

## QUARTERLY 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 9<sup>th</sup> December 2014 (when the Committee last received a similar report) and the date of the preparation of this report (17<sup>th</sup> March 2015).

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.

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. Significant steps have been made in respect of clearing the backlog of cases since the last quarterly report which was brought to the 9<sup>th</sup> December Committee and many of the applications referred to within this quarterly report are relatively new but still at an advanced stage. However the number of decisions to allow for more time is indicative of the problems which are being experienced in progressing these matters.

Members may wish to note that the Government are currently consulting on proposals to speed up the completion of Section 106 agreements. Details of the consultation are available via the link below

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/405819/Section\\_106\\_Planning\\_Obligations\\_speeding\\_up\\_negotiations.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405819/Section_106_Planning_Obligations_speeding_up_negotiations.pdf)

As from 1<sup>st</sup> October 2013 Local Planning Authorities have been required, as part of the 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 1<sup>st</sup> 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 normally 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 4<sup>th</sup> 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 17<sup>th</sup> 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 17<sup>th</sup> July 2013 and was subsequently extended, in consultation with the Chair and Vice Chair, to the 6<sup>th</sup> September 2013, to the 16<sup>th</sup> May 2014, and then to the 16<sup>th</sup> September 2014 (the date of the Planning Committee to which a further report on the application was then taken).

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

The 7<sup>th</sup> October 2014 passed without the agreement being secured. Given that the delays had been on the Council's side your officer had no alternative but to decline to exercise the authority to refuse the application and to agree a further extension to the 6<sup>th</sup> December 2014.

At its meeting in December the Committee were advised of a further extension having been granted – to the 13<sup>th</sup> December. This date was not met but progress continued, albeit slowly, to be made, in part due to the involvement of a mortgagee, and the sharing of a draft decision notice, and it was considered appropriate to agree a further extension of time to the 19<sup>th</sup> March 2015. Although an agreement signed by the other parties has now been received, further alterations to it are being sought to ensure that it achieves what was sought by the Planning Committee. This will mean that a further two week extension (until the 2<sup>nd</sup> April) will be required and this has been agreed by your Officer.

At the time of writing some 99 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.

## **(2) 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 11<sup>th</sup> 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 14<sup>th</sup> April 2014.

Members will be aware that there have been various delays in the process since the original committee date of the 11<sup>th</sup> March 2014 and these have been reported in detail previously.

In particular the applicant sought to demonstrate that the level of contributions would make the scheme unviable. The applicant submitted financial information to substantiate their claim, and the conclusion of the District Valuer has been that it is not viable for the developer to provide any of the financial contributions that the committee originally resolved should be secured.

A report was brought to the Committee of the 3<sup>rd</sup> March 2015 and members resolved to permit the application subject to the applicant entering into a Section 106 obligation by 14<sup>th</sup> June 2015 to require the review of the financial assessment of the scheme if there is no substantial commencement within 14 months of the grant of planning permission.

At the time of writing some 59 weeks have passed since receipt of the application. The application was received after the introduction of the Planning Guarantee however no repayment of the fee is required in this case.

## **(3) 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 3<sup>rd</sup> April 2014, the decision was deferred to for a site visit, and the application was determined at its meeting on the 22<sup>nd</sup> 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 20<sup>th</sup> 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 have been numerous delays on the Council's behalf since the original decision of the committee which has resulted in your officer agreeing to various extensions of time. The previous report to the 9<sup>th</sup> December meeting advised that an extension had been agreed to the 16<sup>th</sup> December. This date passed without the completion of the agreement. Alternative versions continued to be exchanged between the parties and the number of outstanding issues gradually reduced, and in the circumstances extensions were agreed to the 9<sup>th</sup> February, the 19<sup>th</sup> February and the 31<sup>st</sup> March. The agreement remains uncompleted with both the applicant and the Borough Council now waiting for the response of the County Council – the terms of the schedule regarding education contributions being now the principal sticking point.

At the time of writing some 58 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.

## **(4) 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 28<sup>th</sup> January, when it was deferred for a site visit and further advice, before being determined at the meeting on the 11<sup>th</sup> 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 29<sup>th</sup> 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.

The Committee on the 9<sup>th</sup> December were advised that the agreement had reached an advance stage and an appropriate extension to the period which the obligation can be completed would be agreed. Your Officer agreed to an extension to the 15<sup>th</sup> December and the agreement was eventually completed and the decision notice of approval was issued on the 12<sup>th</sup> December within the extended statutory timescale agreed by the applicant – i.e. 'in time'.

By the time of the decision some 78 weeks had passed since the application was received (before the introduction of the Planning Guarantee).

**(5) Application 13/00970/OUT Land off Pepper Street, Keele**

This application for the erection of up to 100 dwellings came before the Planning Committee initially on the 15<sup>th</sup> July, was the subject of a site visit, and was then determined on the 5<sup>th</sup> 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 5<sup>th</sup> October 2014.

That date passed without the securing of the planning obligations and your officer agreed to further extend the period to the 18<sup>th</sup> December but this deadline passed without completion.

Progress continues to be made and the applicants have demonstrated that they are actively pursuing the completion of the agreement and the solicitor acting on behalf of the applicant has recently indicated that a further 4 weeks will be required (principally because of the number of parties to the agreement). Your officer has therefore agreed to extend the statutory period to the 2<sup>nd</sup> April.

At the time of writing some 64 weeks has passed since the receipt of this application. No refund of the planning fee is required in this instance.

**(6) 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 7<sup>th</sup> October 2014 (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 18<sup>th</sup> November, with the usual caveat that your Officer could extend that period if he considered it appropriate.

The applicant's solicitor initiated the process with the submission of a draft agreement on the 6<sup>th</sup> November. It did not prove possible to finalise the document by the 18<sup>th</sup> November. The target date for completion was not achieved and further extensions of time of the 2<sup>nd</sup> December and 16<sup>th</sup> December were also not achieved. A further (and final) extension of time was agreed of the 9<sup>th</sup> January 2015 and the agreement was eventually completed and the decision notice of approval was issued on the 9<sup>th</sup> January within the extended statutory timescale agreed by the applicant – i.e. 'in time'.

By the time the decision was issued some 28 weeks had passed since receipt of the application, but no repayment of the planning fee was due in this instance.

**(7) Application 14/00767/FUL Former Woodshutts Inn, Lower Ash Road, Kidsgrove**

The application for full planning permission for the erection of 22 affordable dwellings comprising a three storey block of 6, one bedroom flats; 10 two storey, two bedroom dwellings and 6 two bedroom bungalows came before the Planning Committee on the 9th December 2014 (at around week 9). The resolution of the Planning Committee included a time limit for the securing of certain planning obligations relating to public open space and education contributions, with the usual caveat that your Officer could extend that period if he considered it appropriate, and the Coal Authority withdrawing its objection by no later than 20th January 2015.

Since the Committee decision the Coal Authority have clarified exactly what they require, but the applicant has not to date provided the required additional information regarding the location of the mine shafts (which requires the employment of a specialist contractor and thus apparently could not be provided by the 20<sup>th</sup> January). The situation has been complicated by the fact that since the Committee decision the applicant has now advanced a case that the scheme is not viable with the contributions referred to in the Committee resolution if the units are all to be 'affordable'. Although they did have the opportunity to raise such a case before or at the Committee and did not take it, given the Committee's clear wish to encourage the development of this brownfield site and the lateness in the process when the overall scale of the required contributions became apparent, your Officer has not 'timed out' the applicant and refused the application on the basis of their failure to meet the 20<sup>th</sup> January deadlines. Officers are now cooperating with the applicant and the District Valuer to obtain a viability appraisal from the latter, the results of which will be reported to the Committee – probably at its meeting on the 28<sup>th</sup> April.

Your Officer has agreed to extend the period within which the agreement can be completed to 28<sup>th</sup> April, but in practice if the Committee do agree that certain contributions are not required, a section 106 agreement will still be required (to secure a reassessment of the scheme's viability should there be no substantial commencement and the potential requirement to make contributions).

At the time of writing some 24 weeks have passed since receipt of the application. However no refund of the planning application fee will be due if the application remains undetermined after 26 weeks, as the applicant has already agreed to extend the statutory period

#### **(8) 14/00477/FUL Newcastle Baptist Church, London Road, Newcastle-under-Lyme**

The application for full planning permission for the demolition of the former Newcastle Baptist Church and the erection of a residential apartment development containing 14 two bed units and 8 one bed units with the formation of a new access (onto Vessey Terrace) and associated car parking was deferred at the Committee's meetings on the 9<sup>th</sup> December and the 6<sup>th</sup> January to allow for the receipt and consideration of the advice of the District Valuer regarding viability. At its meeting of the 3<sup>rd</sup> February 2015 (at around week 32) the Committee resolved to permit the application subject to the applicant entering into a Section 106 obligation by the 17th March 2015 to require the review of the financial assessment of the scheme if there is no substantial commencement within a year of the grant of planning permission (and the potential requirement to make the policy compliant contributions).

At the time of writing the deadline of the 17<sup>th</sup> March has passed without the above obligation being secured and the applicant has requested additional time (for this). Very limited progress has been made on the agreement to date there being some confusion between the parties as to who was acting on the applicant's behalf and a delay in progressing instructions on the Council's side. Your Officer has taken the view that whilst it is appropriate to allow some extra time for the planning obligation to be secured, this should be a relatively limited period. Given the importance of timeliness in planning decisions, the avoidance of uncertainty to third parties, the period of time that has already passed since the 3rd February Committee, the date of the District Valuer's report and the

importance of there being a limited time between that date and the date of any consent, given the advice within that report as to the reliance that should be placed upon it in the future, an extension to only the 31<sup>st</sup> March is appropriate.

At the time of writing some 38 weeks have passed since receipt of the application, but no refund of the application fee is required, the applicant having previously agreed to extend the statutory period.

**(9) 14/00736/FUL Former Diamond Electronics, West Avenue, Kidsgrove**

This application is for full planning permission for a new industrial unit, link to existing unit, and associated service area and car parking that came before the Planning Committee on the 3<sup>rd</sup> February 2015 (at around week 8). The resolution of the Planning Committee was to permit subject to a planning obligation for a travel plan monitoring fee being secured by the 27<sup>th</sup> February, with the usual caveat that your Officer could extend that period if he considered it appropriate.

A draft agreement has been circulated and the applicant has sought to vary the standard trigger point for payment which has resulted in some delay whilst this was explored, and as a result the 27<sup>th</sup> February deadline was not met. However, the applicant is now content with the original trigger point for such agreement, and it is expected that the agreement will now be completed relatively quickly, although an end date for this has yet to be set. At the time of writing some 13 weeks has passed since receipt of the application.

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

**(10) 14/00930/OUT Land Off New Road, Windy Arbour Farm, Madeley**

This application for outline planning application for the erection of up to 32 dwellings (including details of access) came before the Planning Committee on the 3<sup>rd</sup> February 2015 (at around week 11). The resolution of the Planning Committee included a time limit for the securing of certain planning obligations relating to 25% affordable housing, public open space and education contributions by the 17<sup>th</sup> March, with the usual caveat that your Officer could extend that period if he considered it appropriate.

In this case the applicant's solicitor, at the suggestion of the Council's solicitor, submitted a draft agreement on the 3<sup>rd</sup> March. It did not prove possible to finalise the document by the 17<sup>th</sup> March and in the circumstances the view has been taken that it is appropriate to extend the period – until the 31<sup>st</sup> March. A revised draft agreement has been prepared and is ready to be circulated.

At the time of writing some 18 weeks has passed since receipt of the application.

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

**(11) 14/00973/FUL Oxford Arms, Moreton Parade, May Bank**

This application is for full planning permission for residential development of 10 dwellings comprising 3 pairs of semi-detached dwellings and 4 detached dwellings came before the Planning Committee on the 3<sup>rd</sup> February 2015 (at around week 6). The resolution of the Planning Committee included a time limit for the securing of a planning obligation relating to a public open space contribution by the 10<sup>th</sup> March, with the usual caveat that your Officer could extend that period if he considered it appropriate.

The agreement was not secured by the 10<sup>th</sup> March. At the time of writing no decision has yet been made as to whether or not to refuse the application or to allow for some more time. A further update on this case will be provided to the Committee.

At the time of writing some 12 weeks has passed since receipt of the application.

Date Report prepared  
17<sup>th</sup> March 2015