

SECOND 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 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 be agreed 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 26th August 2014 (when the Committee last received a similar report) and the date of the preparation of this report (25th November 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 10 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. With respect to the latter there have been particular pressures as a result of the two appeals that are being heard at Public Local Inquiries.

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 have been 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 and the application has been determined 'in time'. 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.

Members will recall that the Planning Peer Review Action Plan, currently under call in, contains a number of proposed actions with respect to the completion of planning obligations, in response to a recommendation of the Review Team. It is hoped that these will result in an improvement in performance in this area, although there are many factors affecting performance including ones that are not within the control of the Council.

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 (at around week 7). The resolution of the Committee was that planning permission should be granted subject to the prior securing of a planning obligation (relating to the routing of hgv's) 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, to the 16th May 2014, and then to the 16th September 2014 (the date of the Planning Committee to which a report on the application was then taken).

The Planning Committee on the 16th September 2014 set a new date – the 7th October – for completion of the agreement, whilst again providing authority to extend that date if considered appropriate

The 7th October passed without the agreement being secured and this remains the position. Given that the delays have been on the Council's side your officer has had no alternative but to decline to exercise the authority to refuse the application, and a new date of the 6th December has now been agreed. At the time of writing some 84 weeks have passed since the application was received (before the introduction of the Planning Guarantee), and considerably beyond the timescale which the applicant has been prepared to agree.

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

(2) 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 (at around week 13). 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, 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, and following that the 29th August was agreed.

The Committee on the 26th August were advised that the 29th August date would not be met, and that a further modest extension would be likely to be required. The agreement was eventually completed on the 8th September within that extension, and the decision notice of approval was issued on that same day within the extended statutory timescale agreed by the applicant – i.e 'in time'.

By the time of the decision some 52 weeks had passed since the application was received (before the introduction of the Planning Guarantee).

(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 (at around week 13). 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 were 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 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 expressed strong concerns about delays. A number of drafts of the agreement

had been produced and circulated amongst the various parties, and with further instructions then provided by your officers it was reported to the August meeting that it was hoped that the matter would soon be concluded, although the agreement of a considerable number of parties was required in this case. A new backstop date of the 5th September was agreed.

The agreement was eventually completed on the 10th September following one more extension of time, and the decision notice of approval was issued on the 12th November, within the extended statutory timescale agreed by the applicant – i.e. ‘in time’.

This application was received after the introduction of the Planning Guarantee and by the time the decision was issued some 48 weeks had passed since receipt of the application, but no repayment of the planning fee was due in this particular case.

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

This application came before the Planning Committee on the 11th March 2014 (at around week 5), the Committee giving until 24th March for the completion of an obligation restricting various uses and activities and preventing severance. Your officer 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. In the last quarterly report members were advised that the wording of the planning obligation had been agreed but the applicant had asked to see the draft decision notice before signing the agreement. That had been provided to him but there had been a further delay it would appear due to his absence abroad. Given the very advanced stage the matter had reached your officers had not issued a notice of refusal, but they were pressing the applicant to bring the matter to a resolution, failing which the Authority could refuse the application. By the time of the actual meeting on the 26th August members were advised that the agreement had by then been completed and as a result the decision would be able to be issued (and it would be ‘in time’).

The decision was issued on the 29th August and within the extended statutory timescale agreed by the applicant.

This application was received after the introduction of the Planning Guarantee and by the time the decision was issued some 30 weeks had passed since receipt of the application, but no repayment of the planning fee was due in this particular 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 (at around week 7). 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 – 18th September 2014. That date passed without the obligation being secured, and a number of extensions of time were agreed by your officer, given that the delay was on the Council’s side, the most recent one being to 6th November. The agreement was completed on the 4th November, and the decision notice itself issued on the 7th November, within the extended statutory timescale agreed by the applicant – i.e. ‘in time’.

This application was received after the introduction of the Planning Guarantee and by the time the decision was issued some 50 weeks had passed since receipt of the application, but no repayment of the planning fee was due 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 (at around week 7). 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 was not forthcoming at that time.

As was reported last time the matter was taken up again with the applicant, and in order to allow time for an independent viability assessment to be undertaken and the matter to potentially come back before the Committee, an extension until the 8th October was agreed.

The matter has not been progressed as promptly as it should have been - the applicant instructing new agents, and there being correspondence between the parties about who should undertake and pay for a viability appraisal. The 8th October date passed without the obligations being secured, and a new date of the 15th November was then set. This too has passed without completion – the agent now actively pursuing the viability case of his client.

At the time of writing some 44 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.

A further update will be provided to the Committee on this case.

(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 initially on the 3rd April, the decision was deferred to for a site visit, and the application was determined at its meeting on the 22nd April 2014 (at around week 11). 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.

As previously reported, 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 then took over preparation of the initial draft agreement.

Your Officer agreed to extend the period for securing the obligations to 31st August, and then to 19th September. The applicants submitted their draft of the agreement on the 26th August, a substantive response to it was sent on the 16th October, and at present the

agreement has not yet been concluded. A further extension was given until the 6th November and consideration is now being given to what further period to give.

At the time of writing some 42 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.

A further update on this case will be provided to the Committee.

(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 first before the Planning Committee at its meeting on the 28th January, when it was deferred for a site visit and further advice, before being determined at the meeting on the 11th March 2014 (at around week 35). 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 were extensive negotiations between March and August 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. The most recent period expired on 14th November.

At the time of writing some 72 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 (at around week 12). The obligation being sought is similar to that which has been previously achieved on this site.

Given that the applicant had been pressing to conclude this agreement, and the delay had been largely on the Council's side your officer agreed to extend the period of time for the completion of the S106 to the 7th August 2014 and then subsequently to 5th September as previously reported. That date too passed without the matter being finalised and in the circumstances a further period of time was agreed, the agreement was completed by 9th September and the decision notice issued on the 10th September, within the extended statutory timescale agreed by the applicant – i.e 'in time'.

This application was received after the introduction of the Planning Guarantee and by the time the decision was issued some 25 weeks had passed since receipt of the application, but no repayment of the planning fee was due in this particular case.

(10) 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 (at around week 12). 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 passed without the drafting of the obligation by the Council having commenced and so your officer concluded that it would be appropriate to allow for a further period. As previously reported an extension was given to the 15th September.

The agreement was completed in this case on the 10th September, and the decision issued on the 12th September, within the extended statutory timescale agreed by the applicant – i.e. 'in time'.

This application was received after the introduction of the Planning Guarantee and by the time the decision was issued some 17 weeks had passed since receipt of the application, but no repayment of the planning fee was due in this particular case.

(11) Application 13/00970/FUL Land off Pepper Street, Keele

This application for the erection of up to 100 dwellings came before the Planning Committee initially on the 15th July, was the subject of a site visit, and was then determined on the 5th August 2014 (at around week 33). The resolution of the Planning Committee was that planning permission should be granted subject to the prior securing of a number of planning obligations by the 5th October 2014.

That date passed without the securing of the planning obligations. In this case the applicant has elected, following a lack of progress by the Authority, to prepare the first draft of the agreement. This was received on the 9th October and a response, albeit a not fully complete one, was provided to that draft on the 20th November, and your Officer has agreed in the circumstances to extend the period to the 18th December, to reflect that the Council's solicitor is awaiting on further instructions, the applicant's solicitor's response is awaited, the County Council's views have not yet been obtained and the practical consequences of the number of parties that will require to be signatories to the agreement.

At the time of writing some 48 weeks has passed since the receipt of this application. No refund of the planning fee is due in this instance.

(13) Application 14/00476/FUL The Homestead, May Bank

This application for the erection of a 65 apartment extra care scheme with allied facilities came before the Planning Committee on the 7th October (at around week 14). The resolution of the Planning Committee included a time limit for the securing of certain planning obligations relating to the payment of a public open space contribution and a contribution towards Travel Plan monitoring costs – of the 18th November, with the usual caveat that your Officer could extend that period if he considered it appropriate.

In this case the applicant's solicitor has initiated the process with the submission of a draft agreement on the 6th November. It did not prove possible to finalise the document by the 18th November and in the circumstances the view has been taken that it is appropriate to extend the period – until the 2nd December. A revised draft agreement has now been prepared and is on circulation. It would appear likely that a modest extension is going to be required.

At the time of writing some 21 weeks has passed since receipt of the application.

A further update on this case will provided to the Committee.

Date Report prepared
27th November 2014