



## PLANNING FEES AND PERFORMANCE: HOMES FOR SCOTLAND RESPONSE

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### **1.0 OVERVIEW**

- 1.1 Homes for Scotland notes the Scottish Government’s commitment to implementing changes to the planning fee regime in Quarter 2 of this year. We welcome the opportunity to share our thoughts before those changes are finalized.
- 1.2 Our members do not recognize the improvement in planning performance that the Minister refers to in his Ministerial Foreword. In recent months our home builder members have consistently told us it is now harder than ever to secure a planning decision in Scotland.

- 1.3 This leaves us with a difficult decision to make on whether or not to support further increases in planning fees. On one hand we must recognize the need to boost the resources available to local planning services, if performance is to improve. On the other hand, our members have not experienced any real improvement in performance since planning fees were last increased in 2017. The consultation paper itself declares that of the 15 planning authorities that saw fee income uplifts at that time, only 10 reinvested that uplift in their planning service.
- 1.4 The Scottish Government increased fees immediately after the Independent Review of Planning and at that time a commitment was given to there being no further increase until performance measures had been put in place. We are disappointed that the Scottish Government has not been able to follow this good intention and feels compelled at this point to increase fees again before the National Planning Improvement Coordinator has been appointed and has begun to tackle the performance issues that are affecting Scotland's home builders and other stakeholders.
- 1.5 There have been 17 increases in planning fees since 1981 and our members report they have only seen a continued deterioration on service levels. The lack of any real expectation on ring-fencing and reinvestment of fees must have a part to play in this gap between stated public intention and experienced applicant reality.
- 1.6 The 2017 fee changes saw applicants pay local authorities an additional £4,218,242 in planning fees. Only 33% of that (£1,412,018) was reinvested. The remaining 67% (£2,806,224) was spent elsewhere. This is clearly unacceptable to paying applicants. It is also unfair to frontline planning teams.
- 1.7 In the circumstances, Homes for Scotland does not want to object to the principle of increasing planning fees in order to finally achieve acceptable levels of performance across the piece. We would however ask for any fee increases at this stage to be accompanied by some firm and reliable commitments from both the Scottish Government and individual local authorities:
  - Homes for Scotland to attend High Level Group on Planning Performance
  - Local commitments to investing fee income in development management
  - No fee changes until National Planning Improvement Coordinator is in post
  - Further technical consultation on the detail of final fee proposals
  - No further fee increases until post 2025

## 2.0 PLANNING PERFORMANCE

### 2.1 VISION FOR PLANNING SERVICES

#### Question 1

**Should we set out a vision for the Planning Service in Scotland?**

Yes

#### Question 1.a.

**Do you agree with the vision proposed in this consultation paper?**

*“The planning system must provide certainty, consistency and clarity to all those who participate in it, through effective engagement policy, decision making and communication.”*

No

#### Question 1.b.

**Do you have any comments about the proposed vision?**

The vision should reflect the importance of planning in anticipating the development and land uses are needed to ensure all parts of Scotland flourish, and the central role of the planning system in delivering those changes.

As currently worded, the proposed vision is silent on the fact that planning is about managing change and achieving sustainable development, not just making decisions.

We suggest the following vision:

*To successfully manage the development and use of land in the long-term public interest, the planning system must provide certainty, consistency and clarity as to how development and land use will be managed. This is important for all of those who participate in planning or who depend upon its decisions and outcomes. Effective engagement policy, decisions making and communication are essential to ensuring all stakeholders have a voice in how planning operates and an understanding of plans, policies and decisions, and the outcomes being sought.*

### 2.2 PLANNING PERFORMANCE REPORTS: PREPARATION & CONTENT

#### Question 2.

**Is the proposed approach to the content correct?**

No

**Question 3.****Do you have any comments on the Proposed content of Planning Performance Reports?**

In addition to the content outlined on page 11 of the consultation paper, performance reports should identify the extent to which measurable outcomes have been achieved. This is essential if ongoing service design and resourcing decisions are to be better aligned to improving the positive outcomes of planning: measuring not just what has been achieved to date, but what remains to be achieved.

Not all outcomes lend themselves to quantitative measurement, but some do. Delivering enough homes to meet need and demand is a good example of an outcome that can be measured in terms of both what is required, and what is being achieved. Any approach to performance which side-steps this important task runs the risk of exacerbating Scotland's already significant problem of wealth inequality.

**Question 3.a.****Do you have any comments or suggestions as to how reports should be prepared?**

Reports should be prepared and finalised in partnership with stakeholders. This must include the home builders and other planning applicants who:

- fund development management services by paying substantial planning fees;
- are relied on to implement plans, and blamed where they are unable to do so;
- see direct and negative effects on their businesses where planning decisions do not align with plans, spatial strategies and policy

The management plan partnership approach used by the National Parks in England and Wales provides a potential model.

**Question 3.b.****What statistical information would be useful/valuable to include and monitor?**

House price inflation in both the home ownership and rental markets (this being a signal that planning approaches to housing delivery may need to be reviewed in order to stimulate supply).

**Question 3.c.****What are the key indicators which you think the performance of the system and authorities should be measured against?**Timely decision making

The time taken to issue a decision should remain a primary performance indicator. Irrespective of the precise causes of delay in any single application, planning authorities should continue to be responsible for issuing decisions as quickly as possible. Unlike their counterparts in other parts of the UK, planning applicants in

Scotland do not benefit from a “planning guarantee<sup>1</sup>”. Nor do they have access to the full range remedies for extended delays – such as England’s provision for repayment of planning fees after 26 weeks<sup>2</sup>. Their only choice they can make is to appeal against non-determination – which in practice worsens the uncertainty over when a decision will be made.

We were very disappointed that the recent reform of primary legislation did not give Scottish applicants equivalent rights to recover fees as are enjoyed by their English counterparts. This is just one of many strong provisions in place to address applicant needs in England. An amendment of this nature was tabled by Graham Simpson MSP during stage 2 of the Planning (Scotland) Bill, but it was rejected by the other parties. We think the Scottish Government should give careful thought to what new options it can make available to Scottish applicants in instances where they experience unacceptable delays in receiving a planning decision. This should be an early area of consideration for the National Planning Improvement Coordinator.

Delays in determining applications can have a ruinous effect on the businesses affected. Debt-financed smaller developers, reliant on just one site or a handful of sites, are particularly vulnerable to the financial impacts of planning delays, but delays can also have a major impact on cash flow for any scale of businesses – putting at real risk their ability to retain their staff. Once site A is approaching completion, any business needs a shovel-ready, fully consented site B onto which they can transfer their trade, sales and site management staff. If site B is still stuck in the planning system, those jobs are clearly under threat. In many parts of Scotland this is a live issue for our home builders.

Existing monitoring of decision-time performance is inadequate and un-inclusive. The focus on relative performance from year to year, rather than on whether statutory timescales are being met, places insufficient emphasis or impetus on timely decision making – something we explored earlier this year in our February 2019 press release on planning performance statistics (reproduced at Appendix 2).

The number of major applications requiring to be determined has been falling for 5 years. Despite this, the average decision-making time is still double the statutory time period – even with increasing use of the Stop-the-Clock protocol (see Appendix 3) and an increase in the use of processing agreements. This ongoing problem was discussed in detail in Scottish Planning and Environmental Law (SPEL) Journal no. 189, October 2018 (p. 102-103), in an article which concluded there is a need for a review of development management services to inform any proposals for further increases in planning fees.

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<sup>1</sup> The planning guarantee is the UK Government’s policy that no application should spend more than a year with decision-makers, including any appeal. In practice this means that planning applications should be decided in no more than 26 weeks, allowing a similar period for any appeal. The planning guarantee does not replace the statutory time limits for determining planning applications.

<sup>2</sup> If an applicant in England has not exercised this right of appeal against non-determination, and the application remains undetermined after 26 weeks, then the fee paid by the applicant will be refunded to them (unless a longer period for the decision has been agreed).

## Use of Processing Agreements

Performance can also be judged on the use of a processing agreement to project manage planning decisions from pre-app through to negotiation of developer obligations. This approach can improve efficiency and transparency from the start to the end of the development management process. Planning case officers need to be good project managers, understanding what needs to happen when to be able to make a planning decision by an agreed date, and using that knowledge to coordinate and galvanise their colleagues and consultees. Passive approaches to service are not acceptable and will be even less supportable if fees increase again.

## Applicant Satisfaction

Qualitative measures of customer (applicant) satisfaction are important given the increasing reliance on planning fee payers to subsidise or fully-fund frontline planning services. Some authorities already send questionnaires to applicants upon conclusion of the application. This could be standardized and the results published. It could contain several questions rating the process rather than the result, such as:

1. Project management of the application and consultees
2. Communication (including responsiveness to questions and information)
3. Validation
4. Speed of response from consultees

## Elected Members: Training and Decision-Making

HFS welcomes the provisions in the new Planning Act for the training of elected members. We would be keen to explore ways in which we and our members could contribute to this new training. We will also consider what the desired outcomes of that training might cover, in respect of housing delivery and our members' experience of local planning services. One way to gauge the impact of member training could be to monitor any reduction in the number of decisions that are taken against officer recommendations – or in the number of refusals being overturned on appeal. The latter has been considered as a potential measure of decision-quality in the English planning system.

When considering performance, it is important that the broader context is not lost. Most non-householder planning applications are submitted by, or on behalf of, companies that want to invest money in the Scottish economy, creating new jobs and new homes. Whilst the planning performance statistics can appear abstract, each week of delay defers investment and adds – unproductively – to project costs. In some instances, the length of delays and complexity can deter investment altogether. Performance urgently needs to be addressed.

## Effective Housing Land / Delivery of New Homes

The restrictions put in place through development plans and the wider planning system have a direct impact on the land options that are available for home building. Plans identify the land that the planning authority believes should be used for home

building, taking into account a range of considerations. Home builders, as businesses, can only build homes on that land if they can access it at an appropriate price and they build and sell homes at costs and prices that result in a profit. Not all of the land identified in plans provides a genuine commercial opportunity that makes home building through the market a realistic option. The supply of effective housing land in Scotland is therefore lower than it may appear when looking at development plans and housing land audits. This results in many home builders competing for each bit of genuinely effective land, pushing land prices up and reducing the range of locations in which home building is commercially viable. Despite this, many of Scotland's planning authorities judge themselves to be maintaining a five-year effective housing land supply.

Approaches to performance need to change if current impasses and imperfect information are to be overcome. An outcome-focused measure of performance would not just look at land identified in plans and audits – paper homes – but at the number of new homes that have been successfully delivered through the planning system – real homes that real households can live in. The number of new homes delivered could be judged against the sites in plans and audits (i.e. how successfully are planning authorities identifying sites for residential development that can be delivered over the plan period). Delivery can also be judged against housing supply targets.

If performance continues to be judged just on land identified, not homes built, it will be more important than ever for the Scottish Government to work with stakeholders to agree a standard methodology for measuring the effective housing land supply for each part of Scotland. This should be focused on achieving a realistic means of predicting delivery so that alternative arrangements can be put in place as soon as a delivery shortfall can be anticipated. Current methods point to land supply not being an issue, when the home building industry knows from painful experience that it is, and despite many allocated sites not coming forward from on plan to the next.

**Question 3.d.**

**Do you have any other comments to make with regards to how the Performance of the Planning System and Authorities is measured and reported?**

The High Level Group on Planning Performance does not embrace representatives of key planning applicant groups and planning fee payers, such as the home building industry. The group needs more balance if it is to play an effective role in achieving an outcome-focused approach to performance, and if it is to provide those who fund planning services with an appropriate opportunity to discuss their experiences, needs and perspectives.

**Question 3.e.**

**Do you have any suggestions about how we could measure the outcomes from planning such as: Placemaking; Sustainable Development; Quality of decisions?**

Development of a methodology to assess the beneficial impacts of enabling people and families to move into and/or remain in living in an area.

Articulating the role that meeting housing need and demand has on achieving sustainability, so stakeholders understand the negative impact on sustainability that can arise if cumulative decisions on individual proposals result in too few homes being built across Scotland as well as in each area.

Better tracking what happens after a community has objected to a planning application. Do the negative impacts they perceive arise in practice or are they mitigated? Do the new homes built, and the people that move into them, bring positive benefits to the areas (e.g. to local shops and services).

**Question 3.f.**

**Do you have any suggestions about how planning's contribution to the National Outcomes contained in the National Performance Framework should be measured and presented?**

NPF4 will need to be very clear in terms of what action and outcomes are required and the local authority level to achieve the positive outcomes that NPF4 is designed to deliver. On housing delivery, the Scottish Government has been clear it wants to see more, high-quality new homes built across Scotland. NPF4 should provide clear signals to local authorities on what that means at the local level: What level of increased delivery is needed in each part of Scotland if positive outcomes are to be achieved and negative outcomes avoided. As well as understanding need and demand more comprehensively, that must include planning to fully delivery against that need and demand and action to address the negative consequences of failing to do so (e.g. the upward effect on land and house prices and the downward impact on affordability and wealth equality).

## **2.4 NATIONAL PLANNING IMPROVEMENT CO-ORDINATOR**

**Question 4.**

**Do you agree with the proposed responsibilities of the planning improvement co-ordinator?**

Yes

This makes it clear the role relates to the whole system, and to the breadth of stakeholders, but leaves flexibility for the post-holder to shape the role in discussion with those stakeholders.

**Do you have any comments/suggestions about the role of the National Planning Improvement Co-ordinator?**

Engagement with key planning delivery partners – including home builders – should be an early priority for the National Planning Improvement Coordinator. Home builders in Scotland do not recognize the picture that is painted of improving services



as, in practice, they find it harder than ever to secure a planning decision. To allow for frankness, but also for proposed discussion, the Coordinator should engage with stakeholders in round-table sessions as well as individually.

Until it becomes a more inclusive group, complete with representatives of applicant groups and other stakeholders, the High Level Group on Planning Performance should not have a monopoly in engagement with or directing the National Planning Improvement Co-ordinator. The success of this new appointment will in part depend upon his or her ability to remove the current barriers between those who operate the planning system and those who use it.

The appointment of a National Planning Improvement Co-ordinator has great potential to make a positive impact on performance and on the achievement of better outcomes through planning. Significant improvements could be made by identifying and sharing best practice in terms of both efficiency and quality of decision making. However, to maximise the impact of the new coordinator, it will be vital for them to have a balanced and informed perspective on the planning system, and current performance, including from the user's perspective. The current forum for performance discussions – the High-Level Group on Planning Performance – is not conducive to this. In the age of collaboration, it is extraordinary to us that Homes for Scotland continues to be purposely excluded from that group.

### **3.0 PLANNING FEES**

#### **3.1 PROPOSED CHANGES TO FEE STRUCTURE**

##### **Question 5**

##### **Do you agree with the proposed planning fees for Category 1 – Residential Development**

No

We can only support fee increases where there is a clear pathway to fully compensating paying applicants with rapid and sustained improvements in service.

We specifically object to the proposal to increase the fees for smaller residential developments by 50%. In our 2019 [Small Scale Home Builders Report](#) we called for a planning fee freeze for single homes and minor residential developments (i.e. up to 49 homes). We also called for a more graded approach to fees for developments falling within the minor development category – for example for schemes in the categories of under 12 homes, 13-25 homes and 25-49 homes, and 50+ homes. This would assist small businesses who can be particularly challenged in assembling funds for the early costs of the planning and development processes.

We are also concerned that, beyond minor development, projects in the 200-399 home and 400-562 home cohorts are facing a higher increase than lower-end major developments or strategic scale developments.

**Question 5.a****Is the proposed method for calculating the planning fee correct?**

No

The methodology – and the underlying concept of “full cost recover” puts too large a share of the burden on planning applicants and does not recognize the fact that the costs of planning services are rising in response to increasingly complex policy requirements, not as a result of the actions of applicants.

The planning system exists in the long-term public interest, not for the direct benefit of applicants. As concepts of the public interest have developed, the planning system has been leaned upon to satisfy and increasingly diverse – and sometimes competing – set of policy agendas.

There are limits to the extent to which applicants – many of them private businesses – can underwrite the public demand for an increasingly rigorous, barrier-laden and cost in-efficient approach to planning.

**Question 5.b****Do you have any comments on the proposed fees and for calculating?**

Homes for Scotland supports the principal of increasing resources for planning resources, but we can only give outright support to higher fees if the specific proposals are clearly justified and where there is a clear path in place to achieve demonstrable and corresponding service improvements for applicants.

If implemented, the new fees would make applications fees for most applications significantly in excess of what they are currently and more expensive than equivalent applications in England with precious little detail on how performance will be improved.

The people we represent, our members, are paying customers of the planning system. From their perspective it is very difficult, if not impossible, to justify a further increase in fees which are non-ringfenced for development management services and which cannot be linked to any clear and measurable performance improvement commitments or achievements.

The proposed fee schedule would double some existing fees. Some applications will become two times as expensive as an equivalent application in England (see analysis in Appendix 2). The justification for such radical fee changes is unclear. The proposals send the wrong message to would-be and current investors in home building in Scotland.

HFS is open to the principle of reviewing and potentially increasing fees when it can be clearly justified. However, the current consultation appears somewhat one sided, with steep increases in planning fees proposed on the one hand and somewhat limited information on performance.

A clear commitment to the reinvestment of planning fee income into core planning services would be a fair and reasonable response to Homes for Scotland's in-principle support for higher fees. Furthermore, any additional investment by paying applicants should be matched by increased public sector investment, and rewarded with a place at the table when planning performance is discussed.

HFS objected to the previous increase in fees in 2017 as no performance measures were included. The impact of these fee increases is unclear and the information available is limited. Only a third of the additional fee income was reinvested in planning services – but it isn't at all clear how that reinvestment improved the services being provided to those paying the fees. The proposed fee increases before us now are more far-reaching, and will add significantly to the costs for applicants, but little information has been provided to explain how they will improve decision times and other aspects of performance that are important to those paying the fees.

HFS is willing to consider the merits of fee increases but would expect more information to explain the justification for what is proposed and more information on the current costs involved with processing applications. From our members' perspective, as the industry paying probably more than any other in planning fees, the following pre-requisites would be a fair means of balancing the needs of planning authorities against the needs of home builders:

- Homes for Scotland to attend High Level Group on Planning Performance
- Local commitments to investing fee income in development management
- No fee changes until National Planning Improvement Coordinator is in post
- Further technical consultation on the detail of final fee proposals
- No further fee increases until post 2025

#### Further HFS comments on planning costs and the full-cost recovery principle

The increase of the maximum fee in 2017 was calculated to have brought in an additional £4m. Heads of Planning Scotland (HOPS) carried out a detailed survey of the benefits of this change, published in January 2019. It found that of the £4.2 million generated in additional fees, £1.4m of this (or 33%) was reinvested in the planning service and that not all of this was on development management. We would be keen to discuss further with HOPS and the Scottish Government how to help ensure that any future fee increases (linked to performance) could be more fully reinvested into the development management service.

Before specific fee increases are considered, we and our members are clear that there needs to be a wider conversation, informed by evidence on what the priorities and principles should be for new funding. Some of the motivation for further fee increases appears to stem from a desire to achieve full cost recovery for development management. However, before this becomes enshrined as a principle, it needs further thought. We see real pitfalls, as well as points of principal relating to the public-interest purpose of planning controls being in place in the first place.

The planning system is not in place for the benefit of applicants. It is a regulatory regime designed to fulfil a range of functions and aspirations which impact upon a

variety of stakeholders. Like other regulatory regimes it is in place because it is deemed to have wider benefits beyond its immediate users and therefore it has public funding.

Many rural authorities receive few large applications and could not sustain staff and services on a full cost recovery basis. Several authorities receive less than 50% of their operating costs from applications. Achieving full cost recovery in these places would either require cuts to staff or very large increases in fees for smaller developments. Planning costs are already a major barrier for smaller home builders and rural businesses, as demonstrated by many pieces of work including the Homes for Scotland Small-Scale Home Builders project, the Federation of Master Builders annual home building survey, and the Central Association of Agricultural Valuers . A fee increase would exacerbate these issues and deter applicants.

If fully applied, the principal of full cost recovery would presumably mean much higher fees for householder and small-scale applications – as the current fees for these appear to be discounted relative to the amount of time they will take to deal with, and it is widely believed they are subsidised by larger applications. An application for 49 new homes may cost 49 times more, in fee terms, than an application for 1 new home. The cost differential for the authority determining the applications is surely not as marked as that.

An element of the current fee regime that is more consistent with full cost recovery is that, above that 49 home (or 2.5 hectare) marker, the charge for an application does not rise without limit. This reflects the fact that there is a certain level of fixed work to be done regardless of the size of the application. An application on a 5-hectare site does not cost twice as much to deal with as an application on a 2.5-hectare site as many of the issues, and the level of detailed consideration required, are similar. It is therefore disappointing to see the proposed fee structure departing from this tenet for planning permissions in principle, trebling fees for many applications (see appendix 2).

For the reasons outlined above, full cost recovery appears to be a questionable and potentially unachievable objective. However, if changes to the fee structure are to be considered further, and if consultation upon them is to be meaningful, information should be published on the resources (and costs) that are currently applied to processing applications. The indicative proposals seem to be aimed at making mid-sized developments more expensive, particularly those in the range of c100-300 homes, but no evidence has been presented to show that the current fees paid for these applications are insufficient.

We and our members believe it would be unreasonable to overcharge one set of applicants to cross subsidise other applications, but it appears the current proposed changes to the fee structure may have this effect. The costs of any subsidisation or discounting policy should not be borne by another set of applicants.

## **Questions 6 to 27 – Other Categories**

Homes for Scotland has no comments on the proposed fee changes for other categories of development. We are therefore submitting a nil response to questions 6 through to 27.

### **3.2 OTHER FEES**

#### **APPROVAL OF MATTERS SPECIFIED IN CONDITIONS**

##### **Question 28.**

**How should applications for planning permission in principle and Approval of Matters Specified in Conditions (AMSC) be charged in future?**

##### **Question 28.a**

**How should the fee for AMSC applications be calculated?**

##### **Question 28.b**

**Should the maximum fee apply to the individual developers/applicants or applied to the whole development with applicants (if number is known) paying an equal share of the max fee?**

Homes for Scotland has no comments on these questions.

##### **Question 28.c**

**Should the granting of a Section 42 application lead to the fee calculator being reset?**

No

Section 42 applications for the variation of conditions can often be associated with minor matters pertaining to the wider planning application. Homes for Scotland is unsure as to how such a scenario would merit or necessitate the resetting of the fee calculator. We can't think of any scenario in which this would be appropriate, or what problems in practice the Scottish Government might be aiming to resolve with this particular idea.

#### **CROSS BOUNDARY APPLICATIONS**

##### **Question 29.**

**Should the fee for cross boundary applications be split between the respective authorities?**

Homes for Scotland has no comments on questions posed on how adjacent authorities might share the fee income from cross-boundary applications. We note the fee income for cross-boundary applications is not proposed to be increased, beyond any increases arising from the changes to category-based fees.

## CONSERVATION AREAS / LISTED BUILDINGS / HAZARDOUS SUBSTANCES

### Question 30.

Do you agree or disagree with the proposal that where applications are required because permitted development rights for dwellings in conservation areas are restricted, then a reduced fee should be payable?

### Question 31.

Is the introduction of a fee for applying for Listed Building Consent appropriate?

### Question 32.

Should the fees for Hazardous Substances Consent be increased?

Homes for Scotland has no comments on these matters.

### Question 33.

Are the proposed increases in fees for the categories below appropriate?

- a. Certificate of lawful use or development
- b. Advertisement
- c. Prior notification / approval
- d. Alternative schemes

Homes for Scotland has no comments on these matters.

### Question 24.

Are there other fees that have not been considered?

No

## 3.3 DISCRETIONARY CHARGING

### Question 35.

Do you think we should set out the range of services which an authority is allowed to charge for?

Yes, but only if this has the effect of removing uncertainty as to the lawfulness of charges which are already being used in practice. This should not be a long of open-ended list of the cumulative impact of costs increases for applicants will have a deterring impact on plan implementation and wider land use and development activity.

## PRE-APPLICATION DISCUSSIONS

### Question 36.

#### How should the fee for pre-application discussions be set?

Pre-application services should be designed with local stakeholders, with the options available clearly costed and supported with service commitments. Local authorities should be required to consult on their proposals to introduce or to increase their charges for pre-application services, and to provide clear evidence showing by the proposed fee level is appropriate and what service the fee payer can expect to receive. Fees should be used to install a business-conscious approach to early planning advice, and not to generate income from existing activity – especially where existing approaches are not supported by or useful to prospective applicants.

Good quality pre-application engagement with Local Authorities has a role to play in the planning system. High quality pre-application services which provide high quality considered advice in a timely manner, and which doesn't simply amount to development plan policies being restated, have the potential to add huge value to the planning process by improving efficiency. We would welcome the opportunity to be involved in further discussions on this work.

There are, of course, some complicating factors. Firstly, using pre-application services must be optional if a fee is to be charged. Authorities must not construct approaches which have the effect of forcing prospective applicants to pay for pre-application advice when it should be possible to anticipate the requirements and potential outcome of any planning application by reading the applicable policy and guidance. Secondly, given that the authority will be in a monopoly position, unlike other providers of professional services, there should be clear rules and guidance in place to ensure a high quality of service.

Small scale home builders should continue to benefit from free or low-cost pre-application advice services. This is in line with a recommendation of Homes for Scotland's recent report on [Small Scale Home Builders](#).

### Question 36.a

#### Should the fees for pre-application discussions be subtracted from the full fee payable on submission of an application

Yes.

Provision and take-up of good pre-application advice will result in better quality applications and this will ease the work for the planning officer and his/her consultees.

## PROCESSING AGREEMENTS

### Question 37.

**Do you think there should be an additional charge for entering into a processing agreement to reflect the additional resource required to draft and agree the timescale to be included?**

**Should we set the fee for that or an upper limit allowing authorities the flexibility to set their fee within clear parameters?**

No

Processing agreements are a project management tool that, if used well, can reduce the administrative costs of a planning application for the planning authority.

Introducing an additional charge for entering a processing agreement would disincentivise their use.

If a charge is introduced it should be automatically and fully refundable if, for any reason, the decision time first agreed requires to be extended. We know that in practice many home builders have no choice but to agree to an extension of the original time period.

## NON-MATERIAL VARIATIONS

### Question 38.

**Where a non-material variation is required should an authority be able to charge for each change which is made? Or per request?**

**No charge?**

**Per Change?**

**Per Request?**

**Should regulations set the fee for that or an upper limit allowing authorities the flexibility to set their fee within clear parameters?**

There should be no charge.

Non-material variations used to be agreed informally between authorities and applicants at little or no cost to either party. Formal requests are only now required because of a government decision to formalise the processes. Non-material variations, by their nature, have no material impact in practice. Applicants should not have to pay the price of the government's decision to subject them to an administrative process.



## MONITORING CONDITIONS

### Question 39.

**Should authorities be able to charge for carrying out the monitoring of conditions?**

No.

The use of unnecessary monitoring conditions should be discouraged. Where they are absolutely necessary, the planning authority – or other monitoring party – should undertake this work as part of their core function.

### Question 39.a.

**Should a fee for monitoring be limited to certain types of monitoring requirements?**

### Question 39.b.

**What should this be limited to?**

Homes for Scotland is not aware of any types of monitoring requirements which would justify additional fees or charges.

## DISCHARGE OF CONDITIONS

### Question 40.

**Do you think there should be a fee payable for the discharge of conditions?**

No.

Not unless performance on the discharge of conditions improves remarkably, or unless a fee is balanced with a deemed discharge of condition if not response is received within 4 weeks of submission.

A potential model for this is available in The Town and County Planning (Development Management Procedure) (England) Order 2015 (SI 2015 /595). This was introduced in an attempt to provide a degree of certainty around the timing of discharge of planning conditions.

The number of conditions attached to planning applications has increased exponentially in some areas, and the right of a planning authority to charge a fee for dealing with them would discourage a reversal of this. Planning application fees are designed to cover all of the matters which a planning authority will need to consider in order to make its decision.

Any fee which is introduced should be a token administrative charge only, and charged on a per-request basis, not per-condition. Any new fee should also result in a significant improvement in service. Applicants currently have no recourse in instances where discharge of conditions requests remain undecided – despite having already paid a very substantial planning application fee. This is a particular

issue where the condition has to be discharged before development can be lawfully commenced.

## **PLANNING AGREEMENTS**

### **Question 41.**

**Do you think that Planning Authorities should be able charge for the drafting of planning agreements?**

**If so, how should this be calculated?**

Charging for the drafting of legal agreements already occurs in some authorities. In desperate measures, and where these results in better value for money to applicants who would otherwise be faced with even longer delays, they are sometime welcomed by applicants.

In general, though, we would uphold the principal, previously clarified by the Chief Planner, that the administrative costs of preparing a section 75 agreement are intended to be covered by the planning application fee. The lawyers acting for planning authorities need to be incentivized to keep this part of the planning application process efficient and applicant-friendly, and to put in place practices which help reduce the cost and time involved for all parties. Accepting unilateral undertakings, or putting industry-agreed templates into place, are good options.

## **MASTERPLAN CONSENT AREAS**

### **Question 42.**

**Should an authority be able to charge for development within a MCA (building, or changes or use) in order to recoup the costs involved in setting one up?**

**Should we set the fee or an upper limit in the regulations?**

A fee of this nature would risk undermining the planning authorities' determination to stimulate development in these areas. Home builders that, in time, benefit from an authority having been proactive in creating market interest in home building would be unlikely to begrudge paying a fair contribution towards the planning activity that has created the opportunity. But any fee should be less than would be payable under the normal planning application route (given the removal of that administrative burden is on of the principals behind initiatives of this nature) and should not be designed to fully recoup the planning authority's costs. Whilst the council's costs might be significant, they will have been weighed up against the public benefits to be achieved through stimulating development. And action should have been taken to keep costs to a manageable minimum.

Home builders would already incur costs in demonstrating fit with the parameters for the particular Masterplan Consent Areas, and in contributing to developer contributions.

## **ENHANCED PROJECT MANAGED APPLICATIONS**

**Question 43.**

**Should the ability to offer and charge for an enhanced project managed service be introduced?**

**What, if anything, should happen in the event of failure to meet timescales?**

Potentially, yes, but this should be for genuinely exceptional levels of service, not just the good-enough / best-practice services that each planning authority should already be aspiring to.

Significant work and stakeholder liaison should be undertaken before such provisions are finalized and put into practice. Piloting work could be undertaken with authorities already felt (by home builders and other relevant applicant groups) to be capable of delivering enhanced services using existing resources and cultures.

If timescales aren't met the full fee should be automatically refundable unless both parties agree to a new timescale. This would be in line with provisions already in place for standard applications in England, under the Planning Guarantee.

### **SELF BUILD/CUSTOM BUILD REGISTERS**

**Question 44.**

**Do you think charging for being added or retained on the register of interested people should be included in the list of services which Planning Authorities should be allowed to charge for?**

**Should there be a restriction on the amount that can be charged?**

Homes for Scotland has no comments on this matter

### **CHARGING FOR APPEALS**

**Question 45.**

**Do you think that, in principle, fees should be charged for appeals to Planning and Environmental Appeals Division (DPEA)?**

Homes for Scotland does not support the principle of fees for planning appeals. Planning appeals are already hugely costly, and too often that cost occurs because an applicant is forced into an appeal situation by virtue of an unreasonable first-instance decision.

The planning system intervenes in the decisions people seek to make about what they do with their land. The decisions made by local councillors and planning teams can have major financial implications for families and businesses, and for Scotland's wider ability to secure the development and land use changes that are needed to benefit the public at-large in the long term.

Those on the receiving end of a refusal of planning permission, or who receive no decision after a given period of time, should retain their access to a fee-free independent review. Anecdotal evidence from home builders that operate in both

Scotland and England suggests the predictability of the outcome of an appeal in Scotland is much lower. We also hear strong evidence to suggest refusals against officer advice are increasing, with a corresponding increase in success rates at both appeal and award of costs applications - in such cases.

In some circumstances a planning appeal proves the only way to secure consent for a perfectly sustainable development – even ones which are allocated.

Were fees to be introduced, measures would need to be put in place to achieve better performance in timely DPEA/Ministerial decision making, and to give applicants some meaningful options in the event that timely decisions are not forthcoming.

**Question 45.a.**

**Should we limit the circumstances in which a fee can be charged for lodging an appeal?**

**Question 45.b.**

**In what circumstances do you think a fee should be paid for lodging an appeal?**

Homes for Scotland does not support the overarching principle of appeal fees.

**Question 45.c.**

**Do you think that the fee should be refunded in the event of a successful appeal?**

Yes, if fees are introduced.

**Question 45.d.**

**If so, should this follow the same process as is currently set out for awarding costs?**

Arrangements for award of costs should be reviewed with a view to making them less off-putting to those applicants whom they are designed to assist.

**Question 45.e.**

**What categories of appeals should be considered for charging?**

Homes for Scotland does not support the overarching principle of appeal fees.

**Question 45.f.**

**Do you think that a fee scale should be provided in relation to appeals to Local Review Bodies and, if so, should the arrangements differ from appeals to DPEA?**

Homes for Scotland does not support the overarching principle of appeal fees, irrespective of what body is responsible for the appeal decision.

**REDUCING AND WAIVING FEES**

**Question 46.**

**Do you have any suggestions as to the circumstances in which authorities could waive or reduce a planning fee?**

**Question 46.a.**

**Should the maximum reduction allowed be set out in regulations?**

This may be a sensible option in instances where an allocated site has not been delivered as anticipated or hoped by the planning authority, and where a potential applicant is being put off by the scale of the planning application fee (in concert with other planning and development costs).

As detailed earlier in this response, Homes for Scotland supports a freeze in fee increases for small scale home builders, and a more graded approach to fee setting within different scales of the minor residential development category.

Any decisions to reduce or waive fees should be at the cost of the planning authority, having weighed up the potential public benefit gain. Fee paying applicants should not be leant on to make up the difference.

Homes for Scotland can see no need for a maximum reduction to be set out in regulations, given the financial hit of any waiver or reduction will be born by the local authority. Local authorities should be capable of making that judgement call.

**4.0 OTHER ISSUES**

**RETROSPECTIVE APPLICATIONS**

**Question 47.**

**Should the surcharge be set at 100%?**

**If not what level should it be set at?**

**47.a. Authorities will need to apply discretion when applying this surcharge. Should authorities need to clearly set out the reasons why the surcharge has been applied or not in each individual case?**

Homes for Scotland has no comments on this matter



## INCENTIVES

### Question 48

**Do you consider the use of rebates, discounts or other incentives, a useful tool in delivering a more efficient service?**

### Question 48.a

**If so what would you consider to be an effective discount, rebate or other incentive?**

Yes.

As outlined elsewhere in our response, Homes for Scotland is aware that home builders and other applicants in Scotland are at a disadvantage as there is no firm Scottish Government commitment to a policy like the UK Government's planning guarantee – or the options available to recoup fees where decision times are unacceptable.

Such measures can act as effective sticks to galvanise efforts from planning authorities, inspectors/reports and Ministers to ensure planning services are run efficiently and with the needs of applicants in mind.

There are no special circumstances in place in Scotland which justify applicants being disadvantaged in this way. The planning application process is broadly the same in England and Scotland. Authorities in both countries should be incentivized to deliver applications on time.

In practice many applicants would likely waive their right to a fee refund and agree new timescales with authorities. But the concept of fairness should be applied to applicants as much as it is to authorities. An authority might think it is unfair for their fee to be taken away – but an applicant will think it unfair to have no means of incentivizing the authority to play their part in achieving a timely decision.

Homes for Scotland recognises there may be alternative means of incentivizing good performance which might work more effectively in Scotland than a simple import of the English provisions. We would be happy to take part in further work focused on this. We do thought strongly support the notion that some methods are needed to incentivize good performance and/or compensate applicants for poor performance.

## ADVERTISING FEE

### Question 49.

**Do you consider there should be a single advertising fee?**

Homes for Scotland has no comments on this matter.

## ENVIRONMENTAL IMPACT ASSESSMENT

### Question 50.

**Do you consider that submission of an Environmental Impact Assessment (EIA) should warrant a supplementary fee in all cases?**

No

Home builders and other applicants already incur significant additional costs where an EIA is required. The costs of considering EIA reports should be anticipated and covered by the fee rates for planning applications.

## HYBRID APPLICATIONS

### Question 51.

**Do you think that applications for planning permission in principle should continue to be charged at half the standard fee?**

Yes

**Should there be a different fee for 'hybrid applications' as described here?**

Homes for Scotland has no comments on this matter

## CHARGING FOR SG SERVICES

### Question 52

**Should the Scottish Government introduce a service charge for submitting an application through eDevelopment (ePlanning and eBuilding Standards)?**

No

Applicants submitted through eDevelopment will reduce the administrative cost burden on the planning authority and therefore reduce the extent to which the Scottish Government is required to fund local planning services.



## APPENDIX 1

### HOMES FOR SCOTLAND FEBRUARY 2019 PRESS RELEASE ON PLANNING PERFORMANCE (SPEED OF DECISION) STATISTICS

#### Home builders question focus of Planning Performance statistics

#### 01 FEBRUARY 2019

Industry body Homes for Scotland has questioned the focus of official planning performance statistics, the latest of which report an average of 37 weeks being taken to decide major housing applications in the first half of 2018/19.

Issuing a plea for a more meaningful and inclusive approach to measuring the effectiveness of the country's planning system, Homes for Scotland Director of Planning Tammy Swift-Adams said:

“Legislation sets a target of 16 weeks for decisions to be made on planning applications for major housing developments - proposals which have the potential to ease the housing crisis. These statistics show, but the publication doesn't openly acknowledge, that the average time taken to make those decisions is more than double what it should be.

“Taking 37 weeks rather than 40.3 weeks to make a decision that should take 16 weeks is not a meaningful improvement in, or measure of, planning performance.

“The Planning Bill was an opportunity to establish a more enlightened way of looking at performance. However, the existing ‘penalty clause’, which Scottish Ministers could use (but as yet have not) to encourage better performance, has been removed from legislation at the request of authority representatives. It hasn't been replaced with anything new.

“The softer alternative set out in the first version of the Planning Bill, a government-appointed planning co-ordinator, could have provided a more useful and more collaborative way of working with planning authorities and their customers (both paying applicants and constituent communities). That has been removed from the Bill too, also at the request of authority representatives.

“It is no wonder, then, that Scottish home builders feel there is little prospect – with or without the Planning Bill – of achieving more support for home building from across Scotland's planning authorities.

“We need to develop a system of measurement that encourages the delivery of new housing sites on the ground, not just on paper. Planning authorities hold the key to whether the opportunities offered by Homes for Scotland members can get out of the starting blocks.”

## APPENDIX 2: REVIEW OF FEE PROPOSALS

Our analysis shows that the proposed fee changes will lead to very significant fee increases for mid-sized applications. This will **double** the cost of some planning applications and bring the cost of all but the very largest applications well in excess of current fees in England.

Figure 1 below summarises the proposed changes to planning permissions in principle. It is also notable that the proposed changes introduce differential rates for different uses with residential applications costing more. No evidence is presented to support this.

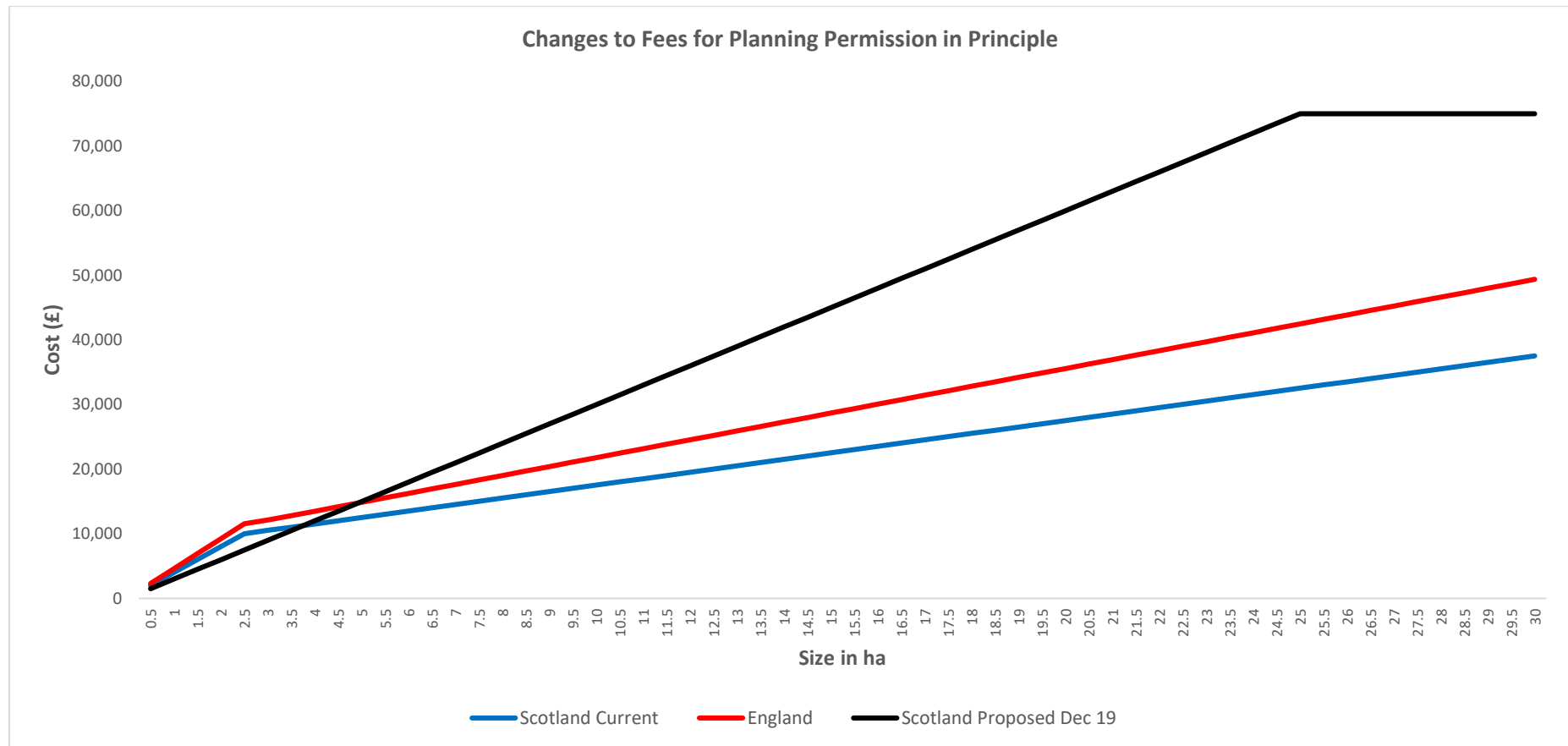


Figure 1 Summary of Proposed Changes for Planning Permissions in Principle

Figure 2 below summarises the proposed changes to Full Planning Permissions. It is also notable that the proposed changes further increase the disparity between costs in England and Scotland.

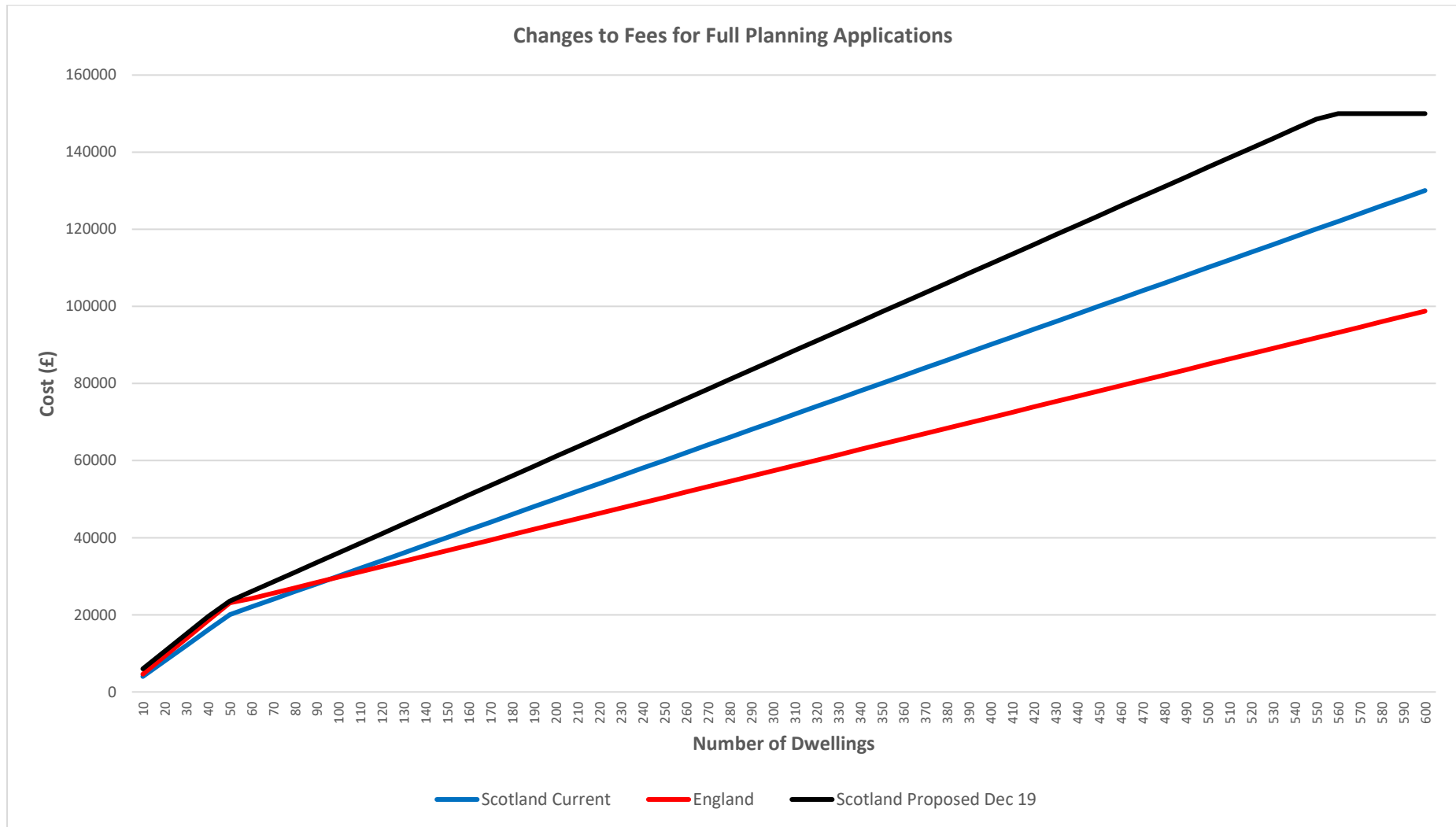


Figure 2 Summary of Proposed Changes for Full Planning Applications

### APPENDIX 3: Stopping the Clock Protocol Usage over Time

The Below graph shows changes over time. The Source is various versions of the Annual Planning Performance Statistics 2018/19

