

Decision Maker: **Renewal & Recreation PDS Committee**

Date: **11th June 2013**

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

Title: **PLANNING APPEALS – COSTS DECISIONS**

Contact Officer: Jim Kehoe, Chief Planner
Tel: 020 8313 4441 E-mail: jim.kehoe@bromley.gov.uk

Chief Officer: Marc Hume, Director of Renewal & Recreation

Ward: All

1. Reason for report

During 2012 and early 2013, several costs awards for planning appeals have been made against the Council. As these awards are made for 'unreasonable behaviour' as opposed to a difference in viewpoint over the planning merits, we will wish to minimise such payments.

This matter was considered by Development Control Committee (DCC) in April 2013 and it was agreed that a remedial action plan be proposed, with the participation of the Chairman of the Development Control and the four Plan Sub-Committees. This exercise is at its formative stages and the R&R PDS is invited to comment on and add to the initial ideas that are set out in the report below.

2. **RECOMMENDATION(S)**

That:-

- 1. In order to minimise future planning appeal costs awarded against the Council due to 'unreasonable behaviour', an action plan be prepared and reported to future meetings of the Development Control Committee and the Renewal and Recreation Policy Development and Scrutiny Committee; and**
- 2. The Committee note that the Chairman of DC Committee together with Chairmen of Plans Sub-Committee and the Chief Planner have formed a Panel Group to assist with the preparation of the action plan; and**
- 3 The R&R PDS Committee comment on and add to the initial proposals presented at Appendix A of the report.**

Corporate Policy

1. Policy Status: Existing Policy:
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: No additional costs
 2. Ongoing costs: Further Details The objective is to reduce costs awarded against the Council.
 3. Budget head/performance centre: Central Contingency
 4. Total current budget for this head: £60,000
 5. Source of funding: Existing Revenue Budget 2013/14
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Staff

1. Number of staff (current and additional): 43fte
 2. If from existing staff resources, number of staff hours: 3 days for preparation of the Action Plan
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Legal

1. Legal Requirement: The basis for the award of costs at appeal is set out in Circular 03/2009.
 2. Call-in: Not Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): About 200 appellants per year
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable
2. Summary of Ward Councillors comments:

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 The DCC considered the matter at its April 2013 meeting and for convenience a copy of that Committee's report is attached at Appendix B.
- 3.4 Since that time, the site specific tables of the DCC report have been updated and these are shown at Appendix C.
- 3.5 A further £41,182 has been paid in costs, on the following sites:-
- | | |
|--------------------------------------|----------------|
| • 2-4 Raleigh Road, Penge | £4,227 |
| • 96 Oaklands Lane, Biggin Hill | £18,770 |
| • 68 Leaves Road, Keston | £1,300 |
| • 254-260 Southlands Road, Bromley | £7,973 |
| • 52 High Street, Green Street Green | £2,550 |
| • 66-68 Park Road, Beckenham | <u>£6,362</u> |
| | £41,182 |
- 3.6 Other cost awards remain to be settled.
- 3.7 The additional payments made reinforce the need for remedial action to reduce these costs, which by definition are for unreasonable behaviour as defined in the Costs Circular.
- 3.8 At the time of report preparation, the panel has received the contents of Appendix A and is due to meet to discuss these and any other proposals. It is therefore suggested that any further proposals of the Committee be considered by the Panel.

4. POLICY IMPLICATIONS

4.1 None

5. FINANCIAL IMPLICATIONS

5.1 None directly from this report, but the Action Plan is intended to reduce costs awards against the Council.

5.2 For the financial year 2012/13, costs relating to appeals lost total just under £100k. This total includes actual costs paid plus estimated costs accrued for at the year end. £100k has been drawn down from the central contingency to fully meet these costs.

5.3 It should be noted that the central contingency only holds a balance of £60k from 2013/14 onwards and therefore action needs to be taken to reduce on-going costs.

6. LEGAL IMPLICATIONS

6.1 None

7. PERSONNEL IMPLICATIONS

7.1 None

Non-Applicable Sections:	[List non-applicable sections here]
Background Documents: (Access via Contact Officer)	[Title of document and date]