

Planning and Highways Regulatory Committee

Planning Appeals and Possible Costs Claims

15th March 2010

Report of Head of Planning Services

PURPOSE OF REPORT

To recommend to Members a procedure to minimise the risks of cost claims against the Council in respect of applications which are refused against officer advice and which then go to appeal.

This report is public

RECOMMENDATIONS

- (1) That in those instances where Committee propose to refuse an application against officer advice AND where both the Head of Planning Service and the Senior Solicitor (or their representatives) agree that there is a risk of costs being awarded against the Council in any subsequent appeal, that a deferral for a “cooling off ” period be introduced. This will enable the officers to assess whether it is possible to produce evidence to support Members’ prospective reasons for refusal and thus to minimise the risk of any subsequent successful costs claims against the Council.

1.0 Introduction

- 1.1 A costs claim has recently been awarded against the Council in respect of two planning applications refused against officer recommendation (the related planning appeals were allowed) and the Council was considered to have acted unreasonably in refusing them. Planning Committees are fully at liberty not to accept officer recommendations. Indeed, it is considered such occasional disagreements are a fundamental part of the democratic process. Experience in this Authority suggests that such divergences of opinion are rare and usually relate to those finely balanced applications where it is possible to make a convincing argument both for and against a proposal. In recent times there have been only one or two successful costs claims in such circumstances, although in one case relating to Mayfield Chicks at Burrow with Burrow the costs awarded against the Council were significant.

However, a legislative change which now allows costs claims to be made in respect of written representation appeals (previously they could only be made in respect of public inquiries or hearings) will certainly lead to an increase in the number of such costs applications against the Council, essentially as 80% of appeals are considered

under the written procedure. The appeals referred to above were the first this Authority has experienced under the new system.

In addition to the above, recent experience suggests that Planning Inspectors are increasingly looking to Councils to produce their own detailed technical evidence where they disagree or do not accept that provided by applicants. It is clear that it is no longer sufficient to argue that the Council disputes the applicant's evidence. In any appeal the Council has to provide evidence to fully support its reasons for refusal. To fail to do so leaves it vulnerable to an accusation of unreasonable behaviour. It is possible for the Council to win an appeal and lose a partial costs claim were it has been unable to justify part of the grounds for refusal. In the case referred to above it is clear that the Inspector had placed a great deal more weight on the technical noise report produced by the appellants than the anecdotal "evidence" produced by neighbours. In that instance the Inspector suggested that the Council should have investigated the neighbours' concerns more vigorously before refusing the application.

It is acknowledged that neighbours often amount assertive and effective arguments to persuade Members to support their point of view. Such campaigns rarely follow through into convincing and robust defences at appeal. Where they are the sole source of evidence to back up a refusal the Council puts itself in a vulnerable position in relation to potential claim for costs.

In order to minimise the risks of costs awards against the Council it is suggested that a minor change to current procedures is introduced as detailed below.

2.0 Proposal Details

- 2.1 It is recommended that where Committee move for refusal against officer recommendation, and both the Head of Planning Services and the Senior Solicitor (or their representatives) agree that the proposed reasons for the decision may not be supported by sound planning evidence, and there is a risk of a costs award against the Council from any subsequent appeal that the Committee's normal practice should be to move a deferral to the following meeting. This would give officers time to investigate the Members' suggested reasons for refusal and provide advice as to whether these were supportable or whether further work needed to be undertaken to ensure they can be justified on appeal.

It is not the purpose of this "cooling off" period to persuade Members to a different viewpoint. It is simply to enable the Council's professional planning and legal advisors to advise on how such a decision can be defended if there is an appeal. Members should note that the Council's Planning Officers as Chartered Town Planners cannot give evidence to support a Member decision if it is contrary to their own professional opinion. It is usually the responsibility of a Member or members of the Committee to give the Council's evidence if such an appeal is heard by an informal hearing or public inquiry.

It is also expected that such measures would be used sparingly and only where officers considered that there is a significant likelihood of an awards costs against the Council

3.0 Details of Consultation

3.1 None

4.0 Options and Options Analysis (including risk assessment)

4.1 Option 1

Continue as at present and run the risk of an increasing number of successful costs claims against the Council

4.2 Option 2

Introduce the cooling off system recommended above to minimise such risks

5.0 Conclusion

5.1 Committee are advised to approve the above recommendation for the clearly stated advantageous reasons detailed in the main body of this report.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)	
It is not considered that this minor procedural change in the Committee's operation has any adverse impacts in respect of the above matters.	
FINANCIAL IMPLICATIONS	
Due to the unpredictable nature of these claims, the service currently has no budget provision to accommodate them. The last claim, Mayfield Chicks (as mentioned above), amounted to £78,000. Due to the legislative changes that have taken place there is the possibility of an increase in the number of costs awards against the Council if measures suggested are not implemented. In the event that any such costs awards arise, this will need to be reported through Cabinet identifying how/where the costs are to be funded from.	
SECTION 151 OFFICER'S COMMENTS	
None	
LEGAL IMPLICATIONS	
None	
MONITORING OFFICER'S COMMENTS	
None	
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