

Introduction of Mineral Review Fees

Report on the results of the
consultation

September 2009

Further Consultation on Proposals for Introducing Mineral Review Fees

Consultation Report

This matter was first raised as part of the package of proposals for changes to the system of planning fees consulted on in July 2008. The Minister for Environment, Sustainability and Housing agreed in principle in February 2009, among other fee decisions, the introduction of new fees for the review of old mineral permissions from April 2010, subject to further consultation on the level at which the proposed fee should be set.

A second consultation was undertaken of 12 weeks duration, with a closing date for responses of 11 September 2009.

17 consultation responses were received in total, 6 from Mineral Planning Authorities, 1 AONB, 3 from consultation bodies and 7 from the minerals industry of which 3 were from trade associations.

The Welsh Assembly Government is considering the responses made to both consultations in determining how to take forward this issue.

<p>Question 1</p>	<p>In reviewing minerals permissions, should a flat fee be charged to cover the costs of appraisal? If so, a fee of £24,852 is proposed as necessary to ensure that mineral planning authorities are fully compensated for all costs incurred irrespective of size and/or complexity of development. If you advocate a different level for a flat fee, please provide any evidence you have to support your proposal.</p>
<p>Summary of representations</p>	<p>12 of the 17 respondents commented on this proposal, with all universally opposed to a flat fee for a variety of reasons.</p> <p>MPAs consider that it would be disproportionate burden for small sites, and inadequate in covering MPAs costs in making a determination in respect of large Schedule 1 EIA sites or those with multiple issues.</p> <p>The industry is universally opposed to the introduction of fees in principle, particularly on small indigenous companies. The trade associations are of the view that if the Welsh Assembly Government proceed the fee imposed should be for a variation of conditions only which is currently £170, and that no fee should be charged for the first ROMP review nor for a postponement of a review.</p>
<p>Question 2</p>	<p>In reviewing minerals permissions, should a variable fee be charged to cover the costs of appraisal, to be set at the same level as a normal application for the winning and working of minerals? Scale of charges detailed at Annex 3.</p>
<p>Summary of representations</p>	<p>16 of the 17 respondents commented on this Assembly Government preferred proposal, with opinions diametrically opposed.</p> <p>The MPAs, AONB and certain consultation bodies support the principle that planning authorities be adequately funded to undertake their duties, and that those who benefit from their services should fund them, through the provision of appropriate fees. It is felt that the maximum full fee proposed of £65,000 equates to a nominal equivalent of £4,300 pa over a 15 year review period, a not unreasonable sum for an operator to factor in over the lifetime of a large mineral or mining site as an ongoing cost. For smaller sites the fees correspondingly lower. MPA costs involved in reviewing</p>

	<p>mineral permission: even simplest cases MPA obliged to carry out full consultation and publicity, hold meetings with consultees, applicant and their representatives, draft reports, conditions and legal agreements and engage services of specialists when in-house skills unavailable. Also this may be the first opportunity to assess cases with regard to EIA Regulations, remedy possible inadequacies in initial reviews, respond to national and local legislative and policy changes, and changes to local circumstances at the site and surrounding areas. The costs associated with any subsequent approval of conditional schemes, appeals, claims for restriction of working rights etc remain and have the potential to be costly, and ROMP fees will assist in covering these.</p> <p>The industry is highly critical of the consultation process involved and the apparent decision reached by the Assembly Government to introduce fees without direct discussion with trade associations and major operators over the ramifications of the proposal, which could not be worse timed given the current recession. It disputes that the work involved with ROMP reviews equate with new planning applications, as operators do not wait for periodic reviews before considering improving environmental standards, as this a continual process undertaken in co-operation with planning authorities and other regulators. Regular statutory monitoring visits by planning officers, for which operators already pay a substantial fee, are an integral part of the process. A review is to a great extent a formalisation process with operators gaining little direct benefit. It is felt that the preparation of ROMP submissions are costly without further fee burdens being imposed and that the public purse should bear the administrative cost of considering the ROMP applications as part of their statutory responsibility.</p> <p>Several small independent operators reported that a scale of charges based on hectarage was particularly disadvantageous to their operations due to their particular circumstances, and would make their operations unviable eg remaining small slate quarries; operator with permission to process waste rock up to 10,000 tonnes per annum over a large area.</p>
Question 3	<p>In reviewing minerals permissions, should a variable fee be charged to cover the costs of appraisal, to be set at a suitable proportion of the level for a normal application for the winning and working of minerals? If proportionate, at what level? Scale of charges detailed at Annex 3.</p>
Summary of representations	<p>12 comments received, with opinions mixed but the majority not in favour of a variable fee being imposed.</p> <p>In general terms this proposal was deemed difficult to administer, requiring detailed guidance on the level of fees for given circumstances, giving rise to the potential for inequality and differences in the application of such fees.</p> <p>From the MPA point of view a variable fee was thought unsuitable as it would not adequately reflect the amount of work expended upon each application, which is not governed/dictated by area. Most mineral applications generate significant effects necessitating numerous consultees; sometimes public meetings need to be held; liaison meetings convened; press advertisement fees; valuations by the Mineral Valuer and legal opinions (sometimes at QC level) re compensation liability. Timescales for determination are usually months but can take years requiring continued input at key points.</p> <p>Industry opponents repeated their arguments against the imposition of any</p>

	<p>fees. Comments received from some of the smaller operators were that they were opposed to any fee on small indigenous companies. One recommended that any fee imposed be applied only to larger companies with quarry volumes in excess of 250,000 tonnes, another that it should be levied at no more than 25% of the current full initial fee, as this was the maximum that could be born by smaller enterprises without putting them out of business. It was felt that the small slate quarries will suffer the worst consequences of the proposed fee, as need large hectarage under permit (to exploit different veins of rock) but produce a low-value product and have many restrictions on their operation to satisfy perceived amenity and environmental issues. Possible that in 15 years they will be unable to afford the fee nor be able to write it off through the books as in the case of large operators. Variable fee with particular circumstances such as processing restrictions should be taken into account, otherwise economic viability of smaller companies are endangered.</p> <p>A general question raised by the industry is whether any new fee will result in a better quality service.</p> <p>One advisory body supported a variable fee subject to the following factors being taken into account in setting the fee. Mineral working sites existing for more than 15 years may have restored/landscape land within the site boundary; many have a liaison committee and the planning officer and public have 15 years experience of site activities. Therefore any site area should exclude restored/landscape land before making the fee calculation. Also if a liaison committee meets regularly and works satisfactorily a proportional fee reduction should be considered; similarly if site well known to planning officer and public. It believes such proportional reductions would encourage operators to complete restoration earlier and ensure liaison committees work better.</p>
Question 4	Should there be a separate Minerals Register for Review purposes?
Summary of representations	<p>10 respondents of which 9 not in favour of this proposal from both MPA and the industry.</p> <p>See no significant benefit as review applications intermittent and few in number. There is already a statutory requirement to maintain a Minerals Register, although it is not known how many authorities maintain such a register, or a list of key review dates.</p> <p>One MPA supported the establishment of a national register of mineral sites for periodic review purposes to ensure that no dates are missed, as if the 12 month reminder letter is not served in time there is nothing the authority can do to remedy the situation and a site will never subsequently be reviewed.</p>
Question 5	Are there any unintended consequences that may result from these proposals?
Summary of representations	<p>10 respondents raised a number of issues of concern, both positive and negative.</p> <p>As the quality of information submitted is the key factor in determining ROMP review applications, one MPA envisages that the introduction of a fee should encourage operators to engage in discussions with the authority at an early stage in the process in order to provide the requisite information to support their application, either in the form of EIA or supplementary information. On the reverse side It could also place operators in a difficult position as this fee would be additional to their initial financial outlay in</p>

	<p>providing EIA and other information and may affect the quality of the information submitted.</p> <p>Another MPA thinks that the payment of fees may focus the attention of those landowners and operators who perpetuate mineral planning permissions by maintaining inactive sites or carrying out token working to enable it to be used in future bargaining arrangements to act as a "demonstrable reserve asset" for finance, trading and contract tendering means, and may result in some permissions being voluntarily given up.</p> <p>3 MPAs expressed concern that might lead to a substantial proportion of operators submitting formal requests for postponements in response to the formal 12 month notice of periodic review. To prevent this one recommended that MPAs refuse to agree any postponements, another that there should be a flat rate fee introduced for applications for postponement of review dates.</p> <p>The industry are of the view that the financial burden of such a fee could be significant, particularly to smaller operators, and be a constraint on resources which could otherwise be available for operational improvements. It will be a further serious disincentive to the opening of new sites and therefore compromise the continuity of aggregates supply in the longer term. Smaller existing sites with less reserves remaining, and those with small scale output mineral workings with large surface areas eg for building stone, sand & gravel serving local markets, may be forced to close prematurely. The timing of the fee imposition will disrupt market stability by giving a commercial advantage to those operations where a fee has not yet been payable. All this at a time when the industry is already under pressure due to the current recession.</p> <p>Mention of fee dispensations for already worked and restored land, provided never re-worked or used for ancillary operations but would need to be clearly defined as if ever circumstances change and area re-worked fee would be required – see final point to Q3.</p>
<p>Question 6</p>	<p>Do you have any comments on the outcomes predicted in the partial RIA, in particular the costs and benefits? Your comments should be supported by relevant evidence/data if possible.</p>
<p>Summary of representations</p>	<p>7 respondents.</p> <p>Fundamental omission from the RIA which is the assessment of the current cost of administering a ROMP application. The lawfulness of a charging regime cannot therefore be assessed against Section 303(5A) of the 1990 Act. The RIA makes the assertion (RIA20) that the fees "would be relatively low in relation to overall development costs." It provides no information to support that statement and in any case the significance of the cost must vary considerably with the size of the operation, the reserves it has remaining and the general economics of extraction. The statement is clearly at odds with RIA29 which acknowledges that sites may close as a result of introducing fees for periodic reviews.</p> <p>Para RIA 24 contains a simplistic and naïve approach to the business significance of fees for minerals reviews. Cost for tonnage may be small, but analysis overlooks the immediate cash flow impact of the fee. Irrespective of whether, in accountancy terms, the fee cost can be spread</p>

	<p>over the 15 year period, the operator still has to find the cash to pay the fee at the point of submission, at the same time as funding the associated EIA. Cash flow issues are significant for all sizes of business, particularly so in the current recession. Proposal could not be more ill-timed. Also RIA places emphasis on fee income providing support for maintenance of specialist mineral planning teams in MPAs but nothing in consultation paper commits to such hypothecation of revenues.</p>
Other	Other points made.
Summary of representations	<p>10 respondents.</p> <p>Industry critical of the principle of introducing fees and the furtive way the consultations have been conducted. Analysis of 2008 responses flawed as relied on head count and did not give due emphasis to the MPA response which was on behalf of its considerable membership in Wales (which included Tarmac). In view of the collective view principle offered up by trade organisations not being given due weight by the Assembly Government, it is felt this negates the basis on which the fee proposals brought forward in this further consultation in 2009.</p> <p>2009 responses included 3 trade associations: CBI representing 20 companies operating in Wales, MPA 12, BAA 6, with operator Tarmac operating 12 aggregate quarries in Wales (plus controls dormant sites).</p> <p>Smaller operators particularly concerned over their survival if fee imposed as cannot compete against large foreign based and subsidised companies.</p> <p>MPAs, in contrast, comment that every review incurs costs and demands on them even if little change materialises upon determination. As other regulatory agencies are able to make charges to cover the administrative costs of maintaining up to date regulatory licences and permits eg annual maintenance charge made by the Environment Agency for environmental permits. On this basis they feel it is not unreasonable for MPAs to charge to maintain up to date minerals and mining permissions, albeit only at 15 year intervals.</p>

<p>Questions for MPAs</p>	<p>In answer to the miscellaneous questions on ROMP reviews undertaken by MPAs, only 3 Authorities responded.</p> <p>Bridgend - 3 ROMP applications submitted without EIA in 1997. All remain undetermined and have required intermittent officer time on a regular basis. An approximate estimate of staff costs would be £25-£30k. In due course EIAs were submitted on a voluntary basis which required detailed assessment and discussion at steering groups involving key statutory consultees.</p> <p>Gwynedd – time/cost of ROMP reviews without EIA 3-4 months at a cost of £5,000-£7,000 (approx); time/cost of ROMP reviews with EIA 2-3 years at a cost of £15,000-£20,000 (approx).</p> <p>Bridgend – No periodic reviews without EIA, with EIA 1 in 2002, 2 in 2008. Gwynedd – No periodic review scheduled for 2009.</p> <p>NPT - Only 2 applications submitted in recent years (whether EIA required not specified), with impending periodic reviews in some cases overtaken by the submission and approval of extensions.</p> <p>Gwynedd - A single dormant site has had a schedule of conditions approved in 2007 requiring EIA.</p> <p>Bridgend – 1 12-month notice of periodic review issued over the last 12 months. Gwynedd - A single IDO Permission - No such scheme submitted however in response to the 12-month notice. The permission has since lapsed in June 2009.</p>
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