

**Decision Maker:** RENEWAL, RECREATION AND HOUSING POLICY,  
DEVELOPMENT AND SCRUTINY COMMITTEE

**Date:** Tuesday 2 July 2019

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

**Title:** PLANNING APPEALS - COSTS 2018-2019

**Contact Officer:** John Stephenson, Development Control Manager, Appeals and Planning Investigation. Tel: 0208 461 7887 E-mail: John.Stephenson@bromley.gov.uk

**Chief Officer:** Jim Kehoe, Chief Planner

**Ward:** (All Wards)

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1. Reason for report

This report provides an update on the award of costs from planning appeals made in the financial year 2017/2018. **17** applications claiming for costs were made in the period April 2018 to March 2019 of which **6** have been allowed and **11** refused (**published as Appendix 1 in the Part 2 confidential section of the agenda**)

The report also provides an update on cost claims that were paid in 2018/2019. The total of planning appeal cost claims paid in 2018/2019 is **£38,150 (published as Appendix 2 in the Part 2 confidential section of the agenda)**.

The Council have actively been applying for an award of costs against the appellant where the Council believe they have acted unreasonably. One such case has been applied for within this financial year which is currently being processed.

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2. **RECOMMENDATION(S)**

**Members note the report.**

## Impact on Vulnerable Adults and Children

1. Summary of Impact:
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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: Not Applicable:
  3. Budget head/performance centre: Central contingency
  4. Total current budget for this head: £60k
  5. Source of funding: Central contingency for 2018/19
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## Personnel

1. Number of staff (current and additional): 53.86ftes
  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):
- 

## 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 number of cost claims against the Council has increased this financial year to 17 compared to 2017/2018 where 12 claims were received. 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 Members have requested to be advised of the some of the main factors which have resulted in the Planning Inspectorate to award costs against the Council in 2018/2019 for unreasonable behaviour. The reasons have included:
1. Lack of evidence to substantiate its reasons for refusal.
  2. Grounds of refusal contrary to technical and or officer advice which includes statutory consultees.
  3. Unnecessary use of side space Policy 8 of the Bromley Local Plan states that the Council will normally require 1 metre side space the word normally adds an element of discretion within the policy to consider the specific circumstances of each proposal.
  4. Previous Planning Inspectors decision the Council failed to take account of the Inspectors recent decision, a significant material consideration.
- 3.7 This report principally provides an update on the award of costs in planning appeals that were received by the Planning Inspectorate in the financial year 2018/2019. **17** applications claiming for costs were made in the period April 2018 to March 2019 of which **6** have been allowed and **11** refused.
- 3.8 The report also provides an update on cost claims that were paid in 2018/2019 arising from planning appeals made in previous years totalling **£4,550**. The total of planning appeal cost claims paid in 2018/2019 is **£ 38,150, including the £4,550**.
- 3.9 Two claims against appeal decisions made in 2018/2019 are awaiting submission and one is pending submission.
- 3.10 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 decision in 2018/2019 is attached. **(Appendix 1)**. A list of all cost claims paid in 2018/2019 is also attached. This includes payments arising from planning appeals in previous years **(Appendix 2)**.

- 3.11 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.
- 3.12 The Council have applied for an award of costs against the appellant where the Council believe they have acted unreasonably. One such case has been applied for within this financial year and award to the Council, payment has been received.

**4. FINANCIAL IMPLICATIONS**

- 4.1 A total of **£38.2k** has been paid during 2018/2019 in settlement of planning appeal cost claims received. This includes a previous outstanding claim from 2016/2017. This additional cost has been contained within the overall planning budget.
- 4.2 The latest budget monitoring report includes an estimated £50k projection for appeal costs, which includes an estimated substantial cost for Westmoreland Road.
- 4.3 Other claims of £3.3k have been received in relation to 2018/19 lost appeals and will be paid in 2019/20.
- 4.3 It should be noted that amounts totalling £15.2k were received in 2018/19 in relation to cost claims submitted by the Council.

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