

FOURTH QUARTER REPORT ON EXTENSIONS TO TIME PERIODS WITHIN WHICH OBLIGATIONS UNDER SECTION 106 CAN BE ENTERED INTO

Purpose of the Report

To provide Members with a quarterly report on the exercise by the Head of Planning and Development of the authority to extend periods within which planning obligations can be secured by (as an alternative to refusal of the related planning application).

Recommendations

a) That the report be noted

b) That the Head of Planning and Development continue to report on a quarterly basis on the exercise of his authority, to extend the period of time for an applicant to enter into the Section 106 obligations.

Introduction

The Committee have usually, when resolving to permit an application subject to the prior entering into of a planning obligation, also agreed to authorise the Head of Planning and Development to extend the period of time for an applicant to enter into the Section 106 obligations if he subsequently considers it appropriate (as an alternative to refusing the application or seeking such authority from the Committee).

When this practice was first established it was envisaged that such an extension might occur where the Head of Planning and Development was satisfied that it would be unreasonable for the Council not to allow for additional time for an obligation to be secured. It was recognised that an application would need to be brought back to Committee for decision should there have been a change in planning policy in the interim. It was agreed that your Officer would provide members with a regular quarterly report on the exercise of that authority insofar as applications that have come to the Committee are concerned. The report does not cover applications that are being determined under delegated powers where an obligation by unilateral undertaking is being sought.

This report covers the period between 28th January 2014 (when the Committee last received a similar report) and the date of the preparation of this report (8th April 2014)

In the period since the Committee's consideration of the last quarterly report (at its meeting on 28th January 2014) section 106 obligations have not been entered into by the dates referred to in Committee resolutions, or subsequent extensions, with respect to some 5 applications. In one case no formal decision has yet been made on whether or not to extend the period. In all the other cases where an extension has been agreed by your Officer it has been on the basis that the applicants similarly agree to extend the period within which they cannot appeal against the Council's failure to determine the application.

As from 1st October the Planning Guarantee has been introduced, and in particular it requires Local Planning Authorities to refund any planning fee if after 26 weeks no decision has been made on an application, other than in certain limited exceptions, including where an applicant and the Local Planning Authority have agreed in writing that the application is to be determined within an extended period. This will only apply to applications received after the 1st October 2013. This introduction of the Planning Guarantee provides yet another reason for maintaining a clear and continued focus on timeliness in decision making.

Details of the applications involved are provided below:-

Application 13/00245/FUL – Old Springs Farm, Stoneyford (HLW Farms)

The proposal for the retention of an agricultural building for chopping and storage of Miscanthus came before the Planning Committee at its meeting on the 4th June 2013 (the eight period expiring on the 10th June 2013). The resolution of the Committee was that planning permission should be granted subject to prior securing a planning obligation by the 17th July 2013, and that if the obligation was not secured by that date, then the Head of Planning should consult with the Chairman and Vice Chairman prior to making any decision on whether to extend the period within the obligation could be secured.

The obligation was not secured by the 17th July 2013 and was subsequently extended, in consultation with the Chair and Vice Chair, to the 6th September 2013. The obligation was not secured by this extended date.

The applicant's planning consultant provided comments on the draft section 106 after some delay due to personal circumstances. There was then a considerable delay on behalf of the Council and the applicant's agent expressed concern about the continued delay in resolving this matter. In mid March a further draft of the agreement was sent to the applicant's agent, and it is understood that a response is currently awaited. An interested party has now been informed of the current position. The Head of Planning and Development is yet to consider what is a reasonable but challenging extension period and he will be consulting with the Chair and Vice Chair on this matter, in accordance with the previous resolution. At the time of writing some 51 weeks has passed since the application was received. The application was received before the introduction of the Planning Guarantee.

An update on this case will be given in a Supplementary Report.

Application 13/00712/FUL – Blackfriars, Lower Street, Newcastle

This application, for a new foodstore with associated parking, servicing and landscaping first came before the Planning Committee at its meeting on the 10th December 2013. The resolutions of the Committee inter alia required that certain obligations, relating to the payment of contributions to NTADS, travel plan monitoring, the use of an automatic number plate recognition system, the improvement of nearby subways and the provision of a future footpath, be entered into by the 31st January 2014, unless your Officer considered it appropriate to extend the period. That did not occur and the application came back before the Planning Committee at its meeting on the 18th February, both to address the issue of whether additional time should be provided for the agreement to be completed and because of the outstanding objection from the Environment Agency.

The Committee having agreed that the development was acceptable, notwithstanding the by then confirmed objection of the Environment Agency, extended the period of time within which the same obligations had to be entered into until the 7th March 2014. That date passed without the obligations being secured, although a contributory factor was that the Secretary of State had not at that time determined whether or not to 'call-in' the application (which had been referred to him under the Consultation direction as flood risk area development). He made that decision on the 1st April, advising the LPA that they could proceed to determine the application. In the interim a draft agreement had been prepared and the agreement sought of the County Council to its contents – the County being required to be a party to the agreement. Your officer agreed on the 1st April, on the basis that there was not yet an agreement approved by the Councils available to the applicant, that it was reasonable and appropriate to permit the applicant additional time until the 25th April 2014 to conclude the agreement - having secured from the applicant their agreement to similarly extend the statutory period (within which they cannot appeal against the Council's non-determination of the application).

By the 25th April some 32 weeks will have passed since the application was received. The application was received before the introduction of the Planning Guarantee.

Application 13/00625/OUT – Linley Trading Estate, Butt Lane

This application for the erection of up to 139 dwellings and associated works first came before the Planning Committee at its meeting on the 7th January 2014. The resolutions of the Committee inter alia required that planning obligations be obtained by agreement by 3rd March to secure financial contributions towards the provision of education facilities, the provision of 2 affordable units, a management agreement for the long term maintenance of the open space on the site, a contribution towards travel planning monitoring, and that the financial viability assessment be reviewed if the development has not been substantially commenced within 12 months of the grant of planning permission and appropriate adjustments made to the contributions and provision, unless your Officer considered it appropriate to extend the period for the securing of these obligations.

Subsequently a report was brought before the Planning Committee on the 11th March 2014 and the Committee accepted certain recommendations as to the content of the planning obligations which are to be sought, whilst at the same time now allowing the applicant until the 22nd April to conclude the legal agreement. It would appear unlikely that this agreement will be achieved due to delays by the authority associated with the production of a draft agreement for consideration by the applicant. It may be necessary for your officer to agree an extension of the period and if this happens before the 22nd April a supplementary report on this item will be provided to the Committee

This application was received after the introduction of the Planning Guarantee referred to above. By the 22nd April some 26 weeks will have passed, but having obtained the applicant's agreement to extend the statutory period the Council will not have to pay back the application fee should the application be determined after that date

Application 14/00077/FUL – Maer Hall, Maer

The application for permission to vary a condition of an earlier permission relating to a conversion scheme came before the Planning Committee at its meeting on the 11th March 2014. The resolutions of the Committee inter alia required that certain planning obligations relating to the ownership and use of the building to be secured by agreement by 24th March 2014, unless your Officer considered it appropriate to extend the period for the securing of these obligations. The date passed without the agreement being completed due the absence abroad for an extended period of the applicant and the lack of an agreed obligation for him to complete. Noting the lack of any change in the material planning circumstances, the limited time between the 11th March (up until when there would have been a measure of uncertainty about the Council's position given the matter had yet to be considered by the Committee) and the 24th, and the reasons the date had not been achieved, on the 1st April your officer agreed to extend to the 25th April the period for the securing of these obligations, whilst the applicant agreed to extend the statutory period similarly.

By the 25th April some 12 weeks will have passed from receipt of the application, the application being received after the introduction of the Planning Guarantee.

Application 08/00795/EXTN2 – Former Holdcroft Garage, Knutton Lane, Wolstanton

The application for permission to renew a previous permission for residential development on this site came before the Planning Committee at its meeting on the

7th January 2014. The resolutions of the Committee inter alia required that obligations securing financial contributions to NTADS and open space enhancement be secured by 7th February unless your officer considered it appropriate to extend the period. That date passed without the obligations being secured. The Council has not provided the applicant with an agreement to complete, and in the circumstances your officer has now agreed to extend the period for the securing of the obligations until 7th May, noting that there has been no material change in planning circumstances that would justify a reconsideration of the application or a greater contribution. In exchange the applicant will be required to agree to extend the statutory period (within which no appeal can be made against the Council's failure to determine the application).

By the 7th May some 24 weeks will have lapsed since receipt of the application. The application was received after the introduction of the Planning Guarantee.

Application 14/00027/FUL Land adjacent to 31 Banbury Street

This application for permission for the erection of 13 dwellings came before the Planning Committee at its meeting on the 11th March 2014. The resolutions of the Committee inter alia required that obligations securing financial contributions to NTADS, education provision and open space improvement be secured by the 14th April. The applicant has now informed the authority that such a level of contributions would make the scheme unviable, but they have provided fairly limited information to substantiate this claim. It is clear that the 14th April deadline will not be met. Your officer notes the lateness of the submission now made by the applicant, but also members' expressed wish to see this brownfield site developed, and the requirement for Local Planning Authorities to act in a positive and proactive way, whilst also making decisions in a timely manner. He has agreed to extend the period within which an agreement can be secured – the intention being to bring a report to the 13th May Committee, if the applicant provides additional information and assists in its appraisal – because any decision to alter the contributions secured would have to be made by the Committee. The applicant will in return be required to formally agree to extend the statutory period (within which no appeal against the Council's non-determination of the application can be made)

By the 13th May some 16 weeks will have lapsed since receipt of the application. The application was received after the introduction of the Planning Guarantee.

Date Report prepared

8th April 2014