

5. FEES FOR THE LODGING OF APPEALS AGAINST OFFICERS' DECISIONS

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The purpose of this report is to provide the Council with an opportunity to consider the possibility of charging a fee for lodging of appeals against officers' statutory decisions and decisions made by Council officers acting under delegated authority.

BACKGROUND

The Council requested this report after considering a submission on the Supplementary Order Paper to the Local Government Reform Bill (No. 2) containing proposed amendments to the Dog Control Act. Although the Bill does not provide for the instituting of a fee for the lodging of appeals against officers' statutory decisions, the Regulatory and Consents Committee considered that a submission on the Bill was an opportune time to raise the issue with the Select Committee. However, the Committee did not wish to do so without first considering the wider ramifications.

At present there are four provisions for people to seek to appeal decisions made by Council officers viz:

1. Section 339 of the Local Government Act 1974: Objections to notices issued by the Council of its intention to erect a transport shelter.
2. Section 66 of the Building Act 1991: Objections to notices issued under section 66(3)(b) in respect of earthquake prone buildings.
3. Section 10 of the Litter Act 1979: Objections to notices requiring the occupier of private land to clear litter from that land.
4. The Dog Control Act 1996 where there are four separate rights of objection to the Council in respect of notices issued by the Council under that Act. They are:

Section 22: Objections to notices classifying persons as probationary owners.

Section 26: Objections to notices disqualifying persons from being the owner of a dog.

Section 31: Objections to notices classifying any dog as a dangerous dog.

Section 55: Objections to notices issued in respect of barking dogs.

The Building Act and Litter Act provisions are rarely used, and there have been no appeals in recent times, likewise the probationary owner and disqualified owner provisions are not used. Practically therefore the only situations where appeals against officers' decisions come to a hearing are:

- Bus shelters where six appeals have been heard over the last approximately two years;
- Dangerous dogs where nine objections have been heard in the last two years;
- Barking dogs where 17 objections have been heard in the last two years.

That is, overall, appeals are running at around 16 per year, with most being about dog matters and half about barking dogs. Of the bus shelter hearings two resulted in changes; for dangerous dogs only one notice was withdrawn as a result of the hearing; and for barking dogs 15 of the appeals resulted in changes.

At the present time no charges are levied for lodging of such appeals.

DISCUSSION

There are a number of issues to consider in deciding whether it is in the community's best interests for the Council to levy a fee for the lodging of appeals.

For levying a fee

The main arguments in favour of a fee are:

1. The decision as to whether or not to lodge an appeal has at least an element of private benefit in it and it is therefore not reasonable for the full cost to the Council of hearing the appeal to be met from the public purse (rates).
2. If no fee is charged potential appellants may see the appeal as “free” and lodge frivolous appeals, or appeal to defer the implementation of a fair and reasonable decision, or appeal vexatiously in order to waste the Council’s time.
3. A fee may reduce the number of appeals, as it will cause some potential appellants to look more closely at whether they have a good chance of succeeding before lodging an appeal.
4. In general the Courts and other tribunals (for example the Disputes Tribunal) charge applicants at least a nominal administration fee. For example there is a fee of \$120 for appeals to the District Court on matters under the Local Government Act.

Against

The main arguments against charging a fee are:

1. These are decisions made by an officer under delegated authority, seeking a review of such a decision to an elected member tribunal is a democratic right that should not be charged for.
2. People should not be deterred from appealing by the cost of lodging an appeal, and in particular people unable to afford the fee should not be denied justice.
3. Not charging a fee is a signal that the Council is committed to being open and accessible to its citizens. It also sends this signal at a point in time when an individual citizen (an appellant or potential appellant) is aggrieved with the Council having been served with a notice they would rather not have.

FEE LEVEL?

If a fee was to be set, the maximum could be the actual and reasonable costs of hearing the appeal which is likely to vary between hearings in the range of a few hundred dollars to up in the thousands. Fees set at this level are likely to be unacceptable because :

1. The appellant would have no certainty until after the hearing as to what the fees for the hearing would be.
2. To some extent the cost of the hearing may be a matter of luck, for example if the same panel hears two or three appeals on the same day then the actual and reasonable costs would be much less than if only one appeal was held.
3. Other appeal tribunals do not recover actual and reasonable costs from appellants.
4. Appellants would be put off by the uncertainty and the costs of lodging an appeal and the Council would face the criticism that it had set the fees high to obstruct all but very determined appellants able to afford the fees.

At the other end of the scale a relatively low administration fee could be set. In a submission on the Dog Control Act some years ago the Council proposed that provision be made for a fee of \$200 for lodging an appeal against an officer decision.

SHOULD THE FEE BE REFUNDABLE ON SUCCESS?

One possibility is to provide for a fee to be charged only if the appeal is unsuccessful. The argument in favour of this is a successful appeal can be seen as saying that “the officer got it wrong” and therefore the appellant should not have to pay any fee. In practice most cases are not as clear cut as that. Decisions are a matter of judgement. Further a refundable fee is likely to add to the disappointment and resentment of an unsuccessful appellant who will see it as a “fine” for appealing and may even be inclined to think that the Council disallowed the appeal in order to avoid having to make the refund.

DISCUSSION

It can be seen from the statistics given in the introduction that appeals against officer decisions are provided for only in a few situations, and that few appeals are heard. Therefore there is not a lot of revenue involved in the decision as to whether or not to seek to be able to charge for appeals (a fee of \$200 per appeal would only yield the Council about \$3,000 a year in revenue). The matter can therefore be assessed and considered on the question of principle – is the public interest better served by charging appellants a fee? On balance given the low number of appeals and the lack of evidence that people are appealing trivially or vexatiously there is no strong argument for charging a fee; and not charging one reinforces the public perception of the Council as an open and accessible administration.

Recommendation: That the Council confirm that it does not wish to seek to have the power to charge for the lodging of appeals against officers' statutory decisions at the present time.