

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 05 September 2023

TITLE	Transport Development Management – Section 278 and Section 38 Assessment and Inspection Fees and Charges		
Ward(s)	Citywide		
Authors: Pip Howson / Adam Crowther	Job titles: Transport Development Manager / City Transport Service Manager		
Cabinet lead: Cllr Donald Alexander, Cabinet member for Transport	Executive Director lead: John Smith, Interim Executive Director Growth and Regeneration		
Proposal origin: BCC Staff			
Decision maker: Cabinet Member Decision forum: Cabinet			
Purpose of Report: To seek approval for a comprehensive (and above inflation) uplift to the fees charged for Section 38 and Section 278 agreements” and the introduction of pre-application fees for transport and highways advice.			
Background			
<ol style="list-style-type: none"> 1. Transport Development Management (TDM) carries the statutory responsibility to negotiate then undertake the technical approval and inspection of highway works carried out by developers resulting from the planning process. These processes are pursuant to one of two sections of the Highways Act. <ul style="list-style-type: none"> • Section 38 agreements for the adoption of new highway infrastructure, and • Section 278 agreements where works are undertaken to the existing highway 2. This report relates to the Cabinet Member Report, dated 7 October 2021 which gave approval to investigate uplifting TDM fees further. 3. TDM has two teams who contribute to the delivery of a safe, efficient, and sustainable public highway which is fundamental to achieving Bristol City Councils priorities of equity and climate change. The process starts before the first planning stage of pre-application. In 2022 the planning department had to limit the way they carried out pre-applications. TDM continued to offer pre-app advice as a gesture of goodwill however resources have diminished and without a fee this vital piece of early engagement would be difficult to maintain. This report proposes the introduction of new fees to reflect the work involved. Together with increase in the published fees for Section 278/S38 services. 4. Bristol City Council as planning authority processes in excess of 1,500 planning applications per year of which approximately 25% require highway agreements. The larger the scheme the more significant the time required for TDM’s management. Section 278 works are the direct result of TDM officers negotiating improvements to existing infrastructure at the planning process and have accounted for £8.3m worth of improvements to Bristol’s highway network over the last five years. This increase reflects the improvement and strengthening of TDM procedures to ensure the payment of fees, the signing of an agreement and the 			

technical approval of designs prior to any commencement of development.

5. It should also be noted that construction was significantly impacted during the Covid-19 pandemic and the impact of BREXIT on areas of construction employment
6. As justification for the new fees proposed. Re a TDM pre-app to Approval fee -Early discussion between applicants and the Local authorities is a valuable part of the planning application process. This approach is beneficial as it provides applicants / agents with full information at an early stage to assist in formulating a proposal before committing to costs and incorporating sufficient information in the application to maximise its chances of success. This approach is also intended to facilitate an efficient application and decision process resulting in quicker outcomes.

Re Design guide Departures fee

7. TDM recently launched the Design Guidance for work on the highway see the link below: <https://www.bristol.gov.uk/transport-development-management-tdm/processes> this requires a departure process for highways and TDM to assess changes and this service will need to have a fee. This is aimed at being a deterrent to developers so that they adhere to the adopted guidance where possible.

Re post-approval new fees S278

8. As a significant number of Section 278 and S38 extend beyond a reasonable time to complete a further fee is proposed to cover the extra management of that process.

Methodology and research to support the proposal

9. TDM officers have carried out a revised benchmarking exercise with other cities with similar development demand. This we summarised in 2 tables. Table 1 Proposed New Fees and Table 2 Revised fees:

Table 1 - Proposed new fees	
TDM Pre -APP to Approval Service- This is an Abortive fee to protect the Council against financial loss if an applicant doesn't proceed with the development. (Service includes meeting / site visit/ checking indicative plans and a response)	See below categories
<ul style="list-style-type: none"> • Under 9 residential units requiring new or amended access arrangements (Minor works) 	£500
<ul style="list-style-type: none"> • Between 10 -49 residential units requiring new or amended access arrangements (Minor works plus) 	£1000 to £3000
<ul style="list-style-type: none"> • Above 50 residential units requiring new or amended access arrangements 	£3000 to £5000
Bristol's Street Design Guide departure process	£500 per item
Post approval new fee	
If more than 2 years elapses after issue of the Part 1 Certificate*, without the Part 2 Certificate* being issued, BCC will charge a further fixed fee (4.5% of Bond) for additional administration and inspection work for S38	4.5% of bond
If more than 3 years from final technical approval to substantial completion a further fixed fee (4.5% of Bond) for additional administration and inspection work in respect to S278	4.5% of bond

**(Part 1 Certificate is normally carried out after a snagging list is agreed (things to correct) Part 2 Certificate is when the action on the snagging list have been completed or satisfactorily mitigated*

Table 2 Revision of TDM Post Approval Fees			
Transport Development Management - Highways Act 1980 - Section 38			
Service	2023-24	for oct 2023	increase

Preparation of Highway Agreement	300	500	£200	
Drawing approvals and site supervision	Flat rate of 9% based on the estimated value of works	10%	1%	
Transport Development Management - Highways Act 1980 - Section 278 - Minor highway works				
Preparation of Highway Agreement	50	100	100%	
Drawing approvals and site supervision - Estimated value of work up to and including £29,999.00	10% subject to a minimum value of £2,000.00		no change	
Transport Development Management - Highways Act 1980 - Section 278 - Major highway works				
Preparation of Highway Agreement	£200	£400	100%	
Drawing approvals and site supervision - Estimated value of work up to and including £49,999.99	9% subject to a minimum value of £2,000.00	10% subject to a minimum value of £2,500.00	1%	
Drawing approvals and site supervision - Estimated value of work up between £50,000.00 and £99,999.99	8% subject to a minimum value of £4,500.00	10% subject to a minimum value of £5,000.00	2%	
Drawing approvals and site supervision - Estimated value of work up between £100,000.00 and £199,999.99	7% subject to a minimum value of £7,500.00	10% subject to a minimum value of £8,000.00	3%	
Drawing approvals and site supervision - Estimated value of work up between £200,000.00 and £499,999.99	6% subject to a minimum value of £12,500.00	8% subject to a minimum value of £14,000.00	2%	
Drawing approvals and site supervision - Estimated value of work up between £500,000.00 and £999,999.99	5% subject to a minimum value of £25,000.00	7% subject to a minimum value of £27,000.00	2%	
Drawing approvals and site supervision - Estimated value of work up over £1,000,000.00	4% subject to a minimum value of £40,000.00	6% subject to a minimum value of £50,000.00	2%	

Charges for VAT will be in addition to the costs listed above

Evidence Base for Table 1

The proposed new fees are based on charges already applied in Cities of comparable demographics to Bristol City. (Appendix A sets out details)

- Plymouth
- Barnsley
- Norfolk

Evidence Base for table 2

Following a benchmarking exercise across Bristol City Council (BCC) Bath and North Somerset (BANES) and South Gloucestershire Council (SGC), TDM presented a summary of the benchmarking findings is provided below and is taken from an earlier Cabinet Member Report, dated 7 October 2021 which gave approval to investigate this further (Appendix A sets out details)

Cabinet Member / Officer Recommendations

That Cabinet:

1. Approve the increase and introduction of new Transport Development Management fees as set out in Tables 1 and 2 in this report to better represent the cost of managing these works and bring the council in line with other similar local authorities.
2. Authorise the Executive Director of Growth and Regeneration, in consultation with the Cabinet Member for Transport, to take all steps required to implement the increase in fees.

Corporate Strategy alignment:

- Improving connectivity – delivery of developments that are permeable and safe for all modes of travel, especially the most vulnerable users, providing sufficient protection from motorised traffic
- Tackling congestion – the need to encourage and insist upon the best infrastructure to accompany (and be funded by) development.

City Benefits:

- Health – reducing the negative environmental and health impacts caused by increased and excessive car reliance
- Sustainability – ensuring that the infrastructure to accompany development minimises future harm to the local area
- Equality – Ensuring that each of the interventions made are accessible to all users

Consultation Details:

None

Background Documents:

Highways Act.

- [Section 38 agreements for the adoption of new highway infrastructure](#), and
- [Section 278 agreements where works are undertaken to the existing highway](#)

Revenue Cost	0 increase will help meet current budget target	Source of Revenue Funding	N/A
Capital Cost	N/A	Source of Capital Funding	N/A
One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input checked="" type="checkbox"/>	Income generation proposal <input type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:**1. Finance Advice:**

This report seeks Cabinet approval to agree 2 separate changes to the Council’s transport Development Management fees.

Pre-application fees for transport and highways advice

The first is to agree to the introduction of pre-application fees for transport and highways advice. This fee is being introduced to protect the Council against financial loss if an applicant doesn't proceed with the development. The details of these proposed new fees are set out in Table 1. The service has assessed that there could be an average of 25 cases per year to which these fees would apply. Based on this number of cases it is estimated that this would generate approximately £0.0570m per year. For the 2023-24 financial year assuming these charges are introduced on October 1st 2023, this would generate approximately £0.028m this financial year.

Fees charged under Section 38 & Section 278

The second proposal is to seek approval to comprehensively review and set new rates for fees charged under Section 38 and 278. Full details are provided in Table 2. Some of the proposed charges are above the current rate of inflation. These charges are being revised so that they better represent the cost of managing these works as well as to ensure the fees are consistent with the amount charged by local authorities with a similar profile to Bristol. The service has determined that approximately 75 cases per year could be affected by these charges. Based on this number of cases it is estimated that this would generate approximately £0.444m per year. For the 2023-24 financial year assuming these charges are introduced on October 1st 2023, this would generate approximately £0.222m this financial year.

The estimated additional income in 2023-24, will contribute towards the achievement of the existing income target

Finance Business Partner: Alison Bennett Interim Finance Business Partner, Growth & Regeneration 25 August 2023

2. Legal Advice

Section 38 and Section 278 of the Highways Act 1980 authorise the Council to recover its costs associated with entering into these agreements.

Pre-application advice is a discretionary service to be provided by the Highways Authority. Consequently, authority to charge for this discretionary service is under Section 93 of the Local Government Act 2003. Section 93 requires that the charge must not generate a surplus.

Legal Team Leader: Joanne Mansfield, Team Manager - Property Planning and Transport Team 31 July 2023

3. Implications on IT: No immediate implications on IT in regard to this activity.

IT Team Leader: Alex Simpson Lead Enterprise Architect, 1 August 2023

4. HR Advice: There are no HR implications evident

HR Partner: Celia Williams, HR Business Partner, 1 August 2023

EDM Sign-off	John Smith – Interim Executive Director Growth and Regeneration	21 June 2023
Cabinet Member sign-off	Cllr Donald Alexander, Cabinet Member for Transport	6 July 2023
For Key Decisions - Mayor's Office sign-off	Mayor's Office	7 August 2023

Appendix A – Further evidence detail on the proposal –	YES
Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	NO
Appendix F – Eco-impact screening/ impact assessment of proposal	NO
Appendix G – Financial Advice	NO

Appendix H – Legal Advice	NO
Appendix I – Exempt Information	NO
Appendix J – HR advice	NO
Appendix K – ICT	NO