

The above application is for the retention of an extension to existing agricultural buildings, linking two buildings to form one.

RECOMMENDATION

That the decision of your Officer, following consultation with the Chair, that the Council should agree to enter into a Section 106 agreement, be noted

Reason for Recommendation

The matter was urgent and an immediate decision was required which was then taken following consultation with the Chairman. The basis for the decision is explained in the report below.

KEY ISSUES

Members may recall that planning permission was granted in 2009 for a crop storage barn, specifically for storage of crops that would be used at the Biomass Station at Eccleshall (reference 09/00137/FUL). A S106 obligation was entered into relating to the routeing of all heavy commercial and other vehicles travelling to and from the site and the Biomass Station. A different building was constructed, however not in accordance with the approved plans. A report was taken to the Planning Committee meeting on 28th April 2015 where Members noted that the evidence available to the Council suggested that the building was substantially completed more than 4 years ago and was now immune from any enforcement action.

Planning permission was issued in 2015 for the retention of an agricultural building for the chopping and storage of miscanthus (13/00245/FUL). A S106 obligation was entered into in connection with that planning permission which secured a routeing agreement for vehicles transporting miscanthus to and from the building.

A site visit was undertaken, in 2015, to establish whether the S106 obligation was being complied with and at that visit it became apparent that an extension had been constructed that linked the building permitted under reference 13/00245/FUL to the building that had been established as being immune from enforcement action, forming a larger single building. A retrospective application was submitted, upon request, to regularise that development reference 15/01074/FUL.

Consideration was given, under delegated authority, to the development that had been undertaken and for which planning permission was being sought (15/01074/FUL) in June 2016. It was concluded that whilst a routeing agreement could not be required in connection with the use of the unauthorised building the works undertaken to incorporate that building into one, larger, building provided the opportunity to reopen that issue. In addition, the same reasons why a routeing agreement was required to make the development permitted under reference 13/00245/FUL acceptable, i.e. to avoid adversely affecting highway safety, and the character of the Conservation Area through which Tyrley Road passes, applied to the new larger building. As such the applicant was advised that planning permission would only be granted if a S106 obligation was first entered into to secure a routeing agreement for the entire building.

Protracted discussions have since been taking place with the applicants. The applicants were indicating, until recently, that they would not enter into such an obligation considering it to be unlawful. They have, however, more recently accepted that a S106 obligation is required and have provided a signed copy to the Authority. Upon receipt of the signed obligation it became apparent that there is no authority under the Scheme of Delegations set out in the Council's Constitution for your Officer to make such a decision, and the decision on whether to authorise the required Deed of Variation is one that falls to the Planning Committee to make.

Given that the next Planning Committee meeting which the matter could be reported to for a decision was some 4 weeks from the receipt of the signed obligation your Officer invoked the procedure for matters of urgency set out in Appendix 4 in the General Instructions section of the Constitution and

your Officer consulted with the Chair of Planning Committee. The two reasons why your Officer considered that the completion of the agreement was urgent (and should not wait until after the 12th September meeting) and were as follows:

First of all an appeal against the application's non-determination could be lodged at any time (the application has been with the authority for two years) and if it were then the Council would be quite exposed to the accusation of unreasonable behaviour (in that the other side have expected since last June that officers have had authority to enter into the agreement). The fact that the Council were delaying completing/signing so that the decision could be made by the appropriate part of the Council would, if this matter came before an Inspector, be unlikely to persuade them that the Council had not behaved unreasonably.

The second concern is that in the absence of a grant of planning permission for the development in the interim the development could become lawful simply because of the passage of time. Developments without planning permission become lawful if more than 4 years has passed since they were substantially completed. The Council's evidence as to when the building became substantially completed is limited (it could have been completed sometime before the enforcement officer first saw it as this is a relatively remote site that is not overlooked by neighbours). There is information in the application form which gives the date of completion of the building as considerably less than 4 years ago, but the Council has previously been misled by similar information on this site which turned out later on to be incorrect. It was considered to be in the public interest to avoid this happening again.

In addition given the decision of the Planning Committee in respect of 13/00245/FUL your Officer had reason to consider it is extremely likely that the Committee would agree anyway to the idea of the further planning obligation.

APPENDIX

Policies and Proposals in the approved Development Plan relevant to this decision:-

[Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy \(CSS\) 2006-2026](#)

Policy CSP1: Design Quality
Policy ASP6: Rural Area Spatial Policy

[Newcastle-under-Lyme Local Plan \(NLP\) 2011](#)

Policy N17: Landscape Character –General Considerations
Policy N18: Area of Active Landscape Conservation

Other material considerations include:

[National Planning Policy Framework \(NPPF\) \(2012\)](#)

[Planning Practice Guidance \(PPG\) \(2014\)](#) (on planning obligations, and on appeals)

Background Papers

Planning files
Planning documents referred to

Date report prepared

29th August 2017