

Decision Maker: RENEWAL AND RECREATION POLICY DEVELOPMENT AND SCRUTINY COMMITTEE

Date: Wednesday 5 July 2017

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

Title: PLANNING APPEALS - COSTS 2016-2017

Contact Officer: John Stephenson, Planning Appeals and Enforcement Manager
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Chief Officer: Chief Planner

Ward: (All Wards);

1. Reason for report

This report provides an update on the award of costs from planning appeals made in the financial year 2016/2017. **27** applications claiming for costs were made in the period April 2016 to March 2017 of which **9** have been allowed and **16** refused, 1 pending decision and 1 awarded in the Council's favour. **(Appendix 1)**

The report also provides an update on cost claims that were paid in 2016/2017. The total of planning appeal cost claims paid in 2016/2017 is **£106,086 (Appendix 2)**

The Council have actively been applying for an award of costs against the appellant where the Council believe they have acted unreasonably. Three such cases have been applied for within this financial year, two are still in progress and one has been allowed, in the Council's favour.

2. **RECOMMENDATION(S)**

Members note the report

Impact on Vulnerable Adults and Children

1. Summary of Impact: None directly from this report
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Corporate Policy

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

1. Cost of proposal: N/A as reporting on actual spend.
 2. Ongoing costs: N/A
 3. Budget head/performance centre: Contingency
 4. Total current budget for this head: £60k
 5. Source of funding: Existing controllable revenue budget 2016/17
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Personnel

1. Number of staff (current and additional): 46.22FTEs
 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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Procurement

1. Summary of Procurement Implications: None directly from this report
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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? 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 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 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 about 25 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. It is necessary to demonstrate that the Council 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 2016/17 have included failing to produce evidence to substantiate its reasons for refusal, unsupported by objective analysis, and an inaccurate assessment of character of area.
- 3.7 This report principally provides an update on the award of costs in planning appeals that were received by the Planning Inspectorate in financial year 2016/2017. **27** applications claiming for costs were made in the period April 2016 to March 2017 of which **9** have been allowed and **16** refused, 1 pending decision and 1 awarded in the Council's favour.
- 3.8 The report also provides an update on cost claims that were paid in 2016/2017 arising from planning appeals made in previous years totalling **£102,240**. The total of planning appeal cost claims paid in 2016/2017 is **£106k**.
- 3.9 Members are notified of all cost decisions together with all appeal decisions on a weekly basis. A list of all cost applications received and their decisions in 2016/2017 is attached. **(Appendix 1)**. A list of all cost claims paid in 2016/2017 is also attached. This includes payments arising from planning appeals in previous years **(Appendix 2)**.
- 3.10 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.
- 3.11 The Council have applied for an award of costs against the appellant where the Council believe they have acted unreasonably. Three such cases have been applied for within this financial year, two are still in progress and one has been allowed, in the Council's favour.

4. FINANCIAL IMPLICATIONS

- 4.1 A total of **£106k** has been paid during 2016/2017 in settlement of planning appeal cost claims received. This includes some of the previous outstanding claims from 2014/2015 and 2015/2016. These additional costs have been contained within the overall planning budget.
- 4.2 Three claims against appeal decisions made in 2016/2017 are awaiting submission and one is pending negotiation.
- 4.3 The latest budget monitoring report includes an estimated £23k for these claims.

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