

CABINET

31st March 2004

BYRON AVENUE TELECOMMUNICATIONS MAST APPEAL COSTS

REPORT OF THE DIRECTOR OF DEVELOPMENT SERVICES

Contact Officer: Denice Prestidge Tel No: 01962 848551

RECENT REFERENCES:

PDC351 Byron Avenue Telecommunications Mast appeal, 24 September 2003

PDC172 Byron Avenue Mast Application, 5 March 2002

PDC107 Judicial Review – Byron Avenue Phone Mast, 13 August 2001

EXECUTIVE SUMMARY:

The Byron Avenue Mast Appeal was a lengthy, high profile and controversial appeal which lasted from the date it was lodged on 23rd May 2002, until the decision to allow the appeal on 19th August 2003. Winchester City Council's external legal costs required for Counsel and other legal expertise prior to the appeal, and in subsequently defending the appeal, were substantial. In addition, the Secretary of State's appointed Inspector decided to allow Orange Telecommunications' appeal and made a partial award of costs against Winchester City Council. The total Legal costs relating to Byron Avenue from 2002 to 2004 are £152,326 excluding VAT, although negotiations continue with a view to reducing these.

Clearly, these costs were beyond any anticipated expenditure of the Planning Legal revenue budget or reserves. This has resulted in an overspend on the Planning Service Legal Budget and Legal Reserve provisions with a shortfall of about £49,000 in 2003/4. It is proposed that a virement is made to the Legal budget of £49,000, met from expected underspends in the Development Services budget out-turn for 2003/04 and from Planning Grant Reserves. It is proposed that the shortfall should not be met from the Planning Delivery Grant award for 2004/5, as the grant is intended to improve performance in the planning service, not to meet extra-ordinary legal costs incurred as part of the democratic process and in any case is a grant for next financial year.

RECOMMENDATIONS:

- 1 That a virement of £49,000 be approved from underspends and planning grant reserves to the planning legal budget to meet the deficit rising from the Byron Avenue Telecommunications appeal and award of costs.

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DETAIL:

1 Introduction

- 1.1 On 22nd January 2001, a telecommunications planning application was submitted to Winchester City Council, proposing to site an 11.79 metre high monopole and equipment cabin on land at Byron Avenue, Winchester. On 26th January 2001, the siting and design of the submitted details were approved by the then Chief Planning Officer under delegated authority. A claim for judicial review of this decision was lodged by a third party in March 2001.
- 1.2 Following the granting of leave at an oral hearing in July 2001, Winchester City Council submitted to judgement and a consent order, quashing the original decision, was made on 22nd January 2002. The Council re-determined the application in February 2002, when it was refused.
- 1.3 The Development Control Planning Committee decided to refuse planning permission on the grounds of health affects and concerns about them. Subsequently, in May 2002, Orange submitted an appeal against the Council's decision to refuse the proposal on these grounds.

2.0 Byron Avenue Mast Appeal Costs

- 2.1 The Byron Avenue Mast Appeal was a lengthy, high profile and controversial appeal which lasted from the date it was lodged on 23rd May 2002, until the decision to allow the appeal on 19th August 2003. Winchester City Council's external legal costs required for Counsel and other legal expertise prior to the appeal, and in subsequently defending the appeal, were substantial. The estimated costs amounted to £70,121 in 2002/3 and £4,011 in 2003/4 - a total of £74,132. Clearly, these costs were beyond any anticipated expenditure of the Planning Legal revenue budget or reserves.
- 2.2 On 19th August 2003 the Secretary of State's appointed Inspector decided to allow Orange Telecommunications' appeal and made a partial award of costs against Winchester City Council. The costs were limited to those incurred in addressing the health affects and concerns about them, in relation to the Byron Avenue Telecommunications mast. The total sum claimed is £91,878.65 including V.A..T. and disbursements (£78,194.60 excluding VAT). This sum is currently being negotiated between Winchester City Council's Legal Department and Burges Salmon (who are acting for Orange Telecommunications). The total Legal costs relating to Byron Avenue from 2002 to 2004 are £152,326 excluding VAT, excluding any reduction as part of the ongoing negotiations.

3.0 Costs and Budget Implications

3.1 The following table provides the details of the costs of the Byron Avenue case and the legal budget implications.

Table 1: Byron Avenue Costs and Budget Implications

| | | |
|----|--|-----------------|
| | Expenditure 2003/4 | |
| 4 | Total Byron Avenue Costs for 2003/4 (estimate – cost award claim still in negotiation) | £82,205 |
| 5 | Other general Legal cost expenditure in 2003/4 | £27,786 |
| 6. | Total Legal Costs estimated in 2003/4 | £109,991 |
| | | |
| | Budget and Virements to meet costs | |
| 7. | Total Revenue Legal Revenue Budget (£24,730 Legal budget plus £32,110 carry forward from 2002/3 of planning income) | £56,840 |
| 8. | Total Legal Reserves | £4,560 |
| 9 | Transfer of underspends from the Development Services budget and any shortfall from a Supplementary Estimate request. (Note: Underspends can only be estimated at this stage and will not be known until June). | £30,000 |
| 10 | Planning grant reserves contribution | £18,591 |
| 11 | Total Virement required to meet Legal Budget Overspend | £48,591 |
| 12 | Total Budget and Virement 2003/04 | £109,991 |

3.2 The costs outstanding are estimated at £48,591 and it is proposed that a virement of this amount is made to the Legal Budget from Development Services underspends (approximately £30,000) and Planning Grants Reserve (the balance of approximately £18,591)

Until the 2003/4 budget is closed down, it is difficult to estimate any underspends in the Development Services budgets. However, by June 2004 these can be confirmed.

3.3 It is proposed that a virement from anticipated Development Services budget underspends and Planning Grant Reserves is transferred to the Legal Budget to meet the shortfall. It is not proposed that the Planning Delivery Grant (PDG) award for 2004/5 should be used to meet extra-ordinary legal costs incurred as part of the democratic process, as this is not the intention of the award. It is considered that the Planning Delivery Grant should be used to improve performance in the planning development control and plan making (Forward Plans) services of Winchester City Council during 2004/5. This will be considered at Cabinet in April.

3.4 In his letter dated 9th March 2004, the Rt Hon Keith Hill MP suggested areas that Local Authorities could concentrate the use of the Planning Delivery Grant resources as follows,

..."Areas in which authorities might consider concentrating their additional resources include: the preparation of regional planning guidance and the future regional spatial strategies; completing current reviews of existing development plans and preparing for the new system of local development frameworks; the better resourcing of IT systems; assistance from consultants; outsourcing of certain planning services; increasing staffing levels; training for staff and councillors; supporting mediation services; encouraging a more diverse planning workforce; bursaries for employees to gain planning qualifications and more use of technical staff.."

OTHER CONSIDERATIONS:

2 CORPORATE STRATEGY (RELEVANCE TO):

2.1 Protection of the environment is a key corporate priority.

3 RESOURCE IMPLICATIONS:

3.1 As described above

BACKGROUND DOCUMENTS:

The Planning Delivery Grant 2004/5, ODPM Letter, 9th March, Rt Hon Keith Hill MP.

The Planning Application and Appeal Case documents held within the Planning service (reference number WTC114).

APPENDICES:

None

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