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**Report of: Director of Development and Regeneration**

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**SUBJECT: BRIEFING NOTE REGARDING COMPARABILITY AND PRECEDENCE  
IN RELATION TO THE DETERMINATION OF PLANNING APPLICATIONS**

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Wards affected: Borough wide

## **1.0 PURPOSE OF THE REPORT**

1.1 To outline the relevance of comparability and precedence in the determination of planning applications.

## **2.0 RECOMMENDATIONS TO PLANNING COMMITTEE**

2.1 That the contents of the report be noted.

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## **3.0 BACKGROUND**

3.1 At the Corporate Overview and Scrutiny Committee meeting held on 12<sup>th</sup> October 2017 Members considered an item submitted by Councillor Cotterill requesting clarification on the consideration of comparability and precedence in the development management process. The minutes of the meeting record that " at the request of the Chairman, the Director of Development and Regeneration, who was in attendance, addressed the Committee and provided clarification in relation to consideration of planning matters, referring to the process, procedures and legislative duty and the pre-planning advice service. He made an undertaking to place an Information Report on the Planning Committee agenda providing advice to Members in relation to "precedent" and "comparability" as it related to planning legislation.

## **4.0 DETERMINATION OF PLANNING APPLICATIONS**

4.1 As Members will be aware the National Planning Policy Framework stresses the importance of having a planning system that is genuinely plan led. Where a proposal accords with an up to date development plan, such as the West Lancashire Local Plan 2012-27, it should be approved without delay, as required by the presumption in favour of sustainable development.

- 4.2 National Planning Policy Guidance supports the NPPF and advises that an application for planning permission must be decided in accordance with the development plan unless material considerations indicate otherwise. Therefore in some circumstances, a non-policy compliant scheme can be approved if material considerations indicate that planning permission should be granted.
- 4.3 Whilst there is a need to treat each application on its merits the Courts have held that previous planning decisions are capable of being a material consideration. This is to ensure that cases are decided on a like for like basis thereby ensuring consistency in the planning process.
- 4.4 One of the cornerstones of good planning is consistency in decision making and it is important that Local Planning Authority's make consistent decisions, whether applications are determined under delegated powers or by the Planning Committee.

## **5.0 COMPARABILITY**

- 5.1 When considering planning applications, account should be taken of any comparable developments that have recently been granted planning permission. Often applicants point to similar developments in their planning statements or supporting case, indicating that they should be considered as material considerations. In such cases the developments identified are assessed by officers to see whether they can be considered to be directly comparable to the application under consideration. In many cases it is established that they are not comparable for various reasons, e.g. differences in design or siting, approval under an earlier Local Plan or previous Green Belt SPD regime or that the developments referred to were permitted under legislation which has subsequently been amended.
- 5.2 However where like for like developments are identified they can be considered to be a material consideration in the determination of subsequent planning applications and can result in approval of a development that does not accord with the relevant planning policies.

## **6.0 PRECEDENT**

- 6.1 Court and appeal decisions have established that it is legitimate for decision makers to give weight to the possibility of creating an undesirable precedent when considering whether to grant planning permission contrary to planning policy or principles. Decision makers must apply consistency in decision making and therefore precedent can make it difficult to resist subsequent applications. However guidance indicates that setting an undesirable precedent should only be a legitimate concern of the Local Planning Authority if there is a realistic chance that similar applications may be submitted.
- 6.2 For example, in the appeal decision for the conversion of a garage at 61 Stone Mason Crescent, which was for the conversion of an integral garage into a habitable room, the Inspector concluded that "I have considered the Council's argument that the current proposal would set a precedent for similar developments in the surrounding area. Whilst each application and appeal must

be considered on its own merits, I can appreciate the Council's concern that approval of this proposal could be used in support of such similar schemes. I consider that this is not a generalised fear of precedent, but a realistic and specific concern as there may be pressure to convert garages to living accommodation. Allowing this appeal would make it more difficult to resist further planning applications for similar developments, and I consider their cumulative effect would exacerbate the harm which I have described above."

- 6.3 Therefore when considering planning applications, especially those which are contrary to the Local Plan or other relevant planning policies, decision makers must be mindful of the issue of precedence, if there is a realistic likelihood that similar applications may be submitted.

## **7.0 CONCLUSION**

- 8.1 The above information should assist Members of the Planning Committee in establishing how far it is material to the determination of an application that a precedent might be set for the grant of further developments, which may cumulatively erode planning policies and principles and reinforce the need for consistency in decision making.

## **8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 8.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder. The report has no significant links with the Sustainable Community Strategy.

## **9.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 9.1 There are no significant financial or resource implications arising from this report.

## **10.0 RISK ASSESSMENT**

- 10.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers.

### **Background Documents**

The following background documents (as defined in Section 100D (5) of the Local Government Act 1972) have been relied on to a material extent in preparing this Report.

Minutes of Corporate and Environmental Overview and Scrutiny Committee meeting held on 12<sup>th</sup> October 2017.

### **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.