Technical Approval charge is permitted). The equivalent staff cost, including

Legal internal recharges averaging £25K, has been £255K, making an annual average deficit of £94K (£255K - £161K).

5.9 A comparison of adjacent Authority developer charges, shown in **Appendix 3**, indicates that Bath & North East Somerset has the lowest charges of our neighbouring authorities: Somerset charge a flat rate of 7.5% of the costs of the highway works of the development, Bristol 8%, and Wiltshire, South Gloucestershire and North Somerset all charging graduated supervision costs from 10% for smaller sized development works on a sliding downward scale for larger sized developments. Other charges in parts of the UK are higher still with Surrey, Buckinghamshire and Leicester charging up to 12%.

5.10 This proposal recommends that the Councils supervision fee charge follows a stepped charge regime similar to North Somerset to cover both technical approval and supervision costs, with structures related work provided additionally at cost. The stepped element is suggested as our experience shows smaller scale developments cost proportionately more to supervise and approve than larger developments.

(1) 10% for highway works up to and including £130K (reduced minimum fee of £2,850);

(2) 9% for highway works up to and including £325K (minimum fee of £13K);

(3) 8% (increased from 6%) for highway works up to and including £650K (minimum fee of £29,250);

(4) and 7% (increased from 4%) for highway works costing more than £650K (minimum fee of £82K)

5.11 This has higher percentage rates for larger schemes than North Somerset but has a lower initial minimum fee. **Table A2.2** shows the financial benefits from applying these fee structures

5.12 It is noted that the Community Infrastructure Levy will be introduced by Bath & North East Somerset to cover many parts of the agreements currently provided through the Section 106 process. The highway aspects of adoption and off-site works are not likely to be affected by the Levy as these negotiations and agreements are likely to remain separate.

6 RISK MANAGEMENT

6.1 The report author and Lead Cabinet member have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

7 EQUALITIES

7.1 An EqIA has been completed. No adverse or other significant issues were found.

8 RATIONALE

8.1 The rationale for increasing supervision charges on S38, S106 and S278 works, (to cover both technical approval and on-site supervision), is to recover more of the cost of officer time from the developer. Authorities charge for this time and Bath & North East Somerset charges have resulted in an annual average net loss

of £94K per annum over the past five years which equates to £470K over that five year period.

- 8.2 Bath & North East Somerset supervision charges are significantly less than neighbouring and UK wide authorities and have been fixed since the formation of the Council in 1996. Since that time costs have increased as developments have become more complex because of changes in central government policy advice (such as Manual for Streets), and more variation on surface treatment and materials.
- 8.3 The proposed increase options seek to address the imbalance between income and staff costs.

9 OTHER OPTIONS CONSIDERED

- 9.1 No change to existing 6% flat rate for supervision only fees: an average net loss of £94K per annum may continue. The finance for this deficit would need to be found from other parts of the Service or from other parts of the Authority.
- 9.2 Charging separately for Technical Approval: this is a potential option which would include revenue from development proposals that do not reach the physical development stage. It would be more complex to administer as requires separate agreements and payments from the Developer.
- 9.3 Charging a higher fixed fee percentage: the rationale for the increase in fees is to address the imbalance between staff costs and income from this work and the costs to break even of 8.7%, shown on **Table A2.3 of Appendix 2**. This would be slightly higher than surrounding authorities: Somerset charge 7.5% and Bristol charge 8%. Experience shows that smaller developments have a greater proportional cost in terms of supervision and technical approval time so should have a corresponding increase in fees relative to larger developments.
- 9.4 Charging the same as North Somerset: of the surrounding authorities, North Somerset was seen to be the nearest to Bath & North East Somerset in urban / rural makeup. The charges would be as follows, and showed an estimated increase in income of £70K, including structures, which would reduce the annual deficit to £24.5K – please see **Appendix 2, Table A2.4**. It was considered that this is a less preferred option as the Authority would still be subsidising this work:
- (1) 10% for highway works up to and including £130K (minimum fee of £3.3K);
 - (2) 9% for highway works up to and including £325K (minimum fee of £13K);
 - (3) 6% for highway works up to and including £650K (minimum fee of £29,250);
 - (4) and 4% for highway works costing more than £650K (minimum fee of £39K)
- 9.5 It was considered that the proposed stepped fee percentage based on North Somerset's financial model, but with alterations to enable all costs to be met by developers, would be clear to developers, and would be in line with neighbouring authorities as well as relatively easy to administer.

10 CONSULTATION

10.1 *Other Bath & North East Somerset Services; Stakeholders/Partners; Section 151 Finance Officer;*

10.2 Additional awareness of the report was carried out by email advising major developers of the general proposals. Emails were sent out in mid-January and any replies received will be fed back verbally at Committee.

11 ISSUES TO CONSIDER IN REACHING THE DECISION

11.1 *Customer Focus; Sustainability; Property; Health & Safety; Impact on Staff; Other Legal Considerations*

12 ADVICE SOUGHT

12.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	<i>Steve Froggatt 01225 395239</i>
Sponsoring Cabinet Member	<i>Councillor Roger Symonds</i>
Background papers	<i>None</i>
Please contact the report author if you need to access this report in an alternative format	