

# Agenda



## Policy Development Scrutiny Committee

Date:	Thursday, 9 October 2014 at 6:15pm
Venue:	Town Hall, St Annes, FY8 1LW
Committee members:	Councillor Fabian Craig-Wilson (Chairman) Councillor Leonard Davies (Vice-Chairman)  Councillors Ben Aitken, Frank Andrews, Susan Ashton, David Chedd, Maxine Chew, John Davies, David Donaldson, Charlie Duffy, Karen Henshaw JP, Edward Nash, Elizabeth Oades, Richard Redcliffe, Elaine Silverwood, Vivienne M Willder.

**Public Platform** To hear representations from members of the public.

Item		Page
1	<b>Declarations of Interest:</b> Declarations of interest, and the responsibility for declaring the same, are matters for elected members. Members are able to obtain advice, in writing, in advance of meetings. This should only be sought via the Council's Monitoring Officer. However, it should be noted that no advice on interests sought less than one working day prior to any meeting will be provided.	1
2	<b>Confirmation of Minutes:</b> To confirm the minutes of the previous meetings held on 10 September 2014, as a correct record as attached.	3 - 8
3	<b>Substitute Members:</b> Details of any substitute members notified in accordance with council procedure rule 23(c).	1
4	<b>Empty Residential Properties Position Statement</b>	9 - 11
5	<b>Planning Appeals</b>	12 - 20

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# Minutes

## Policy Development Scrutiny Committee



<b>Date:</b>	Wednesday, 10 September 2014
<b>Venue:</b>	United Reform Church, St Georges Road, St Annes
<b>Committee members:</b>	Chairman: Councillor Fabian Craig-Wilson Vice-Chairman: Councillor Len Davies  Councillors Ben Aitken, Frank Andrews, Susan Ashton, Julie Brickles, David Chedd, Maxine Chew, David Donaldson, Charlie Duffy, Karen Henshaw JP, Angela Jacques, Elizabeth Oades, Richard Redcliffe, Elaine Silverwood, Vivienne M Willder
<b>Other members:</b>	Councillor Cheryl Little (Portfolio Holder for Social Wellbeing) Councillor Dr Fiddler ( Portfolio Holder for Planning and Development) Councillor Karen Buckley (Portfolio Holder for Finance and Resources) Councillors Alan Clayton, Linda Nulty
<b>Officers:</b>	Allan Oldfield, Tracy Morrison, Paul O'Donoghue, Julie Glaister, Mark Sims, Lyndsey Lacey, Steve Smith, Bryan Ward, Lucy Wright
<b>Other representatives:</b>	Dr Chris Wilson, Vince Sandwell (BE Group)
<b>Members of the public:</b>	3 members of the public were in attendance

### Public Platform

Mr Anthony Guest and Mr Fred Moor addressed the committee on the additional/urgent item (detailed at minute 4) relating to the call-in request on the Employment Land Evidence Base Update. The matters raised were addressed during the consideration of the item.

#### 1. Declarations of interest

Members were reminded of their responsibilities for declaring of interests as required by the Council's Code of Conduct. There were no declarations of interest on this occasion.

#### 2. Confirmation of minutes

RESOLVED: That subject to the following being inserted prior to the second paragraph (of page 4 )of 4 June minutes, which begins "The Chairman invited Councillor Liz Oades to explain" the minutes of the Policy Development Scrutiny Committee meetings held on 4 and 18 June 2014, be approved as correct records.

*“Prior to the debate, Councillor Fabian Craig-Wilson stated that a decision can only be called in if there has been something in the procedures used to make that decision that may have been flawed, and not just because Councillors did not like the decision.*

*Councillor Charlie Duffy requested that it be recorded in the minutes that the Constitution states that decisions can be called-in when the appropriate Scrutiny Committee, after due deliberation, consider that the Executive Decision is not in the interests of the borough and ought to be reconsidered, and this had been accepted by the committee at that time as the correct interpretation.”*

### 3. Substitute members

The following substitutions were reported under Council procedure rule 23(c):

Councillor Julie Brickles for Councillor John Davies

Councillor Angela Jacques for Councillor Edward Nash

### 4. Call-in Request – Employment Land Evidence Base Update

The Chairman accepted that the above additional item should be considered by the committee as a matter of urgency. In doing so, the Chairman indicated that she would bring forward the item and deal with it first on the agenda.

The Committee was advised that the report was classed as urgent on the grounds that the call-in procedure within the council’s constitution requires that call-in requests be heard within a specific time frame.

It was reported that ten members (and two additional signatories) of the Council had invoked the recovery and call-in procedure to question a portfolio holder decision made on 27 August relating to the Employment Land Evidence Base Update. Members were invited to consider whether the decision made was not in the interests of the inhabitants of the borough and ought to be reconsidered.

A copy of the call-in request, the Individual Cabinet Member Decision and the report relating to the Cabinet Member Decision were circulated with the agenda.

The Chairman invited Councillor Elizabeth Oades to the table to explain why it was felt that the decision was not in the interests of the inhabitants of the borough and ought to be reconsidered.

Councillor Oades provided the committee with a comprehensive verbal report and reasoning for the call-in. The following five key areas were highlighted and elaborated on by Councillor Oades at the meeting as distinct and fundamental to the decision making.

1. The option model chosen was flawed in that it released too much Greenfield land for employment purposes.
2. An understanding of how the consultants (BE Group) had undertaken the methodology and arrived at the conclusions to predict the need for additional employment land in the period to 2030. In particular why, (a) 6 of the 7 different models considered by the BE group were disregarded and (b) why the model based on the historic employment land take up was chosen and deemed appropriate as a basis for determining and arriving at a figure for future employment land needs.
3. Soundness and robustness of (a) the 16 page critique of Tony Guest (previously circulated) and (b) the rebuttal evidence given to the Local Plan Steering Group by officers of the Council.
4. Reliability and reputation of the work of BE Group.

5. That most of the employment sites brought forward in recent years have been situated in the North of the borough or close to the boundary with Blackpool and the M55 thus serving both Blackpool and Fylde's requirements for employment land.

The Chairman asked Councillor Trevor Fiddler (Portfolio Holder for Planning and Development), to respond. In doing so, he introduced the matter by making reference to the highly technical piece of evidence presented to members and the associated background to the Local Plan process for dealing with such matters. He then went on to refer to the recent consideration of the matter by the Local Plan Steering Group which he suggested was accepted by the majority of the Group and comment and address each of the points raised by Councillor Oades. In conclusion, he stated that in his opinion, the evidence presented by Mr Guest had no substance and that the work undertaken by the BE Group and the rebuttal evidence given by officers to the Local Plan Steering Group was deemed to be sound, robust, credible and valid. Councillor Fiddler cautioned any approach to delay progress with the Local Plan process unnecessarily.

Further to the above, the Chairman invited key witnesses Dr Chris Wilson and Vince Sandwell of the BE Group to the table to further address members on the key issues raised during the meeting. In doing so, Mr Sandwell sought to address the concerns raised about the credibility and reputation of the work undertaken by BE Group on the employment land evidence. He explained that the Group had previously undertaken at least 30 similar pieces of work with local authorities across the country which had been subject to scrutiny none of which had been challenged by the various Inspectors and/or been subject to adverse comments.

Various members of the committee sought further clarification on the key issues raised and these were addressed in turn, by the key members and representatives concerned.

At the juncture where there were no further questions for the Portfolio Holder, Councillor Fiddler left the room to allow the committee to discuss the information before them.

Members asked for a copy of the Brief given by the Council to the BE Group to be made available to members of the committee for perusal. An undertaking was given to do this.

Following an in-depth discussion and debate, the following motion was proposed by Councillor Duffy and seconded by Councillor Oades:

"To call-in the Individual Cabinet Member Decision on the Employment Land Study and ask the Portfolio Holder to reconsider the decision as it was considered that the decision taken was not in the interests of the inhabitants of the borough for the reasons outlined in 1 to 5 above.

The Chairman sought a recorded vote on the matter and following the requisite show of hands, the motion was put and subsequently LOST as detailed below:

**Votes for the motion (7):** Councillors Brickles, Chedd, Chew, Duffy, K Henshaw, Oades, Silverwood.

**Votes against the motion (9):** Councillors Aitken, Andrews, S Ashton, Craig-Wilson, L Davies, Donaldson, Jacques, Redcliffe, Willder

**Abstentions (0)**

Following the motion being defeated, the Chairman indicated that the call-in request would automatically fail and the Individual Cabinet Member Decision (dated 27 August 2014) would be therefore implemented.

Further to the above, a vote on an amended motion to defer the establishment of an Employment Land Task and Finish Group for consideration by the Local Plan Steering Group (proposed by Councillor Redcliffe and seconded by Councillor Aitken) was LOST on the Chairman's casting vote. The original motion (proposed by Councillor Oades and seconded by Councillor Charlie Duffy) to set up an Employment Land Task and Finish group was then put and this was also LOST.

#### 5. General Fund Budget Monitoring Report 2014/15 – Position as at Quarter Ended 30 June 2014

Paul O'Donoghue (Chief Financial Officer) presented an update of the Council's General Fund Revenue Budget Monitoring as at 30th June 2014.

In introducing the report, Mr O'Donoghue highlighted that report detailed the findings and issues emerging from budget monitoring carried out during the first quarter of 2014/15, and that instructions remained in place that officers should not commit to any unnecessary expenditure and should seek to maximise efficiencies.

A comprehensive list detailing the significant variances highlighted by the budget monitoring exercise was included as an appendix to the report. The Committee's attention was drawn to a number of key areas relating the first quarter and these included: employee costs; fleet costs; planning application fee income; planning appeal costs and council tax and housing benefits.

IT WAS AGREED to note the updated position.

(Councillor Brickles was not in attendance during the discussion and voting on this matter)

#### 6. Homelessness Strategy Action Plan 2013-18 Update

Further to the request of the Policy Development Scrutiny Committee and Cabinet an update of the Homelessness Strategy Action Plan is presented to committee each September. Lucy Wright (Senior Housing Officer) was invited by the Chairman to present the report which included details of the pilot policy to discharge the homeless duty into the private rented sector.

In her report, Ms Wright made reference to the work undertaken by the Fylde Homelessness Forum which undertakes to implement strategy actions and monitor progress of the strategy action plan.

Attached as an appendix to the report was a review of the strategy action plan detailing good progress made in the delivery of the Plan. Two specific areas were highlighted as vulnerable which had significant relevance to the prevention of Homelessness in Fylde: (a) funding for the Face2Face YMCA Drop in Service and (b) funding for 'Rough Sleeping No second night out' Further details with regard to the funding/support issues were detailed in the report.

The Chairman requested that her thanks and appreciation be recorded for the hard work undertaken by officers' on this matter.

Following discussion the committee AGREED to recommend to Cabinet the following:

1. Noting the updated to the Action Plan as set out in Appendix 1 of the report.
2. The extension of the pilot policy to discharge the homeless duty into the private rented sector for a further 12 months.
3. To support the continuation of the Face2Face YMCA 'Drop in 'service as detailed in the report.
4. To acknowledge the importance of the no second night out service (particularly through the winter months) and support the use existing resources within the Homelessness budget to fund the service from October 2014 to March 2015.

(Councillor Brickles was not in attendance during the discussion and voting on this matter)

#### 7. Anti-Social Behaviour, Crime and Policing Act 2014

Tracy Morrison (Director of Resources) and Bryan Ward (Community Safety Manager) jointly presented the report.

By way of introduction, Ms Morrison advised that Royal Assent for the Anti-Social Behaviour, Crime and Policing Act, 2014 was given in May, 2014 and that the act will be fully implemented on 20 October 2014. She explained that the legislation makes fundamental changes to a wide range of

areas of local authority and police activity including: antisocial behaviour powers; litter notices; DPPOs; dog control orders; licensed premises closures and dangerous dog powers.

This report specifically related to the anti-social behaviour provisions of the Act which provide more effective powers to tackle anti-social behaviour (ASB) and give victims and communities more power to define and respond to ASB.

A summary of the new powers together with details of the community trigger arrangements and responsible bodies for dealing with such matters was included in the report.

Following consideration of this matter the committee IT WAS AGREED to recommend the following to Cabinet:

1. To delegate power to take any action under the Anti-Social Behaviour, Crime and Policing Act 2014 to the Chief Executive and the Director of Resources following consultation (in either case) with the Portfolio Holder for Social Wellbeing.
2. To agree to the relevant bodies for Fylde adopting the draft threshold as the number of qualifying complaints for the purposes of their review procedures under section 104 of the act (the threshold for the community trigger) as detailed below:
3. The operation of the provisions of the Act in relation to ASB being monitored for a six month period and reported back to members.
4. To implement the actions outlined in paragraph 29 of the report and undertake the development of an Anti-Social Behaviour Policy, which follows the guidance provided by the Home Secretary, and is submitted to members for approval and publication.

(Councillor Brickles was not in attendance during the discussion and voting on this matter)

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# REPORT



REPORT OF	MEETING	DATE
RESOURCES DIRECTORATE	POLICY DEVELOPMENT SCRUTINY COMMITTEE	9 OCTOBER 2014

## EMPTY RESIDENTIAL PROPERTY POSITION STATEMENT

### PUBLIC ITEM

This item is for consideration in the public part of the meeting

### SUMMARY

Previous reports about empty residential properties have been presented to this Committee, the most recent one being in November 2013. A further report relating to changes to Council Tax discounts and the proposal to levy a premium on dwellings remaining empty for two years or more was presented to this committee in January 2014. This report updates Members on the current position regarding long-term empty properties following the changes to Council Tax discounts/premium that were introduced from 1st April 2014.

### RECOMMENDATION

That Members note the current position with regard to long-term empty properties in the borough.

### CABINET PORTFOLIO

This falls within cabinet portfolio:

Social Wellbeing	Councillor Cheryl Little
Finance and Resources	Councillor Karen Buckley

### SUMMARY OF PREVIOUS DECISIONS

Previous reports were presented to the Community Focus Scrutiny Committee of Oct 2010 and the Policy Development Scrutiny Committee of June 2011, May 2013 and November 2013. A further report relating to changes to Council Tax discounts and the proposal to levy a premium on dwellings remaining empty for two years or more was presented to this committee in January 2014.

## REPORT

1. At the meeting of this Committee in November 2013 members recommended the continuation of actions to deal with empty properties within current resources that had been outlined in the draft empty property strategy as previously presented. Members also recommended consideration of applying a council tax premium to those properties that had remained empty for two years or more.
2. The proposal to apply a council tax premium in respect of properties as described above was contained within a further report presented to this committee in January 2014. The proposal was approved by Council at its meeting of 27<sup>th</sup> January 2014, coming into effect from 1<sup>st</sup> April 2014. The effect of the introduction of the premium charge results in a council tax scheme that allows full council tax discount for empty and unfurnished properties for six months; a full 100% council tax charge for these properties where they remain empty for a further 18 months; the application of a premium of 50% of the council tax charge (ie 150% of the council tax for the property is payable) for such properties remaining empty thereafter.
3. Earlier reports to members have indicated the number of long term empty properties (excluding those which are uninhabitable) as:

April 2013	701
October 2013	586.
4. The number of long term empty properties recorded at the beginning of September 2014 (excluding those which are uninhabitable) was 488. This represents a reduction of 98 from October 2013.
5. New homes bonus is paid to the council in relation to the net number of additional dwellings provided in Fylde each year as measured annually in October. The reduction in long term empty properties is a component part of the additional dwellings calculation. It is therefore important that the number of empty properties is maintained at as low a level as possible for the purposes of New Homes Bonus entitlement.
6. There has been a welcome reduction in the number of long term empty properties over the last 18 months or so. It is uncertain whether this scale of reduction will continue into the future and there seems to remain a 'hard core' of around 400+ long term empty properties. Of this number an estimated 132 properties have been empty for more than two years and are now subject to the new council tax premium. The current activities of the housing service in relation to empty properties are limited and in the main are responsive to complaints from the public. Since April this year no complaints have been received by the housing service about empty properties.
7. There are a number of benefits to taking action to reduce the number of long term empty properties including;
  - Removing blight properties
  - Providing additional affordable housing
  - Reducing pressure on the housing stock and therefore on the pressure for new-build
  - Increased income from the new homes bonus as mentioned earlier.

## Conclusion.

8. This report outlines the current position in respect of the numbers of long term empty residential properties in Fylde.

<b>IMPLICATIONS</b>	
Finance	There has been a continuation in the reduction in the overall number of long term empty properties in the borough. This generates additional income to the Council in the form of the New Homes Bonus as well as additional Council Tax income once discount and exemption periods have expired.
Legal	Additional enforcement action, if needed, would require support from the council's legal services.
Community Safety	None from this report
Human Rights and Equalities	None from this report
Sustainability and Environmental Impact	None from this report
Health & Safety and Risk Management	None from this report

<b>REPORT AUTHOR</b>	<b>TEL</b>	<b>DATE</b>	<b>DOC ID</b>
John Cottam	01253 658690	September 2014	

<b>LIST OF BACKGROUND PAPERS</b>		
<b>Name of document</b>	<b>Date</b>	<b>Where available for inspection</b>
PDSC Reports & Minutes		<a href="http://www.fylde.gov.uk">www.fylde.gov.uk</a>

# REPORT



REPORT OF	MEETING	DATE
DEVELOPMENT SERVICES	POLICY DEVELOPMENT SCRUTINY COMMITTEE	9 OCTOBER 2014

## PLANNING APPEALS

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

The Scrutiny Management Board has requested that consideration be given to the planning appeals process. In line with that request, this report sets out the background to planning appeals, the detail and number of appeals received over the last 2 year period and the reasons for those appeals. Current policy on dealing with appeals and methods of reducing the cost and number of appeals and the Council's approach to defending appeals are also examined.

### RECOMMENDATIONS

1. That the contents of the report are noted and that members make any additional comments or recommendations.
2. That the current custom and practice of defending planning appeals is maintained.
3. That the success rate in defending planning appeals continue to be monitored.

### CABINET PORTFOLIO

This item falls within the following cabinet portfolio(s):

Planning & Development - Councillor Dr Trevor Fiddler

### SUMMARY OF PREVIOUS DECISIONS

Full Council 27 January 2014

Planning appeal costs - Unfunded Budget Increase request – RESOLVED:

1. To note the number and cost of planning appeals both incurred and in the system and agreed to an unfunded budget increase in 2013/14 of £116,118 to meet the currently unbudgeted additional cost;
2. To note both the historical cost of appeals incurred by the Council and the limited budget provision for these costs included in the Council's base budget going forward; and
3. That developers should note that the unfunded budget increase meant that Fylde Borough Council

would go forward with appeals should they need to. Members of the Council were prepared to make what they believed to be correct decisions.

Development Management Committee 9<sup>th</sup> October 2013 and Cabinet 27 November 2013

Appeal Decision Mowbreck Lane - RESOLVED:

1. That the Inspector's decision be noted and the approach of the Inspector and weight applied to various aspects of the decision be taken into consideration in the determination of planning applications for other similar development in the future.
2. To agree to the consideration of the introduction of formal procedural arrangements where the decision of the Committee is at variance with the officer recommendation.
3. That a small representative group of the Development Management Committee and appropriate officers be formed to consider the most appropriate mechanism for such a process and a report be presented to future meetings of the Development Management Committee and Cabinet for consideration.

## REPORT

### Introduction

1. The Scrutiny Management Board has requested that a report be considered to examine a series of issues relating to planning appeals including:
  - Detail and number of appeals
  - Reasons for appeals
  - Current policy on dealing with appeals
  - Reducing the cost and number of appeals
  - The Council's approach to defending appeals
2. If a planning application is refused, granted subject to conditions which the applicant considers unreasonable, or has not been determined within the eight or thirteen week statutory time period, the applicant may exercise a right of appeal to the Secretary of State for Communities and Local Government.
3. A Planning Inspector appointed by the Planning Inspectorate (PINS), an executive agency of central government, is responsible for determining most planning appeals. Certain significant or contentious appeals, which are known as recovered appeals, are determined by the Secretary of State (SoS), based upon the recommendation of an inspector. In such cases the SoS may not to agree with the findings of his Inspector and reach his own conclusion.
4. There are essentially three methods utilised to determine planning appeals.
  - **Written representations** is a method whereby the appellant and the local planning authority submit written submissions which are considered by a planning inspector. This method accounts for the majority of planning appeals and is the fastest and cheapest method of determination. In 2008 a simplified form of written representations appeal was introduced relating to householder appeals. In appeals determined via the **Householder Appeals Service** the inspector relies on the Council's report setting out the reasons for refusing planning permission or imposing a particular condition and there is no opportunity for additional information in support of the Council's decision to be submitted.

- **Hearings**, previously referred to as informal hearings, are a round table discussion involving the appellant, the local planning authority and any interested parties which may involve local residents and/or statutory consultees such as the highway authority.
  - **Public Inquiries** are generally reserved for the largest and most complicated proposals. Public Inquiries are often heard over several days and involve the parties being represented by an advocate and evidence being presented by expert witnesses.
5. Whatever method is chosen to determine an appeal, the Inspector will take account of:
- the material submitted to the local planning authority;
  - all the appeal documents;
  - any relevant legislation and policies, including changes to legislation, any new Government policy and any new or emerging development plan policies since the local planning authority's decision was issued; and
  - any other matters that are material to the appeal.

The inspector will also visit the site before he or she decides the appeal.

### **Detail and number of Appeals**

6. The Council determines in the region of 650 planning applications per year of which 87% are granted planning permission. This means that, on average 85 planning applications are refused each year. Following the refusal of planning permission, an applicant may submit a revised proposal that addresses the reasons for refusal or may choose not to pursue their proposal. However, the Council receives in the region of 25 planning appeals per annum and this has been relatively consistent over recent years. The appeals range in the complexity of the issues they present and the manner in which they are considered by the Planning Inspectorate (PINS).
7. The following tables provide a breakdown of the appeal decisions received by the Council over the period from 1 August 2012 to 31 July 2014. During this period 6 appeals were withdrawn before a decision was made, only one of the appeals was against the failure of the council to make a decision within the specified time.

**Table 1. Appeals by Method of Determination**

<b>Appeal Method</b>	<b>Number of Appeals</b>
Householder Appeal Service	10
Written Representations	24
Hearing	7
Public Inquiry	3
<b>Total</b>	<b>44</b>

**Table 2. Appeals by Decision**

Decision	Number of appeals
Dismissed	18
Allowed	25
Part Allowed	1
<b>Total</b>	<b>44</b>

**Table 3. Appeals by type of application and decision**

Type of Application	Number of appeals	Allowed	Dismissed	Part Allowed
Major	7	5	2	0
Minor	21	13	8	0
Householder	10	4	5	1
Advertisement	3	2	1	0
Listed Building Consent	2	0	2	0
Imposition of Condition	1	1	0	0
<b>Totals</b>	<b>44</b>	<b>25</b>	<b>18</b>	<b>1</b>

8. The above shows that 56% of appeals were allowed during this period which is worse than the national average of 36%.

### Reasons for Appeals

9. As can be seen from table 3, the majority of planning appeals relate to the refusal of an application rather than the imposition of a planning condition. Taken as a whole, the reasons for refusal of planning applications that have subsequently been appealed does not show any common themes that are resulting in appeals being upheld. The reasons include matters relating to policy and principle and to detailed matters of design.
10. However, in regard to the major appeals, they all relate to the release of greenfield land outside settlement boundaries for residential development. Current Government Policy requires each local planning authority to be able to demonstrate a 5 year supply of housing land. The settlement boundaries defined in the adopted Fylde Borough Local Plan, which was adopted at a time of housing restraint, do not provide sufficient sites within established settlements to enable this council to meet this requirement and so there is pressure to allow development on the edge, but outside of, existing settlements. Clearly the release of greenfield land which is allocated as countryside in a local plan is controversial and the Council is placed under considerable pressure from local residents to resist development.

## Reducing the cost and number of future appeals

11. As mentioned above, on average, 87% of planning applications determined by Fylde Borough Council are granted planning permission. This is in line with the national average. Fylde Council is not, therefore, refusing a higher proportion of applications than any other authority that is leading to unnecessary planning appeals. When planning permission is refused, the Council encourages applicants to discuss the reasons for refusal in order to examine whether a proposal can be amended to address those reasons for refusal. It is often the case that a revised submission is granted planning permission and this process is a major contribution to the fact that only 30% of planning applications that are refused are appealed.
12. Apart from householder appeals, which will be determined in line with the Householder Appeal Service except in very special circumstances, the Council and the appellant will be asked by PINS for their views on the most appropriate method to determine any particular appeal. The final decision on the chosen method rests with PINS taking into account specified criteria set out in Annex K of the PINS Procedural Guide (April 2014).
13. In the majority of circumstances, the Council will request that the appeal be determined via the written representation method as this is the most cost effective method for the council. It is appropriate for certain planning appeals, particularly those relating to major developments, to be determined following a public inquiry. Public Inquiries require the booking of appropriate venues, the appointment of Counsel to represent the Council's case and potentially, where the necessary specialist skills are not available in house, the appointment of expert witnesses.
14. Third parties, such as neighbouring residents or local interest groups often request that appeals are determined following a public inquiry so they have an opportunity to be heard by an Inspector. Whilst there may be a perception that it is preferable to be heard by an Inspector, nationally, appellants are successful in 63% of appeals determined following a public inquiry compared to only 32% of appeals determined by the written representations procedure.
15. In January 2014, Full Council considered a report that set out the costs associated with defending various planning appeals. Whilst the number of planning appeals which are determined following a public inquiry are limited in number, it is clear that the cost of those appeals is can be substantial.
16. In addition to meeting the Council's own costs in defending appeals, in circumstances where a party is considered to act unreasonably, the other party may apply to the inspector for an award of costs. Until recently, this provision only related to public Inquiries and hearings, but a costs award can now be made in regard to appeals determined via the written representation route. Local planning authorities are required to behave reasonably in relation to procedural matters at the appeal, for example by complying with the requirements and deadlines of the process. The NPPG sets out examples of unreasonable behaviour which may result in an award of costs which in regard to procedure includes:
  - lack of co-operation with the other party or parties
  - delay in providing information or other failure to adhere to deadlines
  - only supplying relevant information at appeal when it was previously requested, but not provided, at application stage
  - not agreeing a statement of common ground in a timely manner or not agreeing factual matters common to witnesses of both principal parties
  - introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen



- prolonging the proceedings by introducing a new reason for refusal
- withdrawal of any reason for refusal or reason for issuing an enforcement notice
- failing to provide relevant information within statutory time limits, resulting in an enforcement notice being quashed without the issues on appeal being determined
- failing to attend or to be represented at a site visit, hearing or inquiry without good reason
- withdrawing an enforcement notice without good reason
- providing information that is shown to be manifestly inaccurate or untrue
- deliberately concealing relevant evidence at planning application stage or at subsequent appeal
- failing to notify the public of an inquiry or hearing, where this leads to the need for an adjournment

(This list is not exhaustive).

17. Local planning authorities are also at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include:

- preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
- failure to produce evidence to substantiate each reason for refusal on appeal
- vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
- refusing planning permission on a planning ground capable of being dealt with by conditions risks an award of costs, where it is concluded that suitable conditions would enable the proposed development to go ahead
- acting contrary to, or not following, well-established case law
- persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable
- not determining similar cases in a consistent manner
- failing to grant a further planning permission for a scheme that is the subject of an extant or recently expired permission where there has been no material change in circumstances
- refusing to approve reserved matters when the objections relate to issues that should already have been considered at the outline stage
- imposing a condition that is not necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects, and thus does not comply with the guidance in the National Planning Policy Framework on planning conditions and obligations
- requiring that the appellant enter into a planning obligation which does not accord with the law or relevant national policy in the National Planning Policy Framework, on planning conditions and obligations
- refusing to enter into pre-application discussions, or to provide reasonably requested information, when a more helpful approach would probably have resulted in either the appeal being avoided altogether, or the issues to be considered being narrowed, thus reducing the expense associated with the appeal
- not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.

- if the local planning authority grants planning permission on an identical application where the evidence base is unchanged and the scheme has not been amended in any way, they run the risk of a full award of costs for an abortive appeal which is subsequently withdrawn

(Again, this list is not exhaustive).

18. In the last 2 years this council has had 2 costs awards made against it in regard to planning appeals. One of these related to highway issues and has not been pursued by the appellant. The other was a more significant award and related to the council's failure to substantiate reasons for refusal relating to the release of housing sites for development.
19. Planning committees can, and often do, make a decision which is different from the officer recommendation. Sometimes this will relate to conditions or terms of a S106 obligation. Sometimes it will change the outcome, from an approval to a refusal or vice versa. This will usually reflect a difference in the assessment of how a policy has been complied with, or different weight ascribed to material considerations. However, in circumstances where the advice of officers is not followed, the committee is required to provide clear and convincing reasons why planning permission has been refused.
20. In order to reduce the overall cost of defending appeals, it is considered necessary to:
  - provide a pre application advice service to reduce the number of unacceptable proposals that are submitted
  - reduce the number of appeals by negotiating solutions following the refusal of planning permission
  - choosing the written representation process wherever possible
  - substantiating all reasons for refusal
  - providing a robust defence of the council's decision to refuse planning permission
  - adapting the Council's position at appeal as circumstances change
  - with respect to major scale appeals (and others that arise where decisions have been made contrary to officer advice) there is a need to have a robust system in place that gives officers the authority to adapt the council's case, and for members to contribute to these decisions as required.

### **Approach to defending Appeals**

21. The approach to defending appeals is in line with National Guidance contained in the NPPG and with the Council's Constitution.
22. As set out above, if a Council fails to produce evidence to substantiate each reason for refusal on appeal, it is at risk of an award of costs against it. Accordingly, it is in the Council's interest to ensure that a case is made in regard to each planning appeal.
23. In addition to the national guidance, the Council's constitution requires members to:
  - Ensure that they understand the implications of any proposed decision, including possible appeals and costs awards;
  - Not normally take a decision contrary to the officers recommendation without adjourning for a few minutes so that the reasons for the proposed decision can be discussed and then agreed by the committee and, where there is concern about the validity of reasons, considering deferring the decision to another meeting to have them tested and discussed;

- Ensure that clear, precise reasons for their decisions, based on material planning considerations, are clearly recorded, particularly where the committee’s decision conflicts with officer recommendations; and
- Where the decision is not in accordance with the development plan, ensure that the reasons that justify overriding the development plan are clearly demonstrated and explained

24. Some of the provisions set out above were introduced in 2014 in order to seek to reduce the risk of an award of costs in circumstances where Members wish to make a decision contrary to the officer recommendation in line with the decision of Cabinet on 27 November 2013.

25. Planning Officers who are members of the Royal Town Planning Institute (Chartered Town Planners) are also bound by a professional code of conduct. As a result, in circumstances where a chartered town planner recommends that planning permission ought to be granted it would not be appropriate for that officer to defend a refusal of planning permission at appeal. In such circumstances it would be necessary to seek an external planning consultant who is willing to defend the Council’s position, which in turn would incur further expense.

<b>IMPLICATIONS</b>	
Finance	<p>Council in March 2014 approved a budget growth item to provide for the estimated increase in the cost of planning appeals in the sum of £100k for 2014/15 (providing a total approved budget for 2014/15 of £125k), £75k for 2015/16 and £50k for 2016/17 and 2017/18.</p> <p>The cost of planning appeals will be closely monitored and if those costs are expected to exceed the approved budget additional resources would be required.</p>
Legal	<p>The appeal process must be conducted within the legal framework of the Town and Country Planning Act 1990. Under the Constitution, the authority to act as the Local Planning Authority in all respects, including appeals, is delegated to the Development Management Committee. The Head of Governance is authorised to take part in legal proceedings to give effect to the decisions of the Council and to represent the Council before any court, tribunal inquiry or other hearing. The Director of Development Services is authorised to advise PINS of the council’s preferred appeal process under the scheme of delegation.</p>
Community Safety	There are no implications
Human Rights and Equalities	There are no implications
Sustainability and Environmental Impact	There are no implications
Health & Safety and Risk Management	There are no implications

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LIST OF BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
National Planning Practice Guidance	6 March 2014	<a href="http://planningguidance.planningportal.gov.uk/">http://planningguidance.planningportal.gov.uk/</a>
Procedural Guide Planning appeals	April 2014	<a href="http://www.planningportal.gov.uk/uploads/pins/procedural_guide_planning_appeals.pdf">http://www.planningportal.gov.uk/uploads/pins/procedural_guide_planning_appeals.pdf</a>
Full Council – Medium Term Financial Strategy Update, Including General Fund, Capital Programme and Treasury Management for 2013/14 to 2017/18	3 March 2014	<a href="http://www.fylde.gov.uk/meetings/details/1105">http://www.fylde.gov.uk/meetings/details/1105</a>
Full Council - Planning Appeal Costs – Unfunded Budget Increase Request	27 January 2014	<a href="http://www.fylde.gov.uk/meetings/details/1104">http://www.fylde.gov.uk/meetings/details/1104</a>
Constitution of the Council	July 2014	<a href="http://www.fylde.gov.uk/council/constitution/">http://www.fylde.gov.uk/council/constitution/</a>
Development Management Committee	9 October 2013	<a href="http://www.fylde.gov.uk/meetings/details/1111">http://www.fylde.gov.uk/meetings/details/1111</a>
Cabinet - Appeal Decision Mowbreck Lane	27 November 2013	<a href="http://www.fylde.gov.uk/meetings/details/1088">http://www.fylde.gov.uk/meetings/details/1088</a>