

Council Report

Report of Strategic Director - Place

Author: Dawn Hudd

Tel: 01483 444 888

Email: dawn.hudd@guildford.gov.uk

Lead Councillor responsible: Tom Hunt

Tel: 07495 040978

Email: tom.hunt@guildford.gov.uk

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## **Supplementary Estimate for funds in respect of planning appeals relating to Member overturn decisions**

### **Executive Summary**

Appeals against planning decisions are a statutory provision within planning law. An applicant can appeal any decision (or failure to make a decision). Where an appeal is lodged the local planning authority should be prepared to make a robust defence of its decision. For most appeals this is done at officer level. Therefore, whilst there is a time cost to this there is not a cost in terms of appointing consultants to defend the decision on behalf of the Council.

For large scale appeals on complex applications there is a necessity to appoint Counsel and specialist witnesses. However, in these cases there is still the expectation that Council officers will act as the planning witness.

Where an application is refused contrary to the officer's recommendation these tend to be more controversial. Often such overturns will be considered by either a hearing or inquiry, and this necessitates attendance in person to defend the appeals. Due to conflicts in respect of professional integrity Council officers who have recommended approval cannot professionally defend a refusal. Therefore, it is necessary to appoint external consultants to defend such appeals. There is no budget for such appointments and therefore supplementary budgets are required to secure funds to make such appointments.

This report seeks a supplementary budget for three appeals which have already been considered and to agree the funding of those. Going forward a supplementary estimate will be brought forward at the time an appeal is made to secure agreement for monies to defend the appeal.

Given the status of the appeals this report does not present a range of options, however, future reports would include an option not to agree the funding which would necessitate a reconsideration as to whether the appeal should be defended.

At its meeting held on 24 November 2022, the Executive also considered this report and endorsed the recommendation below.

### **Recommendation to Council**

That a supplementary estimate for the Development Management service of £535,000 to cover the payments required to defend three significant appeals relating to Member overturn decisions which were subsequently heard at either public inquiry or as a hearing, be approved.

#### Reasons for Recommendation:

To ensure robust defence of planning appeals resulting from Member overturn decisions.

**Is the report (or part of it) exempt from publication? No**

## **1. Purpose of Report**

- 1.1 The purpose of this report is to request a supplementary budget for the costs of defending recent planning appeals resulting from the overturn of a number of officer recommendations to approve. This has resulted in the need to appoint external consultants to handle the appeals as their refusals are against the professional advice of officers meaning those officers are unable to professionally represent the Council's position at the relevant Hearings/Public Inquiries.

## **2. Strategic Priorities**

- 2.1 This proposal supports delivery of the following key aspects of the Council's strategic priorities as follows:
- Revive Guildford town centre to unlock its full potential
  - Provide and facilitate housing that people can afford
  - Create employment opportunities through regeneration
  - Support high quality development of strategic sites

Approval of the recommendations within this report will enable the funds to be available to appoint appropriate persons to defend the Council's position at appeal. Robust defending of appeal decisions ensures that strategic priorities are met at promoting high quality development.

### **3. Background**

- 3.1 Budget provisions for Development Management include only a very small budget amount for dealing with appeals wrapped up with a 'Consultancy' account code.
- 3.2 Once an appeal is lodged the Council has limited time to submit relevant information to defend the appeal. Where the appeal resulted from an 'officer' level decision this is carried out by the original case officer. There is little additional 'spend' on smaller appeals, although there is a time cost.
- 3.3 For larger appeals considered under Hearing or Inquiry procedures there is likely to be the need to bring in additional support to the main case officer to defend reasons which relate to specialist areas and/or to appoint additional legal support to act on behalf of the Council, i.e. Counsel. Where these larger appeals relate to officer level decisions it is still likely that there would be a significant cost impact. However, the recommendation would have been known much earlier in the process meaning there is a greater opportunity to plan for the appeal.
- 3.4 Should an inquiry level appeal be lodged in respect of an application refuse contrary to the officer's recommendation then less time is available. Furthermore, this is considered an unexpected cost due to the overturn and additional cost will be incurred due to the need to appoint a professional planning witness.
- 3.5 Historically these budget deficits have not been reported, however, this does not address the additional spend requirements. They are NOT budgeted for and therefore a supplementary budget is required to secure this.
- 3.6 Going forward individual supplementary requests will be brought forward for each appeal, however, it is noted that there have been three relatively recent appeals of member overturns. Therefore, this report seeks a single supplementary budget to cover the additional spend in respect of the three appeals.
- 3.7 Officers follow procurement procedures in all appointments made to ensure the Council is receiving appropriate value for money.

### **4. Consultations**

- 4.1 Finance team (Emma Parry)

## 5. Key Risks

- 5.1 Failure to secure appropriate funding to defend a planning decision at appeal will likely leave the Council open to significant risk of either losing the appeal and/or have Costs awarded against the Council. This brings a wider financial risk and significant reputational risk to the Council.

## 6. Financial Implications

- 6.1 The increase in staffing resources will result in a cost increase to current budget provision. There are three appeals which are the subject of this report which have attracted significant expenditure and those amounts are included here as they relate to the current financial year:

### Land at Ash Manor (Inquiry)

QC: £138,600.00  
Supporting barrister: £75,204.00  
Energy consultant £780.00

£214,584

### Howard of Effingham (Inquiry)

Counsel: £80,000 likely cost given length of inquiry  
Planning and Design Witness: £33,700  
Housing Land Supply: £25,000  
School need & costings witness £107,700  
Viability: £10,630  
Heritage: £12,440

Total: £269,470

Costs above are estimates as final invoices will be sent following conclusion of the inquiry which has increased in length since the outset.

### Urnfield (Hearing)

Planning expert £10,000

- 6.2 These represent the known costs; however, given the increase in length of the Howard of Effingham inquiry costs associated with that appeal could be also increased as original quotes were based on the original length of time. It is therefore prudent to include a buffer within the cost for that inquiry taking the overall estimate to £300,000 for this inquiry. Additionally, the Ash Manor figure is rounded up to £225,000.

- 6.3 These costs are likely NOT to be recovered irrespective of the outcome of the appeal. It is a general principle of planning appeals that each side meets its own costs. A party is only awarded Costs when there is an issue of unreasonable behaviour from another party. The Council should also be cautious of making spurious Costs applications as a matter of course. During the Ash Manor inquiry the Council made a successful partial costs counter claim following a spurious application made by the appellant. However, the scope of these costs is limited purely to the cost associated with defending the applicant's costs claim and is not part of the figures here.
- 6.4 Officers seek to ensure best value for money in appointments to defend appeals whilst ensuring that those appointed are qualified to make a robust case. Choices are also often limited due to the specialist nature of the fields where witness are required and avoiding potential conflicts of interest. It should also be noted that the Ash Manor appeal was ultimately dismissed highlighting the importance of properly defending decisions, however, it should be noted that this was at a high financial cost to the Council. By way of further update the 'Urnfield' appeal referenced in this report has recently been determined with the appeal allowed. The Costs application made by the applicant was successfully defended.
- 6.5 As the total supplementary estimate is in excess of £500,000, full Council approval is required under Financial Procedure Rules.

## **7. Legal Implications**

- 7.1 None

## **8. Human Resource Implications**

- 8.1 None

## **9. Equality and Diversity Implications**

- 9.1 There are no equality and diversity implications as a result of this report.

## **10. Climate Change/Sustainability Implications**

- 10.1 No such implications apply

## **11. Summary of Options**

- 11.1 This report is seeking a supplementary budget for 2022-23 of £535,000 to cover appointments made in respect of these appeals. Given these appeals are already underway there no alternative option in this instance. The

Business Rates Equalisation reserve can be used to fund this supplementary estimate.

- 11.2 It should be noted that alternative options for reports presented in future could include items such as withdrawing reasons for refusal or accepting that the Council will not defend particular matters if funding is not agreed.

**12. Conclusion**

- 12.1 The appeals referenced in this report necessitated the appointment of external consultants to represent the Council and robustly defend the reasons for refusal. The supplementary expenditure is considered essential.

**13. Background Papers**

None

**14. Appendices**

None