

Cabinet Member for City Services

15th March 2023

Name of Cabinet Member:

Cabinet Member for City Services – Councillor P Hetherton

Director Approving Submission of the report:

Director of Transportation and Highways

Ward(s) affected:

City Wide

Title:

Section 278 and Section 38 Fees

Is this a key decision?

No

Executive Summary:

In accordance with the City Council's procedure for dealing with fees and charges, those relating to highway adoptions, are agreed by the Cabinet Member for City Services. It is standard practice to review each of the fees and charges and increase in line with current inflation levels on an annual basis. The last review of the fee levels was in April 2019 and therefore a review has been undertaken. This has concluded that it is appropriate to update the fees and charges and therefore it is proposed to uplift and amend our existing Section 278 (S.278) and Section 38 (S.38) (Highway Act 1980) fees such that the fees are aligned with the level charged by other Authorities and to ensure that the level of risk placed on the Council when covering staff costs is reduced. It is also intended that the increase in fees will provide sufficient additional revenue to provide continuing flood risk and drainage work in connection with S.278 and S.38 process.

Recommendation:

The Cabinet Member is recommended to approve the uplift and amendment to the fees in connection with the technical approvals of Section 278 and Section 38 works as set out in Appendix A to the report.

List of Appendices included:

Appendix A - Schedule of proposed S.38 and S.278 Fees

Background papers:

None

Other useful documents

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title: Section 278 and Section 38 Fees

1. Context (or background)

Under Section 278 (S278) and Section 38 (S38) of the Highways Act 1980, the City Council, as Local Highway Authority, enters into legal agreements with third party developers seeking to undertake works on the adopted highway, or seeking adoption of new highway that has been constructed by that third party. Typically, these agreements are related to new developments. The Council incurs costs to scrutinise the proposed works covered by such agreements, and in the negotiation and approval of the agreements, and these costs are recovered through fees charged to the third party.

Highway Development Management would normally undertake an annual review of the fees, which should cover all work undertaken by the team in relation to S278 and S38 agreements, including the necessary technical approvals relating to proposed highway development works. This is standard practice and typically the fee increases are in line with the current inflation rates. For clarity S.278 agreements are required for any works on the existing adopted highway and S.38 agreements create the legal mechanism for new highway to be adopted by the Highway Authority.

The main reasons for this review and proposed changes in S.278 and S.38 fees are set out below:

The last review of the fee levels was undertaken in April 2019 and fee levels have not been reviewed or updated since.

The current fee structure is not aligned with other local authorities and does not reflect current levels of inflation. This is resulting in unrecovered costs for the Council including the inability to provide funds for business-critical flood risk advice to support S.278 & S.38 agreements. It is proposed that fees are increased to a suitable level to rectify this issue.

The current fee structure results in unrecoverable expenditure if there are delays in developments coming forward. It is proposed that new fees are introduced to mitigate this risk.

The Authority is currently exposed to a high level of risk when undertaking the works necessary to produce the legal agreements and technical review if the developer withdraws or sells on the site before the agreements are signed.

It is therefore intended that the current fee levels are increased over a two-year period to bring the fees more into line with current regional levels. A two-year period will allow developers to adjust and forecast project viability accordingly.

The revised fee structure will also assist in providing revenue to continue to support flood risk and drainage works as Lead Local Flood Authority ensuring our existing infrastructure can accommodate the increased capacity and demand from the proposed developments.

2. Options considered and recommended proposal

Consideration was given to retaining the current fee structure however, this was dismissed as it would result in the costs of the service not being recovered. Furthermore, the level of fees being requested would be out of line with other Local Authorities.

The recommended option, to increase the existing fee level, is set out in Appendix A to the report.

3. Results of consultation undertaken

3.1 No consultation has been undertaken.

4. Timetable for implementing this decision

4.1 The new fee structure will be implemented with immediate effect if approved.

5. Comments from Interim Chief Executive (Section 151 Officer) and Chief Legal Officer

5.1 Financial implications

S.278 and S.38 fees are set to recover the cost to the Council of technical approval process of the highway schemes that form part the legal agreements. It is therefore important to ensure that the fees are set correctly so that the Council does not make a loss from this activity.

It is difficult to accurately predict the financial implications of the proposed fee changes as S.278 and S.38 income and expenditure varies depending on the volume and nature of development works. However, the table below sets out the estimated impact of the proposals:

	£ 000
S.278/S.38 Income	
Average annual income received in the last 3 years	340
Impact of inflation on infrastructure projects	61
Additional income based on proposed fee change	100
Total Estimated Average Annual Income	501
S.278/S.38 Expenditure	
Total Estimated Cost 2023-24	500
Net Cost of Providing Service	0

This shows that the proposed increases are necessary in order to ensure that the service remains cost neutral to the Council.

There is a financial risk that the number and type of developments differ from the estimates above and the amount of income received does not cover the costs of operating the service. In order to mitigate this risk:

- The financial position of the service will have to be carefully monitored and action taken to control costs if necessary.
- The fees and charges structure will be reviewed on an annual basis to establish if there is a need to increase fees to cover any potential shortfalls.

5.2 Legal implications

None

6. Other implications

6.1 How will this contribute to the Council Plan (www.coventry.gov.uk/councilplan/)?

Not applicable

6.2 How is risk being managed?

None

6.3 What is the impact on the organisation?

None

6.4 Equality Impact Assessment (EIA)

No specific equalities impact assessment has been carried out.

6.5 Implications for (or impact on) climate change and the environment

None

6.6 Implications for partner organisations?

None

Report author:

Name and job title:

Ian Lewis
Transport and Development Design Manager

Service:

Transportation and Highways

Tel and email contact:

Email: ian.lewis@coventry.gov.uk
Tel: 024 76 976 908

Enquiries should be directed to the above person.

Contributor/approver name	Title	Service Area	Date doc sent out	Date response received or approved
Contributors:				
Caroline Taylor/Michelle Salmon	Governance Services Officers	Law and Governance	08.02.2023	09.02.2023
John Seddon	Head of Transport and Innovation	Transportation and Highways	08.02.2023	09.02.2023
Names of approvers for submission: (officers and members)				
Graham Clark	Lead Accountant	Finance	08.02.2023	13.02.2023
Rob Parkes	Team Leader Place, Legal Services	Law and Governance	08.02.2023	12.02.2023
Colin Knight	Director of Transportation and Highways	-	08.02.2023	09.02.2023
Councillor P Hetheron	Cabinet Member for City Services	-	13.02.2023	13.02.2023

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Appendix A – Schedule of proposed S.278 – S.38 Fees

Form of Agreement	Cost Estimate Threshold	Current Fee Level	Proposed Fee Level 2023/24	Proposed Fee Level 2024/25
S.38 Agreement	£20k to £50k	13%	14%	15%
	£50k to £100k	12%	13%	14%
	£100k to £250k	11%	12%	13%
	£250k to £400k	10%	11%	12%
	£400k to £600k	7%	8%	9%
	£600k to £1mil	7%	8%	9%
	£1mil and above	7%	8%	9%
Minor S.278 Agreement	up to £20k	£1,800	£2,100	£2,400
	£20k to £50k	13%	14%	15%
	£50k to £100k	12%	13%	14%
	£100k to £250k	11%	12%	13%
S.278 Agreement	£250k to £400k	10%	11%	12%
	£400k to £600k	7%	8%	9%
	£600k to £1mil	7%	8%	9%
	£1mil and above	7%	8%	9%
Site works commenced prior to Agreement. Applicable to S.38 works only	This fee is charged in addition to the corresponding % for cost estimate	2.50%	3.50%	4.50%

All S.38 Agreements anticipate that developer works will be completed within 2 years.

- in the event that works associated with a S.38 Agreement have not been completed within 2 years then a further fee of 5% will be levied to cover inspection and administration between years 2 and 4.
- if incomplete after 4 years – levy a further charge of 5% is proposed.
- if incomplete after 6 years – call in the bond and complete the works using the bond sum.
- where agreements have not previously been extended, at the end of 2 years we will seek the reasonable reimbursement of any additional costs that have been incurred with reference to the Council's Schedule of Fees and Charges.
- in the event the developers ongoing development works cause damage to highways already adopted and maintained by us and within the development, action will be taken to recover the costs of correcting the damage under Section 59 of the Highways Act 1980 – Recovery of expenses due to extraordinary traffic.