

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

**Date:** 18 November 2014

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

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

**Contact Officer:** Jim Kehoe, Chief Planner  
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**Chief Officer:** Marc Hume, Director of Regeneration & Transformation

**Ward:** All

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1. Reason for report

Costs awards for planning appeals have been made against the Council. 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.

The report shows recent patterns in cost awards for Planning Appeals.

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2. **RECOMMENDATION(S)**

The R&R PDS Committee note the pattern of cost awards presented in 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: £60k
  5. Source of funding: Existing Revenue Budget 2014/15
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### Staff

1. Number of staff (current and additional): 43 fte
  2. If from existing staff resources, number of staff hours:
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### Legal

1. Legal Requirement:: The basis for the award of costs at appeal is set out in National Planning Practice Guidance (2014).
  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 National Planning Practice Guidance (March 2014). 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 A 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 and costs can be awarded for failure to diligently investigate to ensure the accuracy of and necessity for the serving of an enforcement notice prior to the enforcement appeal being lodged. Failure to produce a statement or submission of a late statement may also amount to unreasonable behaviour.
- 3.3 The issuing of the March 2014 national planning practice guidance has been followed by a sudden increase in diverse costs claims. These concern appeal procedure, including at householder appeal stage, behaviour of statutory consultees and development control case management with appeals against the non-determination of planning applications. Inspectors are now also able to make costs claims against either the Council or the appellant at any point.
- 3.4 The site specific tables of the Appeal Cost Decisions have been updated for the financial years from 2011/ 2012 to date and these are shown at Appendix A.
- 3.5 The trends for planning appeal costs awards is as set out below. This is based on the date when the planning appeal was submitted to the Planning Inspectorate.

<b>Year</b>	<b>Costs Awarded</b>	<b>Pending Cases</b>
2011/12	£33,140	None
2012/13	£67,598	1 case
2013/14	£18,220	5 cases
2014/15	£23,905	3 cases

- 3.6 The payments made reinforce the need for remedial action to reduce these costs, which by definition are for unreasonable behaviour.

**4. POLICY IMPLICATIONS**

None directly from this report

**5. FINANCIAL IMPLICATIONS**

5.1 None directly from this report.

5.2 To date for 2014/15, a sum of £3,905 has been paid for cost awards and an invoice for £20,000 is expected.

5.3 Of the 9 pending cases, claims have been submitted for 3, totalling £69k. It is not possible to quantify the full costs that may become payable for the remaining 6 cases.

5.4 A sum of £60k is held in the central contingency to meet any cost awards that cannot be contained within the existing planning budget.

**6. LEGAL IMPLICATIONS**

None directly from this report

**7. PERSONNEL IMPLICATIONS**

None directly from this report

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