



Report to the Chief Officer (Highways and Transportation)

Date: 11 August 2020

Subject: Annual Review of Fees and Charges for Section 38/278 Agreements

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has consultation been carried out?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Will the decision be open for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Summary

1. Main issues

- The following proposal supports the 'Best Council Plan' and the ambition of becoming an efficient and enterprising organisation. The purpose of this report is to seek approval for an increased level of fees and charges for Sections 38 & 278 services delivered by Highways and Transportation. The fees and charges relate to the process of incorporating roads and structures into the adopted highway under Sections 38 & 278 of the Highways Act 1980. The fees relating to this process have not been comprehensively reviewed, benchmarked or amended during the last 5 years
- As part of the recent review process Highways & Transportation has benchmarked its fees with that of other local authorities including all our neighbouring organisations in West Yorkshire. This exercise has shown that Leeds has been charging lower fees than the majority of other councils. The low fee levels have led to a loss of income to the Council and an inability to cover actual costs.
- This report also seeks to address the minimum fee charged for Section 278 of the Highways Act 1980 so called Mini 278 Applications. S278 Mini Applications are for small amendments to the existing highway. The Highway Authority currently charges £1,000 minimum fee or 10% of the estimated cost of the works whichever is higher. The £1,000 minimum charge for fees does not cover the cost to process the application and supervise the works on site. The fees relating to this process have not been fully reviewed or amended in 5 years. The 10% engineering and supervision fee is proposed to remain and will fall into line with the existing S278

Minor fees and proposed S38 fees. Raising the minimum application fee from £1,000 to £2,000 for the engineering and supervision fees will ensure the council covers all costs incurred.

- The report identifies that Leeds City Council has been accepting insufficient bond values on schemes. This has left the Council at risk of funding 40% of the total cost to finish a scheme should the Developer go into administration. The report recommends an increase in bond value from 60% to 100% for the cost of the scheme.

2. Best Council Plan Implications

- This proposal supports the 'Best Council Plan' ambition of becoming an efficient and enterprising organisation. The fee increase supports the delivery of the Best Council Plan's objective of promoting sustainable and inclusive growth, as it is seen as sustainable and inclusive for local businesses and partners operating in the Leeds area.

Recommendations

The Chief Officer (Highways and Transportation) is requested to approve the increase in fees and charges as recommended in Appendix A.

1. Purpose of this report

- 1.1 The purpose of this report is to seek approval for the revised level of charges and bonds to be applied from 1st of September 2020.

2. Background information

- 2.1 The Local Government Act 2003 and The Localism Act 2011 gave the Authority the power to charge for specified functions. The regulations addressed the view that persons benefiting from the adoption of a road should pay the cost of the service, rather than this being borne by the community at large via the Council Tax system.
- 2.2 The charges have generally increased in line with income inflation and corporate guidelines recommended in the budget circular, unless exceptional circumstances have dictated otherwise. The underlying principle being that the charges reflect no more than the true cost to the authority in delivering the service.
- 2.3 The charges have not been appropriately reviewed or uplifted since 2014/15, remaining static even as the costs relating to the provision of the service have significantly increased.

3. Main issues

- 3.1 In undertaking this exercise the fees charged by Highways & Transportation have been like-for-like benchmarked with other Local Authority's fee levels.
- 3.2 After reviewing both the S38 and S278 processes and costs to undertake these Agreements to the council in line with the fees currently charged for each, and subsequently consulting and comparing with other neighbouring highway authorities, the evidence concludes that the current fee levels should be increased both creating parity in the region and covering costs.

- 3.3 The proposed increases in charges to commence on the 1st of September 2020 are shown in Appendix A.
- 3.4 The increase will make the charges more reflective of current costings for both staff time and the common remediation that is often required at extended dates within the life cycle of the agreement process. Increasing fees will more readily cover the costs of inspections on site throughout the course of the schemes, along with appropriate levels of supervision and overseeing from the engineering team.
- 3.5 The increase in bond values will offer further security against the risk of the Council incurring costs should a developer go into administration.
- 3.6 The increase will make the charges in-line with other Local Authorities.
- 3.7 Leeds City Council currently charge 7.5% of the total scheme cost for engineering and supervision fees on S38 schemes. Neighbouring Local Authorities currently charge the following % of the bond amount for S278/38 Schemes:
- Kirklees Council 10%
 - Wakefield Council 10%
 - Bradford Council 9%
 - Calderdale Council 9%
- 3.8 Please see further details of fees charged by other Local Authorities at Appendix C.
- 3.9 It is acknowledged this is a difficult time for the construction industry, however it is essential for Leeds City Council to review fees charged and benchmark them against other West Yorkshire Authorities.
- 3.10 The fee increases support the delivery of the Best Council Plan's ambition of becoming an efficient and enterprising organisation. An examination of the services supplied has been undertaken to ensure that all chargeable services are included and that the actual allowable costs involved are recovered. Processes have been amended to become more efficient to ensure cost increases are at the lowest level and remain in line with general income inflation, which is seen as sustainable and inclusive for local businesses. It is similarly intended to raise the minimum engineering and supervision fees for so called Mini S278 schemes as the current fees for the smallest of schemes are not covering the cost of officer time. The 10% of the estimated cost of the works for engineering and supervision fees will not change. The details of the fee increases can be found in Appendix A.
- 3.11 A persistent issue faced by Highways & Transportation is late or delayed applications made by developers when construction work on a S38 scheme has already been undertaken or is near completion. This leads to additional intervention, complexity, time and cost. Often extra and complex exploration has to be carried out to determine if roads and drainage etc. have been built to adoptable standards. Developers often delay entering into the agreements to negotiate bond reductions. This approach triggers additional officer time to review schemes and renegotiate bonds. Implementing a higher fee for applications made after construction has been completed will cover the costs of the Council for any extra time spent on administering these schemes. Setting out these fees and bond reductions at application stage will produce a set of updated procedures for both Developers and the Highways Authority to adhere to.

4. Corporate considerations

4.1 Consultation and engagement

- 4.1.1 Internal consultation has been undertaken with the relevant Finance Manager and Legal Services. There were no objections to the content of this report and they support the changes.
- 4.1.2 Consultation with all West Yorkshire Councils has taken place to find out what they charge and to make sure LCC proposals are in-line with what they charge and are fair across the West Yorkshire Region.
- 4.1.3 These proposals have been discussed with the Executive Member and were supported.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality Diversity Cohesion and Integration (EDCI) screening has previously been undertaken and the process determined that no EDCI Impact Assessment was required.
- 4.2.2 The screening document identified that there will be no specific impact on people with mobility issues, carers, pram and wheelchair users, or young and old people, as the charges are minimal and mainly impact on business providers.

4.3 Council policies and the Best Council Plan

- 4.3.1 This proposal supports the 'Best Council Plan' ambition of becoming an efficient and enterprising organisation. The fee increase supports the delivery of the Best Council Plan's objective of promoting sustainable and inclusive growth, as it is seen as sustainable and inclusive for local businesses and partners operating in the Leeds area.

4.4 Resources, procurement and value for money

- 4.4.1 The Highway Authority has historically not been charging the applicable level of fees for the S38 and S278 schemes. Insufficient bond values have been accepted on schemes previously.
- 4.4.2 The fee increase will enable Highways & Transportation to deliver increased value for money for the Council. By providing adequate, cost covering, income from fees and charges supporting the current revenue budget allocations. Based on 2019/20 figures, it is predicted this could be an additional £2,035,000 in income for the service during the next 5 years.

4.5 Legal implications, access to information, and call-in

- 4.5.1 The report is not eligible for call-in.

4.6 Risk management

- 4.6.1 Failure to implement the recommended charge increases will result in an underfunding of actual costs being encountered by the Highway Authority

4.6.2 Failure to take an adequate bond leaves the Council at risk of having to inject funds to complete a scheme should a developer go into administration.

5. Conclusions

5.1 The relevant fees and charges relating to S38 and S278 works have not been appropriately reviewed for 5 years. The fees in Leeds are not comparable with other Local Councils, particularly those in the West Yorkshire Region. This has resulted in a loss of income versus actual costs to the Council around Section 38 and so called Mini 278 Agreements.

5.2 The review of fees and charges is in accordance with good financial and resource practice within the authority. The recommended increases reflect the true cost of delivering the services provided by Highways & Transportation, meaning roads and structures can be well-assessed by engineers and fully inspected before being incorporated into the adopted highway.

6. Recommendations

6.1 The Chief Officer (Highways and Transportation) is requested to approve the increase in fees and charges as recommended in Appendix A.

7. Background documents

7.1 None

8. Appendices

8.1 Appendix A – List of proposed fees and charges.

8.2 Appendix B – Scheme costing examples previous and proposed

8.3 Appendix C - Comparative Costings for Other Local Authorities

8.4 Appendix D - Equality Diversity Cohesion and Integration Screening

Highway & Transportation Fees and Charges Review 2020/21 Appendix A

Proposed Fees and Charges from 1 July 2020

Activity	Charge 2019/2020	Proposed Charge 2020/21	Notes
Section 38 Fee – Pre Construction Application	7.5% of estimated cost of works	10% of estimated cost	This would ensure Leeds fall into line with what other West Yorkshire Councils charge.
Section 38 Fee – Late Application at Part One of Construction*	7.5% of estimated cost of works	12.5% of estimated cost	This is a method of securing the Council against increased costs when developers who want to enter into a S38 agreement at a late stage are asking for lower bond reductions. They are working at risk, as are the Council when providing services without an agreement in place.
Section 38 Fee – Late Application at Part Two of Construction*	7.5% of estimated cost of works	15% of estimated cost	As above but at part two of construction.
Percentage Bond	60% of estimated cost of works	100% of estimated cost of works	Bonds were reduced to 60% in the days of austerity in 2009 to encourage developers to build. This has never been reviewed as the market recovered and improved. If a developer went into administration LCC would be liable for the 40% extra if not changed. All other West Yorkshire Councils charge 100% of the estimated cost of the works.
S278 Mini Minimum Fees	£1,000	£2,000	We currently charge 10% inspection fees for Mini S278 with a minimum fee of £1000 for engineering and inspection fees. The £1,000 doesn't often cover officers' time on small schemes and the minimum charge should be £2,000 (Bradford Council charge £2,500 minimum fee)

Part 1 Construction Description

- All approved earthworks and ground improvement works, including treatment of mine workings (where required) and remediation of ground contamination.
- Street Lighting operational
- All drainage installed
- All kerb foundations and (where appropriate) kerbs, including lowering at vehicle crossings, pedestrian crossings, sub-base and base-course surfacing to all pedestrian ways linking to the existing adopted highway network.
- Carriageway sub-base, road base, vehicle crossings and any supporting structures to the same

Part 2 Construction Description

- The development must be complete
- All signage/lining must be in place (20mph signs, road hump signs, Street Name plates, Street Name etc.)
- The development and surrounding area must have been inspected and passed by the Section 38 Highway inspector.

- Street Lighting installed, commissioned and adopted by Leeds City Council
- Highway Adoptable Structures – Inspected and passed by Leeds City Council Highway Structures Team (If applicable)
- Adopted Landscaping – Passed by Leeds City Council Landscaping Team (If Applicable)

Highway & Transportation Fees and Charges Review 2020/21 Appendix B

Scheme costing examples previous and proposed

The following examples illustrate how the proposed new fees will impact on a scheme.

Current S38 Fees and Bond Example

- Estimated cost of construction £1,000,000
- Engineering and Inspection Fees 7.5% of Estimated cost of construction £1,000,000 = £75,000
- Bond amount for S38 Agreement 60% of Estimated cost of construction £1,000,000 = £600,000

Proposed S38 Fees and Bond Example

- Estimated cost of construction £1,000,000
- Engineering and Inspection Fees 10% of Estimated cost of construction £1,000,000 = £100,000
- Bond amount for S38 Agreement 100% of Estimated cost of construction £1,000,000 = £1,000,000

Entering into S38 at Part 1 S38 Fees and Bond Example

- Estimated cost of construction £1,000,000
- Engineering and Inspection Fees 12.5% of Estimated cost of construction £1,000,000 = £125,000
- Bond amount for S38 Agreement 50% of Original estimated cost of construction £1,000,000 = £500,000

Entering into S38 at Part 2 S38 Fees and Bond Example

- Estimated cost of construction £1,000,000
- Engineering and Inspection Fees 15% of Estimated cost of construction £1,000,000 = £150,000
- Bond amount for S38 Agreement 25% of Original estimated cost of construction £1,000,000 = £250,000

Current S278 Mini Fees

- The Developer must pay the Council's minimum staff fees of **£1,500** to start the design checking process. The £1,500 consists of £1,000 Staff fees for checking the design and inspecting the Highway Works, £250 for Legal fees and £250 for Licence Fees. The Council's final fee may increase depending on the scope and extent of work involved. This would be calculated on the basis of 10% of the Council's estimated cost of the Highway Works plus the Legal and Licence fees.

Proposed S278 Mini Fees

- The Developer must pay the Council's minimum staff fees of **£2,500** to start the design checking process. The £2,500 consists of £2,000 Staff fees for checking the design and inspecting the Highway Works, £250 for Legal fees and £250 for Licence Fees. The Council's final fee may increase depending on the scope and extent of work involved. This would be calculated on the basis of 10% of the Council's estimated cost of the Highway Works plus the Legal and Licence fees.

Appendix C – Comparative Costings for Other Local Authorities

Council Name	Section 38 Costs	Section 278 Costs
Bradford MDC	9% of full bond amount, bond is to cover 100% of works.	At Cost (£2,500.00 minimum)
Calderdale MDC	9% of full bond amount, bond is to cover 100% of works.	At Cost (£2,500.00 minimum)
Kirklees MDC	10% of full bond amount, Bond is to cover 100% of works.	£3,700.00 Up Front Fee
Wakefield MDC	10% of full bond amount, bond is to cover 100% of works.	No details

Appendix D Equality, Diversity, Cohesion and Integration Screening



As a public authority we need to ensure that all our strategies, policies, service and functions, both current and proposed have given proper consideration to equality, diversity, cohesion and integration.

A **screening** process can help judge relevance and provides a record of both the **process** and **decision**. Screening should be a short, sharp exercise that determines relevance for all new and revised strategies, policies, services and functions. Completed at the earliest opportunity it will help to determine:

- The relevance of proposals and decisions to equality, diversity, cohesion and integration.
- Whether or not equality, diversity, cohesion and integration is being/has already been considered, and
- Whether or not it is necessary to carry out an impact assessment.

Directorate: City Development	Service area: Highways and Transportation
Lead person: James Marsh	Contact number: 0113 3780736

<p>1. Title: ANNUAL REVIEW OF FEES AND CHARGES FOR SECTION 38 AGREEMENTS</p> <p>Is this a:</p> <p> <input type="checkbox"/> Strategy / Policy <input type="checkbox"/> Service / Function <input checked="" type="checkbox"/> Other </p> <p>If other, please specify Proposed annual increase in highway licence fees</p>
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<p>2. Please provide a brief description of what you are screening</p> <p>The Local Government Act 2003 and The Localism Act 2011 gave the Authority the power to charge for specified functions. The regulations addressed the view that persons benefiting from the adoption of the road should pay the cost of the service, rather than this being borne by the community at large via the Council Tax.</p> <p>The charges have generally increased in line with inflation to ensure that the charges reflect no more than the true cost to the authority in delivering the service.</p> <p>The proposed increases in charges are to commence at the beginning of a financial year or as defined in the budget circular to take account of inflation and in line with corporate guidelines.</p> <p>The increases in charges are minimal and will have an insignificant impact across the board with the initial impact, in the majority of cases, being borne by the developer who may or may not pass on the cost to their customers.</p>
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3. Relevance to equality, diversity, cohesion and integration

All the council's strategies/policies, services/functions affect service users, employees or the wider community – city wide or more local. These will also have a greater/lesser relevance to equality, diversity, cohesion and integration.

The following questions will help you to identify how relevant your proposals are.

When considering these questions think about age, carers, disability, gender reassignment, race, religion or belief, sex, sexual orientation and any other relevant characteristics (for example socio-economic status, social class, income, unemployment, residential location or family background and education or skills levels).

Questions	Yes	No
Is there an existing or likely differential impact for the different equality characteristics?		X
Have there been or likely to be any public concerns about the policy or proposal?		X
Could the proposal affect how our services, commissioning or procurement activities are organised, provided, located and by whom?		X
Could the proposal affect our workforce or employment practices?		X
Does the proposal involve or will it have an impact on <ul style="list-style-type: none"> • Eliminating unlawful discrimination, victimisation and harassment • Advancing equality of opportunity • Fostering good relations 		X X X

If you have answered **no** to the questions above please complete **sections 6 and 7**

If you have answered **yes** to any of the above and;

- Believe you have already considered the impact on equality, diversity, cohesion and integration within your proposal please go to **section 4**.
- Are not already considering the impact on equality, diversity, cohesion and integration within your proposal please go to **section 5**.

4. Considering the impact on equality, diversity, cohesion and integration

If you can demonstrate you have considered how your proposals impact on equality, diversity, cohesion and integration you have carried out an impact assessment.

Please provide specific details for all three areas below (use the prompts for guidance).

- **How have you considered equality, diversity, cohesion and integration?** (**think about** the scope of the proposal, who is likely to be affected, equality related information, gaps in information and plans to address, consultation and engagement activities (taken place or planned) with those likely to be affected)

- **Key findings**
(**think about** any potential positive and negative impact on different equality characteristics, potential to promote strong and positive relationships between groups, potential to bring groups/communities into increased contact with each other, perception

that the proposal could benefit one group at the expense of another)
<ul style="list-style-type: none"> • Actions (think about how you will promote positive impact and remove/ reduce negative impact)

5. If you are not already considering the impact on equality, diversity, cohesion and integration you will need to carry out an impact assessment.	
Date to scope and plan your impact assessment:	
Date to complete your impact assessment	
Lead person for your impact assessment (Include name and job title)	

6. Governance, ownership and approval Please state here who has approved the actions and outcomes of the screening		
Name	Job title	Date
James Marsh	S38/278 Operations Manager	21/5/20

7. Publishing This screening document will act as evidence that due regard to equality and diversity has been given. If you are not carrying out an independent impact assessment the screening document will need to be published. If this screening relates to a Key Delegated Decision, Executive Board, full Council or a Significant Operational Decision a copy should be emailed to Corporate Governance and will be published along with the relevant report. A copy of all other screenings should be sent to equalityteam@leeds.gov.uk . For record keeping purposes it will be kept on file (but not published).	
Date screening completed	21/5/20
If relates to a Key Decision - date sent to Corporate Governance	
Any other decision – date sent to Equality Team (equalityteam@leeds.gov.uk)	21/5/20