

 <b>Executive, 14<sup>th</sup> March 2012</b>		<b>Agenda Item No.</b> <h1 style="text-align: center;">9B</h1>
<b>Title</b>	Request for transfer of funds from Planning Appeals Reserve	
<b>For further information about this report please contact</b>	Gary Stephens, Development Manager	
<b>Wards of the District directly affected</b>	All	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>	n/a	
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	Yes
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality &amp; Sustainability Impact Assessment Undertaken</b>	No

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	17/02/12	Chris Elliott/Bill Hunt
Head of Service		
CMT	20/02/12	
Section 151 Officer	17/02/12	Mike Snow
Monitoring Officer	17/02/12	Andy Jones
Finance	17/02/12	Jenny Clayton
Portfolio Holder(s)	23/02/12	Councillor John Hammon
<b>Consultation &amp; Community Engagement</b>		
<b>Final Decision?</b>		Yes
<b>Suggested next steps (if not final decision please set out below)</b>		

## **1. SUMMARY**

- 1.1 This report proposes revised arrangements for funding issues arising from appeals against planning decisions made by this Council and considers the issues arising from past appeals.

## **2. RECOMMENDATION**

- 2.1 That Executive notes that specialist consultancy advice was procured for a number of planning appeals during 2011/12 contrary to the provisions of the Code of Procurement Practice, and that officers will be exploring the use of Framework Agreements in the future.
- 2.2 That Executive approves the use of £35,000 from the Planning Appeals Reserve to cover the costs incurred in 2011/12 in terms of consultancy advice in defending its planning decisions at appeal (c. £27,300), and the appellants costs awarded against the Council (c. £7,400).
- 2.3 That Executive authorises the use of the Planning Appeals Reserve for any additional costs not able to be accommodated within the agreed Revenue Budget incurred by the Council as a result of its planning decisions at appeal to the Development Manager, following prior consultation with the Section 151 Officer.
- 2.4 That Executive confirms that the Council will not fund any legal or consultancy costs incurred by Town and Parish Councils in preparing or presenting their evidence at Planning Appeals, although the Council will work with Town and Parish Councils where appropriate, particularly where there are economies of scale in the Councils jointly commissioning work together.

## **3. REASONS FOR THE RECOMMENDATION**

- 3.1 Specialist consultancy advice was obtained by officers during 2011/12 to defend the Council's planning decisions at various appeals. This advice was obtained without going through tendering processes under the Code of Procurement Practice due to the strict time constraints set within the planning appeal process by the Planning Inspectorate. Executive are therefore asked to note that this advice was procured contrary to the provisions of the Code of Procurement Practice.
- 3.2 In terms of procuring such advice in the future, officers will be exploring the use of existing framework agreements, for example OGC buying solutions. Where consultants cannot be procured through a compliant framework, officers will secure services through the use of three quotes. The Council will then use this information to establish a separate framework for use from April 2013.
- 3.3 The total cost of the specialist consultancy advice in 2011/12 was c. £27,300. In addition, the Council were required to pay during 2011/12 the appellants costs of c. £7,400 in relation to two appeals that were lost.

The approval of Executive is therefore sought to use the Planning Appeals Reserve to cover these costs.

- 3.4 In terms of funding any future costs associated with planning appeals, it is proposed to authorise the use of the Planning Appeals Reserve where it is not possible to accommodate these costs within the agreed Revenue Budget to the Development Manager, following prior consultation with the S151 officer.
- 3.5 In relation to the Faerie Tale Farm appeal heard in January, the Council received requests from the Parish Council to fund or part fund one of its witnesses at the appeal. The request was denied based on legal advice, although officers and the Council's legal representatives did provide advice and support to the Parish. It would be helpful for officers in terms of responding to any future requests, to have the Council's position clarified.
- 3.6 Having regard to the budgetary position and the need to retain the Council's impartiality in appeal cases, it is not considered appropriate for the Council to fund any legal or consultancy costs incurred by Town and Parish Councils in preparing or presenting their evidence at planning appeals. However, officers of the Council will work with Town and Parish Councils where appropriate, particularly where there are economies of scale in the Councils jointly commissioning work together.

#### 4. **POLICY FRAMEWORK**

- 4.1 **Policy Framework** – It is important that the Council defends its planning policies through the appeals process, and that it therefore provides an appropriate level of resource to fund expert advice where needed to defend its planning decisions based on those policies.
- 4.2 **Fit for the Future** – n/a

#### 5. **BUDGETARY FRAMEWORK**

- 5.1 The recommendation will transfer £35,000 from the Planning Appeals Reserve in 2011/12, leaving £549,000 uncommitted for defending future appeals, additional costs relating to the Local Plan or other appropriate schemes, as to be agreed by the Executive.

#### 6. **ALTERNATIVE OPTION(S) CONSIDERED**

- 6.1 An alternative option would be to not authorise the use of the Planning Appeals Reserve to the Development Manager, in consultation with the S151 officer. However, this would require further reports to Executive each time officers wish to use the Planning Appeals Reserve. Another alternative would be to allocate an annual budget, or budget per appeal, to the Development Manager, however it is not possible to estimate in advance how many appeals will occur in any given period, or how much the costs incurred might be for an appeal.

- 6.2 The Executive could as an alternative also fund legal or consultancy costs incurred by Town and Parish Councils in preparing or presenting their evidence at Planning Appeals. However, this would put an additional burden on the Planning Appeals Reserve and would reduce the money available for the Council in defending its own decisions.