

**Decision Maker:**        **DEVELOPMENT CONTROL COMMITTEE**

**Date:**                    **Thursday 10 April 2014**

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

**Title:**                    **PLANNING APPEALS - COSTS 2013/2014**

**Contact Officer:**        Catharine Leadbeater, Planner  
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**Chief Officer:**        Chief Planner

**Ward:**                    (All Wards);

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1. Reason for report

This report provides an update on the award of costs in planning appeals in the financial year 2013/2014. 23 claims for costs were received in the period April 2013 to March 2014 of which 10 have been allowed and 13 dismissed. To date 7 cost claims have been paid totalling approx £15,211.

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2. **RECOMMENDATION(S)**

**Members note the report**

### Corporate Policy

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

1. Cost of proposal: N/A: Reporting that £15,212 has been paid out during 2013/14 to date
  2. Ongoing costs: N/A
  3. Budget head/performance centre: Planning Division
  4. Total current budget for this head: £705k
  5. Source of funding: Existing controllable revenue budget 2013/14
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### Staff

1. Number of staff (current and additional): 44.4 ftes
  2. If from existing staff resources, number of staff hours: N/A
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### Legal

1. Legal Requirement: Statutory Requirement :
  2. Call-in: Not Applicable:
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### Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough Population
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### Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: n/a

### 3. COMMENTARY

- 3.1 In planning and enforcement appeals the main parties are normally expected to meet their own expenses irrespective of the outcome. Costs may be awarded on the grounds of 'unreasonable behaviour' resulting in unnecessary wasted expense. Policy guidance concerning the costs procedure was provided in the Costs Circular (CLG Circular 03/09). On 6 March 2014 Circular 03/09 was superseded by National Planning Practice Policy Guidance (NPPG) concerning Appeals.
- 3.2 Section 4 of the NPPG Appeals guidance sets out the circumstances when an award of costs may be applied for. The award of costs supports an effective and timely planning system in which all parties are required to behave reasonably. In order to support this aim further, it is stated that Inspectors will now use their existing legal powers to make an award of costs where they have found unreasonable behaviour, including cases where no application has been made by either party, applying the same guidance when deciding an application for an award of costs, or making an award at their own initiative. Costs may be awarded at the initiative of the Inspector in relation to planning appeals received on or after 1<sup>st</sup> October 2013.
- 3.3 Costs awards may also be made against statutory consultees as there is a clear expectation that a statutory consultee will substantiate its advice at appeal.
- 3.4 In Local Planning Authorities with a high appeals workload such as Bromley, the number of claims against the Council can be significant. Bromley consistently has one of the highest number of planning appeals in the UK. The volume of appeals is reflected in the relatively high number of claims for costs.
- 3.5 The trend for the number of costs claims against the Council has remained on average about 20 a year. However the amounts claimed can vary significantly depending on the type of case. It is not sufficient for the appellant to claim costs on the grounds that the Council has made an incorrect decision and it is necessary to demonstrate that it has acted unreasonably, for example if it is unable to produce convincing evidence in support of its reasons to refuse permission.
- 3.6 Factors which have persuaded Planning Inspectors to award costs against the Council in 2013/2014 have included the following:
1. Failing to produce sufficient evidence to substantiate reasons for refusal or demonstrating why the development could not be permitted.
  2. The Council misunderstood the position in relation to GPDO provisions, application refusal and appeal opposition unreasonable.
  3. Insufficient justification to contest the 2<sup>nd</sup> and 3<sup>rd</sup> reasons for refusal caused appellant additional work and to provide an expert.
  4. Lack of highway evidence to demonstrate position level of on-street parking.
  5. Enforcement notice withdrawn because it misquoted the wrong policies
  6. Council failed to substantiate its Members' views and showed unreasonable grounds for taking a decision contrary to professional advice of officers.
- 3.7 This report provides an update on the award of costs in planning appeals in financial year 2013/2014. 23 claims for costs were received in the period April 2013 to March 2014 of which 10 have been allowed and 13 dismissed.

3.8 To date 7 claims for costs have been paid. There are a further 3 cases where costs awards have been made but are awaiting submission of claim. The total amount paid to date is approximately £15,211 although there a number of large claims currently awaiting settlement from the previous year. Members are notified of all cost decisions together with all appeal decisions on a weekly basis. A list of all cost decisions received in 2013/2014 is attached. **(Appendix 1)**

3.9 In some cases the decisions made at committee may be contrary to officer's recommendations. Whilst the Council is not bound to accept the advice given by officers, on appeal it will be required to show that there are reasonable planning grounds for doing so, and that the relevant evidence is provided to justify its decision. A criticism by Inspectors is that insufficient evidence is produced to substantiate the reasons for refusal. If permission is refused and goes to appeal it is therefore essential that the Council is able to produce sufficient supporting evidence to sustain the reasons for refusal. Although is it right for the Council to take into account of local objections, its reasons for refusal should be specific, precise, complete and relevant to the application and Planning Inspectors expect to be presented with evidence to substantiate the reasons for refusal. Where such evidence is lacking a claim for costs is more likely to succeed. Two such cases in the period 2013/2014 were paid totalling £3,350.

**4. FINANCIAL IMPLICATIONS**

4.1 A total of £15,212 has been paid out as cost awards during 2013/14. These additional costs have been contained within the overall planning budget.

4.2 As mentioned above, there are a further three cases where cost awards have been made but the submission of the claims are awaited. The latest budget monitoring report includes an estimated £41k for these claims.

4.3 There are also a large number of claims currently awaiting settlement from previous years with an estimated claims totalling £164k. All of these costs have been accounted for in the projected outturn figures for 2012/13. It should be noted that £113k of this sum relates to cases where claims have been received and where the costs are being challenged or negotiated. The remaining £51k relate to cases where no claims have been submitted.

Non-Applicable Sections:	Policy, Legal and Personnel Implications
Background Documents: (Access via Contact Officer)	N/A