

## **Report to the Cabinet**

**Report reference:** C-059-2015/16  
**Date of meeting:** 11 January 2016



**Portfolio:** Governance and Development Management  
**Subject:** Planning Appeal Compensation Budget  
**Responsible Officer:** Nigel Richardson (01992 564110).  
**Democratic Services Officer:** Gary Woodhall (01992 564470).

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### **Recommendations/Decisions Required:**

- (1) That a District Development Fund Growth Bid in the sum of £90,000 (split as £45,000 for 2016/17 and £45,000 for 2017/18) be made for the Planning Compensations budget in respect of Planning Appeals in the Development Control budget; and**
- (2) That any underspend 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. In 2012, Cabinet a budget of £90,000. Subsequently, where a cost claim has been awarded against the Council, it has been paid out from this.

However, there is only £12,700 remaining as at December 2015, following a recent cost award of almost £23,000 for one appeal case in Loughton at Former Public Car Park, Church Hill (EPF/1412/14 – Development of ground floor retail and 6 apartments above). Whilst costs awarded against the Council in respect of planning and enforcement appeals is uncommon, a subsequent costs on appeals is currently unlikely to have sufficient budget fund. Therefore the planning compensations budget for Development Control requires further funding. Whilst the contingency budget amount has usually lasted about 3 years, the advice discussions with the Assistant Director – Accountancy, is that the £90,000 be split over 2 years, but any underspend be carried forward to successive years.

### **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 growth bid could be sought every time an award of costs against the Council is successful, as per pre-2008. However, this caused delay as it required approval through Cabinet and Council and the threat of further costs from the

chasing appellant's planning consultancy.

### **Report:**

1. In the case of planning application and enforcement appeals, as stated in the National Planning Practice Guidance on Award of Costs, 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 against the Council have tended to be few in frequency.

3. However, these are gradually becoming more frequent, for a number of reasons. The first is that a cost claim can now be made in the case of written representation type appeals, which is the most common method of appeal, and secondly, the Planning Inspector can award costs even if other parties have not applied for them. Finally, since March 2012 with the publication of the National Planning Policy Framework that sets out the Government's planning policies and how they are expected to be applied, more weight is being given to evidence based planning decision making and the need for an up to date Local Plan, which otherwise can result in costs.

4. There is currently about £12,700 left from the initial £90,000 budget that was approved at Cabinet on 22 October 2012. Whilst officers do try to put up a robust defence against any cost claim, there is still the risk that 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 £90,000 is close to being used up after 3 years and authority is therefore sought for a further injection of funds into the appeal compensation budget, which if not used up as budgeted for 2 years, can be carried over into the following financial years. It is hoped that this will also last for at least 3 years.

### **Resource Implications:**

That a Growth Bid 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.  
National Planning Practice Guidance on Award of Costs  
National Planning Policy Framework

### **Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

Finance (Peter Maddock)  
Management Board 16<sup>th</sup> December 2015

**Background Papers:**

None

**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.

# Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

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The subject of this report does not impact on the Equality Act 2010