

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 13th October 2015 (when the Committee last received a similar report) and the date of the preparation of this report (15th January 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 6 applications.

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. It is the issuing of the decision notice, rather than the consideration of the application by the Committee, which is the basis for the measurement of whether the decision has been made “in time” insofar as the speed of determination criterion for designation of poorly performing LPAs.

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 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

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 2015, 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 2015 deadline was not met, due to delays on the Council's side in preparing and agreeing a draft agreement for circulation with officers seeking to devise a standard or model approach wording of agreements which require a viability reassessment. .

With a further extension being granted until 15th October 2015, and that too not being met because of further delays in the drafting of such an agreement by the Council, your Officer has considered that he has had little alternative but to accept that the applicant should be given more time to complete the Section 106, noting that there has been no material change in planning policy in the interim. A further update report will be given in a supplementary report.

Some 102 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 was required in this case.

(2) 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 2015 (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 2015 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.

That date passed without completion of the agreement, and 2 further periods were then allowed for its completion – the first up to the 19th November 2015 and the second up to the 18th December 2015. That last date passed without completion of the agreement. The applicant has continue to press for a draft agreement, and such a document is now being circulated. Improved progress is now expected and an update will be provided to the Planning Committee by means of a supplementary report.

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.

(3) 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 has been delayed for a number of reasons in recent months with one delay being whilst the advice of the District Valuer regarding viability was obtained. 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 were delays on the Council's part and members may 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 was seeking an agreement. The Committee subsequently agreed at the meeting on the 13th October 2015 that officers had the authority to either refuse the application should the agreement not be completed within a reasonable period, or to extend that period.

The agreement was eventually completed on the 23rd October 2015 and the decision notice of approval subsequently issued. The applicant did not agree to an extension to the statutory period beyond the 2nd April 2015. The application was not determined "in time".

This application was received after the introduction of the Planning Guarantee and by the time the decision was issued some 70 weeks had passed since receipt of the application, but no repayment of the planning fee was due in this particular case.

(4) 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 2015, 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 2015 deadline for the completion of the agreement was not achieved and numerous extensions were then agreed with the applicant owing to various delays originally on the part of the Council and then the applicant raising concerns about trigger points for payment of the contributions which involved the views of key consultees being sought.

The agreement was eventually completed on the 24th November 2015, and the decision notice of approval was then issued.

This application was received after the introduction of the Planning Guarantee and by the time the decision was issued some 40 weeks had passed since receipt of the application, but no repayment of the planning fee was due in this particular case.

(5) 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 2015, of planning obligations relating to on-site affordable housing, and payment of contributions towards public open space and education facilities. A further period of time for the completion of the legal agreement, up to the 12th November 2015 and then another to the 3rd December was then agreed. That date passed without completion of the agreement. Final comments are awaited from the County Council and once these are received the agreement will be circulated. A supplementary report will be provided to the Committee on this case.

At the time of writing some 37 weeks has passed since the original receipt of the application.

(6) 15/00699/FUL Land At Ashfields New Road, Newcastle

The application is for full planning permission for the erection of 42 residential units made up of five pairs of semi-detached, two bedroom dwellings; a block of 10 one bedroom flats; and a further block of 22 one bedroom flats. The application came before the Planning Committee on the 13th October 2015 (at around week 9). The resolution of the Planning Committee included a time limit for the securing of planning obligations, by the 6th November, for a financial contribution for the enhancement and maintenance of the open space at the Greenway.

Since the committee meeting the applicant has submitted a financial viability report and advice of the District Valuer has been received for consideration. A report on that advice is expected to be provided to this Committee and that report will recommend a new date within which the required Section 106 will need to be concluded

At the time of writing some 22 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.

Date Report prepared

15th January 2016