

Report to the Cabinet

Report reference: C-025-2012/13
Date of meeting: 22 October 2012



Portfolio: Planning
Subject: Planning Appeal Compensation Budget
Responsible Officer: Nigel Richardson (01992 564110)
Democratic Services Officer: Gary Woodhall (01992 564470)

Recommendations/Decisions Required:

- (1) That a District Development Fund Supplementary Estimate in the sum of £90,000 for 2012/13 be recommended to the Council for approval for the Planning Compensations budget in respect of Planning Appeals in the Development Control budget; and**
- (2) That any underspend in 2012-13 be carried forward into successive years until it is spent.**

Executive Summary:

Up to 2008, a supplementary DDF was sought each time appeal costs were awarded against the Council. Instead of agreeing to pay out using this same procedure, because of one particularly costly case in 2008, Council instead approved a contingency budget of £100,000 be allocated to the Development Control Appeal budget. Subsequently, where a cost claim has been awarded against the Council, it has been paid out from this and has lasted 4 years.

However, there are currently two cost awards to be paid and insufficient budget to cover them both. Any subsequent costs on appeals will have no budget. Therefore the planning compensations budget for Development Control requires further funding.

Reasons for Proposed Decision:

Although the Council can challenge the amount of costs awarded it is difficult to challenge the Planning Inspectorate's decision to award them. Once an amount is agreed it must be paid or it can be enforced as a debt.

Other Options for Action:

Rather than a contingency budget, a DDF supplementary estimate could be sought every time an award of costs against the Council is successful. However, these will be more frequent than in 2008 because the opportunity to apply for costs is now possible across all three appeal types including written representations, rather than just hearings and public inquiries as previously.

Report:

1. In the case of planning application and enforcement appeals, costs may be awarded against the Council if the appeal inspector from the Planning Inspectorate considers that the Council have acted unreasonably in our decision making and caused another party, usually the appellant's consultant, unnecessary expense.
2. As part of a 6 monthly appeal performance report to Area Plans Sub-Committees, an analysis of any cost awards are also reported. Officers do succeed in defending most cases when sought by the appellant, and successful ones have tended to be few in frequency and usually less than £10,000 in cost.
3. However, these are gradually becoming more frequent, mainly because a cost claim can now be made in the case of written representation type appeals, which is the most common method of appeal. A cost claim is only successful if the planning inspector considers the Council have been unreasonable in their decision making, i.e. where a reason for refusal is not justified or supported. The likelihood of costs being awarded has also increased since the National Planning Policy Framework, which sets out the Government's planning policies and how they are expected to be applied, was published in March 2012 and gives more weight to evidence based planning decision making and the need for an up to date Local Plan from April 2013.
4. There is currently £12,868.28 left in the budget and there are two cost claims totalling almost £35,000 to be paid. The Council is challenging another cost claim (£9,232.92), which is at a judicial review. Whilst officers do try to put up a robust defence against any cost claim, there is still the risk that, particularly in those cases where decisions are closely balanced or where officer's recommendations are overturned at planning committee, there will be an award of cost in favour of the appellant to be paid by the Council. The withdrawal of an enforcement notice can also be prone to a cost award, as can even dismissed appeals where a reason for refusal has not been substantiated or judged by the Planning Inspector to be reasonable.
5. The initial £100,000 has been or is about to be used up after 4 years. At the time of agreeing this budget in 2008, it was unlikely to have been envisaged that it would have lasted this long. The budget is just about to run out and authority is therefore sought for a further injection of funds into the appeal compensation budget, which can be carried over into the following financial years.

Resource Implications:

That a Supplementary estimate of £90,000 be approved to costs awarded against the Council for future appeals.

Legal and Governance Implications:

The Town and Country Planning Act 1990 as amended and regulations.
The Planning Act 2008
Circular 03/09 - Cost Awards in Appeals and Other Planning Proceedings
National Planning Policy Framework

Safer, Cleaner and Greener Implications:

None.

Consultation Undertaken:

None.

Background Papers:

Appeal cost decision letters and cost claims.

Impact Assessments:

Risk Management

There is a risk that if a cost payment is not made or agreed, then the appellant can refer the case to a costs judge of the Supreme Court for a separate decision, which could result in further costs.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A