

FIRST QUARTER 2014/15 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 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 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 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 officers 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 22nd April 2014 (when the Committee last received a similar report) and the date of the preparation of this report (14th August 2014).

In the period since the Committee's consideration of the last quarterly report section 106 obligations have not been entered into by the dates referred to in Committee resolutions, or subsequent extensions, with respect to some 11 applications.

Whilst the report is only concerned with those cases where decisions have had to be made on whether or not to agree to provide an extended period, it is evident from that there have been problems in concluding obligations across a number of cases. Insofar as the Council is concerned (obligations involve a number of parties) this reflects workload pressures within both Planning and Legal services. It is recognised that the Council needs to maintain a focus on delivery of these obligations – which can become over time just as important (to applicants) as achieving a prompt consideration of applications by Committee.

As from 1st October 2013 Local Planning Authorities are required, as part of the so called Planning Guarantee, to refund any planning fee paid 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 applies to applications received after the 1st October 2013. This provides yet another reason for the Planning Service maintaining

a clear and continued focus on timeliness in decision making, instructing solicitors and providing clarification where sought.

In cases where extensions of the period within which an obligation may be secured have been considered appropriate your Officer's agreement to that has been on the basis of that should he consider there to be a material change in planning circumstances at any time short of the signing of the final document he retains the right to bring the matter back to the Planning Committee. Applicants are also asked to formally agree a parallel extension of the statutory period within which no appeal may be lodged by them against the non-determination of the application, and in most cases that agreement has been provided.

Details of the applications involved are provided below:-

(1) 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 week 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 (relating to the routeing of hgvs) 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. and again later on to the 16th May 2014.

The agreement remains unsecured and the application undetermined.

There have been extensive delays on both sides at different times in bringing this matter to a conclusion. The current position is that the applicant has signalled their unwillingness to complete an agreement along the lines which your officers consider reflect the resolution of the Committee; your officers have given them a final opportunity to reconsider that, and a response is currently awaited. The related planning application is a retrospective one and there is interest by another party and indeed concern by them about the delay. It is your officers' intention to bring the application back to the Committee in September for reconsideration if agreement cannot be reached. In terms of the period within which the Section 106 can be completed, the Chair and Vice Chair have not been consulted on a new date since the agreed date ran out in May (and no new date has been agreed since).

At the time of writing some 69 weeks have passed since the application was received (before the introduction of the Planning Guarantee).

An update on the position will be provided to the Committee.

(2) Application 13/00712/FUL – Blackfriars, Lower Street, Newcastle

This is another application that was reported on the last quarterly report with limited progress being made.

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 2014, 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 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). Subsequently when this 25th April date was not met a further extension of time, until 23rd June, was then agreed.

That date also was passed without completion of the agreement but progress in completing the agreement has continued to be made, and although no formal arrangement has been agreed, officers have held off from refusing the application. As at the end of July agreement was reached on the wording of the obligation, and completion of it is expected very soon (as is a commencement of the development).

At the time of writing some 48 weeks have passed since the application was received (before the introduction of the Planning Guarantee).

It is hoped to provide a supplementary report to the Committee on the progress made.

(3) Application 13/00625/OUT – Unit 7, 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 and the Committee accepted certain recommendations as to the content of the planning obligations which are to be sought, whilst at the same time allowing the applicant until the 22nd April to conclude the legal agreement. This deadline was not met.

As previously reported an extension until the 22nd May was subsequently agreed. The agreement was not secured by that date, but the applicants have continued to actively pursue the matter, and your officer considered that refusal in such circumstances would have been unreasonable. In early July it was agreed to allow until the 1st August for the agreement to be concluded, but that date too was not achieved, for various reasons. The applicants have expressed strong concerns about delays. A number of drafts of the agreement have been produced and circulated amongst the various parties, and with further instructions now provided by your officers it is hoped that the matter will soon be

concluded, although the agreement of a considerable number of parties is required in this case. A new backstop date has not yet been specified and the intention is now to do so.

This application was received after the introduction of the Planning Guarantee and at the time of writing some 43 weeks have passed since receipt of the application, but no repayment of the planning fee is due in this particular case.

A supplementary report will be provided to the Committee on this case.

(4) Application 14/00077/FUL – Maer Hall, Maer

This application came before the Planning Committee on the 11th March 2014, the Committee giving until 24th March for the completion of an obligation. The previous quarterly report detailed that your officer had agreed to extend the deadline to the 5th May 2014 for the securing of the obligation.

The 5th May date passed without completion of the obligation.

The wording of the planning obligation has been agreed but the applicant has asked to see the draft decision notice before signing the agreement. That has been provided to him but there has been a further delay it would appear due to his absence abroad. Given the very advanced stage the matter has reached your officers have not issued a notice of refusal, but they are pressing the applicant to bring the matter to a resolution, failing which the Authority could refuse the application.

At the time of the writing some 27 weeks have passed from receipt of the application, the application being received after the introduction of the Planning Guarantee, but no repayment is due in this case.

(5) 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.

The previous quarterly report advised that a new deadline had been specified – 7th May 2014. That date passed without the obligation being secured. There has been no active interest shown by the applicant in concluding this matter and in the circumstances a decision has now been made to refuse the application.

At the time of writing some 38 weeks have passed since receipt of the application. The application was received after the introduction of the Planning Guarantee but no repayment of the fee will be required in this particular case.

(6) 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.

As previously reported the applicant has informed the authority that such a level of contributions would make the scheme unviable. It was previously agreed to extend the period within which an agreement can be secured and it was indicated that the intention was to bring a report to the 13th May Committee, if the applicant provided additional

information and assisted in its appraisal – because any decision to alter the contributions secured would have to be made by the Committee. Your officers understood that additional information would be submitted, but this has not been forthcoming. Your officers will be raising the matter again with the applicant.

At the time of writing some 29 weeks have passed since receipt of the application. The application was received after the introduction of the Planning Guarantee however no fee is refundable in this case, as the application being a resubmission, was not accompanied by a fee.

(7) Application 13/00990/OUT Land Adjacent To Rowley House, Moss Lane, Madeley

This application for the erection for 42 dwellings and associated works came before the Planning Committee at its meeting on the 22nd April 2014 (the 13 week period expiring on the 5th May 2014). The resolution of the Committee was that planning permission should be granted subject to prior securing a planning obligation by the 20th May 2014. The obligations to be secured relate to education and public open space contributions which are to be applied on a sequential basis, as well as affordable housing.

There were delays in instructing Legal Services in this matter, and as a consequence it was considered appropriate to agree to extend the period initially until 23rd June. That date passed without the securing of the agreement, but again bearing in mind that the delay was on the Council's side, it was considered unreasonable to refuse the application. The applicants have now taken over preparation of the initial draft agreement which will then be circulated for comment amongst the various interested parties. Your Officer has agreed to extend the period for securing the obligations to 31st August, although it is already recognised that more time will be required. The applicants have demonstrated a clear wish to conclude the agreement, which, given its unusual terms, is likely to take some time to conclude.

At the time of writing some 27 weeks have passed since receipt of the application. The application was received after the introduction of the Planning Guarantee but no repayment of fee will be required in this particular case.

(8) Application 13/00525/OUT Land Between Apedale Road and Palatine Drive, Chesterton

This application for the erection of up to 350 dwellings including open space, new vehicular access, infrastructure, ancillary development and associated earthworks which came before the Planning Committee at its meeting on the 11th March 2014. The resolution of the Committee was that planning permission should be granted subject to prior securing of a planning obligation by the 29th May 2014. The obligations sought include an NTADS contribution, a contribution towards an extended bus service, an education contribution, affordable housing, a travel plan monitoring contribution and a reappraisal mechanism.

There have been extensive negotiations since March with the applicants regarding the details prior to the instruction of solicitors. The applicant has shown every wish to conclude an agreement, and in the circumstances appropriate extensions of time have been agreed by your officers.

At the time of writing some 55 weeks have passed since receipt of the application. The application was received after the introduction of the Planning Guarantee but no repayment of fee will be required in this particular case.

It is hoped to provide the Committee with an update via a supplementary report.

(9) Application 14/00217/FUL Land At High Street/Marsh Avenue/Silverdale Road, High Street, Wolstanton

The proposal before the Authority was to vary condition 6 of planning permission 13/00487/FUL that permitted 62 No. 1, 2, and 3 bedroom apartments for persons aged over 55, with associated works. The variation of condition 6 sought a change to the floor plans to include 2 additional apartments and additional floor space.

The application came before the Planning Committee at its meeting on the 10th June 2014. The resolution of the Committee was that planning permission should be granted subject to prior securing a planning obligation by the 10th July 2014 (the thirteen week period having already expired on the 13th June 2014.). The obligation being sought is similar to that which has been previously achieved on this site.

Given that the applicant has been pressing to conclude this agreement, and the delay has been largely on the Council's side your officers agreed to extend the period of time for the completion of the S106 to the 7th August 2014. That date too has passed without the matter being finalised and in the circumstances a further period of time is to be agreed.

At the time of writing some 22 weeks have passed since the receipt of the application, the application being received after the introduction of the Planning Guarantee.

An update on this application will be provided to the Committee.

(10) Application 14/00284/FUL Former Priory Day Centre, Lymewood Grove, Newcastle

This application for the demolition of the redundant day care centre and the construction of 13 new single storey dwellings which came before the Planning Committee on the 24th June 2014. The resolution of the Committee was that planning permission should be granted subject to prior securing of a planning obligation for off-site public open space contributions by the 23rd July (the thirteen week period expiring on the 29th July).

Although the 23rd July passed without completion of the agreement, it was by then at an advanced stage. The applicant will be advised as to a new deadline for its completion this being the appropriate course of action in your Officers opinion given the proximity of the committee decision to the original deadline, and the progress made in the interim.

At the time of writing some 16 weeks have passed since receipt of the application.

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

(11) Application 14/00362/FUL Unit 7 Linley Road, Trading Estate, Butt Lane

This application for a variation of conditions of an outline planning permission granted on appeal for a retail development with commercial units came before the Planning Committee on the 15th July 2014. The resolution of the Committee was that planning permission should be granted subject to the prior securing by the 13th August of a planning obligation for a contribution to travel plan monitoring.

That date has passed without the drafting of the obligation by the Council having commenced and so your officer has concluded that it would be appropriate to allow for a further period. How long that will be is a matter is being discussed with the solicitor dealing with the case.

At the time of writing some 13 weeks have passed since receipt of the application.

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

Date Report prepared
14th August 2014