

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 23rd June 2015 (when the Committee last received a similar report) and the date of the preparation of this report (1st October 2015). During this period the development management service and legal services have both had a number of long term staff absences which has had a negative impact on performance. This has resulted in S106 agreements not being dealt with as efficiently as they might otherwise have been and in some cases in concerns being expressed by applicants. In other cases agreements have been able to be promptly concluded. Such cases are not referred to in this report, which is concerned only with those cases where more time has been permitted for the completion of planning obligations. In that sense the report does not present a comprehensive picture.

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 9 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. In some cases applicants have however little immediate requirement to complete such obligations, being content to rest upon the resolution of the Committee. Expectations and requirements vary considerably.

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. 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. An application determined within such an agreed extended period is defined as one that has been determined as being determined "in time".

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 which the obligation could be secured.

A series of extensions were agreed (to the period within which the Section 106 should be completed). These were reported in detail to Members by means of the quarterly reports

A further report came before the Committee on the 21st July 2015 (at around week 118) on a proposal to vary the terms of the proposed obligation and the Committee resolved to permit the application subject to that amended obligation being agreed by 31st July 2015.

In the event of that not happening your Officer was authorised to refuse the application on the grounds that, in the absence of such an obligation, the development would have a detrimental impact upon highway safety and the amenity of the locality including the enjoyment of the national cycle route, and the character of the Conservation Area through which Tyrley Road passes; or, if he considered it appropriate, to agree to extend the period of time within which the obligations can be secured.

The Committee also resolved that if the obligation was not entered into by that date the Council's solicitor was authorised to issue an Enforcement Notice to secure removal of the building.

That date passed without completion of the agreement, although by that point an agreement was in circulation for signing by the applicant, their Bank (a mortgagee) and the Council. A further extension was requested and agreed (but only to the 7th August, the expectation being that would provide sufficient time for the agreement to be signed by all of the parties) but that too passed without completion of the agreement.

Further correspondence has since been sent to the solicitor asking where matters are up to, but, at the time of writing, no response has yet been received to such approaches.

A supplementary report will be provided to the Committee.

At the time of writing some 128 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.

Various developments resulted in the matter not progressing - these being reported in detail in previous quarterly reports to the Committee.

At its meeting on the 3rd March 2015 (week 58) following a viability appraisal, the Committee received a detailed report on this application. It resolved again to permit the application but this time subject to the applicant first entering into a Section 106 obligation, by 14th June, requiring the review of the financial assessment of the scheme if there is no substantial commencement within 14 months of the grant of planning permission (and appropriate NTADS, open space and education contributions then being made if the scheme is evaluated at that time as able to support such contributions).

The 14th June deadline was not met, due to delays on the Council's side in preparing and agreeing a draft agreement for circulation. This delay is because Council is seeking to devise a standard or model approach wording of agreements which require a viability reassessment. Members received at the last meeting a report about this same delay in relation to the London Road Baptist Church proposal. Your Officer, on the 27th August, considered it appropriate to extend the period (which within the Section 106) could be completed to the 30th September 2015. That date has however passed now. Progress has been made to the extent that a 'without prejudice' draft agreement has now been sent to the applicant's solicitor and the County Council and responses are now awaited.

A further extension of the period within which the agreement can be completed would be appropriate, and a further supplementary report will detail how much additional time has been agreed to.

Some 87 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.

Members have been advised previously that the Coal Authority have withdrawn their objection and the applicant had subsequently informed the authority that the levels of contributions sought towards education and POS would make the scheme unviable. This resulted in a further report, following a viability appraisal, coming before the Planning Committee on 21st July (at around week 41). This time the Committee resolved to permit the application subject to the applicant entering into a Section 106 obligation by the 21st September to secure 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 contributions then being made to public open space and education on an equal proportion basis, if the scheme is evaluated at that time as able to support such contributions.

A draft S106 agreement reflecting the above is being prepared by the Council's legal section but has yet to be circulated to the applicant's representatives and the deadline of the 21st September has now passed. Again this delay is related to that for the Baptist Church and Banbury Street agreements, in which similar obligations are being sought. These other agreements are now at a more advanced drafting stage and it is envisaged that the draft agreement for this proposal can be prepared in a timely manner.

A new deadline has not been set but one is likely to be given following the delays by the Council in preparing a draft. A new deadline will be indicated to the applicant and a further update provided prior to the Committee meeting.

At the time of writing some 52 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.

(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).

There have been delays on the Council's part and members will recall that an urgent report came before the Planning Committee on the 15th September 2015 in the light of the request by the applicant that different terms be agreed. The Committee confirmed the revised basis upon which it is seeking an agreement. Since the 15th September the applicant's solicitor has confirmed that his client is willing to enter into a Section 106 agreement on the terms outlined in the report to the Planning Committee.

In terms of the date by which the agreement must be completed the Committee resolution does not provide such a date. Whilst there is every indication that the applicant wishes enter into such an agreement as quickly as possible, it may be appropriate for the Committee to formally resolve what that date should be. A suggested date will be provided in a supplementary report, based upon the progress made by that date.

At the time of writing some 67 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.

(5) 15/00166/FUL Jubilee Baths, Nelson Place, Newcastle

The application for full planning permission for the demolition of the former swimming baths and construction of a 244 room student development on six floors came before the Planning Committee on the 3rd June 2015 (at around week 13). The resolution of the Planning Committee included a time limit for the securing of planning obligations, by the 3rd July, for a substantial public open space contribution and a contribution to be used to fund Resident Parking Zones in the event that it is subsequently demonstrated through surveys that the development has resulted in on-street parking problems.

The 3rd July deadline for the completion of the agreement was not achieved – a draft Section 106 not being circulated by the Borough Council until close to the end of this period. There were further delays principally on the Council's side at this stage and an extension was agreed to the 17th August. In recognition of the fact that the relatively slow progress was on account of key personnel on both sides being absent on holiday during this period and in recognition that progress had been made in preparing the draft agreement your officer subsequently agreed to a further extension to the 7th September.

The 7th September deadline has passed without completion of the agreement due to the applicant raising concerns about the trigger points for the payment of the contributions. Views of the key consultees have been sought by the Instructing Service on this matter.

With respect to the period of time within which the Council is prepared to allow such obligations to be secured, further consideration is being given to this and a supplementary report will provide details on what by the Committee meeting will have been agreed.

At the time of writing some 31 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.

(6) 15/00368/OUT Land at West Avenue, Kidsgrove

This application, for outline planning permission for the erection of up to 44 dwellings, came before the Planning Committee on 21st July 2015 (at around week 9). The resolution of the Planning Committee included a time limit for the securing, by the 15th August, of planning obligations relating to on-site affordable housing, and payment of contributions towards public open space and education facilities.

A draft agreement has been forwarded by legal services to the Instructing Service for comment, but because that comment has not yet been provided no further progress has been made. The 15th August accordingly passed without completion of the agreement. An update will be given prior to the committee meeting.

At the time of writing some 22 weeks has passed since the original receipt of the application.

(7) 15/00077/OUT Land to the 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 included 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. As reported to the 23rd June meeting your Officer subsequently agreed to extensions first to the 2nd June and then to the 30th June, having taken into account the circumstances of the case.

Despite considerable efforts by the other side's solicitor, solicitors acting for other parties and in particular one of the mortgagees, delayed the final completion of the agreement which was not secured until the 7th July. Your officer agreed to allow further time to allow for this, and the decision notice on the application was issued on the 24th July (some 24 weeks since the original receipt of the application) and with the applicant's agreement was made "in time".

(8) 14/00968/FUL Former TG Holdcroft site, off Knutton Road, Wolstanton

This application, for full planning permission for the erection of 31 self-contained units of sheltered accommodation for the elderly, came before the Planning Committee at its meeting on the 23rd June 2015 (at around week 14). The resolution of the Planning

Committee included a time limit for the securing, by the 24th July, of a planning obligation relating to the payment of various contributions, and a financial reappraisal/ contributions review mechanism in the event of substantial commencement not being achieved within 12 months of the date of the consent.

The agreement was not completed by the 24th July, but on the basis that reasonable progress had been made, such that an agreement had been reached between the developer and the Council on a draft, and the draft was now with the owners of the site, your Officer concluded that it was appropriate to extend the period within which the obligations could be formally secured – to the 13th August.

The agreement referred to was completed within that extended period.

The decision notice on the application was issued on the 26th August (some 23 weeks since the receipt of the application). The decision, with the agreement of the applicant, was made “in time”.

(9) 15/00376/FUL Plot 34, Eastwood Rise, Baldwins Gate

This application, for full planning permission for the erection of a detached dwelling and garage, came before the Planning Committee at its meeting on the 23rd June 2015 (at week 7). The resolution of the Committee included a time limit for the securing, by 31st July, of a planning obligation concerning a previous permission.

The agreement was not completed by 31st July, due to the applicant’s solicitor being ill during the period leading up to that date. Your Officer, on that basis, concluded that it was appropriate to extend the period within with the obligation could be formally secured – to the 11th August.

The agreement referred to was completed on the 6th August.

The decision notice on the application was issued on the 11th August (some 14 weeks since the receipt of the application). The decision, with the agreement of the applicant, was made “in time”.

Date Report prepared
1st October 2015