

## 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 Section 106 obligations.**

### Introduction

The Committee, when resolving to permit an application subject to the prior entering into of a planning obligation, usually also agree 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 16<sup>th</sup> August 2016 (when the Committee last received a similar report) and the date of the preparation of this report (16<sup>th</sup> December 2016).

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, and extensions have been agreed with respect to some 3 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 is concerned. As advised at the last meeting (within with the half yearly DM performance report), from the first quarter of 2017 the national performance regime will include performance with respect to applications for Major and Non-Major development.

Furthermore 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 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, provided that agreement is obtained prior to the expiry of the existing statutory period, is defined as one that has been determined as being determined "in time".

Details of the applications involved are provided below:-

**(1) 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.

Members will recall that the last quarterly report reported that numerous extensions of time had been agreed with the applicant since the resolution of the committee in July 2015 and that the S106 was at an advanced stage. A further extension to the period of time within which the Section 106 agreement can be completed (until the 31st August 2016) was subsequently agreed. The agreement was not completed by the 31st but a further extension to the 2nd of September was agreed and it was completed on the 1st September and the decision on the application was issued "in time" on the 7th September 2016.

The decision was issued in this case some 70 weeks after 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) 16/00326/FUL site of former Woodshutts Inn, Lower Ash Road, Kidsgrove.**

The application came before the Planning Committee on 19th July 2016 (at around week 8).for the variation of condition 15 of 14/00767/FUL which related to an odour abatement system. 14/00767/FUL is a permission for residential development. The resolution of the Planning Committee was to accept the variation subject to the Council's position in respect of obligations being preserved via the securing of a Section 106 agreement, by no later than 12th August, for a financial reassessment if substantial commencement of the development is not achieved by 24th March 2017, and if capable of being supported, education and public open space contributions then being made.

This matter was progressed via a deed of variation and members were informed in the last quarterly report that your Officer had agreed to extend the Section 106 period to the 12th September 2016, the applicant having in parallel agreed to extend the statutory period. This date passed without completion of the agreement. The agreement was completed on the 30th September and a decision was issued "in time" on the 3rd October 2016.

The decision was issued in this case some 19 weeks after receipt of the application.

**(3) 16/00609/FUL – Land adj Sheet Anchor, Newcastle Road, Baldwins Gate**

This application for permission for the erection of 7 dwellings came before the Planning Committee at its meeting on the 8<sup>th</sup> November 2016 (at around week 15). The resolutions of the Committee inter alia required that obligations securing a financial contribution of £20,601 towards public open space provision, £19,399 as a payment towards off-site affordable housing provision within the Borough, and the review of the financial assessment of the scheme, if there has been no substantial commencement within 1 year of the grant of planning permission. The resolution included the provision that the agreement should be completed by the 25<sup>th</sup> November in line with the agreed extension of time for the determination of the application.

There were a number of delays in agreeing with the applicant the wording of certain requirements of the agreement that was in accordance with the resolution of the Planning Committee. It was agreed to extend the period for the completion of the agreement until the 9<sup>th</sup> December. . By that date the matter was at an advanced stage so a further small extension of time was agreed to the 16<sup>th</sup> December 2016, the agreement was completed the decision issued "in time" on the 16<sup>th</sup> December 2016.

The decision was issued in this case some 20 weeks after receipt of the application.

Date Report prepared

16<sup>th</sup> December 2016