

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 4th January 2017 (when the Committee last received a similar report) and the date of the preparation of this report (13th February 2017).

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 in 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 engrossment 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) 16/00902/DEEM4 Land off Deans Lane and Moss Grove

This application, for outline planning permission for the erection of up to 50 dwellings, came before the Planning Committee on 6th December 2016 (at around week 5). The resolution of the Planning Committee included a time limit for the securing, by the 24th January 2017, of an undertaking regarding the provision of a planning obligation with respect to the provision of a visibility splay and an agreement providing obligations relating to on-site affordable housing, and payment of contributions towards public open space and education facilities.

Neither obligation was completed by the 24th January – in the case of the agreement due to delays on behalf of the Council as the Local Planning Authority in providing instructions, and accordingly it was considered appropriate by your Officer to agree to extend the period, within which the obligations can be completed by, to the 14th March. Some 15 weeks have now passed since receipt of the application.

(2) 16/00874/FUL Land West of Barrie Gardens, Talke

This application, for full planning permission for the erection 10 dwellings, came before the Planning Committee on 4th January 2017 (at around week 10). The resolution of the Planning Committee included a time limit for the securing, by the 3rd February 2017, of planning obligations for the payment of a contribution towards off site public open space.

The applicant's legal representatives submitted a draft agreement prior to the deadline but it was not completed by the 3rd February due to delays on behalf of the Council and a further extension of time was agreed to the 24th February. The Council's legal representatives have now progressed the matter and an amended draft version has been sent to the applicants to agree. The applicant has requested that the POS contribution payment trigger rather than being prior to commencement of the development be prior to first occupation of the dwellings. Officers have advised them that this does not accord with local planning policy and the applicant is now considering the advice given. A further update report will be given in a supplementary report.

Some 16 weeks have now passed since receipt of the application.

3) 16/00958/FUL M & S, Wolstanton Retail Park, Newcastle

This application, for a variation of condition 3 of the original planning permission 11/00611/FUL, came before the Planning Committee on the 4th January 2017. The resolution of the Committee was that subject to the applicant entering into planning obligations by no later than the 12th February, that preserve the Borough and the City

Council's position in relation the obligations secured prior to the grant of planning permission 11/00611/FUL, the application is to be permitted subject to various conditions.

The 12th February has passed without either Deed of Variation of the previous legal agreements being completed. It is understood that substantive progress has been made on the drafting of these Deeds of Variation, although the engrossment stage has not yet been reached (at least with respect to 'Newcastle' agreement). Your officer noting the progress made and the number of parties who will need to be signatories has agreed that the period can be extended to the 5th March.

Some 13 weeks have now passed since receipt of the application.

Date Report prepared

13th February 2017