
Subject:	PLANNING APPEAL – AWARD OF COSTS
Meeting and Date:	Cabinet – 3 March 2014 Council – 5 March 2014
Report of:	Nadeem Aziz – Chief Executive
Portfolio Holder:	Councillor Nick Kenton, Portfolio Holder for Environment, Waste and Planning
Decision Type:	Non-Key Decision
Classification:	Unrestricted

Purpose of the report:	To advise Members of 2 recent Planning Inspector’s decisions and the costs award made against the Council.
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Recommendation:	1. Release £8,010 from General Fund Balances to meet the costs award for application 12/500.
	2. To release up to £28,822 from the General Fund Balances to meet the costs award for application 12/311

1. Summary

This report outlines two recent decisions by the Planning Inspector upholding appeals against the Council’s refusal to grant planning permission. These refusals were decisions of the Planning Committee against Officer recommendations. Both appellants applied for and were awarded costs against the Council and this report seeks agreement to release the final agreed sums from General Fund Balances.

2. Background Information

Application 12/500

2.1 Planning application DOV/12/00500 proposed a change of use of land for the siting of 12 holiday lodges, together with operational development and recreational space at St Margarets Holiday Park. Due to the number of third party objectors the application was referred to Planning Committee with a recommendation for approval.

2.2 Planning Committee considered the application on 25 October 2012 and decided:

“That, notwithstanding the Officer's recommendation, Application No DOV/12/0500 be refused on the following grounds (with the precise wording delegated to Officers):

- (a) That the proposed development and change of use of land would not conserve the landscape and scenic beauty of the Area of Outstanding Natural Beauty;

- (b) That the economic benefits of the development would be limited and do not outweigh the impact on the Area of Outstanding Natural Beauty.”

2.3 The Applicants submitted an appeal against this refusal and a separate application for costs. Both were considered under ‘written representations’ rather than by a hearing. Therefore, the Inspector had to rely on written evidence and did not seek to meet Officers or members of the Planning Committee.

2.4 The Inspector visited the site on 21 February 2013 and issued his decision on 10 April 2013. His decision was that the appeal was upheld and the application for costs was allowed.

Application 12/311

2.5 Planning Application DOV/12/00311 was for a residential development of 38 dwellings and 6 flats at the former site of South Deal Primary School. This was referred to Planning Committee due to the number of third party objectors, with a recommendation to approve.

2.6 Planning Committee considered the application on 17 January 2013 and decided:

“That, notwithstanding the Officer's recommendation, Application No DOV/12/0311 be refused on the grounds of:

- (a) Its scale, density and design and its adverse impact on residential amenity and the spatial character of the area; and
- (b) That the development would be likely to result in parking problems in the vicinity of the site which would be harmful to highway safety.”

2.7 The Applicants submitted an appeal against this refusal and a separate application for costs. Both were also considered under ‘written representations’ rather than by a hearing.

2.8 The Inspector visited the site on 9 July 2013 and issued his decision on 8 August 2013. His decision was that the appeal was upheld and the application for costs was allowed.

3. The negotiations

3.1 The Planning Inspector does not set a cost amount. This is a matter to be negotiated between the applicant and the Council. The Regeneration and Development Department has been undertaking those negotiations. If no agreement is reached then the matter can be referred to the Senior Courts Cost Office who will decide whether the claim is reasonable.

12/500

3.2 The applicant had employed the services of their Agent, a national firm of property consultants, to deal with the appeal. The fee for this was £12,083.54.

3.3 The Department did not accept this amount and believed that it was excessive for this type of appeal.

- 3.4 Having obtained a detailed breakdown of costs, a number of elements were challenged.
- 3.5 Through the process of negotiation the Agent revised their request and this was reduced to £8,010 (ex Vat)
- 3.6 Although still a significant sum for this type of appeal, the applicant understood the cost when they engaged their Agent and at that point had no certainty that they would obtain costs. Seeking a detailed assessment from the Senior Courts Costs Office may have resulted in the full original sum being payable and therefore the revised sum was accepted and payment has been made.

12/311

- 3.7 The applicant employed a National Consultancy firm to submit the appeal to the Planning Inspector.
- 3.8 This is a larger scheme and the appeal submission by the applicant was comprehensive.
- 3.9 The costs claim is £28,822 and the Department believes that the costs requested by the applicant are excessive. At the time of writing this report, further details are being sought to understand a full breakdown of the costs claim.
- 3.10 Given the sum involved, the Department is considering a referral to the Senior Courts Cost office.
- 3.11 This report is not seeking Members approval to agree either cost award, but to approve the use of General Fund Balances to fund the awards from the General Fund Balance as there is not capacity to do so from the Regeneration and Development departmental budget.

4. Identification of Options

- 4.1 The Council approves the use of General Fund Balances.
- 4.2 The Council does not approve the use of General Fund Balances.

5. Evaluation of Options

- 5.1 By approving the use of General Fund Balances, this costs award does not impact on the Department's budget and the plans it has in place to resource the service effectively to meet the major regeneration projects and general upturn in planning applications as the economy improves
- 5.2 By rejecting this request, the sum will be met from the Department's budget with the resulting reduction in resources.

6. Resource Implications

- 6.1 Payment of these awards will result in a reduction in General Fund Balances of up to £36,832.

7. Corporate Implications

- 7.1 Comment from the Section 151 Officer: Finance has been consulted on this report and has no further comments to make. (HL)
- 7.2 Comment from the Solicitor to the Council: The Solicitor to the Council has been consulted in the preparation of this report and has no further comments to make.
- 7.3 Comment from the Equalities Officer: This report does not specifically highlight any equalities implications however, in discharging their responsibilities members are required to comply with the public sector equality duty as set out in section 149 of the Equality Act 2010 <http://www.legislation.gov.uk/ukpga/2010/15>

Contact Officer: Dave Robinson, Planning Delivery Manager