



AGENDA ITEM: 12

**CORPORATE AND
ENVIRONMENTAL OVERVIEW &
SCRUTINY COMMITTEE:
18 February 2016**

Report of: Interim Borough Solicitor

**Contact for further information: Mrs C A Jackson (Extn. 5016)
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SUBJECT: MEMBER ITEM / COUNCILLOR CALL FOR ACTION

Borough wide interest

1.0 PURPOSE OF THE REPORT

1.1 To advise the Corporate and Environmental Overview & Scrutiny Committee of an item, submitted by a Member, attached as an Appendix.

2.0 RECOMMENDATIONS

2.1 That the Member's Item detailed at Appendix 1 be noted.

2.3 That the Committee determine if it wishes to consider the item submitted at Appendix 1 and, if so, confirm what further action it wishes to take having regard to the options at 4.3.

2.2 That should the Committee decide not to consider the Member's Item/Councillor Call for Action, provide reasons for that decision to the Member who requested it.

3.0 BACKGROUND

3.1 The Corporate and Environmental Overview & Scrutiny Committee establishes its own Work Programme annually.

3.2 The current Work Programme for Corporate and Environmental Overview & Scrutiny Committee and included on the Council's web-site is:

'Corporate and Environmental Overview and Scrutiny Committee

The Committee conducts in depth review/policy development as set out in its work programme..

‘Corporate and Environmental Overview and Scrutiny Committee

The Committee conducts in depth reviews/policy development as set out in its work programme.

In 2015/16 the Committee will be continue its review on ‘A Market Town Strategy for Ormskirk Town Centre.’

The Committee considers as part of its routine work:

- Items referred from "Members Update" at the request of a Member
- Members items/Councillor Call for Action (CCfA)
- Performance management
- Acts as the Council's Crime and Disorder Committee
- Recommendations from previously conducted reviews

The Member Development Commission will continue its work during 2015/16 and the ‘Public Involvement at Meetings Working Group’ will commence its work.’

4.0 DETAILS RELATING TO SUBMITTED ITEM

4.1 Appendix 1, attached to this report, gives details of the Member Item /CCfA item submitted for consideration by the Committee.

4.2 The following are potential reasons why a Member Item may not be considered further:

- The issue is an individual case
- The Member has not explored the issue fully and exhausted all avenues as set down on the Members items/CCfA submission form
- A review into the general issue is included in an O & S work programme
- A petition is being submitted to the Council
- A complaint is being or has been submitted and the outcome is awaited
- A FOI request is being or has been made and the outcome is awaited
- Scrutiny of the issues is unlikely to result in improvements for local people
- The issue has been the subject of Executive Call In
- The issue has been the subject of a Council Motion / Question
- The issue is urgent and could be more speedily resolved by other means
- The issue is an ‘excluded matter’ (Constitution 18.3)

4.3 If the Committee decides to discuss the item it can either:

- Note the concern.
- Request a relevant officer to bring back a report on the issue.
- Make a recommendation to Cabinet / Council as appropriate.
- Undertake an in-depth Review on the subject matter (subject to current work programmes and resources)

- Set up a Working Group to look at the issue in more details (subject to the Committee's work programme and resources)
- Refer the matter to another authority / body if the issue raised is not within the remit of the Council.

5.0 COMMENTS OF THE INTERIM DIRECTOR PLANNING

- 5.1 The Council has had a Service Level Agreement with Lancashire County Council's Property Group for many years for the provision of specialist planning advice. The current contract was initially negotiated in 2010 and has since been reviewed on an annual basis. The Council consults the LCC Property Group's Land Agents, where necessary, for specialist advice in relation to proposed agricultural development, i.e. proposed agricultural buildings and new agricultural workers dwellings.
- 5.2 Advice is provided by qualified and experienced land agents. Should the Borough Council refuse planning permission on the basis of advice from the County Land Agent, the Service Level Agreement also provides for officers of the Property Group preparing and providing an appeal service including appearance as an expert witness, if required.
- 5.3 Over the years I have found the service to be invaluable. Advice provided by the County Land Agent team is professional, impartial and made with detailed background knowledge of agricultural practices within the Borough. The advice given by the County Land Agent enables the Borough Council to determine whether proposed developments comply with the National Planning Policy Framework (NPPF)

Paragraph 55 of the NPPF indicates that:

“Local planning authorities should avoid new isolated homes in the countryside unless there are other special circumstances such as:

-the essential need for a rural worker to live permanently at or near their place of work in the countryside.”

Paragraph 89 indicates that

“a local planning authority should regard the construction of new buildings as inappropriate in the green belt. Exceptions to this are:

- *Buildings for agriculture and forestry (the Council interprets this to mean buildings that are reasonable necessary for the purposes of agriculture and forestry)”*

- 5.4 Advice is sought from the County Land Agent in respect of all proposed agricultural dwellings and some agricultural buildings if it appears to officers that proposals may not be reasonably necessary for the purposes of agriculture.
- 5.5 When assessing a proposed agricultural dwelling the NPPF requires that a Local Planning Authority determine whether there is an essential need for a rural worker to live permanently in or near their place of work. Prior to the introduction of the NPPF, Annexe A to former Planning Policy Statement 7(PPS7) gave detailed guidance on how such an assessment should be made by looking at whether there was a functional need for a rural worker to be permanently on site and whether the financial performance of the agricultural enterprise was sustainable to provide for a permanent dwelling on the unit. These were referred to as the functional and financial tests.
- 5.6 Although PPS7 has been withdrawn, Annexe A is still used widely as being the most up to date advice as to how essential need should be assessed. The County Land Agent team uses the guidance in the former Annexe as the basis for consideration of agricultural workers dwellings. In a recent appeal decision at Stanley Gate Nurseries for an agricultural worker's dwelling, the County Land Agent assessed the scheme on the basis of Annexe A of the former PPS7 and concluded that there was not an essential need for a rural worker to live on the site. This decision was made post the NPPF coming into force, and in the Inspector's decision he referred to both functional need and financial security of the business. The appeal was dismissed.
- 5.7 There are other examples of the Planning Inspectorate finding the tests in Annexe A of PPS to be appropriate for use in the assessment of whether there is an essential need for a proposed agricultural workers dwelling. On 16th June 2015, the Inspectorate issued a decision in relation to an agricultural workers dwelling at a farm in Bury, appeal reference APP/T4210/W/14/3001924. The Inspector found that "although, as pointed out by the appellant PPS7 is no longer extant, this consideration, in my judgement, can still be regarded as a material consideration and has some pertinence in relation to this case. "
- 5.8 In my considered opinion, use of the Annexe to former PPS7 remains justified in the assessment of essential need in relation to agricultural workers dwellings. I am also of the view that the Council should continue to seek the County Land Agent's professional independent advice in relation to planning applications of this nature. In my opinion it would be inappropriate for Parish Council's to carry out assessments in relation to essential need as I am concerned that impartiality could not be assured and I have no evidence that members of Parish Councils have the required professional qualifications to provide this service.

6.0 CONCLUSION

- 6.1 The Committee is asked to consider the request submitted and determine how it is to be handled.
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Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

1. Members Item – “Suitability of using Annexe A of previous PPS7 to reach decision pertaining to current NPPF para 55, and suitability person/agency to engage in financial test under Annexe A of previous PPS7”