

Decision Maker: **DEVELOPMENT CONTROL COMMITTEE**

Date: **Tuesday 9 April 2013**

Decision Type: Non-Urgent Non-Executive Non-Key

Title: **PLANNING APPEALS - COSTS DECISIONS 2012**

Contact Officer: Tim Bloomfield, Development Control Manager
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Chief Officer: Deputy Chief Planner

Ward: (All Wards);

1. Reason for report

This report provides a summary of the award of costs in planning appeals in 2012. 17 cost decisions were received in the period January to December 2012 of which 10 were allowed, 5 were refused, one was awaiting a decision, and one was withdrawn. In the period to 31 December 2012, 4 cost claims were paid totalling approx. £12,600. In addition, a number of claims have been received which are the subject of current negotiations and have not yet been paid. One cost claim was awarded in the Council's favour and is awaiting settlement. Further details of individual cost decisions are summarised in the attached Appendices.

2. **RECOMMENDATION(S)**

That in order to minimise future planning appeal costs awards against the Council due to "unreasonable behaviour", an action plan be prepared and reported to this Committee and the Renewal and Recreation Policy Development and Scrutiny Committee.

1. Policy Status: Existing Policy
 2. BBB Priority: Quality Environment
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Financial

1. Cost of proposal: £65,642 as detailed in Appendix 1
 2. Ongoing costs Cannot be quantified at this time
 3. Budget head/performance centre: Central Contingency
 4. Total current budget for this head: £150,000
 5. Source of funding: Existing revenue budget 2012/13
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Staff

1. Number of staff (current and additional): 5 fte (excluding Development Control staff)
 2. If from existing staff resources, number of staff hours: Approx. 150 hours per week
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance
 2. Call-in: Not Applicable:
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Not known
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: No comments received

3. COMMENTARY

- 3.1 As a general principle in planning and enforcement appeals the main parties are expected to meet their own expenses irrespective of the outcome. The Planning Inspectorate may award costs on the grounds of 'unreasonable behaviour' by either of the main parties which results in unnecessary or wasted expense. Policy guidance is provided in the Costs Circular (DCLG Circular 03/09) and applications for costs are assessed in the context of this guidance. If the Planning Inspectorate award costs, they do so in a separate decision letter attached to the appeal decision letter. This does not give specific financial details, these follow on as a detailed claim at a later date.
- 3.2 The most common reason for awarding costs against the Council is lack of sufficient evidence to substantiate a reason for refusal. In cases where a refusal cannot be sustained Inspectors have been critical of the Council's failure to produce convincing and credible supporting evidence in support of a decision to refuse permission for a proposed development. Similarly the Inspector may conclude that there was insufficient evidence to take enforcement action. Withdrawal of an enforcement notice at a late stage may also give rise to a claim for costs and suggests that it should not have been issued in the first place. Failure to produce a statement or submission of a late statement may also amount to unreasonable behaviour.
- 3.3 In the period January to December 2012 there were 17 claims for costs by appellants against the Council relating to planning application appeals. The Planning Inspectorate determined 16 claims for costs against the Council of which 10 were allowed, 5 refused and one was withdrawn. One award of costs was made in the Council's favour against the appellant.
- 3.4 In the period January to December 2012, 4 claims for costs were paid. There were a further 4 cases where costs had been awarded against the Council but were awaiting submission of a claim. The total amount paid in 2012 was approximately £12,600 although there are a number of large claims awaiting settlement. Members are notified of all appeal decisions on a weekly basis, including all costs decisions. The attached table provides a summary of all costs decisions in 2012 (Appendix 1). The supplementary table provides an update for the period January – March 2013 (Appendix 2).
- 3.5 Regulations now enable claims for costs to be made in written representation and fast track appeal cases as well as in informal hearings and local inquiries. There were 10 such claims in 2012 of which 6 were allowed, 3 dismissed and one withdrawn
- 3.6 In the period January–March 2013 there have been 8 claims for costs against the Council. 4 of the claims have been successful (76 High Street, Orpington and 66-69 Park Road, Beckenham and two appeals concerning r/o 102 & 104 High Street, Orpington). Further details of the cost claims are currently awaited and decisions are pending on 4 further claims.
- 3.7 Several examples of costs awards are worthy of note to illustrate the circumstances in which Planning Inspectors have concluded that there has been unreasonable behaviour.

2-4 Raleigh Road, Penge - The reasons for refusal related to overdevelopment, impact on visual amenity and lack of on-site parking. The Inspector concluded that although Members were not obliged to accept the officer recommendation for permission the Council had not substantiated its reasons for refusal, stating that the Council's case was 'vague, generalised and inaccurate and unsupported by any objective analysis'. (Claim awaited).

38 Hawthorn Road, Bickley - Permission was refused against officer's advice and failed to take account of previous appeal decisions without clear evidence to justify taking an alternative approach. (Costs of £8,116 paid).

8 Hayes Wood Avenue, Hayes - the Inspector concluded that the Council had incurred unnecessary expense in contesting an appeal which stood no reasonable prospect of success due to lack of evidence. Costs were awarded in the Council's favour.

Land r/o 88-90 High Street, Beckenham – Appeal against non-determination allowed with partial award of costs against the Council. (Claim for £41,000 received).

76 High Street Orpington – Permission refused against officers advice. Lack of evidence to sustain objections on overdevelopment or highway grounds. (Claim awaited)

258 Southlands Road, Bromley – Permission refused but Inspector was critical of the Council's failure to provide sufficient evidence or analysis in support of its objections to the proposed development. (Claim for £12,000 received)

3.8 Next steps

As cost awards are made for 'unreasonable behaviour' as opposed to a difference of viewpoint over the balance of planning merits, we will wish to minimise such payments. It is proposed that this topic be discussed with the Development Control and Plans Sub Committee Chairmen and a short report with an action plan be prepared for the DC Committee and the R&R PDS to consider.

4. FINANCIAL IMPLICATIONS

- 4.1 To date, a sum of £12,642 has been paid for cost awards during the period January 2012 to December 2012. Claims have also been received for £53,000, making a total of £65,642 for the 12 month period with a number of claims not yet received.
- 4.2 There are a number of claims for costs that have not yet been received as well as claims where the determination decision is awaited, and therefore it is possible to quantify the full costs that may become payable due to costs awarded against the Council for this period.
- 4.3 There is a sum of £150k set aside in the central contingency to meet these cost awards.