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**REPORT TO:** Organisation Improvement and Environment Overview and Scrutiny Commission

**DATE:** 8 April 2009

**DEPARTMENT:** Corporate Policy and Improvement/Resources

**REPORTING OFFICER:** Scrutiny Officer (*M Codman*)  
Head of Legal and Democratic Services (*P Jordan*)

**SUBJECT:** **SCRUTINY REVIEW SUBMISSION  
-DEVELOPMENTS AT EAST PARK ROAD SPOFFORTH  
AND LITTLE RIBSTON**

**WARD/S AFFECTED:** All

**FORWARD PLAN REF:** N/A

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## **1.0 PURPOSE OF REPORT**

- 1.1 The purpose of the report is to provide information to the Commission regarding a Review Submission received so that it can consider the issue and agree any action (if any) to be undertaken.
- 1.2 It should be noted that the purpose of the report and the consideration of the proposed issue for review is to establish the scope of any potential review taking into account the remit and principles of Overview and Scrutiny (both regulatory and procedural) and agree any action to be undertaken (if any). **It is not to address the specific issues contained within the submission.**
- 1.3 The review sponsor has also been invited to address the Commission regarding the issues that have been raised. They have been informed that their address should be no longer than 20 minutes and be limited to the issues previously raised.

## **2.0 RECOMMENDATION/S**

It is recommended that the Commission either:

- 1) Agrees that further work to produce a scope for a wider policy review is undertaken (if the sponsor agrees) and that the scope is considered at a future meeting.

or

2) Agrees that no further work is undertaken.

### **3.0 THE REPORT**

#### **1 BACKGROUND**

- 3.1 A Scrutiny Review Submission form was received on 7 January 2009 via the Council website. The issue for review was that “HBC collaborated with Accent Housing Association to provide affordable housing in the district” in particular the following aspects: the Councils method for ascertaining the need for affordable housing including type of provision, planning policies/guidelines and Building Regulations/Control and their application by Council Officers in relation to the developments at East Park Road Spofforth and Little Ribston.
- 3.2 The reason for the review was that “statutory requirements, planning policies and guidelines have been applied to the development at East Park Road in such a way as to facilitate the development”. Specifically, “has HBC complied with all relevant policies, guidelines and statutory instruments with regard to assessing and providing for housing need, planning policies and guidelines and building control?” A copy of the Submission Review Form and some additional information is attached at **APPENDIX A**.
- 3.3 Since the receipt of the submission form there has been ongoing e-mail correspondence with the review sponsor. This has involved a number of Officers to ensure that the extent of any potential review could be established and that it would be within the remit of Overview and Scrutiny. The review sponsor has requested that the review as originally proposed should be put forward for consideration, based on the original form and e-mails received. Additional information has been requested to assist in the clarification of certain issues but this has not been received. This report is therefore based on information received to date.

#### **East Park Road Spofforth and Little Ribston – Brief History**

- 3.4 The review submission concerns developments at East park Road Spofforth and Little Ribston. The following is a summary of the applications for these sites:

Spofforth – Applications for land to the east of 19 East Park Road, Spofforth:

- Outline application approved by Planning Area 2 Sub-Committee on 06/07/04 subject to conditions
- Reserved matters application approved subject to conditions under delegated powers on 11/09/06 by Head of Planning Services in consultation with Chairman of Planning Committee

Little Ribston – Applications for land opposite Garth Cottage and adjacent to 1 Crimple Avenue and 7 North View, Spofforth Lane, Little Ribston:

- Outline application approved by Planning Area 2 Sub-Committee on 28/08/01 subject to conditions

- Outline application approved under delegated powers on 16/02/04 following resolution by Planning Area 2 Sub-Committee on 10/02/04 to defer approval subject to conditions to Head of Planning Services
- Reserved matters application approved subject to conditions under delegated powers on 07/08/06 by Head of Planning Services in consultation with Chairman of Planning Committee.

## **2 REMIT OF OVERVIEW AND SCRUTINY**

- 3.5 Whenever a request for review is received it is first considered against the Regulatory Framework to ensure that it is within the remit of Overview and Scrutiny.

### **Overview and Scrutiny – Regulatory Framework**

- 3.6 The Regulatory Framework for the remit of Overview and Scrutiny is detailed in the Local Government Act (LGA) 2000 and the associated Statutory Guidance. A copy of the relevant section of the LGA 2000 and Statutory Guidance is attached at **APPENDIX B**. The statutory sections of the guidance are those marked with a tick.

- 3.7 In summary Overview and Scrutiny can

- Review decisions made or other action taken (and make reports or recommendations) in connection with the discharge of any functions which are the responsibility of the Executive (Cabinet)
- Review decisions made or other action taken (and make reports or recommendations) in connection with the discharge of any functions which are not the responsibility of the Executive (Cabinet)

- 3.8 In addition Scrutiny should not normally scrutinise decisions made by other Committees particularly decisions made in respect of the following:

- Development Control
- Licensing
- Registration
- Consents and other permissions.

- 3.9 In particular Scrutiny is not an alternative to normal appeals procedures and the Statutory Guidance recommends that when considering these functions this should normally be used as part of wider policy reviews.

- 3.10 The following are the relevant sections of the Council Constitution:

### **Overview and Scrutiny Procedure Rules**

#### **8. Agenda Items (Page 208)**

“8.3 Subject to the restrictions below the Committees may investigate or review any matters which fall within their terms of reference save where there are on going judicial proceedings, an Ombudsman or audit enquiry or a complaint under investigation in accordance with the Council’s complaints or whistleblowing procedures.

(a) The Committees may not investigate or review individual decisions of Officers under the General Scheme of Delegation to Officers set out at Part 3 of this Constitution whether under Section 2 relating to Council functions or Section 3 relating to executive functions.

(b) The Committees may not investigate or review individual decisions in relation to planning and other development control decisions under the Scheme of Delegation of Planning Functions. Review of such decisions must be undertaken through the normal appeal processes set down in primary and secondary legislation.

(c) Decisions under the General Scheme of Delegation to Officers and the Planning Scheme of Delegation may be considered within a review of the service as a whole”.

### **Assessment against Regulatory Framework**

3.11 Overview and Scrutiny can consider issues that are or are not the responsibility of the Executive. In theory therefore Scrutiny could consider the issues in the submission form. However, individual Planning decisions and associated issues are predominantly the responsibility of Development Control and clearly under the regulatory framework Scrutiny should not normally review these issues. The issues specifically relating to the developments at East Park Road Spofforth and Little Ribston should therefore not be taken forward

#### **- Further Information (e-mail dated 23 February 2009)**

3.12 The following are extracts from additional information that has been received since the original submission form:

a *“The question relating to planning is not one of application but of enforcement, which is an entirely separate matter altogether. It would be altogether more sensible for HBC to address the numerous errors that have been made in relation to the development of social housing at East Park Rd and other sites throughout the district”.*

This is entirely a planning matter relating to the specific sites therefore under the regulatory framework outside the remit of Overview and Scrutiny

b It is stated that a claim has been filed *“against Accent for damages relating to the appropriation of your land and the inadequacy of the foundations of the social housing that has been built at East Park Rd”*

This is therefore an ongoing legal issue outside the remit of Overview and Scrutiny.

3.13 It should also be noted that the review sponsor has initiated a complaint that includes the way in which a number of the issues in the submission have been dealt with by the Council. As part of the complaints process these issues could potentially still be referred to the ombudsman for consideration.

3.14 Overview and Scrutiny is not an appeals mechanism against Council decisions including dealing with any complaint. It should therefore not consider specific issues relating to the two sites pending any further legal/other action.

3.15 ***The advice therefore from an assessment against the Regulatory Framework is that Overview and Scrutiny should not consider issues relating to the specific developments due to the following:***

- ***This would be outside the remit of Overview and Scrutiny***
- ***There are either ongoing/potential legal/complaints proceedings.***

3.16 Statutory guidance does however indicate that when considering Council functions such as Development Control then this should normally be used as part of wider policy reviews (overview). Decisions under the General Scheme of Delegation to Officers and the Planning Scheme of Delegation could be included but only as part of a wider review of the service. If this “overview” is used for the issues in the review submission then as a wider review there are areas that potentially could be considered, examples could include:

- The Council’s approach in choosing/commissioning preferred partners to provide affordable housing in the District
- The methods for ascertaining the need and type of provision for affordable housing
- Planning policy/guidelines and their application
- Rules/guidelines relating to Planning objections, and their application
- Building Regulations/Control and their application

**N.B The above would not consider individual decisions regarding applications/sites**

3.17 If the commission is minded to take any aspect of this matter forward for further investigation then it must be clear that this would be a wider policy review (overview) ie is there a wider systemic issue that should be reviewed? and if so, what is it?. It would not be the scrutiny of any individual decisions.

**3 OVERVIEW AND SCRUTINY – OTHER PRINCIPLES**

3.18 Once it has been established that there are potential areas for review (in this case as part of a wider “overview”) there are a number of principles that Overview and Scrutiny should consider before committing resources these are:

- Is the issue being considered by other areas within the Council eg by Cabinet/other Officer group
- Is the issue being considered by another external body
- Is new guidance/legislation expected within the next year
- Has Overview and Scrutiny reviewed the issue recently

3.19 Where other reviews are taking place or are planned to take place Scrutiny should wait for the result of any investigation before considering any further work so that duplication of work is avoided. Where work has recently been undertaken regarding the issue this could be reviewed to ensure the most effective use of limited resources.

**Other principles- assessment**

3.20 There are no ongoing/planned reviews for the Planning Service at the present time but a Planning Service Review was undertaken in 2007 that included the following:

### 3.21 **1 Planning Policy**

- Strategic and Regional Planning
- Structure and Local Planning
- Conservation and Listed Buildings
- Trees and Forestry
- Special Projects - projects securing Council's planning aims (AONB, etc)

### **2 Development Control**

- Advice
- Dealing with Applications
- Enforcement

3.22 The review focused on how decisions were made within the Council on policy and planning applications and value for money, looking at costs of service relating to performance, satisfaction and outcomes. It was undertaken by external consultants (IDeA) and was a thorough assessment against national standards, best practice, etc including consultation with stakeholders and users of the service. This was reported to the Organisation Improvement and Environment Overview and Scrutiny Commission on the following dates:

- 16 April 2007
- 18 June 2007
- 21 January 2008
- 3 March 2008
- 1 December 2008

3.23 Progress regarding the Action Plan for improvement was reported at the meeting on 1 December 2008 and will be reported again in late 2009.

3.24 As a separate issue enforcement was reviewed at the last meeting of the Commission on 2 March 2009. Progress on the issues raised will also be reported back later in the year.

3.25 The Community and Partners Overview and Scrutiny Commission has the remit to consider housing matters. It has considered the issue of affordable housing generally at its meeting on 16 June 2008 and as a specific issue at its meeting on 24 November 2008.

### **Way Forward**

3.26 It is evident that these previous reviews include some of the wider policy issues that could be reviewed as part of the submission (See 3.17). It would therefore not be appropriate to review these areas again at the present time particularly as some of them are still being reported to the Commission.

3.27 Further work could be undertaken to identify areas of work for potential review but it should be noted that this would produce a scope that may not be agreed by the sponsor as this would be a wider policy review rather than the scrutiny of individual decisions. The Commission should therefore consider whether this further work to produce a scope is justified taking into account the original submission, what Scrutiny is able to do, previous work undertaken and the justification for undertaking further work. If this was agreed then any scope produced would require to be considered at a future meeting (and also potentially by the Community and Partners Overview and Scrutiny Commission). It may also therefore be appropriate for the Commission to consider the key factors used for assessing potential review issues at this later stage, attached at **APPENDIX C**.

3.28 The Commission can therefore either:

1. Agrees that further work to produce a scope for a wider policy review is undertaken (if the sponsor agrees) and that the scope is considered at a future meeting.

Or,

2. Agrees that no further work is undertaken based on the above.

## **SUMMARY**

3.29 A Scrutiny Submission form was received on 7 January 2009 via the Council website. The issues for review concerned the developments at East Park Road Spofforth and Little Ribston.

3.30 The advice from an assessment against the Regulatory Framework is that Overview and Scrutiny should not consider the review of the specific developments due to the following:

- This would be outside the remit of Overview and Scrutiny
- There are either ongoing/potential legal/complaints proceedings.

3.31 Statutory guidance does however indicate that when considering Council functions such as Development Control then this should normally be used as part of wider policy reviews (overview). If this overview is used for the issues in the review submission then as a wider review there are areas that potentially could be considered such as the examples in 3.16

3.32 Two reviews have been undertaken previously that include some of the wider policy issues that could be reviewed as part of the submission. It would therefore not be appropriate to review these areas again at the present time particularly as some of them are still being reported to the Commission. Further work could be undertaken to identify areas of work for potential review (as part of a wider review) and the Commission should therefore consider whether this further work to produce a scope is justified for consideration at a future meeting or that no further work is undertaken.

## **4.0 CONCLUSION**

4.1 This report provides information to the Commission regarding a Review Submission received so that it can consider the issue and agree any action (if any) to be undertaken.

## **Background Papers -**

**OFFICER CONTACT:** Please contact Mark Codman if you require any further information on the contents of this report. The officer can be contacted at Crescent Gardens by telephone on (01423) 556153 or by Email – mark.codman@harrogate.gov.uk

**SUSTAINABILITY ASSESSMENT / POLICY CONSIDERATIONS**

		Implications are		
		Positive	Neutral	Negative
A	Economy		✓	
B	Environment		✓	
C	Social Equity		✓	
i)	General			
ii)	Customer Care / People with Disabilities			
iii)	Health Implications			
D	Crime and Disorder Implications		✓	

If all comments lie within the shaded areas, the proposal is sustainable.