

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 28th February 2017 (when the Committee last received a similar report) and the date of the preparation of this report (10th May 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 agreed extensions, and extensions have been agreed with respect to some 8 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 submitted to the Committee at its meeting on 6th December 2016 (item 10), from the first quarter of 2017 the national performance regime will include performance with respect to applications for both 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. That date passed without progress and the applicant since has agreed to extend the statutory determination period to the 8th June 2017.

Given that the delay is on the Local Planning Authority's side (in providing the required instructions) it would be unreasonable to "time out" the application, and in the absence of any material change in planning circumstances, and the current position with respect to instructions to the County Solicitor, your Officer has agreed to further extend the period within which the Section 106 may be completed, to the 15th June. Renewed efforts are being made to progress the matter and a further report on progress may be able to be given to the meeting on the 23rd May

Some 27 weeks have now passed since receipt of the application.

(2) 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 was to be permitted subject to various conditions.

The 12th February passed without either of the Deed of Variations of the previous legal agreements being completed. Your officer agreed two further periods for the completion of the Deed of Variations to the 5th March and the 12th March due to the substantive progress made and the draft Deeds of Variation being in circulation at that time.

Both of the Deeds of Variation were completed on the 14th March and in the circumstances a decision notice of approval was issued on the 6th April 2017.

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

(3) Land off Eccleshall Road, Loggerheads. Newcastle Borough council. 16/00866/DEEM4

This application, for outline planning permission for the erection of up to 55 dwellings, came before the Planning Committee on 2nd February (at around week 15). The resolution of the Planning Committee included a time limit for the securing, by the 3rd March 2017, of an undertaking regarding the provision of a S106 agreement providing obligations relating to on-site affordable housing, the provision and long-term management of on site public open space and payment of a contribution towards education facilities.

The 3rd March passed without the completion 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 to the 21st April. This date passed without completion of the agreement.

Given that the delay is on the Local Planning Authority's side (in providing the required instructions) it would be unreasonable to "time out" the application, and in the absence of any material change in planning circumstances, and the current position with respect to instructions to the County Solicitor, your Officer has agreed to further extend the period within which the Section 106 may be completed, to the 15th June. Renewed efforts are being made to progress the matter and a further report on progress may be able to be given to the meeting on the 23rd May.

Some 29 weeks have now passed since receipt of the application.

(4) Application for Major Development - Audley Working Mens Club, New Road, Bignall End. Sandycroft Construction Ltd. 16/01036/FUL

The application for the variation of condition 2 of planning permission 15/00692/FUL originally came before the Planning Committee on the 2nd February (at around week 8). The resolution of the Planning Committee included a time limit for the securing, by the 3rd March 2017, to preserve the Council's position in respect to obligations entered into in respect of 15/00692/FUL which secured a review mechanism of financial contributions if the development is not substantially commenced within 12 months from the date of the decision.

However, following the committee resolution the applicant indicated that a substantial commencement of the development was unlikely to be achieved within 12 months from the date of the previous decision. Therefore an item of Urgent Business came before the 28th February Planning Committee and it was resolved to extend the date by which substantial commencement must be achieved to the 27th July 2017 (to avoid the reappraisal requirement), and the date by which the agreement (Deed of Variation) had to be completed by being amended to the 3rd April 2017.

The 3rd April passed without the Deed of Variation being completed and a further extension to the period was agreed to the 26th April. The Deed of Variation was completed on the 12th April but the decision notice is still to be issued due to negotiations with the applicant regarding conditions.

Some 21 weeks have now passed since receipt of the application.

(5) 16/01107/OUT Land at Selbourne, Ashley

The application for outline planning permission for the erection of 2 dwellings came before the Planning Committee on 28th February (at around week 7). The resolution of the Planning Committee included a time limit for the securing, by the 31st March 2017, of an undertaking regarding the provision of a S106 agreement providing an obligation relating to a contribution towards public open space.

The 31st March passed without the completion of the obligation but it was completed on the 11th April. Taking into account the limited overrun and the absence of any material change in planning circumstances in the interim your officer agreed that the period for completion of the Section 106 period could be extended (to the 11th April). The decision notice on the application was issued "in time" on the 25th April 2017.

The decision was issued in this case some 15 weeks after receipt of the application

(6),(7) & (8) Barnes Hall, Keele University. University of Keele. 16/01014/FUL, Horwood Hall, Keele University. University of Keele. 16/01016/FUL & Lindsay Hall, Keele University. University of Keele. 16/01015/FUL

These three full planning applications came before the Planning Committee on 21st March (at around week 16). Details of what the applications were for were contained within the agenda reports for that meeting

The resolutions of the Planning Committee, with respect to all three applications, included a time limit for the securing, by the 6th May 2017, of an obligations relating to financial contributions towards travel plan monitoring, the provision of real-time travel information and a Toucan signal controlled crossing on Cemetery Road.

Although progress has been made since the Committee with the submission of a draft Unilateral undertaking the 6th May has passed without its completion whilst it is considered by the two Council's solicitors, and there are ongoing discussions between the two applicants and their solicitors about its terms. It has yet to be submitted in a completed and signed form. Having taken into account the progress already made by the applicants, that they have been awaiting responses from the 2 Councils, and the lack of any material change in planning circumstances, your Officer has agreed to extend the period within which the planning obligation may be completed – to the 26th May

Some 23 weeks have now passed since receipt of the application.

Date Report prepared

10th May 2017