

## 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 23<sup>rd</sup> May 2017 (when the Committee last received a similar report) and the date of the preparation of this report (30<sup>th</sup> August 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 11 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.

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 requested 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 by the government 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 6<sup>th</sup> December 2016 (at around week 5). The resolution of the Planning Committee included a time limit for the securing, by the 24<sup>th</sup> 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 24<sup>th</sup> 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 has been considered appropriate by your Officer to agree a number of extensions to the period within which the obligations can be completed by. These dates passed with limited progress. .

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 17<sup>th</sup> September. 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 12<sup>th</sup> September.

Some 42 weeks have now passed since receipt of the application.

**(2) 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 2<sup>nd</sup> February (at around week 15). The resolution of the Planning Committee included a time limit for the securing, by the 3<sup>rd</sup> 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 undertaking was not completed by the 3<sup>rd</sup> March – 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 has been considered appropriate by your Officer to agree a number of further extensions to the period within which the obligations can be completed by.

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 17<sup>th</sup> September. 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 12<sup>th</sup> September

Some 44 weeks have now passed since receipt of the application.

**(3), (4) & (5) 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 21<sup>st</sup> 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 6<sup>th</sup> May 2017, of 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.

The 6<sup>th</sup> May passed without the completion of the Unilateral Undertaking but significant progress had been made and your Officer agreed to extend the period within which the planning obligation may be completed – to the 26<sup>th</sup> May. .

The 26<sup>th</sup> May passed without completion of the Unilateral Undertaking. Your Officer agreed to a further two week period for its completion and it was subsequently completed by the end of that period on the 9<sup>th</sup> June. The decision notice on the applications were issued "out of time" on the 13<sup>th</sup> June.

The decisions were issued in this case some 20 weeks after receipt of the applications.

**(6) Former Orme Centre Orme Road, Newcastle 16/00796/OUT**

This hybrid application for full planning permission for the conversion of the former Orme Centre into student accommodation, demolition of single storey toilet block and other attached buildings and red brick schoolroom; and outline planning permission for the erection of a new building to provide student accommodation came before the Planning Committee at its meeting on the 25<sup>th</sup> April (at around week 15). The resolutions of the Committee required obligations securing should there be no substantial commencement within 1 year of the grant of planning permission a review of the financial position and if viable payment of financial contribution of £93,408 towards public open space provision, £2,200 travel plan monitoring fee and a financial contribution of £50,000 to fund a Resident Parking Zone. The resolution included the provision that the agreement should be completed by the 6<sup>th</sup> June.

A further report came before the 20<sup>th</sup> June Planning Committee with the applicant asking that the 12 month period for substantial commencement be extended. Members resolved to allow an 18 month period and the agreement to be completed by the 14<sup>th</sup> July.

The 14<sup>th</sup> July passed without completion of the agreement. Taking into account the limited overrun and the absence of any material change in planning circumstances in the interim your Officer agreed to a further extension to the 20<sup>th</sup>. The agreement was subsequently completed on that date and the decision notice on the application was issued "in time" on the 26<sup>th</sup> July.

The decision was issued in this case some 28 weeks after receipt of the application.

**(7) 2-4 Marsh Parade, Newcastle 17/00179/FUL**

This application for full planning permission for the demolition of existing buildings and their replacement with a four storey apartment block containing 27 one bedroom apartments came before the Planning Committee at its meeting on the 25<sup>th</sup> April (at around week 8). The resolutions of the Committee inter alia required that obligations securing a financial contribution of £65,000 towards public open space provision and 25% affordable housing provision, if there has been no substantial commencement within 1 year of the grant of planning permission and a review of financial assessment of the scheme then demonstrates that such payments can be made either in full or in part. The resolution included the provision that the agreement should be completed by the 26<sup>th</sup> May.

There was a delay in Council lawyers circulating a draft agreement and in the absence of any material change in planning circumstances it was necessary for your officer to extend the period for completing the S106 to the 20<sup>th</sup> June.

The agreement was completed on the 20th June and the decision notice on the application was issued "in time" on the 23rd June.

The decision was issued in this case some 16 weeks after receipt of the application

**(8) Land East Of Home Farm, Keele Road, Keele 17/00193/FUL**

This application for full planning permission for the erection of a building to be used an Innovation and Leadership Facility came before the Planning Committee at its meeting on the 23<sup>rd</sup> May (at around week 11). The resolutions of the Committee inter alia required that obligations securing a financial contribution of £2,200 towards travel plan monitoring. The resolution included the provision that the agreement should be completed by the 7<sup>th</sup> July 2017.

The 7th July passed without completion of the agreement due to the applicant questioning the lawfulness of an obligation requiring a travel plan monitoring fee, the response to which also involved advice on the matter being obtained from the County Council. Having accepted the position the applicant, on advice from your officers, decided to secure the required obligation by means of a Unilateral Undertaking rather than by an agreement. Subsequently delays occurred in the completion of the Unilateral Undertaking and the applicant sought an extension of time and your Officer agreed to extend the deadline for the securing of the obligation to the 21<sup>st</sup> July. The agreement was subsequently completed on the 17th July and the decision notice on the application was issued "out of time" on the 26th July.

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

**(9) Former Jubilee Baths, Nelson Place, Newcastle 17/00252/FUL**

This application for the demolition of former swimming baths and construction of 273 room student development with associated communal area and car parking came before the Planning Committee at its meeting on the 18th July (at around week 8). The resolutions of the Committee inter alia required that obligations securing a financial contribution of £228,892 towards public open space, travel plan monitoring fee of £2,200 and £50,000 to be used to fund Resident Parking Zones in the event that it has been demonstrated (through surveys secured by condition) that the development has resulted in on street parking problems. The resolution included the provision that the agreement should be completed by the 25th June.

The 25<sup>th</sup> June passed without completion of the agreement. An extension of the period within which the obligations could be secured, to the 13<sup>th</sup> July was granted by your Officer. That date passed and a further extension of the period to the 20<sup>th</sup> July was

agreed, and then one final one to the 21<sup>st</sup> July upon which date the obligations were secured by agreement

The decision notice on the application was issued “out of time” on the 24<sup>th</sup> July, some 17 weeks after receipt of the application.

#### **(10) Land around Wilmot Drive Estate 17/00281/FUL**

This application for full planning permission for the or the erection of 276 dwellings, public open space and associated infrastructure works came before the Planning Committee at its meeting on the 18<sup>th</sup> July (at around week 15). The resolutions of the Committee inter alia required that obligations securing a financial contribution of £60,000 towards a Multi-Use Games Area, £30,000 towards off site highway works, commuted off site affordable housing, travel plan monitoring fee of £6,430, an agreement for the long term maintenance of on site public open space, and the review of the financial assessment of the scheme and its ability to make additional contributions, if there has been no substantial commencement within 18 months of the grant of planning permission. The resolution included the provision that the agreement should be completed by the 25<sup>th</sup> August.

That date passed without the obligations being secured, but not as a result of delay on the applicants’ behalf. Having concluded that there had been no material change in planning circumstances, and noting the applicant wishes to speedily conclude the agreement, your Officer has agreed to extend the Section 106 period to the 22<sup>nd</sup> September

Some 21 weeks have now passed since receipt of the application

#### **(11) Orchard House and 35 Clayton Road 17/00194/OUT**

This application, for full planning permission for the demolition of Orchard House together with the conversion of No. 35 Clayton Road (previously offices) into four flats and outline planning permission for the erection of up to 20 dwellings on the remaining part of the site came before the Planning Committee on 18<sup>th</sup> July (at around week 19). The resolution of the Planning Committee included a time limit for the securing, by the 18<sup>th</sup> August 2017, of an undertaking regarding the provision of a planning obligation with respect to the provision of 25% on-site affordable housing and a financial contribution towards off-site public open space.

The date for the completion of the Section 106 was always challenging given the timescales involved and whilst a draft agreement is now in circulation it has been necessary for your Officer to agree an extension of time for the completion of the agreement to the 7<sup>th</sup> September. A further update will be given if one is available prior to the meeting.

Some 25 weeks have now passed since receipt of the application.

Date Report prepared

30<sup>th</sup> August 2017