

**SUPPLEMENTARY BUDGET**  
**REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY**  
**DIRECTION)**



**WARDS AFFECTED: ALL WARDS**

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1. PURPOSE OF REPORT

- 1.1 To seek agreement from Council the provision of a supplementary budget to fund planning appeal costs from the planning appeals reserve.

2. RECOMMENDATION

- 2.1 To request the provision of a supplementary budget of £100,000 to fund the costs associated with defending planning appeals in the current financial year to be funded by a contribution from the earmarked appeals reserve.

- 2.2 That Council agree that any underspend on this budget in year be carried forward to 2016/17 if required or returned to the appeals reserve to act as a future contingency.

3. BACKGROUND TO THE REPORT

- 3.1 The council has received a large number of planning applications for speculative residential development on greenfield sites on the edge of settlements within the borough over the last year. Partly due to delays in the progression of the two Sustainable Urban Extensions (SUEs) at Barwell and Earl Shilton and because of the previous economic climate, the council has faced challenge to its five year housing supply position. In the absence of a five year housing supply national planning policy considers local policies that restrict housing development on unallocated sites to be out-of-date, weakening the ability for the council to be able to resist against un-planned residential development.

- 3.2 Plans are in place to progress the two SUEs together with another strategic site at Hinckley West. With the adoption of the Site Allocations and Development Management Policies Development Plan Document which is proceeding to examination later in the year and the delivery of planned allocated development, the council is now in a stronger position to claim a five year supply again. In addition, housing completions on sites across the borough are increasing which contributes towards supply levels.

- 3.3 As a result of the uncertainty with the five year supply position due to a number of appeal decisions that have both decided in favour and against the council, developers have sought to take advantage of this uncertainty by submitting a number of speculative applications in the hope of gaining planning permission whilst the council's housing supply policies, as contained in the Core Strategy, are out-of-date.

- 3.4 The council has sought to resist a number of those proposals with the most unsustainable of schemes put forward to Planning Committee with an officer recommendation of refusal whilst other more sustainable proposals have been put forward with an officer recommendation of approval in order to achieve a five year supply.

- 3.5 Planning Committee has resolved to refuse a number of those schemes which has led to appeals being submitted to the Planning Inspectorate by developers. Given the controversial nature of those schemes and the complexities around challenging the

council's five year housing land supply position the majority of those appeals are heard by way of public inquiry.

- 3.6 Public inquiries involve the council being represented by legal counsel and often supported by expert witnesses such as planning and landscape consultants to help defend the council's case. The costs associated in fully defending such appeals can therefore be substantial.
- 3.7 In addition if the Planning Inspector considers that the council has behaved unreasonably for reasons such as imposing reasons for refusal without evidence to demonstrate harm or by putting the appellant to unreasonable expense during the appeal process, costs can be awarded to the appellant. The purpose of the costs regime is not punitive, it is intended to instill a sense of discipline, such as preventing decisions being taken without sound planning reasons for rejecting a proposal. Whilst it is considered that the risk of costs being awarded against the council is low, it is considered prudent to allocate a budget in the unlikely event of costs being awarded.
- 3.8 At present the council has appeals lodged for four residential schemes that are likely to be heard by way of a public inquiry. A further inquiry is also likely to be scheduled later in the financial year.
- 3.9 Based on the costs associated with defending previous appeals it is estimated that an additional sum of £100,000 will be required to engage legal counsel and specialist consultant support for five public inquiries. Legal counsel and specialist consultant support has been sourced through a procurement exercise based on obtaining value for money and knowledge and experience of acting as an advocate or expert witness at planning public inquiries.
- 3.10 Alternative options to this have been considered such as officers defending the appeals and acting as the expert witnesses. Whilst this would reduce costs, it would in effect place considerable pressure on available resources to deliver the planning service, by having less staff available to process and determine planning applications and prepare planning policy documents. There are also issues in respect of professional credibility with individual officers having prepared recommendations to Planning Committee to approve schemes and then being able to defend reasons for refusal that may not be their professional opinions.
- 3.11 A provision of £52,000 is also likely to be required in the event of costs being awarded against the council. Three of the four appeals lodged to-date are as a result of Member overturns with reasons for refusal imposed at Planning Committee by Members. It is difficult to predict in each case whether costs will be awarded against the council and exactly what those costs will be. Nevertheless, based on previous appeals where the Planning Inspector has awarded costs, there is a degree of risk based on the probability, that appellants will at least in some cases make a costs claim for unreasonable behavior should the council be unable to provide evidence to support its reasons for refusal. It is therefore prudent to make provision for this given the number of appeals currently lodged and expected. With suitable expertise in the form of counsel and professional consultant support the chance of being awarded costs during the appeal should be minimised.

### Summary

- 3.12 £100,000 is sought from the planning appeals reserve to fund the costs associated with defending planning appeals. The original budget for 2015/16 contained a budget of £20,000 for appeal costs which was increased to £52,000 following approval of two previous supplementary requests. Out of the total budget £100,000 of this is expected to be used to fund counsel and specialist consultant support. £52,000 is a contingency in the event of successful costs claims. Should this money not be spent

it will be returned as a saving to the planning appeals reserve at the end of the financial year.

#### 4. FINANCIAL IMPLICATIONS [KP]

- 4.1 The original approved budget for 2015/16 contained a budget of £20,000 for appeals costs. This has been increased to £52,500 in year following approval of two separate supplementary budget requests (£7,500 and £25,000) approved in line with the Financial Procedure Rules.
- 4.2 As per section 3.14, a further supplementary budget of £100,000 is being requested to fund further costs. In accordance with the Financial Procedure Rules, this requires approval by Council.
- 4.3 If approved, the total appeals legal costs budget for 2015/16 will be £172,500
- 4.4 As per section 3.14, it is requested that this supplementary budget of £100,000 be funded from the appeals earmarked reserve. As per below, the balance of this reserve as at 31<sup>st</sup> March 2015 was £172,500. Taking into account the budgeted transfers for 2015/16 and the proposed supplementary budget, the closing balance as at 31<sup>st</sup> March 2016 will be £172,500.

	2014/15				2015/16		
	1st April 2014	Transfers to reserves	Transfers from Reserves	31st March 2015 Closing Balance	Transfers to reserves	Transfers from Reserves	31st March 2016 Closing Balance
	£	£	£	£	£	£	£
Balance	0	221,000	-48,500	172,500	100,000	-100,000	172,500

#### 5. LEGAL IMPLICATIONS [MR]

- 5.1 None arising directly from this report.

#### 6. CORPORATE PLAN IMPLICATIONS

- 6.1 The council needs to manage its performance through its Performance Management Framework in relation to appeals.

#### 7. CONSULTATION

- 7.1 None.

#### 8. RISK IMPLICATIONS

- 8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.
- 8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

- 8.3 The following significant risks associated with this report / decisions were identified from this assessment:

<b>Management of Significant (Net Red) Risks</b>		
Risk Description	Mitigating Actions	Owner
Financial implications to the Authority in defending appeals	Take into account the risk in refusing planning applications and the likely success of an appeal	Simon Atha / Eleanor Overton

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

- 9.1 The appeals budget is essential to allow the council to appoint consultants and counsel to put forward a robust case to defend planning decisions. Local communities expect the decisions that have been taken to be strongly defended. This is achieved by making sure that expert witnesses and legal advisors that represent the council have the necessary skills and experience to articulate the council's case and resist challenge from the appellant.

10. CORPORATE IMPLICATIONS

- 10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Procurement implications
- Human Resources implications
- Planning implications
- Data Protection implications
- Voluntary Sector

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Background papers: None

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