

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 31st March 2015 (when the Committee last received a similar report) and the date of the preparation of this report (11th June 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 4 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.

Local Planning Authorities are 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 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 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 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 further report on the application was then taken).

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

The 7th 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 6th December 2014.

At its meeting in December 2014 the Committee were advised of a further extension having been granted – to the 13th December 2014. 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 19th March 2015. Although an agreement signed by the other parties was received, further alterations to it are being sought to ensure that it achieves what was sought by the Planning Committee. To allow time for this a further two week extension (until the 2nd April) was agreed, the other side then proposed the inclusion of a plan the effect of which your officers considered contrary to the position of the Committee, and upon being advised of this, the applicant's agent sought additional time to obtain instructions from their client and a short further extension was then given (to the 8th May). There has been no further correspondence from the other side since then. Your officer has written to the agent indicating that the matter must be brought to a conclusion and providing them with one further extension – to 25th June.

A supplementary report on this matter may be given to the Committee if there are further developments in this case.

At the time of writing some 111 weeks have passed since the application was received (before the introduction of the Planning Guarantee).

(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 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 2014.

Members will be aware that there have been various delays in the process since the original committee date of the 11th 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 3rd March 2015 and members resolved to permit the application subject to the applicant entering into a Section 106 obligation by 14th 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 the agreement has not yet been drafted, because the Council is seeking to decide a standard wording for obligations requiring such a review, so an extension of time is likely to be given, but consideration is being given to whether it may be appropriate to reduce the time period before a review would be required to reflect the time that has now passed and if necessary the Committee may be asked to approve this. A supplementary report is expected to be provided to the Committee on this case which will indicate the new "end date". Some 71 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 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 on the basis of further information received have withdrawn their objection.

With respect to the contributions, as members were advised on the 31st March, 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'. As reported 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 did not 'time out' the applicant and refuse the application on the basis of their failure to meet the 20th January deadline. Instead your officer agreed to extend the period within which the agreement can be completed, initially to 28th April, and to arrange for the District Valuer to undertake an appraisal.

There have been extensive delays on both the applicant's and District Valuer's side which has meant that a draft District Valuer's report has only just been received at the time of writing. No formal agreement to extend the period for the completion of the Section 106, beyond the 28th April has been given, - that becoming a secondary issue to the question of what actual obligations need to be secured. It is hoped that there will be a report on

this application elsewhere on this agenda, and that report will inter alia propose a new end date by which certain planning obligations need to be agreed, and the determination of this application will then get back on track, and be able to be appropriately managed

At the time of writing some 36 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

(4) 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 9th December and the 6th January to allow for the receipt and consideration of the advice of the District Valuer regarding viability. At its meeting of the 3rd 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 end of March members were advised that in the light of the inability of the Council, due to capacity issues within Legal Services, to provide a draft in a timely manner, it was going to be necessary to set a new deadline beyond the 31st March. Since then the applicant has prepared a draft, but that has not yet been responded to, and they have actively pursued progress. The applicant wish to conclude an agreement is evident and in the circumstances it would have been unreasonable to time them out. As with the Land adjacent to 31 Banbury Street case consideration is being given to whether it may be appropriate to reduce the time period before a review would be required to reflect the time that has now passed, and if necessary the Committee may be asked to approve this. A supplementary report is expected to be provided to the Committee on this case which will indicate the new "end date".

At the time of writing some 50 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.

(5) 15/00077/OUT Land to rear of former Randles Garage Higherland

This application, for outline planning permission for the erection of up to 12 dwellings, came before the Planning Committee on 31st March 2015 (at around week 7). The resolution of the Planning Committee include a time limit for the securing, by the 7th May, of a planning obligation relating to the payment of a public open space contribution.

The agreement was not secured by the 7th May. Your officer subsequently agreed to an extension to the 2nd June, having taken into account the circumstances of the case. Upon being advised of this date the applicant's solicitor immediately advised that she considered a further extension of time to the 30th June would be required because her client was in the process of providing the necessary evidence that 3 mortgages relating to the land have been discharged. If such evidence were not provided the Council would want the mortgagees to be a signatory to the agreement.

Your officer has considered the basis upon which the additional time is sought by Grindeys, and has noted that insofar as the draft agreement is concerned some substantive progress has indeed been made in this matter – the applicant's solicitor has confirmed that the main provisions of the section 106 document are agreed (by her client). Furthermore evidence of the discharge of one of the mortgages has now been obtained and submitted to the Council. The applicant is entirely dependent upon the

response of the mortgagees to his requests for the appropriate documentation – i.e. it is not a matter within his control. The requested extension has been agreed, but it has also been indicated to the other side that the Council, mindful that some 13 weeks after the Committee resolution will have passed by the 30th, is not prepared to have a situation where there is no end date and where matters can drag on for ever. The making of timely decisions on applications once they have been submitted remains a consideration that has to be taken into account by the Council.

At the time of writing some 17 weeks has passed since the original receipt of the application.

Date Report prepared

11th June 2015