

**Decision Maker:** DEVELOPMENT CONTROL COMMITTEE

**Date:** Tuesday 9 June 2015

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

**Title:** PLANNING APPEALS - COSTS 2014/2015

**Contact Officer:** John Stephenson, Development Control Manager Planning Appeals and Investigation  
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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 2014/2015.

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2. RECOMMENDATION(S)

Members consider and comment on the report

### Corporate Policy

1. Policy Status: Not Applicable Existing Policy New Policy: Further Details
  2. BBB Priority: Children and Young People Excellent Council Quality Environment Safer Bromley Supporting Independence Vibrant, Thriving Town Centres Not Applicable: Further Details
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### Financial

1. Cost of proposal: N/A as reporting on historic information
  2. Ongoing costs: N/A
  3. Budget head/performance centre: Central Contingency
  4. Total current budget for this head: £60k
  5. Source of funding: Existing revenue budget 2015/16
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### Staff

1. Number of staff (current and additional): 45.87ftes
  2. If from existing staff resources, number of staff hours:
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### Legal

1. Legal Requirement: Statutory Requirement Non-Statutory - Government Guidance None: Further Details
  2. Call-in: Applicable Not Applicable: Further Details
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### Customer Impact

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

1. Have Ward Councillors been asked for comments? Yes No Not Applicable
2. Summary of Ward Councillors comments:

### 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 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.
- 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 increased above the previously reported average of 20 a year in April 2013 to March 2014 to 30 in April 2014 to March 2015 which reflects the widening of the national criteria for appeal cost claims, for example on written representation cases. 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 2014/15 principally due to a failure to produce sufficient evidence to substantiate reasons for refusal
- 3.7 This report provides an update on the award of costs in planning appeals in financial year 2014/2015. 30 claims for costs were received in the period April 2014 to March 2015 of which 7 have been allowed, 18 refused, 1 partial award, 3 awaiting determination and 1 withdrawn.

- 3.8 Members are notified of all cost decisions together with all appeal decisions on a weekly basis. A list of all cost decisions received in 2014/2015 is attached. **(Appendix 1)**
- 3.9 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 it is 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.
- 3.11 Four such cases in the period 2014/2015 were paid currently totalling £4.4k.
- 3.12 Two further cases, a claim initially being £20,500 which is currently being negotiated by the cost advocates. A further cost claim has been submitted for a non determination case for £28,489, this is also currently being negotiated with the cost advocate, with the view to reduce the claim to below £5,000.

#### 4. FINANCIAL IMPLICATIONS

- 4.1 A total of £9.6k has been paid out as cost awards against decisions received for appeals submitted during 2014/15. £5.2k of this sum was paid out in 2015/16 for decisions received after the end of March 2015.
- 4.2 A further £59.8k has been paid out during 2014/15 against decisions received for appeals submitted between April 2012 and March 2014. These additional costs have been contained within the overall planning budget.
- 4.3 Two costs claims are currently being negotiated, the initial total claim being £49k, this is expected to be reduced significantly through negotiation with the cost advocate.
- 4.4 One claim has yet to be submitted and five cases are currently pending a decision. At this stage it is not possible to quantify the full costs that may become payable for these specific cases.
- 4.5 A sum of 60k is held in the Central Contingency to meet any cost awards that cannot be contained within the existing planning budget.

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